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RESOLUTION NO. 2010-88

ZONING APPLICATION VPB-10-022

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; GRANTING THE VARIANCE REQUEST OF APPLICANT LANDS INCORPORATED, PROPERTY LOCATED WITHIN THE FORMER TOWN OF CUTLER UNDER FOLION NO.: 33-5026-003-0212, PALMETTO BAY, FLORIDA, FOR A VARIANCE TO CONSTRUCT A SINGLE-FAMILY HOME TO SETBACK 6 FEET FROM THE EAST AND WEST INTERIOR PROPERTY LINE WHERE 15 FEET IS REQUIRED AND TO PROVIDE 35 PERCENT LOT COVERAGE WHERE 32 PERCENT IS ALLOWED ON A PROPERTY ZONED E-M, AS PROVIDED FOR UNDER SECTION 30-30.6, OF THE VILLAGE'S CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, applicant, Lands Incorporated, pursuant to Section 30-30.6 of the Village of Palmetto Bay's Land Development Code (LDC) filed an application requesting a variance of setback requirements to construct a two-story single family home on a non-conforming lot to allow a 6 feet setback along the east and west interior property lines where 15 feet is required, and an increase in lot coverage to 35 percent where 32 percent is allowed on a property zoned E-M, Estate Modified District; and,

WHEREAS, Planning and Zoning Department issued a recommendation of approval of the setback variance for the single-family home; and,

WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial hearing on the application at the Deering Estate on September 20, 2010; and,

WHEREAS, the Mayor and Village Council find, based on substantial competent evidence in the record, that the application pursuant to Section 30-30.6 of the LDC relating to the above requests, find that the application, is consistent with the Village's Comprehensive Plan and does comply with the applicable land development regulations; and,

WHEREAS, based on the foregoing finding, the Mayor and Village Council determined to grant the application 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 September 20, 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 On October 9th 1951, the Board of Miami Dade County Commissioners via Resolution No. 4565
3 approved the Department of Planning and Zonings request for a change of zoning from RU-1,
4 (One family residential) to EU-IC (2 ½ acre estate) with the following condition: In each and every
5 case where the ownership, as of the date of the adoption of the resolution, would not be
6 inconformity with the proposed zone classification, the owners shall nevertheless be permitted to
7 use their property in its present size for single-family residential use, provided however, that at
8 anytime thereafter, any two or more continues parcels shall come under one ownership, then the
9 same shall not be thereafter separated below the standards of the proposed zoning regulation.

10
11 On August 20th, 2009, the Mayor and Village Council of the Village of Palmetto Bay via Ordinance
12 No. 09-18 modified the Department of Planning and Zoning request for a change of zoning from
13 E-1C (One unit per 2 ½ gross acre) to R-1 (Single-Family – One unit per 7,500 net sq. ft.) as to
14 bring a series of legally non-conforming parcels from the original Town of Cutler to be compatible
15 with the closes zoning designation possible. The Mayor and Council approved a request for change
16 of zoning from E-1C to E-M (Estate Modified– One unit per 15,000 net square feet) instead. As a
17 result, the previous approval under Resolution No. 4565 granting the property owner the right to
18 use the property in its current size for a single–family use became null and void as a result of
19 rezoning the property by the Village as under the current zoning regulations the applicant is unable
20 to meet minimum lot size requirements or setbacks.

21
22 In December 2009, the Village enacted its own LDC, also known as it's "Zoning Code" and
23 associated Zoning Designation Map. The properties that were zoned EU-1C under the County
24 Code were rezoned by the Village and are now designated as E-M, Estate Modified District, under
25 the Village's LDC. The E-M designation mirrors the prior EU-M zoning designation, with a few
26 adjustments. The setbacks for the E-M district are the same as under the County designation.

27
28 As part of the adoption of the LDC, the Village enacted its own zoning procedures, which can be
29 found at Division 30-30 of the Code. The Village has moved away from the County's non-use
30 variance process, which process provided two mechanisms for reviewing variance applications. The
31 Village's process, detailed below, provides a strict hardship standard.

32
33 The adopted 2005 Village of Palmetto Bay Comprehensive Plan, Future Land Use Map designates
34 the site as Estate Density Residential. The residential density allowed in this category is less than 2.5
35 dwelling units per gross acre.

<u>ZONING</u>	<u>FUTURE LAND USE DESIGNATION</u>
<u>Subject Property:</u>	
E-M; Single-Family Residential District	Estate Density Residential less than 2.5 D.U. per gross acre

	Minimum Required	Current
Lot Area	15,000 net square feet	7,200 net square feet
Lot Frontage	120 feet	60 feet
Lot Depth	115 feet	120 feet
Open Space	68%	

Under the current zoning designation, the applicant is unable to accommodate a single-family home without having to request a non-use variance of setback and lot coverage requirements as the parcel is a legally non-conforming lot.

The public hearing was opened and the architect Armando D'Avila, spoke in favor of the application. Mr. Erik Tollberg, a Village resident requested a smaller structure be placed on the site.

Section 3. Standard of Review.

In December 2009, the Village Council adopted Division 30-30 of the Code, relating to "Development Approval Procedures." Section 30-30.6 of the Code, entitled "Variances" governs the process for addressing a variance request. The Village defined a variance as "a relation of the terms of Chapter 30 of the Code, due to an unnecessary and undue hardship when relation of terms is not contrary to the public interest and results from conditions peculiar to the property and not the result of the actions of the applicant that may result from a literal enforcement of Chapter 30 of the Code." In short, the Village has adopted a strict hardship standard for reviewing a variance request. The Village Council specifically identified permitted variances at subsection (b), and prohibited variances at subsection (c).

In Section 30-30.6(b) of the Code, a variance is authorized to be granted by the Village Council, after quasi-judicial public hearing, only for setback lines; lot width; street frontage; lot depth; lot coverage; landscape or open space requirements; height limitations; yard regulations; fence and wall regulations; signs; parking; and flood regulations approved under Section 30-100.6, of the Code of Ordinances, and other matters specifically permitted as variances pursuant to this Division. Administrative setback variances shall be permitted pursuant to Section 30-30.3(d). Cross-reference with the FT&I Zoning District requirements found at Division 30-50 of the LDC.

According to Section 30-30.6(c) of the Code, the Village Council may not grant a variance to allow a prohibited use, or one that is contrary to the Comprehensive Plan or Section 30-30.6 of the Code. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or uses in an adjoining zoning district or because of prior variances granted. Similarly, a variance shall not be

1 granted which increases nor has the effect of increasing density or intensity of a use beyond that
2 permitted by the Comprehensive Plan or Chapter 30 of the Code.
3

4 Pursuant to Section 30-30.6(e) of the Code, the Village Council may after public hearing, adopt a
5 written resolution granting, granting with conditions or denying the variance request. The criteria
6 for reviewing the variance are as follows:
7

8 (1) That the variance is in fact a variance allowed in this Division and is within the province of
9 Village Council.
10

11 The Village Council finds that the non-use variances requested are allowed and within the province
12 of the Village Council. The specific request is approved as the conditions of the site create an
13 unnecessary and undue hardship. In addition, the variance is not contrary to the public interest and
14 results from conditions peculiar to the property and not the result of the actions of the applicant and
15 not due to financial reasons.
16

17 (2) Existence of special conditions or circumstances. That special conditions and circumstances
18 exist which are peculiar to the land, structure, or building involved and which are not applicable to
19 other lands, structures, or buildings in the same zoning district.
20

21 The Village Council found that the subject property was recently rezoned by the Village to E-M.
22 Under the current zoning designation the subject property does not meet minimum lot size
23 requirements. The existing legally non-conforming lot size creates the hardship and was imposed
24 upon the property owner by the Village.
25

26 (3) That the special conditions and circumstances do not result from the actions of the
27 applicant.
28

29 The Council found that there is a special condition unique to the site due to the irregular lot size of
30 the parcel. In addition, the Village rezoned the parcel in 2009 from EU-1C to E-M. As a result of
31 the rezoning a prior 1951 approval which allowed the applicant the right to construct a single family
32 home was lost during the rezoning. As such the Village indirectly has created a direct hardship to the
33 applicant.
34

35 (4) That granting the variance requested will not confer on the applicant any special privilege
36 that is denied by Chapter 30 to other lands, buildings, or structures in the same zoning district.
37

38 The Council finds that the request if approved will allow the applicant to construct a single-family
39 home in its proposed location would be the minimum variance requested without creating a
40 potential life and safety issue.
41

42 (5) Financial difficulties or economic hardship shall not be a factor for determining whether a
43 variance should be granted.
44

45 The Council finds that there are no financial or economic hardships related to this application.

1 (6) That literal interpretation of the provisions of Chapter 30 would deprive the applicant of
2 rights commonly enjoyed by other properties in the same zoning district under the terms of Chapter
3 30 and would work unnecessary and undue hardship on the applicant. The purchase of property
4 which has an illegal nonconformity with Chapter 30 shall not be considered a hardship for the
5 granting of a variance, nor shall conditions peculiar to the property owner be considered.
6

7 The Council finds that the physical limitations of the lot size and the recent rezoning by the Village
8 limit the applicant ability to construct a single-family home.
9

10 (7) That the variance granted is the minimum variance that will make possible the reasonable
11 use of the land, building, or structure.
12

13 The Council finds that the variance will have a minimum adverse impact to the adjacent properties
14 in immediate area. Other homes in the immediate area have been constructed using similar setback
15 and lot coverage as under the previous zoning approval other property owners within the same plat
16 where allowed to construct single-family homes under R-1 requirements.
17

18 (8) That the grant of the variance will be in harmony with the general intent and purpose of the
19 comprehensive plan and Chapter 30, and that the variance will not be injurious to the area involved
20 or otherwise detrimental to the public welfare.
21

22 The Council finds that if approved the request will be in harmony with the general intent and
23 purpose of the Comprehensive Plan and Chapter 30 of the Code. The scale, height, and size are
24 appropriate and compatible with the character of the surrounding neighborhood.
25

26 (9) In granting any variance, Village Council has prescribed appropriate conditions to mitigate
27 the proposed variance and to ensure safeguards in conformity with the comprehensive plan and
28 Chapter 30 or any other duly enacted ordinance. Violation of imposed conditions and safeguards,
29 when made a part of the terms under which the variance is granted, shall be deemed a violation of
30 this chapter and shall nullify the variance development approval.
31

32 According to Section 30-30.6(f) of the LDC, once a written decision is made by the Village Council,
33 that resolution shall be recorded in the public records. The resolution granting a variance shall be
34 deemed applicable to the development for which it is granted and not to the individual applicant,
35 provided that no resolution granting a variance shall be deemed valid with respect to any use of the
36 premises other than the use specified in the application for a variance development approval (See:
37 Section 30-30.6(g) of the Code). As with all applications, if a variance is granted, the development
38 approval shall be valid for 24 months from the date of approval, or that date approved by the
39 Village Council, if a longer period is authorized during the public hearing (See: Section 30-30.2(k) of
40 the Code). In short, Section 30-30.2(k) of the Code requires that the variance be utilized,
41 constructed, if applicable, within the two year period. In this application, the sign would be required
42 to be built within two (2) years of approval.
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1 Section 4. 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 30-30.6 of the Village's
6 Land Development Code. That the Applicant's request for a setback variance is in compliance with
7 the applicable hardship standards.

8
9 3. The Council approves the variance of setback requirements to allow for the
10 construction of a two-story new single-family home (4,204 sq. ft.) to setback 6 feet from the east and
11 west interior property line where 15 feet is required and increase in lot coverage of 35 percent where
12 32 percent is allowed on a property zoned E-M.

13
14 4. The Council staff finds that the variance is in keeping with the basic intent and
15 purpose of the zoning and land use regulations. In addition, the requested non-use will not have a
16 negative impact on the surrounding area since other homes in the immediate area have been
17 constructed with similar setbacks and lot coverage. As such, approval of this application is in
18 character with the surrounding uses, and would be consistent with the Village's Comprehensive
19 Plan.

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22 Section 5. Order.

23
24 The Village Council approves the variance request pursuant to Section 30-30.6 of the Code to allow
25 plans entitled "Old Cutler Residence", consisting of five sheets dated stamped received July 28th,
26 2010, as prepared by Armando Davila Architect P.A. with the following conditions:

27
28 1. The applicant is to comply with the requirements of all other applicable departments
29 and agencies as part of the Village of Palmetto Bay's building permit submittal process.

30
31 2. The application must meet the minimum requirements of Chapter 24 of the Code of
32 Miami-Dade County.

33
34 3. The applicant shall relocate all existing trees affected by the proposed single-family
35 home to another location within the property and shall be noted on the plans submitted to
36 the Building Department. Compliance with this requirement shall be noted on the plans.

37
38 4. The development authorized under this approval shall be valid for 24 months from
39 the date of approval. If not constructed within 24-month period the variance will
40 automatically expire.

41
42 5. This is a final order.

