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**ZONING RESOLUTION NO. 08-08**

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING THE APPLICATION OF BONAVENTURE INC. FOR A NON-USE VARIANCE OF LOT COVERAGE AT 13820 FARMER ROAD PURSUANT TO SECTION 33-311(A)(4)(B), MIAMI-DADE COUNTY CODE, AS ADOPTED BY THE VILLAGE OF PALMETTO BAY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the applicant made applications for a non-use variance of lot coverage at 13820 Farmer Road, pursuant to section 33-311(A)(4)(b) of the Miami-Dade County Code, as adopted by the Village of Palmetto Bay, as described in the Village's 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 at Southwood Middle School on Monday, January 14, 2008 at 7:00 p.m.; and,

WHEREAS, the mayor and village council finds, based on substantial competent evidence in the record, that the application for the non-use variance is consistent with the Village of Palmetto Bay 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 January 14, 2008 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. On February 14, 1957, pursuant to Zoning Resolution 11148, the Board of County Commissioners heard the applicant's request for a district boundary change from EU-1 (One-Acre Estate) to LRU (Limited Residential - currently EU-M) and EU-1 (One-Acre Estate) to permit limited residential use, one-acre development and a special permit for lake-type excavation.

2. The Board of County Commissioners denied the applicant's request for a zoning change but approved the application, for a special permit as recommended by the Zoning Commission for lake type excavation with conditions that include the restriction of the area of the proposed lake to be no more than seven (7) acres including slopes and that the

1 balance of the property be subdivided into thirty (30) building sites of which none shall be  
2 no less than 125' in frontage and no less than 15,000 sq.ft. in lot area. This action resulted in  
3 the creation of 30 legal, non-conforming lots, none of which meet the minimum of one acre  
4 lot size requirement of the underlying zoning district. Since 1957, the 30 lots have been  
5 developed with single family homes surrounding the lake.  
6

7 3. The subject 17,198 sq.ft. property is located at 13820 Farmer Road, Palmetto Bay,  
8 Florida. The applicant, Bonaventure Inc., is requesting a non-use variance of lot coverage to  
9 allow a 1,070.5 sq.ft. covered patio be added to an existing single family home comprised of  
10 2,953.3 sq.ft. The proposed covered patio would increase the lot coverage by 8.39% from  
11 15% to 23.39% where a maximum of 15% is permitted.  
12

13 4. The properties immediately to the north, south, east and west (Tanglewood Lake)  
14 encompass single-family homes and are located within the EU-1 zoning district. In 1957, the  
15 Board of County Commissioners via resolution 11148 approved the developer's request to  
16 create 30 legal, non-conforming lots within the EU-1 zoning district of which lot sizes range  
17 from 14,931 sq.ft. to 36,145 sq.ft. where a minimum of one acre, 43,560 sq.ft., in lot size is  
18 required. The zoning resolution did not address lot coverage. Currently, the subdivision is  
19 completely built out with single family homes of which lot coverage within the subdivision  
20 ranges from 12.5% to 26%. The variance request pursuant to 33-311(A)(4)(b) is in keeping  
21 with the existing development pattern in the area in that it is compatible with the  
22 surrounding zoning and land use regulations. As there is no actual hardship, the criteria of  
23 the alternative non-use variance provisions of 33-311(A)(4)(c) are not met.  
24

25 5. The applicant has submitted a site plan, floor plans and elevations showing the  
26 proposed covered patio in connection with the existing single family home. The patio is a  
27 roof-covered, open air patio extension to the home providing a connection to the pool.  
28

29 6. Approval of the variance for lot coverage will allow the applicant to provide a  
30 1,070.5 sq.ft. covered, open air patio in conjunction with an existing single family home of  
31 2,953.3 sq. ft.  
32

33 Section 3. Conclusions of law.

34 1. The adopted 2005 Village of Palmetto Bay Comprehensive Plan, Future Land Use  
35 Map designates the site as Estate Density Residential. The residential density allowed in this  
36 category is less than 2.5 dwelling units per gross acre.  
37

38 2. In evaluating an application for a Non-Use Variance of Lot Coverage Regulations,  
39 Section 33-311(A)(4)(b) and (c) provides that the Village Council take into consideration,  
40 among other factors, the extent to which:  
41

42 General Requirements under 33-311:  
43

1 a. The development permitted by the application, if granted, conforms to the  
2 Comprehensive Plan for the Village of Palmetto Bay, Florida; is consistent with  
3 applicable area or neighborhood studies or plans, and would serve a public benefit  
4 warranting the granting of the application at the time it is considered.  
5

6 b. The development permitted by the application, if granted, will have a  
7 favorable or unfavorable impact on the environmental and natural resources of the  
8 Village of Palmetto Bay, including consideration of the means and estimated cost  
9 necessary to minimize the adverse impacts; the extent to which alternatives to alleviate  
10 adverse impacts may have a substantial impact on the on the natural and human  
11 environment; and whether any irreversible or irretrievable loss of natural  
12 resources will occur as a result of the proposed development;  
13

14 c. The development permitted by the application, if granted, will have a  
15 favorable or unfavorable impact to the economy of the Village of Palmetto Bay,  
16 Florida;  
17

18 d. The development permitted by the application, if granted will efficiently  
19 use or unduly burden water, sewer and solid waste disposal:  
20

21 e. The development permitted by the application, if granted, will efficiently use  
22 or unduly burden or affect public transportation facilities, including mass transit,  
23 roads, streets and highways which have been constructed or planned and budgeted  
24 for construction, and if the development is or will be accessible by public or private  
25 roads, streets or highways.  
26

27 3. Specific requirements under 33-311(A)(4)(b), non-use variance standard  
28 requirements: the non-use variance maintains the basic intent and purpose of the zoning,  
29 subdivision and other land use regulations, which is to protect the general welfare of the  
30 public, particularly as it affects the stability and appearance of the community and provided  
31 that the variance will be otherwise compatible with the surrounding land uses and would not  
32 be detrimental to the community. No showing of unnecessary hardship to the land is  
33 required.  
34

35 4. Alternative standards under alternative non-use variance standard of 33-311(A)(4)(c)  
36 which requires that the variance will not be contrary to the public interest, where owing to  
37 special conditions, a literal enforcement of the provisions thereof will result in unnecessary  
38 hardship, and so the spirit of the regulations shall be observed and substantial justice done;  
39 provided, that the non-use variance will be in harmony with the general purpose and intent  
40 of the regulation, and that the same is the minimum non-use variance that will permit the  
41 reasonable use of the premises.  
42

43 Section 4. Order.

1 The proposed covered patio is in keeping with the basic intent and purpose of the zoning  
2 and land use regulations. Approval of this application is in character with the existing use of  
3 the property, and is consistent with the Village's Comprehensive Plan. Therefore, pursuant  
4 to Section 33-311(A)(4)(b) the Village Council finds that the plans entitled Proposed  
5 Addition for Bonaventure Inc., 13820 Farmer Road, Palmetto Bay, FL as prepared by  
6 Francisco A. Benitez AIA, consisting of nine (9) sheets, dated stamped received  
7 11/15/2007, is approved, with the following conditions:  
8

- 9
- 10 1. The applicant shall relocate all existing trees affected by the proposed  
11 modifications to another location within the site.
  - 12
  - 13 2. The application must meet the minimum requirements of Chapter 24 of the  
14 Code of Miami-Dade County and comply with all conditions imposed by  
15 Miami-Dade County DERM.
  - 16
  - 17 3. The application must meet the requirements of all other applicable  
18 departments/agencies as part of the building permit submittal process.
  - 19
  - 20 4. The attached site plan, as documented herein, by Mr. Benitez, is approved as  
21 an open air patio. However, any modification of the open air site plan to  
22 enclose the open air patio shall require a public hearing by the then property  
23 owner.  
24

25 The Village Council denies the non-use variance request pursuant to section 33-311(A)(4)(c),  
26 but allows the non-use variance to proceed pursuant to the alternative review procedures of 33-  
27 311(A)(4)(b), with the conditions outlined herein. The Benitez plans are adopted and incorporated  
28 by reference into this resolution as if fully stated herein.  
29

- 30
- 31 1. This is a final order.
  - 32

33 Section 5. Record.

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

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

PASSED and ADOPTED this 14<sup>th</sup> day of January, 2008

Attest: Meighan Rader  
Meighan Rader  
Village Clerk

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

APPROVED AS TO FORM:

Eve A. Boutsis  
Eve A. Boutsis,  
Nagin Gallop Figueredo, P.A.  
Office of Village Attorney

FINAL VOTE AT ADOPTION:

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