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RESOLUTION NO. 2010-119

ZONING APPLICATION VPB-10-040

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING WITH CONDITIONS THE APPLICATION OF ANTONIO & ESTRELLA CANERO LOCATED AT 14355 SW 78th AVENUE; PALMETTO BAY, FLORIDA; APPROVING WITH CONDITIONS THE SHED AMNESTY VARIANCE REQUEST FOR TWO SHED SETBACK REQUIREMENTS; SHED 1, TO SETBACK 6.5 FEET FROM THE EAST REAR PROPERTY LINE WHERE 7.5 FEET IS REQUIRED; SHED 2, SETBACK OF 1 FOOT WHERE 5 FEET IS REQUIRED BETWEEN BUILDINGS ON A PARCEL ZONED E-M; SIZE OF SHED 1 IS 140 SQUARE FEET; SIZE OF SHED 2 IS 80 SQUARE FEET; AS PROVIDED FOR UNDER SECTION 33-311, OF THE COUNTY CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on February 2, 2009, the Village Council pursuant to Ordinance Number 09-03 (“Shed Amnesty Ordinance”) provided for an 18 month shed amnesty program that would allow existing nonconforming sheds to be permitted provided certain conditions are met; and

WHEREAS, the Village created a Shed Administrative Variance process for sheds located more than 3 feet from the property line and under 150 square feet, all other sheds would have to adhere to the provisions of Section 33-311(4)(b) or (c) of the Miami-Dade County Code, and apply for a quasi-judicial hearing for a setback variance; and,

WHEREAS, Planning and Zoning Department issued a recommendation of approval of the shed; and,

WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial hearing on the application at the Deering Estate on October 18, 2010; and,

WHEREAS, the Mayor and Village Council find, based on substantial competent evidence in the record, that the application pursuant to Section 33-311, of the Miami-Dade County Code, as adopted by the Village relating to the above requests, find that the application, as amended by Council Action is consistent with the Village’s Comprehensive Plan and the applicable land development regulations; and,

WHEREAS, based on the foregoing finding, the Mayor and Village Council determined to grant the application, as amended (modified/conditioned) by Council Action as provided in this resolution.

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

Section 1. A hearing on the present application was held on October 18, 2010 in accordance with the Village’s “Quasi-judicial hearing procedures” Ordinance, found at Section 2-107, of the Village’s Code of Ordinances. Pursuant to the hearing, the Mayor and Village Council make the following findings of fact, and conclusions of law.

1 Section 2. Findings of fact.

2 The subject property is located at 14355 SW 78th Avenue, Palmetto Bay, Florida.
3

4 The Council held a public hearing and only the property owner spoke as to the application. The original Staff
5 recommendation of denial was modified during the hearing, provided, Shed 2 is relocated five (5) feet away
6 from the main structure. Shed 2 is currently located adjacent to the primary residence. The property owner
7 agreed with staff recommendation to relocate Shed 2 five (5) feet away from the main structure. The Council
8 incorporates by reference the minutes, audio tape, and transcript (if transcribed) into its findings of fact.
9

10 The applicants submitted a non-use variance application requesting relief from setback requirements in order
11 to allow two existing sheds. Shed 1 (10' x 14' = 140 sq. ft.) to setback 6.5 feet from the east rear property line
12 where 7.5 feet is required. Shed 2 (8' x 10' = 80 sq. ft.) to have a setback of 1 foot where 5 feet is required
13 between buildings on a parcel zoned E-M.
14

15 The Mayor and Village Council of the Village of Palmetto Bay recognized that many sheds have been built on
16 residential properties without a building permit, particularly after Hurricane Andrew or other hurricane
17 events. Due to the emergency and security risk situation after hurricanes often permits were not sought by the
18 homeowners. Often, the Village cannot determine whether the sheds were built due to the aftermath of
19 Hurricane Andrew or more recently. In an effort to facilitate legalization and permitting of these structures
20 to ensure that these structures comply with the Florida Building Code, and to obtain compliance within the
21 community, the Village Council desires to create an 18 month amnesty program to legalize shed structures
22 that meet certain requirements of an administrative zoning review and approval process. As such, the Mayor
23 and Village Council adopted an amendment to Chapter 30 of the Village's Code of Ordinances entitled "Shed
24 Amnesty Program" under Ordinance 09-03.
25

26 The amnesty period was for an 18-month period starting in February 2009. Failure to apply for amnesty
27 within the 18-month period shall not cure the violation and each property owner may be liable for civil
28 citations for violation of this Code. This amnesty for certain sheds shall only apply to residential properties
29 within the Village of Palmetto Bay. It shall not apply to commercial properties.

30 In order to issue a permit so that the property owner or representative can call for required inspections, the
31 applicant shall be required to apply for a building permit with the Building Department and provide the
32 Department a detailed set of plans. The application and plans will be processed as per the applicable building
33 code requirements at the time of the shed's construction, provided, there is clearly established evidence of
34 when the shed was constructed. If there is no evidence of when the shed was constructed, the shed shall
35 comply with the current version of the Florida Building Code. Double permit fees shall be waived; only the
36 "original" amnesty permit fee to obtain a building permit shall apply.
37

38 If the ancillary shed is within the side or rear setbacks, is less than 150 square feet; and provided that the
39 location of the shed is more than 3 feet from any point on the structure to the existing side and rear property
40 lines, or a distance required by the Florida Building Code, then the ancillary shed may remain in its current
41 location, upon administrative zoning review and building permit approval as provided above. Any shed of
42 greater size than 150 square feet and/or located within 3 feet of an adjacent property line, then, that shed
43 must either apply for a zoning non-use non-administrative variance hearing, which would need to be granted
44 by the Village Council pursuant to the criteria of Section 33-311(4)(b) or (c) of the Code; or have the shed
45 removed.
46

1 Section 3. Conclusions of law.

2 1. The Application is in compliance with the adopted 2005 Village of Palmetto Bay
3 Comprehensive Plan, and Future Land Use Map.

4
5 2. The standard of review for a variance is found at Section 33-311(4)(b) and (c), of the Miami-
6 Dade County Code. That the Applicant's request for a setback variance is in compliance with the applicable
7 standards, as conditioned below.

8
9 Section 4. Order.

10
11 A. The Council, pursuant to Section 33-311(4)(b), of the Miami-Dade County Code as applied
12 by the Village, approves with conditions the Applicant's request for a setback variance to keep two sheds.
13 Shed 1 (10' x 14' = 140 sq. ft.) to setback 6.5 feet from the east rear property line where 7.5 feet is required.
14 Shed 2 (8' x 10' = 80 sq. ft.) to have a setback of 1 foot where 5 feet is required between buildings on a parcel
15 zoned E-M. Shed 2 is to be relocated five (5) feet away from the existing main structure. The existing
16 sheds are in keeping with the basic intent and purpose of the zoning and land use regulations. Approval of
17 this application is in character with the existing use of the property and is consistent with the Village's
18 Comprehensive Plan. The Village Council approves the survey prepared for Antonio Canero & Estrella
19 Canero; consisting of one (1) sheet, dated stamped received August 2, 2010.

20
21 B. The Village Council conditions/modifies the approval as follows:

- 22
23 1. The applicants are to comply with the requirements of all other applicable
24 departments/agencies as part of the Village of Palmetto Bay building permit submittal
25 process.
26 2. The applicants are to comply with the landscaping and screening requirements and all the
27 requirements imposed by the Village of Palmetto Bay.
28 3. The applicants are to comply with all the requirements of Ordinance Number 09-03 (Shed
29 Amnesty Ordinance).
30 4. Applicants must complete permitting within 60 days of this Zoning approval.
31 5. Applicants shall relocate Shed 2 five (5) feet away from the main structure.
32 6. Failure to comply with above conditions shall result in the approval being rescinded.
33

34
35 This is a final order.
36

37 Section 5. Record.

38 The record shall consist of the notice of hearing, the application, documents submitted by the
39 applicant and the applicant's representatives to the Village of Palmetto Bay Planning and Zoning Department
40 in connection with the applications, the Village's recommendation and attached cover sheet and documents,
41 the testimony of sworn witnesses and documents presented at the quasi-judicial hearing, and the tape and
42 minutes of the hearing. The record shall be maintained by the Village Clerk.
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44 Section 6. This resolution shall take effect immediately upon approval.

45 PASSED and ADOPTED this 18th day of October, 2010.

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Attest:

Melighan Alexander
Melighan Alexander
Village Clerk

Eugene P. Flinn, Jr.
Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:

Eve A. Boutsis
Eve A. Boutsis,
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Ed Feller	ABSENT
Council Member Howard Tendrich	<u>YES</u>
Council Member Shelley Stanczyk	<u>YES</u>
Vice-Mayor Brian Pariser	<u>YES</u>
Mayor Eugene P. Flinn, Jr.	ABSENT

Executed October 27, 2010