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To: Mayor and Village Council

Date: April 28, 2014

From: Ron E. Williams, Village Manager

Re: Shed Administrative Variances  
Ordinance for 1<sup>st</sup> Reading

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**AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AMENDING SECTION 30-30.3(d), "ADMINISTRATIVE (DE MINIMUS) VARIANCES", TO AMEND THE ADMINISTRATIVE VARIANCE REVIEW CRITERIA AND PROCEDURES RELATING TO SHEDS AND SIMILAR ACCESSORY STRUCTURES; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE. [Cosponsored by Mayor Shelly Stanczyk and Council Person Patrick Fiore]**

**BACKGROUND:**

On March 19, 2014, during a Committee of the Whole (COW) meeting, the Village Council directed the Village Manager to have staff prepare an administrative variance procedure for sheds and other like structures utilizing criteria consistent with the administrative approval authority provided by the 2009 Shed Amnesty Program (Ordinance No. 09-03). The attached proposed ordinance is in fulfillment of that request.

The discussion during the March 19, 2014, COW was a continuation of other actions taken by the Village Council in an ongoing effort to bring as many nonconforming sheds into compliance within parameters acceptable to Village residents. Such efforts included modification of interior setbacks for sheds 144 square feet or less when located in a residential district, and an increase in approval authority for administrative variance from 5% to 10% of a required interior and rear yard setback. Although those efforts provided a legalization path for some sheds constructed without the benefit of a permit, it still fell short of the scope provided by the original Shed Amnesty Program.

Much of the Village Council's discussion centered around providing relief program consistent with that 2009 action. Initial suggestions envisioned reestablishment of the Shed Amnesty Program, however such a remedy was deemed to be short lived and thus inadequate to address what has been observed to be a longer term code compliance matter. Hence, the suggestion was to provide a long term solution through an administrative variance measure consistent with the standards utilized by the 2009 Shed Amnesty Program. The impact would be to provide a path to legalization without the limitation of a narrow application window associated with an amnesty program.

The 2009 Shed Amnesty Program, among other things, provided for an administrative approval authority for existing, unpermitted sheds 150 square feet in size or smaller, that were sited no closer than three (3) feet to any interior or rear property line. Eligible sheds could not exceed eight (8) feet in height. The proposed administrative variance amendment employs the same criteria. All other sheds built without the benefit of a permit that do not comply with the parameters of this proposed amendment may seek a public hearing variance before the Mayor and Village Council for relief.

**ANALYSIS:**

The proposed ordinance was reviewed for consistency with the criteria established in Section 30-30.7(b), of the Village's Code of Ordinances. The Background Section provided above and shall be incorporated into each criterion delineated below. The following is a review of those criteria.

**Criteria (1):** Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the Village's Concurrency Management Program.

**Analysis:** The Comprehensive Plan does not address variances.

**Finding:** Not applicable.

**Criteria (2):** Whether the proposal is in conformance with all applicable requirements of Chapter 30.

**Analysis:** See Background Section. There does not appear to be any particular provision of Chapter 30 that conflicts with the proposed ordinance. The proposed modification offers greater flexibility to an applicant seeking relief from provisions of the Code while remaining consistent with a prior directive of the Mayor and Village Council via the Ordinance No. 09-03, AKA Shed Amnesty Ordinance. The proposed ordinance is consistent with the administrative standards previously authorized in the Shed Amnesty Ordinance.

**Findings:** Consistent.

**Criteria (3)** Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether the changes support or work against the proposed change in land use policy.

**Analysis:** See Background Section and Criteria 2. By way of its action in 2009 through the creation of the Shed Amnesty Program, the Mayor and Village Council identified and established development parameters for existing sheds built without the benefit of permits, and within required setbacks. Because the amnesty program only provided for a limited application window, the full impact of the program was limited. The proposed amendment is not as full in scope as the original program for it only seeks to continue the administrative review procedure as therein provided. By establishing

the administrative procedures in a more permanent manner, it ensure a more consistent application of the law as originally envisioned in the 2009 program.

Findings: Consistent.

**Criteria (4)** Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and locations of uses involved, the impact on the adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land uses.

Analysis: See Background Section and Criteria 3. Implementation of the proposed amendment will provided for: consistency in application of the law as was originally applied in the Shed Amnesty Program for sheds eligible for administrative review.

Finding: Consistent.

**Criteria (5)** Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and service; would exceed the capacity of the facilities and services, existing or programmed, including: transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.

Analysis: The proposed amendment does not impact on the above systems as they are principally a function of use and not physical development standards of a structure.

Finding: Not applicable.

**Criteria (6)** Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetland protection, preservation of groundwater aquifer wildlife habitats, and vegetative communities.

Analysis: The proposed amendment does not impact on the above systems as they are principally a function of use and not physical development standards of a structure.

Finding: Not applicable.

**Criteria (7)** Whether, and to the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

Analysis: See Background Section and Criteria (3) and (4) above. The proposed ordinance does not appear to affect property values or the general welfare.

Findings: Consistent.

**Criteria (8)** Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on land use pattern shall be identified.

Analysis See Background Section and Criteria (3) and (4) above.

Findings: Consistent.

**Criteria (9)** Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose of Chapter 30.

Analysis: See Background Section Criteria (2), (3) and (4) above. As reflected in the Criteria above, there appears to be no conflict to the public interest.

Findings: Consistent.

**Criteria (10)** Other matters which the local planning agency or Village Council in its legislative discretion may deem appropriate.

Analysis: As per the direction of the Village Council.

Finding: As determined by the Village Council.

**FISCAL/BUDGETARY IMPACT:**

There does not appear to be any fiscal or budgetary impact of this amendment.

**RECOMMENDATION:**

Decision for the Village Council.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AMENDING SECTION 30-30.3(d), "ADMINISTRATIVE (DE MINIMUS) VARIANCES", TO AMEND THE ADMINISTRATIVE VARIANCE REVIEW CRITERIA AND PROCEDURES RELATING TO SHEDS AND SIMILAR ACCESSORY STRUCTURES; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE. [Cosponsored by Mayor Shelly Stanczyk and Council Person Patrick Fiore]**

WHEREAS, in 2002 the Village of Palmetto Bay incorporated and shortly thereafter adopted Miami-Dade County's Zoning Code for the purpose of regulation land development matters until such time that the Mayor and Village Council could adopt their own code provisions; and

WHEREAS, on February 2, 2009, the Mayor and Village Council adopted Ordinance 09-03, commonly referred to as the "Shed Amnesty Ordinance", whereby sheds built without the benefit of a building permit, whether within required setbacks or not, were given the opportunity to come into building and zoning compliance; with the program authorized to run for a period of 18 months after the adoption of the Ordinance; and

WHEREAS, the Shed Amnesty Ordinance granted administrative approval authority for existing, unpermitted sheds sited no closer than three (3) feet to any interior or rear property line, with all others going before the Mayor and Village Council for variance approval; and

WHEREAS, on August 20, 2009, the Mayor and Village Council adopted Division 30-50, which, among other provisions, provided setback standards for sheds in residential districts which were in some cases, more stringent than that provided by the Miami-Dade County Code; and subsequently amended those provisions on April 7, 2014 restoring the previous shed setback standards; and

WHEREAS, on August 20, 2009, the Mayor and Village Council of the Village of Palmetto Bay created Section 30-30.3(d), entitled "Administrative (de minimus) variances", so as to provide relief from certain provisions of the Village's Land Development Code; and subsequently amended those provisions on January 6, 2014, by expanding the permitted scope of administrative variance requests and adjusting the review criteria to minimize subjective determinations; and

WHEREAS, there continues to be numerous existing unpermitted sheds throughout the Village that are no longer eligible to participate in the Shed Amnesty Program, that are within the required setbacks, but are at least three (3) feet from the property line; and

WHEREAS, the Mayor and Village Council desire amend Section 30-30.3(d) to implement a long term strategy to address unpermitted sheds that are no closer than three (3) feet to the side or rear property line in a manner similar to the criteria employed by the Shed Amnesty Ordinance.

BE IT ENACTED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated herein by this reference.

Section 2. Code Amendment. Section 30-30.3(d) of the Code of Ordinances of the Village of Palmetto Bay, Florida, is hereby amended to read as follows:

**DIVISION 30-30. DEVELOPMENT APPROVAL PROCEDURES**

\* \* \*

**Sec. 30-30.3. Administrative development approvals.**

\* \* \*

(d) *Administrative (de minimus) variances.* When the literal or strict enforcement of the provisions of the Village's Land Development Code cause unusual, exceptional, unnecessary difficulties or undue hardship or injustice because of the size of the tract, parcel or lot, the topography, the condition or nature of adjoining areas, or the existence of other unusual physical conditions, the planning and zoning director may grant an administrative variance for lot coverage, setback, height, buffer, lot dimension and/or floor area ratio (FAR) requirements in accordance with the following requirements:

\* \* \*

(5) To approve an administrative variance application, the Department Director shall find:

- (A) No more than two sides of the encroaching construction shall be considered for a setback adjustment (all prior setback variances, administrative adjustments and alternative site development options shall count toward this limitation). The front set back is precluded from using an administrative variance process.
- (B) No prior approved setback, lot coverage or building spacing variance(s), administrative adjustment(s) or alternative site development option(s) shall be further changed by administrative adjustment.

- (C) The property owner shall certify in writing that any and all easement areas as shown on the recorded plat remain unencumbered by the encroaching construction, unless a release of interest by the easement holder(s) is obtained and submitted prior to permit issuance.
  - (D) The applicant provide written certification from a registered architect or engineer that the existing encroaching construction complies, or can be made to comply with all applicable construction codes, including but not limited to the Florida Building Code, the applicable fire prevention code and other zoning regulations.
  - (E) The proposed accessory structure is a normal and customary accessory residential use.
  - (F) The impacts associated with the deviation requested are adequately mitigated through alternative measures.
  - (G) Protection of natural features, including trees, wetlands, archeological sites and similar circumstances.
  - (H) Conditions and safeguards. In granting an administrative adjustment, the director may prescribe conditions and safeguards deemed necessary to protect the interests served by the underlying zoning district regulations, including, but not limited to: Landscape materials, walls, and fences as required buffering; modification of the orientation or deletion of any openings; modification of site arrangements; and modification of plans.
- (6) Pre-existing sheds and similar accessory structures 150 square feet in size or less which do not exceed eight (8) feet in height, shall be granted an administrative variance provided the structure is located no closer than three (3) feet to an interior or rear property line, that the request is consistent 30-30.3(d)(5) above, and that the application includes an affidavit(s) from the property owner(s) that about the property boundary where the reduction is requested.
- (76) The planning and zoning director shall give written notice of his/her preliminary determination regarding the administrative variance to the adjacent property owners and shall hear any objections regarding the preliminary determination during a subsequent 30-day period. Administrative (de minimus) variance request for non-residential uses and multifamily residential uses shall be noticed according to Section 30-30.11(o) as per mailing radius for variances. At the conclusion of the 30-day period the Village shall approve, approve with conditions, or deny the administrative variance by written order. Any written objection received from a property owner within the notice radius within the 30-day notice time period shall result in a denial of the request and the applicant may seek a variance as

provided under section 30-30. Notice of intent to issue the administrative variance will be posted on the property and noticed on the Village. Posting of the property and notice on the Village web site shall be considered supplementary in nature and a complementary service to the public and shall in no way compromise the outcome of the final disposition of the preliminary decision.

**Section 3. Conflicting Provisions.** The provisions of the Code of Ordinances of the Village of Palmetto Bay, Florida and all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**Section 4. Severability.** The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Codification.** It is the intention of the Mayor and Village Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the Village of Palmetto Bay, Florida, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 5. Effective Date.** This ordinance shall take effect immediately upon enactment.

First reading: \_\_\_\_\_

Second reading: \_\_\_\_\_

PASSED AND ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Attest: \_\_\_\_\_  
Meighan Alexander  
Village Clerk

\_\_\_\_\_  
Shelley Stanczyk  
Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE VILLAGE OF PALMETTO BAY, FLORIDA ONLY:

\_\_\_\_\_  
Dexter W. Lehtinen  
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore

\_\_\_\_\_

Council Member Joan Lindsay

\_\_\_\_\_

Council Member Tim Schaffer

\_\_\_\_\_

Vice-Mayor John DuBois

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Mayor Shelley Stanczyk

\_\_\_\_\_

## ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; MODIFYING DIVISION 30-110 RELATING TO RELIGIOUS FACILITIES, PRIVATE SCHOOLS, CHILD CARE FACILITIES, AND OTHER NON-GOVERNMENTAL PUBLIC ASSEMBLY USES; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. (Sponsored by Councilman Tim Schaffer.)

WHEREAS, the Mayor and Village Council of the Village of Palmetto Bay desire to amend Division 30-110.

NOW, THEREFORE, BE IT ENACTED BY THE MAYOR AND COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

**Section 1. Recitals.** The above recitals are true and correct and incorporated herein by this reference.

**Section 2.** Chapter 30, of the Village's Land Development Code, at Division 30-110 is amended to read as follows:

**DIVISION 30-110. – RELIGIOUS FACILITIES, PRIVATE SCHOOLS, CHILD CARE FACILITIES, AND OTHER NON-GOVERNMENTAL PUBLIC ASSEMBLY USES**

**Sec. 30-110.1. - Applicability, purpose and definitions.**

This Division shall apply to religious facilities, private schools, child care facilities and other nongovernmental public assembly uses as may be provided for in the underlining zoning district. The purpose of this Division is to ensure such uses are consistent with all applicable land use regulations and development standards provided below prior to the issuance of a development permit. That such approvals are based upon the provision and availability of adequate public facilities and services coincident with the impact of the public assembly use, to ensure compliance with the Village's Comprehensive Plan, Future Land Use Element, Goal 1, and Policy 1.1.6, to ensure quality neighborhood protection, that would serve the immediate needs of the residential community on compatible sites subject to adequate design and buffering, and to ensure that such facilities and services further public health, safety, comfort, order, appearance, convenience, morale and general welfare. It is the intent of this ordinance that such uses do not burden adjoining properties or public rights-of-way by contributing to or causing recurrent stormwater ponding. Buildings for public assemblage shall mean all buildings or other structures or any part thereof, which provide occupancy for assembly in one room as an auditorium, religious facility, non-profit fraternal club, private school, and similar occupancies.

Such uses intended to be controlled by this Division include, but are not limited to, the following:

- (1) *Day care/nurseries.* Child care for infants and children up to and including the age of six (6).
- (2) *After school care.* Child care and recreation for children above the age of five (5) years old when no formal schooling program is conducted and where the care provided is generally after school, on weekends, school holidays and vacations.
- (3) *Babysitting service for shoppers.* Child care for limited time periods (maximum three (3) hours) provided within a shopping center solely for the convenience of the patrons, and limited to not more than 40 children at any one (1) time.
- (4) *Kindergarten.* Child care and preschool programs for children ages four (4) through six (6) years old.
- (5) *Elementary, middle and senior high schools.* References to these schools are to be loosely interpreted to encompass any schools, graded or ungraded, whose students are within the age ranges typically found at these school levels, as more fully defined at Division 30-120.1.
- (6) *Family day care homes:* Child care and recreation with a maximum of five (5) children including the day care operator's own children.
- (7) *Private school.* Any private institution providing child care or instruction at any level from kindergarten through college.
- (8) *Private college/university.* An institution of higher learning beyond the high school level.
  - a. Private colleges and universities with sites of 30 acres or less shall meet the minimum standards established herein for high school facilities. In addition to said minimum standards, facilities with sites exceeding 30 acres shall be subject to review by the Village Council. Trade schools and satellite schools are not considered under this definition and shall be restricted to Village's commercial district.
- (9) *Religious Facility.* A religious facility regulated by this Division are those that conform to the definition at Section 30-40.
- (10) *Private Club.* Private clubs shall be registered as a nonprofit organization and shall conform to the definition of such as provided for at Section 30-40 [club, private].
- (11) *Student, pupil or child.* The terms "child", "Student" or "pupil" and their plurals are to be used interchangeably in this Division.
- (12) Duly constituted "*missions*" are permitted under the same conditions and in the same zoning districts that churches are permitted. For the purposes of this section, a "mission" shall mean any body, association, or organization for doing religious and charitable work, devoted entirely to the moral, religious and social improvement of those in need of such missionary work and assistance, which does not constitute a church but is sponsored by a duly constituted church.

\* \* \*

**Sec. 30-110.2. - Public hearing required.**

The establishment, expansion or modification of any use regulated by this Division in existing or new buildings, is authorized in zoning districts that allow such use as a permitted use, after public hearing and upon a determination that the standards established in this Division have been met.

Applicant shall comply with the applicable requirements of Division 30-30. Applicable definitions and rules of construction found at Division 30-40 shall also be complied with.

**Sec. 30-110.3. - Required information.**

The applicant shall submit the following information to the Village's Planning & Zoning Department for review by the department and for consideration at a public hearing:

- (1) *Written information – all applications:*
  - a. Total size of the site;
  - b. Number of parking spaces provided for staff, visitors, and operations vehicles and justification that those spaces are sufficient for the facility;
  - c. Number of and pick-up and drop-off spaces provided for automobile and bus use and justification that those spaces are sufficient for the transportation needs of the facility;
  - d. Days and hours of operation; weekly and annually;
  - e. An explanation of any such activities anticipated to be conducted in association with the facility but typically conducted outside of the hours of;
  - f. Means of compliance with requirements of the Florida Building Code, the National Uniform Building Code, and the departmental requirements of the Miami-Dade County Fire Department, Miami-Dade County Department of Public Health, the Florida Department of Health and Rehabilitative Services, and any federal or state regulations applicable to the specific application and occupancy.
  - g. Means of compliance with Section 30-30.2(d), unity of title or declaration of restriction in lieu of unity of title.
  
- (2) *Written information – schools and child care facilities:*
  - a. Maximum number of students to be served;
  - b. Grades or age groups that will be served;
  - c. Maximum number of teachers, administrative and clerical personnel;
  - d. Maximum number of classrooms and total square footage of classroom space;
  - e. Total square footage of non-classroom, administrative office space;
  - f. Total square footage of non-classroom, student activity space;
  - g. Amount and location of exterior recreational/play area in square footage; and
  - h. Maximum number and type of vehicles that will be used in conjunction with the operation of the facility.
  
- (3) *Graphic information.* The following graphic information shall be prepared by a Florida registered design professional:
  - a. A plan indicating existing zoning on the site and adjacent areas.
  - b. A site plan indicating the following:
    1. Location of all structures.

2. Parking layout, automobile/bus stacking areas (parent pickup, school bus delivery/pickup, and special needs locations), drives and circulation.
  3. Walkways.
  4. Location of recreation areas and play equipment which shall include surrounding fences and/or walls, which shall comply with 30-60.2.
  5. Any other features which can appropriately be shown in plan form.
- c. Floor plans and elevations of all proposed structures.
  - d. Landscape plan listing quantities, size, and names of all plants consistent with Section 30-100.1(d).

**Sec. 30-110.4. - Physical space requirements for multiple-use facilities.**

Where a private educational facility is to be operated in a structure simultaneously used as a residence, church or other facility, the area which will be specifically used for a private school or child care facility during the hours of operation shall be clearly defined. The area so delineated shall be used as the basis for determining physical space requirements as provided in this Division. No physical space credit will be given for interior or exterior areas that are not restricted to the school or child care use during the hours of operation of said facility. Classroom space and open recreational space shall be considered physical space.

**Sec. 30-110.5. - Residential use.**

No combination of residential use and private school facility or private club shall be permitted on the same property except for the use and occupancy by the owner-operator or caretaker.

**Sec. 30-110.6. - Physical standards.**

The following shall be the minimum permitted physical standard for all uses regulated by the Division.

- (1) *Physical standards - all applications:*
  - a. *Setbacks.* Buildings and other improvements for public assemblage shall comply with the applicable district regulations, located in Division 30-50, and the following additional requirements:
  - b. No building for public assemblage shall be located closer than 25 feet from any property line which abuts a public highway or alley, or closer than 50 feet from any property line abutting or adjacent to another lot or closer than 75 feet from an existing residential building, or within a required landscape buffer.
  - c. In E-1, E-1C and E-2 Districts, where the setback from the front building line is greater than the minimum specified by this section, buildings for public assemblage shall set back at least the minimum distance of 50 feet from the front property line.

- d. No building for public assemblage in E-M, E-S, E-1, E-1C, and E-2 Districts shall be closer than 75 feet from any property line abutting a lot under ownership other than that on which the structure is to be placed.
- e. Landscaping and trees shall be identified and provided in accordance with Division 30-100 of this Code for the underlying zoning district.
- f. *Prohibited locations for child care facilities.* Child care facilities as described in this Division shall be prohibited from operating on property abutting or containing a water body such as a pond, lake, canal, irrigation well, river, bay or ocean or other body of water unless a safety barrier is provided which totally encloses or affords complete separation from such water hazards and at a minimum comply with section 30-60.4. Swimming pools and permanent wading pools in excess of 18 inches in depth shall be totally enclosed and separated from the balance of the property so as to prevent unrestricted admittance. All such barriers shall be a minimum of 48 inches in height and shall comply with the following standards:
  - 1. *Gates.* Gates shall be of the spring back type so that they shall automatically be in a closed and fastened position at all times. Gates shall also be equipped with a safety lock and shall be locked when the area is without adult supervision.
  - 2. *Safety barriers.* All safety barriers shall be constructed in accordance with the standards established in this Code, except that screen enclosures shall not constitute a safety barrier for these purposes.
- g. Compliance with Section 30-50.1(h), relating to odors, liquids, gases, dust, smoke, vibration or noise.
- h. *Signs.* Signs shall comply with district regulations as contained in Division 30-90 of this Code for the underlying zoning i. Compliance with Section 30-110.7(4)a. relating to a mandatory six (6) foot wall and buffer.
- j. A child day care facility within a business district shall comply with the setback requirements of the business district within which it is located.

(2) *Physical standards – schools and child care facilities:*

- a. *Minimum site sizes.* The following are the minimum site sizes that shall be required, based on the proposed maximum number of children who will use the facility at any one time. All calculations for the number of children/students shall be based on the total proposed maximum enrollment. When the number of children permitted results in a fractional number, any such fraction equal to or greater than one-half shall be rounded up to the next highest whole number. When grade levels overlap, the more restrictive standard shall be used.
  - 1. *Minimum site size for grades kindergarten through the sixth grade.* The maximum number of children for kindergarten through the sixth grade shall not exceed 60 children per acre.
  - 2. *Minimum site size for grades seven through 12.* The maximum number of students for seventh through twelfth grades shall not exceed the following:

Minimum Site Size for Grades Seven Through Twelve

Square Feet of Site Area	Maximum Number of Students
From zero acres to two acres	45 students per acre
From more than two acres up to four acres	50 students per acre
From more than four acres up to six acres	55 students per acre
From more than six acres up to eight acres	60 students per acre
From more than eight acres up to ten acres	65 students per acre
From more than ten acres	67 students per acre

- b. *Outdoor recreational areas.* Outdoor recreation/play areas shall meet the following minimum standards, calculated in terms of the proposed maximum number of children for attendance at the school at any one time, unless otherwise indicated. Where there are age category combinations, each age classification shall be calculated individually. All outdoor recreational areas shall be located in the rear yard area. Whenever possible, the outdoor recreational/play areas shall not be immediately adjacent to single-family residences, or section line roads, nor create incompatible impacts on other immediately adjacent properties. Adequate screening in the form of a wall and landscaping shall be provided wherever the outdoor/play area abuts a property under different ownership. Where the front or side street property line of a child care facility described as a day care or day nursery, kindergarten or Family day care home, abuts a section line or half section line right-of-way no outdoor recreation playground/play area shall be located between the right-of-way and the building line parallel to the right-of-way. Within two (2) years after the Director mails notice of the requirement of this ordinance all existing child care facilities shall either comply with the foregoing requirement or install a safety barrier from vehicular traffic designed by a professional engineer and approved by the Public Works Department. For any existing child care facility which is required to either relocate its outdoor recreation playground/play area or provide a safety barrier, any resulting reduction in outdoor recreation playground/play area shall be deemed in compliance with the minimum playground/play area requirements of this Division relating to Physical Standards relating to outdoor areas. Any such reduction shall also be deemed to be in substantial compliance with any site plan previously approved at public hearing. In event that such a child care facility whose site plan was approved at public hearing seeks to relocate its playground/play area, such relocation shall be subject to approval after public hearing upon appropriate application. No fee shall be charged for such application. This subsection shall not be deemed to allow the future expansion of any child care facility to occur without complying with the requirements of the physical standards relating to outdoor areas.

*Minimum Standards for Outdoor Recreation Areas*

Type School	Required Square Footage
Day nursery, kindergarten, preschool and afterschool care	45 sq. ft. per child calculated in terms of half of the proposed maximum number of children for attendance at the school at one time
Elementary school (grades 1-6)	500 sq. ft. per student for the first 30 students; thereafter, 300 sq. ft. per student
Middle and senior high school (grades 7-12)	800 sq. ft. per student for the first 30 students; 300 sq. ft. per student for the next 300 students; thereafter, 150 sq. ft. per student

Where there are category combinations, each classification shall be calculated individually,

- c. *Signs.* Signs shall comply with district regulations as contained in Division 30-90 of this Code for the underlying zoning district. The exterior facade of child care facilities approved within a residential area shall be compatible with the residential character of the adjoining properties and signs shall not exceed six square feet in size.
- d. *Automobile stacking.* Stacking space, defined as that space in which pickup and delivery of children can take place, may be provided in the form of specified parking stalls and/or areas clear of vehicular drive aisles. Stacking space shall be provided for a minimum of two automobiles for private schools or child care facilities with 20 to 40 children; private schools providing elementary, middle or senior high curricula or child care facilities with 40 to 60 children shall provide four spaces; thereafter there shall be provided a space sufficient to stack five vehicles. However, the department may require a traffic and/or circulation study to demonstrate adequate vehicular circulation.
- e. *Bus stacking.* Stacking space shall be provided to accommodate the transportation needs of the children to the facility without causing backup on to adjacent public rights-of-way or substantial disruption to adjacent uses.
- f. *Parking requirements.* Shall be as required by the Miami-Dade County Public School Board for the type and size of private school or child care facility proposed and shall comply with Division 30-70.
- g. *Classroom size.* All spaces shall be calculated on the effective net area usable for instruction or general care of the group to be housed. This space shall not include kitchen areas, bathrooms, and hallways. The minimum classroom space shall be determined by multiplying the maximum proposed number of pupils for attendance at any one time by the minimum square footage, as provided in table below. Where a private educational facility is non-graded, calculations shall be based on the age level that corresponds to the grade level in the public school system. Where a school includes more than one of the following categories, each category shall be individually computed.

Minimum Standards for Classroom Area

Type School	Required Square Feet
Day nursery, kindergarten, preschool and after school care	35 sq. ft. per pupil
Elementary grades (1-6)	30 sq. ft. per pupil
Middle and senior high grades (7-12)	25 sq. ft. per pupil
Baby-sitting service	22 sq. ft. of room area per child

- h. *Structure height.* The structure height shall not exceed the height permitted for the underlying zoning district as delineated in Division 30-50.
- i. *Exemption.* Baby-sitting services are exempt from the requirements relating to outdoor areas, auto stacking, parking and trees.

(3) *Physical standards – Athletic fields and Amenities.* If provided as part of the application, as ancillary uses, the applicant shall comply with the following conditions:

- a. Lighting of outdoor recreational areas shall ~~not~~ be permitted.
- b. A swimming pool may solely provide interior lighting below the surface of the water and comply with Section 30-60.4.
- c. High school or Olympic sized pools shall have a sound proof wall, or other mitigating structures separating the pool area from adjacent residential uses. The mitigating structure or sound proof wall shall be installed prior to the utilization of the pool. The design and construction method of the mitigating structure or sound proof wall shall be determined by a certified acoustical engineer paid for by the applicant. The Village may hire its own acoustical engineer to review the findings of the applicant's expert. The pool may be completely enclosed in a building in lieu of the sound proof wall. An Olympic sized pool is a pool designed to be 50 meters in length (164 feet), and 25 meters (82 feet in length) with 10 lanes, with each lane width to be 2.5 meters (8 feet, two inches wide). The standard size of a high school pool is at least 25 yard in length.
- d. Any outdoor athletic field(s)/court(s)/pool(s) on non-residential properties shall be situated to minimize impacts to adjacent single family residential uses. Exemptions include a single-family size pool, a single tennis court, or a single basketball court.
- e. Fencing for a tennis court(s) shall be required as provided under Section 30-60.2(h).

**Sec. 30-110.7. - Additional site plan review standards.**

In addition to site plan review as required by this Code, the following review standards shall be utilized by the Village:

- (1) *Planning and neighborhood studies.* Planning and neighborhood studies accepted or approved by the Village Council that include recommendations relevant to the facility and site shall be used in the review process.
- (2) *Scale.* Scale of proposed private school and child care facilities shall be compatible with surrounding proposed or existing uses and shall be made compatible by the use of buffering elements.
- (3) *Compatibility.* The design of private school and child care facilities shall be compatible with the design, kind and intensity of uses and scale of the surrounding area.
- (4) *Landscaping and Buffers.* Buffering elements shall be utilized for visual screening and substantial reduction of noise levels at all property lines consistent with Section 30-60.29. For the purposes of this code, "buffer" and landscape strip shall be used interchangeably. Below shall be the minimum requirements as to the landscaping and buffering:
  - a. A six (6) foot concrete wall built consistent with Section 30-60.2, and a landscaped buffer shall be constructed where the non-residential use abuts a single-family residential use regardless of zoning district.
  - b. The wall shall be finished and maintained on both sides by the applicant consistent with Section 30-60.2(b)(3).
  - c. Landscaping within the buffer areas shall be maintained perpetually consistent with the landscape plan consistent with 30-100.1(d).
  - d. The wall and buffer shall be constructed prior to the issuance of any permits for structures or improvements.
  - e. All minimum landscaping requirements of Section 30-100 of the Village's Code of Ordinances, Chapter 24 of the Miami-Dade County Code and conditions imposed by Miami-Dade County PERA shall be met. All development orders shall put the applicant on notice that despite any permits issued by PERA, applicant is to comply with all development orders and conditions contained in this Division relating to landscaping and maintenance.
  - f. No improvements shall be permitted within the buffer area (i.e. no roads, parking, storage sheds, recreational areas, pedestrian access or any other use except landscaping and unpaved maintenance access). No motorized vehicles may be used within the buffer area. Landscape maintenance shall comply with Section 30-100.3.
  - g. Existing trees shall be preserved whenever possible during the development. If trees must be removed, the applicant shall be required to mitigate the impact in accordance with Village and PERA requirements. If the relocated trees do not survive, the applicant shall be required to replace the trees in compliance with Village and PERA requirements and the requirements of Section 30-100.4.

- i. The plants required and selected for the buffer area shall provide both visual and acoustic buffering between the adjacent homes and the proposed structures and the expected noise sources. The buffer should consist of canopy trees, understory trees and shrubs. When possible, the shrubs should be of a type of planting material that would provide the required buffering within two years of planting. A berm may be included in the buffer to absorb sound and increase the vegetation height, as long as irrigation is provided and runoff retention requirements are met. A berm may not substitute for a required fence or wall.
- j. Canopy trees must be a minimum of 25 feet on center for the entire buffer. Understory trees are to be dispersed through the buffer in a manner to accommodate their natural growth and standard planting distance accepted by landscape architects.
- k. The design of the buffer is to be determined and approved by a certified acoustical engineer (licensed by the State of Florida) and landscape architect, paid for by the applicant, when deemed appropriate. The Village may also hire its own acoustical engineer to review the findings of applicant's experts. The experts are to evaluate the uses, the site, the proposed buffer, which is intended to be a visual and sound barrier. The experts shall evaluate the plantings and determine an efficient mechanism for minimizing the noise generating elements of the site from the adjacent properties.

(5) Traffic

- a. Where a traffic study is required by Village Code, applicant shall utilize a certified traffic engineer, licensed in the State of Florida, paid for by the applicant, and shall conduct a traffic study and traffic operations plan, and prepare a report of that study for the Village. The Village may hire its own Traffic engineer to review the findings of applicant's expert.
- b. The applicant shall be responsible for compliance with Comprehensive Plan, relating to traffic concurrency requirements.
- c. Local roads as prescribed by the Comprehensive Plan shall not be used for the delivery of goods or services by commercial vehicles, when possible.
- d. Applicant shall be responsible for all expenses relating to traffic control, police involvement, and police participation in traffic movements. The traffic plan for the roadways relating to the daily use of the property or any special events on the property shall be subject to approval of Village Police Department and Public Works of Miami-Dade County and the Village, as applicable. Police officers are to be hired by and paid for by Applicant to manage traffic at property entrance(s) and off-site locations affected by traffic conditions.
- e. The applicant shall be required to provide additional on-site stacking of automobiles to accommodate any spill-over onto neighborhood streets.
- f. No driveway or driveway access shall be within 10 feet of the buffers abutting residential properties, when feasible.
- g. No helicopter or fixed wing landing zones shall be permitted except for emergency medical services.

- h. Main access shall be provided directly from a collector road or main arterial road, whenever feasible.
  - i. Applicant shall comply with the provisions of Section 30-70.4.
  - j. Applicant shall comply with the provisions of Section 30-60.1 relating to public rights-of-way.
  - k. Pedestrian and vehicular circulation shall be separated insofar as is practicable, and all circulation systems shall adequately serve the needs of the facility and be compatible and functional with circulation systems outside the facility consistent with Division 30-70. Automobile and bus stacking spaces shall be provided to accommodate the drop-off and pick-up needs without causing substantial disruption to adjacent right-of-ways or the surrounding uses.
- (6) *Service areas.* Wherever service areas are provided they shall be screened and so located as not to interfere with the livability of the adjacent residential properties.
- (7) *Parking areas.*
- a. Parking areas shall be screened/obscured and so located as not to interfere with the livability of the adjacent residential properties.
  - b. Vehicle parking shall not be permitted in any on-site buffer areas.
  - c. Ample parking shall be provided on-site for required parking and off all right-of-way areas. Surplus parking may be provided off-site, provided however, it is not located within the rights-of-way.
  - d. Parking structures (for more than six vehicles) shall not be permitted on residentially zoned properties.
  - e. Loading zones shall be situated towards the center of the property and if feasible away from any buffer abutting a residential zone.
  - f. Loading zones may be located within building structures provided the buildings meet setback requirements.
  - g. Ample parking facilities for buildings for public assemblage shall be provided off of rights-of-way. Parking facilities for a building of public assemblage in a residential district may be permitted in the same district with the religious facility, school or other buildings used for noncommercial purposes, provided no parking lot or special parking area is closer than 25 feet from any residential property and shall comply with the parking requirements found at Division 30-70, of this Code.
  - h. Compliance with the requirements of 30-70.4.
  - i. Reflect all off-street parking areas.
  - j. Public assembly uses may enter into parking agreements with adjacent property owners within 500 feet of the public assembly use to accommodate surplus parking needs above and beyond parking code requirements of Division 30-70. The parking agreement shall demonstrate that the lease of such spaces will not create a parking deficiency for the off-site property and a copy of the agreement shall be provided to the Village Planning & Zoning Department.

(8) *Commercial impacts.* Where schools are permitted in commercial areas it shall be clearly demonstrated in graphic form how the impact of the commercial area has been minimized by design techniques.

(9) *Lighting*

- a. All lighting shall require a detailed site lighting plan with location, height, type of lights, shades, deflectors, beam directions, and photometric data. All plans shall be consistent with the requirements of Section 30-60.6.
- b. All ~~E~~ exterior lighting intensities shall be controlled to assure that light spillage and glare are not directed onto adjacent properties or streets and all direct illumination is kept within property boundaries, consistent with the requirements of 30-60.6(2). All ~~E~~ exterior lighting shall be controlled so as not to adversely affect adjacent properties and motorists, consistent with 30-60.6.
- c. No building or structure shall have any up lighting, directional soffit lights or wall-pac lights, provided, however, wall-pac lighting may be placed within an interior courtyard without violating this provision. One way down lights on walls, columns, covered terraces or walkways shall be permitted.
- d. Lighting shall ~~not~~ be permitted to be installed (or used) for outdoor recreational areas consistent with Section 30-60.6. (~~Underwater lighting used for the illumination of a swimming pool, fountain and other water features may shall be permitted~~) consistent with Section 30-60.6.
- e. Parking area, circulation, and security light fixtures shall be installed which project the light rays directly to the ground surface and shall include shields which restrict projection of light rays outward to adjacent properties and also restrict the upward projection of light rays into the night sky. Consistent with 30-60.6(4), it is not intended here to regulate permitted sign lights and it is not the intent to modify, amend or repeal any portion of the Florida Building Code, or the home rule powers of Miami-Dade County. Applicant shall comply with Division 30-90, relating to signage.
- f. The parking area, circulation and security lights shall not exceed a maximum overall height of fifteen (15) feet.
- g. Compliance with the Village's Sustainable Building Standards found at Section 5-51 through 5-63, relating to energy saving fixtures and LED lighting shall be required.
- h. The parking area and internal circulation lights shall be installed consistent with Miami-Dade County Code, the Florida Building Code, and comply with 30-60.6(4).
- i. All lighting on recreational areas are to be turned off on Sundays through Thursdays at 10:00 pm and turned off on Fridays and Saturdays at 11:00 p.m. This does not include swimming pools, fountains, or other water features.

(10) *Noise*

- a. The sound level of site operation shall not exceed the decibel levels in the Village Noise Ordinance, 30-60.29.

- b. Sound pressure levels shall be measured at the property line upon which the emission occurs consistent with 30-60.29.
- c. When determined necessary and applicable, applicant is to hire an acoustical engineer, to determine whether the wall, buffer, and landscaping, as well as proposed activities would limit the effects felt by the community due to the proposed use of the site and to confirm that the noise levels will comply with the Village's noise ordinance. The Village may also hire an acoustical engineer to review the findings of Applicant's expert.

(11) *Trash Pickup Location:*

- a. Trash pickup location shall be situated so as to not interfere with the livability of the adjacent residential properties, and away from the buffer, when feasible.
- b. Any trash enclosure that has any food waste shall be enclosed and screened with landscaping.
- c. Comply with section 30-60.7(f).

(12) *Required Zoning Workshop.*

- a. The Zoning Workshop shall not be considered part of the quasi-judicial hearing. Each application shall be evaluated based upon the record presented at the Village Council hearing(s) on the application.
- b. Upon submission of an application for any of the above described uses, the applicant shall present a planned development to the public during a zoning workshop, which is to be held within 90 days of submittal of the application. Notice of the workshop shall be provided to the public consistent with the requirements of this Division.
- c. The zoning workshop shall be held to provide a forum for the public to learn about the proposed development within the residential zoning district(s). During this workshop members of the public may ask questions and provide feedback or input to the applicant(s). Representatives of the applicant shall be available to answer questions. Color renderings of the proposed structures, along with a site plan and any other visual materials shall be provided in a form viewable by all in the meeting room at least 30 minutes prior to the scheduled start time. A public comment period shall be provided. Developments may be presented to the public simultaneously, in several locations within the meeting site. During this workshop members of the public are encouraged to ask questions and to provide feedback to the applicant about the proposed development.
- d. In addition, representatives of the applicant shall be available to answer questions that members of the public may have about the proposed development. A second workshop may be scheduled within 30 days of the first, provided, however the meeting date is established prior to the conclusion of the first workshop. Upon completion of the workshop procedure, the application shall be scheduled for the next available zoning

hearing, provided the application and staff review is complete and consistent with notification requirements at Section 30-30.11.

- e. The members of the Village Council may be present during the workshop but may not participate in the discussion. The Village Council shall comply with the Village's quasi-judicial procedures found at Section 2-105, and disclosure requirements of Section 2-106, of the Village's Code of Ordinances.

(13) As a condition of approving the plot use or site plan, the Village shall require a recorded covenant establishing the calculations and conditions and restricting the area designated for child care to child care use only.

(14) As part of the site plan the Applicant is to provide graphic information, prepared by a design professional(s), such as registered Florida architects and landscape architects, a plan indicating the existing zoning on the site and adjacent areas; location of all structures; parking layout and drives; walkways, location of recreation areas and play equipment which shall include surrounding fences and walls; floor plans and elevations of all proposed structures; landscaping as further detailed herein; and any other features which can appropriately be shown in plan form.

(15) *General conditions.*

- a. Applicant shall comply with the provisions of Section 30-60.3 relating to utility sheds, accessory buildings, and screened enclosures.
- b. Applicant shall comply with the provisions of Section 30-60.5 relating to generators.
- c. Applicant shall comply with the provisions of Section 30-60.7 relating to outdoor storage.
- d. Applicant shall comply with the provisions of Section 30-60.8 relating to residential boat storage; recreational and camping equipment; tents; awnings and canopies.
- e. Applicant shall comply with the provisions of Section 30-60.18 relating to Special events; temporary uses.
- f. Applicant shall comply with the provisions of Section 30-60.21 relating to maintenance of structures.
- g. Applicant shall comply with the provision of Section 30-60.24, relating to permits not to be issued for violations
- h. Applicant shall comply with the provision of Section Sec. 30-60.25 relating to certificates of use. The certificate of use and occupancy shall be automatically renewable annually by the Department upon compliance with all the terms and conditions including maintenance of the facility in accordance with the approved plan.
- i. Applicant shall comply with the provision of Section 30-60.30 and 30-60.52 relating to telecommunications towers, antennas and satellite dishes
- j. Applicant shall comply with the provisions of Section 30-100.6, relating to floodplain management regulations.

- k. Applicant shall comply with the provisions of Section 30-100.5, relating to multi-agency review of natural resource issues.
- l. Applicant shall comply with the provisions of Section 30-100.7, relating to conservation and emergency water restrictions.
- m. Applicant shall comply with the provisions of Division 30-150, relating to historic preservation.
- n. Applicant shall comply with the provisions of Division 30-160, relating to art in public places.
- o. Applicant shall comply with the provisions of Sections 14-19 through 14-30, relating to false alarms.
- p. Applicant shall comply with the provisions of Section 27-51 thorough 27-90, relating to lot maintenance.
- q. Applicant shall comply with the provisions of Section 29-51 through 29-56 relating to utility line clearing.

**Sec. 30-110.8. Operational Standards**

- 1. Service and delivery vehicles, including but not limited to solid waste pick-up, shall be restricted to Monday through Friday between the hours of 7:00 a.m. to 7:00 p.m. [consistent with 30-60.29(e)(7) of the Code]. Weekend deliveries shall be allowed between 8:00 a.m. and 5:00 p.m.
- 2. Service, delivery and storage areas and equipment shall be adequately screened and located away from view of adjacent single family residential properties.
- 3. Operational hours of the non-residential use shall be such that the impact upon the immediate residential neighborhood is minimized.
- 4. Where services areas are provided they shall be screened and so located as not to interfere with the livability of the adjacent residential properties.

**Section 30-110.9 Preconstruction Requirements**

- 1. The applicant shall comply with the requirements of Section 30-60.11 relating to preconstruction and construction standards for sites.
- 2. Compliance with 30-60.10 and 30-60.29 relating to demolition requirements.

**Section 30-110.10 Enforcement, Vested Rights, and Nonconforming Uses**

- 1 Enforcement shall be provided as per the requirements of 2-205, of the Village's Code of Ordinances.
- 2 Vested Rights shall be determined in compliance with 30-10.3, of the Village's Code of Ordinances.
- 3 Nonconformity of use shall be determined in compliance with 30-10.4, of the Village's Code of Ordinances.
- 4. Any proposed minor changes to existing schools that were approved prior to the adoption of this Division may be approved by the Director, provided that such modifications do not violate the resolution approved as part of the plan. Such minor

changes shall include, but not be limited to, enlargement of the play area, additions, such as storage areas, additional restrooms, and expansion of kitchen facilities.

**Section 3. Conflicting Provisions.** The provisions of the Code of Ordinances of the Village of Palmetto Bay, Florida and all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**Section 4. Severability.** The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Codification.** It is the intention of the Village Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the Village of Palmetto Bay, Florida, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 6. Effective Date.** This ordinance shall take effect immediately upon enactment.

**PASSED and ENACTED** this \_\_\_\_ day of June, 2014.

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Attest: \_\_\_\_\_  
Meighan Alexander  
Village Clerk

\_\_\_\_\_  
Shelley Stanczyk  
Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE  
USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:

\_\_\_\_\_  
Dexter W. Lehtinen  
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore \_\_\_\_\_

Council Member Tim Schaffer \_\_\_\_\_

Council Member Joan Lindsay \_\_\_\_\_

Vice-Mayor John DuBois \_\_\_\_\_

Mayor Shelley Stanczyk \_\_\_\_\_