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**RESOLUTION NO. 09-86**

**ZONING APPLICATION [VPB-09-002]**

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING THE APPLICATION OF BRUCE JOHNSON FOR A NON-USE VARIANCE OF SETBACK REQUIREMENTS UNDER ORDINANCE 09-03 THE VILLAGE'S SHED AMNESTY ORDINANCE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the applicant made applications for a non-use variance of the setback requirements, as described in the Village's Department of Planning and Zoning Recommendation, 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 at the Deering Estate Visitor Center on October 14, 2009; and,

WHEREAS, the Mayor and Village Council finds, based on substantial competent evidence in the record, that the application for a non-use variance under Ordinance 09-03 The Village's Shed Amnesty Program 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 applications, 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 applications was held on October 14, 2009, in accordance with the Village's enacted "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.

The Applicant, Bruce Johnson, sought a non-use variance of the property located at 14820 SW 81<sup>st</sup> Avenue, Palmetto Bay, Florida. Pursuant to Sections 33-311(4)(b) and (c), Miami-Dade County Code, the applicant sought a non-use variance of setback requirements to allow an existing shed (9.5' x 9.5'/ 90.25 sq. ft.) to have a setback of 4" where 5' is required from the (north) interior side property line on a property zoned E-M. As the shed exceeds the minimum 3' foot setback provision under the administrative shed variance criteria, the applicant must adhere to the variance process.

On February 2, 2009, the Village Council, pursuant to Ordinance Number 09-03 (known as "the Shed Amnesty Ordinance"), provided for an 18 month shed amnesty program that would allow

1 existing nonconforming sheds to be permitted provided certain conditions are met. The Village  
2 Council recognized that many of the nonconforming sheds were built on residential properties  
3 without permits; and many of the sheds had been built after Hurricane Andrew or other hurricane  
4 events in an effort to secure construction materials and personal property due to residential damage  
5 caused by the events. In addition, the Village Council acknowledged that they could not determine  
6 whether the sheds were built due to the aftermath of Hurricane Andrew or other hurricane events  
7 that occurred over the past 17 years.  
8

9 Pursuant to Ordinance Number 09-03, property owners could seek a simplified after-the-fact permit  
10 for sheds under two circumstances:  
11

- 12 1. Sheds under 150 sq. ft. and more than 3' from the property line could obtain an  
13 administrative shed variance; or
- 14 2. Shed over 150 sq. ft. +/- and less than 3' from the property line the applicant can seek a  
15 variance.  
16

17 The shed moratorium ordinance facilitates the legalization and permitting of the non-conforming  
18 sheds to ensure that they comply with the Florida Building Code. The current applicants wish to  
19 participate in the amnesty program and bring the existing nonconforming shed into compliance. The  
20 shed is located on the northwest corner of the property, adjacent to a 6' high wood fence, 4" south  
21 of the (north) property line where 5' feet is required. The applicant is unable to comply with  
22 minimum safety requirements (3' under the amnesty) nor the screening landscaping requirements,  
23 due to the 4" setback as indicated in Section b(2) pursuant to Ordinance Number 09-03. The  
24 properties immediately to the north, east, south and west are surrounded by single-family homes.  
25 The property directly west also has a shed in a similar location. This area is zoned by the Village as  
26 E-M. The shed does not qualify for the shed administrative variance process as it exceeds 3' setback  
27 from the property line. This application is adjacent (east) of another shed variance amnesty  
28 applicant. The applicants submitted a survey showing the location of the existing shed. Approval of  
29 the setback variance will allow the applicants to maintain the 9.5' x 9.5' shed on site.  
30

31 The variance request, pursuant to Section 33-311(A)(4)(b), Miami-Dade County Code, is consistent  
32 with the existing development pattern surrounding the area. In addition, the area is also compatible  
33 with the surrounding zoning and land use regulations. Since there is no actual hardship, the criteria  
34 of the alternative non-use variance provisions of Section 33-311(A)(4)(c), Miami-Dade County  
35 Code, have not been met.  
36

37 The applicants submitted a survey showing the location of the existing shed. Approval of the  
38 setback variance will allow the applicants to maintain the 9.5' x 9.5' shed on site.  
39

40 The adopted 2005 Village of Palmetto Bay Comprehensive Plan and Future Land Use Map,  
41 designates the site as Estate Density Residential. (Less than 2.5 dwelling units (D.U.) per gross acre).  
42 There are no government resources impacted including roadways, sewer and water. The sole impact  
43 may be to adjacent neighbors due to the 4" setback request which could produce visual and noise  
44 impacts.  
45

1 In evaluating the application for a Non-Use Variance of Setback Regulations, the Village Council  
2 took into consideration the requirements set forth in Section 33-311(A)(4)(b) Non-Use Variance  
3 Standard, or the alternative Section 33-311 (A)(4)(c) Alternative Non-Use Variance Standard, of the  
4 Miami-Dade County Code. The non-use variance standard requirements in Section 33-311  
5 (A)(4)(b), Miami-Dade County Code, indicates that upon appeal or direct application in specific  
6 cases to hear and grant applications for non-use variances from the terms of the zoning and  
7 subdivision regulations, the Council (following a public hearing) may grant a non-use variance upon  
8 demonstration by the applicant that the non-use variance request maintains the basic intent and  
9 purpose of the zoning, subdivision and other land use regulations, which is to protect the general  
10 welfare of the public, particularly as it affects the stability and appearance of the community and  
11 provided that the variance will be otherwise compatible with the surrounding land uses and would  
12 not be detrimental to the community. No showing of unnecessary hardship to the land is required.  
13 For the purpose of this subsection of the Code, the term "non-use variance" involves matters such  
14 as setback lines, frontage requirements, subdivision regulations, height limitations, lot size  
15 restrictions, yard requirements, and other variances which have no relation to change of use of the  
16 property in question.

17  
18 The alternative non-use variance standard in Section 33-311(A)(4)(c), Miami-Dade County Code,  
19 requires that the variance will not be contrary to the public interest, where owing to special  
20 conditions, a literal enforcement of the provisions thereof will result in unnecessary hardship, and so  
21 the spirit of the regulations shall be observed and substantial justice done; provided, that the non-  
22 use variance will be in harmony with the general purpose and intent of the regulation, and that the  
23 same is the minimum non-use variance that will permit the reasonable use of the premises.

24  
25 After being sworn in, Planning & Zoning Director Julian Perez presented the recommendation of  
26 staff to support the application and outlined the criteria used. Mr. Perez explained that he provided  
27 individual notice to the neighbors of each application for amnesty under Ordinance 09-03. That  
28 additional notice, beyond the notice required under the Village's Code of Ordinances was made a  
29 part of the underlying record. Mr. Perez explained that the intent of Shed Amnesty process was to  
30 establish an unbiased evaluation of each application consistent with the requirements set forth in  
31 Village Ordinance No. 09-03. The application and field information were used by staff to determine  
32 whether the applicant met both primary and secondary requirements. The summary of the  
33 minimum requirements applied by staff are as follows: (1) Primary minimum requirements, include:  
34 the applicant's location of the shed, and the ability to have enough space (minimum 1.5') between  
35 the shed and property line in order to provide sufficient landscaping to screen the shed from public  
36 view and from adjacent property owner's view; and (2) Secondary minimum requirements, which  
37 include: the provision of a wooden fence at least 6' tall; sufficient landscaping provided by adjacent  
38 property owner in the general area where the shed is located; adjacent principal structure and  
39 auxiliary uses are 20' or more feet away from the shed; no opposition from the adjacent neighbor(s);  
40 and the existing size and condition of the shed. An adjacent resident issued a letter recommending  
41 approval of the shed variance application. There were no opponents to the application.

42  
43 The public hearing was then opened. The applicant spoke as did the neighbors of the applicant.  
44 The Village Council deliberated and discussed the concern of extending the use beyond the life of

1 the existing structure and conditioned the approval upon the elimination of the variance upon  
2 destruction of the structure by 50 percent or more, as further delineated below.

3  
4 Section 3. Conclusions of law.

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6 The Mayor and Village Council determined that the existing shed is in keeping with the basic intent  
7 and purpose of the zoning and land use regulations. Approval of the application is in character with  
8 the existing use of the property, and is consistent with the Village's Comprehensive Plan. The  
9 application is approved pursuant to Section 33-311(A)(4)(b), and denied under Section 33-  
10 311(A)(4)(c).

11  
12 Section 4. Order.

13 Pursuant to Section 33-311(A)(4)(b), Miami-Dade County Code, The Mayor and Village Council  
14 approve the application as represented under the survey entitled, the survey entitled, Johnson, Bruce  
15 & Deborah L., 14820 SW 81<sup>st</sup> Avenue, Miami, FL, as prepared by Lannes & Garcia, Inc., consisting  
16 of one (1) sheet, dated stamped received March 5, 2009, with the following conditions:

17  
18 1. The applicant is to comply with the requirements of all other applicable  
19 departments/agencies as part of the Village of Palmetto Bay building permit submittal process and  
20 all relevant state and local code requirements.

21  
22 2. The applicant is to comply with the landscape screening requirements and all the  
23 requirements imposed by the Village of Palmetto Bay under Ordinance Number 09-03 (Shed  
24 Amnesty Ordinance).

25  
26 3. Consistent with the Florida Building Code, should the structure be damaged or destroyed  
27 beyond 50% ["Level Three" demolition of existing residential buildings as defined under the Florida  
28 Building Code at Section 405.1, -- exceeds 50 percent of the aggregate area of the building within  
29 any 12 month period], that the variance for the existing shed shall be abandoned, and the structure  
30 removed.

31  
32 The Applicant consented on the record to the conditions placed on the approval of the  
33 variance application.

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35 Section 5. Record.

36 The record shall consist of the notice of hearing, the applications, documents submitted by  
37 the applicant and the applicant's representatives to the Village's Department of Planning and Zoning  
38 in connection with the applications, the county recommendation and attached cover sheet and  
39 documents, the testimony of sworn witnesses and documents presented at the quasi-judicial hearing,  
40 and the tape and minutes of the hearing. The record shall be maintained by the Village Clerk.  
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