

**RESOLUTION NO. 06-105**

**ZONING APPLICATION 06-9-VPB-1 (06-69)**

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; DENYING THE APPLICATION OF OCTAVIO MENDIZABAL & LESLIE PEREZ-MENDIZABAL, SINGLE-FAMILY RESIDENCE-EU-1, REQUESTING WAIVER OF ZONING REGULATIONS FOR PROPERTY LOCATED APPROXIMATELY 161' SOUTH OF SW 179 STREET AND WEST OF OLD CUTLER ROAD; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the applicant made application requesting to waive the zoning regulations requiring Old Cutler Road to be 100' in width; to permit 35' of dedication (50' required) on the west side of Old Cutler Road, as described in the Miami-Dade Department of Planning and Zoning Recommendation to the Village of Palmetto Bay, which is attached to this resolution; and,

WHEREAS, the village council of the Village of Palmetto Bay conducted a quasi-judicial hearing on the application October 16, 2006, at Southwood Middle School, 16301 SW 80 Avenue, Palmetto Bay, Florida; and,

WHEREAS, the mayor and village council finds, based on substantial competent evidence in the record, that the application is not consistent with the surrounding area and would visually impact this portion of State-designated historic Old Cutler Road; and,

WHEREAS, based on the foregoing finding, the mayor and village council determined to deny 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 October 16, 2006, in accordance with ordinance. no. 02-03, entitled "Quasi-judicial hearing procedures." Pursuant to the hearing, the village council makes the following findings of fact, conclusions of law and order.

Section 2. Findings of fact.

1. The applicant is Octavio Mendizabal and Leslie Perez-Mendizabal. The property is located at 8952 SW 169 Terrace, Village of Palmetto Bay, Miami-Dade County, Florida.
2. The applicant requests to waive the zoning regulations requiring Old Cutler Road to be 100' in width; to permit 35' of dedication (50' required) on the west side of Old Cutler Road.
3. The village council adopts the portions of the cover sheet to, and the county memorandum relating to: Zoning Hearings History, Comprehensive Development Master Plan (CDMP), Neighborhood Characteristics, Site and Buildings, and Neighborhood Services as part of the village's findings of fact. The village additionally adopts the recommendation and findings of the village's Community Development staff.

Section 3. Conclusions of law.

1. The village council adopts by reference the portions of the county memorandum entitled Pertinent Requirements/Standards; and the village Community Development Staff's Analysis that recommend denial as its conclusions of law. The village specifically rejects the county's analysis and recommendations that are contrary to the Village Community Development recommendation relating to compatibility, as the county considered developments outside the Village of Palmetto Bay.
2. The village also adopts the testimony of staff at the hearing, and the testimony heard from the community during the quasi-judicial hearing, which testimony reflected the incompatibility of the variance request with historic Old Cutler Road.
3. The village council further concludes that the application for setback variance is inconsistent with the provisions of the Alternative Non-Use Variance (ANUV) Standards, Section 33-311(A)(4)(c) and is not consistent with the surrounding area and would visually impact this portion of State-designated historic Old Cutler Road. Moreover, the request is not consistent with the Village's comprehensive code and future development plans.

Section 4. Order.

1. The application for waiver of zoning regulations is denied without prejudice.
2. The application is denied on the basis that the applicant did not submit evidence to carry its burden of proof under the Alternative Non-Use Variance Standards, nor has the applicant established an unnecessary hardship, as the applicant can construct (and has constructed) a single-family home in compliance with all set back and zoning requirements.

3. This is a final order.

Section 5. Record.

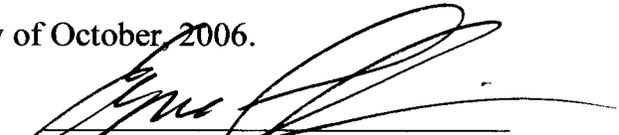
The record shall consist of the notice of hearing, the applications, documents submitted by the applicant and the applicant's representatives to the Miami-Dade County Department of Planning and Zoning in connection with the applications, the county recommendation and attached cover sheet and documents, the testimony of sworn witnesses and documents presented at the quasi-judicial hearing, Opinion of Title correspondence from counsel to applicant, and the tape and minutes of the hearing. The record shall be maintained by the village clerk.

Section 6. This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this 16<sup>th</sup> day of October, 2006.

Attest:

  
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Meighan Pier  
Village Clerk

  
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Eugene P. Flinn, Jr.  
Mayor

APPROVED AS TO FORM:

  
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Eye A. Boutsis, Village Attorney  
Nagin, Gallop & Figueredo

FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>YES</u>
Council Member Paul Neidhart	<u>YES</u>
Council Member Shelley Stanczyk	<u>YES</u>
Vice-Mayor Linda Robinson	<u>YES</u>
Mayor Eugene P. Flinn, Jr.	<u>YES</u>