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3 **RESOLUTION NO. 08-19**

4 A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE
5 VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING;
6 APPROVING THE MODIFICATION APPLICATION OF THE VILLAGE OF
7 PALMETTO BAY AS PROPOSED EASEMENT HOLDER OF
8 APPROXIMATELY 2.10 ACRES AND OF 17777 OLD CUTLER, LLC, ALSO
9 KNOWN AS THE PALMETTO BAY VILLAGE CENTER (PBVC), WHICH IS
10 LOCATED AT 17777-18001 OLD CUTLER ROAD, TO PROVIDE FOR A
11 PARKING AREA AND CONSTRUCTION STAGING FOR THE VILLAGE'S
12 LUDOVICI PARK AND PUBLIC LIBRARY; AND MODIFICATION OF SITE
13 PLAN AND COVENANT RELATING TO THE SITE PLAN; PROVIDING
14 FOR PUBLIC HEARING; AND PROVIDING AN EFFECTIVE DATE.

15 WHEREAS, the applicant made applications for a modification of the existing site plan tied
16 to certain covenants in order to provide a parking facility on the most Northern 2.10 acres,
17 approximately, of the Palmetto Bay Village Center (PBVC) site to be used by the public in
18 conjunction with the Village's Ludovici Park and Public Library as described in the staff report of
19 the Community Development Department of the Village of Palmetto Bay, which is attached to this
20 zoning resolution; and,
21

22 WHEREAS, 17777 Old Cutler, LLC, also known as the Palmetto Bay Village Center
23 (PBVC) has agreed to provide the Village with a perpetual parking easement on approximately 2.10
24 acres of land to be used in conjunction with the Village's Ludovici Park and Public Library; and,
25

26 WHEREAS, prior to any such use, the modification of the approved site plan for the PBVC
27 would require a modification to reflect the parking lot, and ensure compliance with the underlying
28 Declaration of Restrictive Covenants, to wit: ensure the landscaping visual buffer along Old Cutler
29 Road; and,
30

31 WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial
32 hearing on the application at Southwood Middle School on February 25, 2008; and,
33

34 WHEREAS, the Mayor and Village Council finds, based on substantial competent evidence
35 in the record, that the application for a modification of the site plan and associated covenants tying
36 the property to a prior site plan, is consistent with the Village of Palmetto Bay's Comprehensive
37 Plan and the applicable land development regulations; and,
38

39 WHEREAS, based on the foregoing finding, the Mayor and Village Council determined to
40 grant the applications, as provided in this resolution.
41

42 NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE
43 COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:
44

1 Section 1. A public hearing on the present applications was held on February 25, 2008,
2 in accordance with ordinance. no. 02-03, entitled "Quasi-judicial hearing procedures." Pursuant to
3 the hearing, the Village Council makes the following findings of fact, conclusions of law and order.
4

5 Section 2. Findings of fact.

- 6 1. The applicants are the Village of Palmetto Bay and 17777 Old Cutler, LLC, which is
7 also known as Palmetto Bay Village Center ("PBVC"). PBVC owns and operates the
8 office park at the northeast corner of SW 184th Street and Old Cutler Road, which
9 property currently maintains the address of 17777-18001 Old Cutler Road, Palmetto
10 Bay, Florida.
11
- 12 2. The property is encumbered by several Declaration of Restrictive Covenants, which
13 covenants regulate certain uses of the property. These declarations are attached and
14 incorporated by reference as exhibit A.
15
- 16 3. The Village desires to construct a public park and library at a property adjacent to the
17 PBVC, at 17641 Old Cutler Road. The PBVC has agreed to provide a perpetual
18 easement to the Village to allow access to the Northernmost 2.10 acres of the PBVC
19 site to the general public and to the Village for a parking and access easement area.
20 However, prior to allowing any such access easement, the PBVC is required to seek a
21 modification of the existing site plan for the site, and seek zoning approval to allow
22 the parking use at the 2.10 acre area. As such, the PBVC, specifically requests to
23 modify a set of previously approved plans under Village of Palmetto Bay zoning
24 resolution 07-06 and Miami-Dade County zoning resolution Z-34-89, in order to
25 allow the Village to construct a surface parking area to be used by the general public
26 in conjunction with the public park and library. See Exhibit B. The proposed public
27 parking lot is within the OPD district approved by the Board of County
28 Commissioners on February 23,1989, pursuant to zoning resolution Z-34-89.
29
- 30 4. On February 23, 1989, pursuant to zoning resolution Z-34-89, the Board of Miami
31 Dade County Commissioners approved, with conditions, the applicant's request of
32 an unusual use to permit a parking lot in a zone more restrictive than the use it
33 served; to wit parking of cars in a GU district to serve an Office Park District (OPD)
34 in conjunction with the Modification of Proffered Covenants and Modification of
35 Declaration of Restrictive Covenants via prior Resolution 4-ZAB-143-86 as attached
36 hereto.
37
- 38 5. Under an OPD, the developer is to delineate an open space character for buildings
39 whose principal uses are administrative, professional or research related. The major
40 objectives to be achieved by this district are to provide office complexes in an open
41 space environment, to provide freedom for the designer to take a creative approach
42 to the development of an office park and thereby to enhance the visual quality of the
43 Village. Under an OPD, the principal uses permitted are those associated with
44 office buildings for business, professional and secretarial uses that cater to the
45 provision of services. Retail and industrial activities are not permitted as principal

1 uses. Under an OPD, accessory uses are allowed as of right, provided the
2 accumulated total of all accessory uses does not exceed 15 percent of the total gross
3 interior square footage of the buildings proposed for the site, excluding areas
4 devoted to structured parking. Accessory uses may include personal services, private
5 clubs, print shops, recreational facilities including swimming pools, and other similar
6 uses.
7

- 8 6. On June 18, 2007, the Village Council pursuant to Village zoning resolution 07-06,
9 approved, with conditions, the PBVC's request to modify a set of previously
10 approved plans that were authorized under Miami-Dade County zoning resolution
11 Z-34-89, in order to construct a 356-space parking structure (97.5' in height) with
12 roof top recreational amenities use where a surface parking lot presently exists along
13 with the construction of a temporary parking lot.
14
- 15 7. On March 12, 2007, pursuant to zoning resolution 07-31, the Village Council
16 pursuant to 33-303 of the Miami-Dade County Code, as adopted by the Village,
17 changed the use of the library and park site located at 17641 Old Cutler Road from
18 residential to allow a governmental facility to be constructed. This change of use was
19 found consistent with the Village's Comprehensive Plan and Future Land Use Map,
20 which designated the site for Parks and Recreation as well as Institutional and Public
21 Facility use. The Institutional and Public Facility designation entitles an area to be
22 used to construct, amongst other things, a library.
23
- 24 7. The adopted 2005 Village of Palmetto Bay Future Land Use Plan designates the
25 PBVC property as designated for Village Mixed-Use (VMU), GU and Park Use. The
26 residential densities allowed in this category range from a minimum of 3.0 to a
27 maximum of 14 units per gross acre. The 2.10 acres in question in this zoning
28 application are within the OPD district, adjacent to the Parks and Recreation
29 designated areas for the site.
30
- 31 8. The adopted 2005 Future Land Use Plan designates the easterly portion of the
32 subject property for environmentally protected parks and the westerly portion of the
33 property for parks and recreation. The remainder of the property is designated
34 VMU.
35
- 36 9. The Future Land Use Map specifically illustrates park and recreation areas.
37 Compatible parks continue to be encouraged in all residential land use categories and
38 may continue to be allowed in all other future land use categories. The siting and use
39 of future public and private parks and recreation areas shall be guided by the
40 Recreation and Open Space Element and the Capital Improvements Element of the
41 Comprehensive Plan. The maximum intensity for ancillary uses associated with the
42 Parks and Recreation designation shall not exceed a floor area ration (FAR) of 0.2.
43
- 44 10. The Village's Ludovici Park and Public Library received a change of use, to allow the
45 construction of the proposed Library and park
46

1 11. For a modification of a site plan and/or associated covenant, pursuant to Section 33-
2 311(A)(7), of the Miami-Dade County Code, as adopted by the Village, the applicant
3 must demonstrate that the modification of the underlying Resolution and covenant
4 would:

- 5
6 a. not generate excessive noise or traffic;
7 b. not tend to create a fire or other equally or greater dangerous hazard;
8 c. not provoke excessive overcrowding of people;
9 d. not tend to provoke a nuisance; and,
10 e. be compatible with the area concerned, when considering the necessity and
11 reasonableness of the modification, in relation to the present and future
12 development of the area concerned
13

14 12. The modification, if approved by the Village Council, shall require a modification of
15 the associated declaration of restrictions, so that the attached site plans associated with the
16 declarations correctly reflect the construction, location (site plan) associated with the
17 proposed public parking lot on approximately the northernmost 2.10 acres.
18

19 13. The existing covenants for the PBVC, at page four, section 7, indicates that “the
20 [PBVC] will continue to maintain native vegetation on the portion of their property located
21 adjacent to Old Cutler Road and the north and south boundaries with the intent to obscure
22 any visibility of the office building from Old Cutler Road. All landscaping plans will be
23 submitted to the [Village] for approval prior to implementation.” The proposed parking lot
24 is not intended to not impact the native vegetation view of Old Cutler Road, and the Village
25 shall be required to comply with the underlying Declaration of Restrictions to ensure the
26 visual landscape buffer is maintained along the 2.10 acre areas by the Village. The remainder
27 of the landscape buffer along Old Cutler Road shall be the responsibility and obligation of
28 the PBVC. See attached Exhibit B.
29

30 Section 3. Conclusions of law.

31 1. Pursuant to Section 33-311(A)(7) of the Miami-Dade County Code, as adopted by
32 the Village, the applicant’s request to modify the existing site plans to provide for a parking
33 lot along approximately the northernmost 2.10 acres for a public parking lot and public
34 access easement area is hereby granted. The declaration of restrictions which require
35 compliance with prior site plan shall be modified to include compliance with the attached
36 site plan.
37

38 2. The applicant has submitted a site plan for the surface parking lot. The proposed
39 parking lot is consistent with the existing use and is in accordance with the Village’s adopted
40 Comprehensive Plan and the Declaration of Restrictive Covenants associated with the site.
41 The property shall comply with prior site plan approvals and all covenants and restrictions.
42

43 3. The zoning code provides a required minimum level of parking. It does not
44 preclude a development from including additional parking from that beyond required by
45 zoning, particularly as the parking area is to serve the Village’s adjacent park and library at

1 the site 17641 Old Cutler Road. The Village Council accepts the proffered covenant
2 amending the site plan to include the parking lot would allow the applicant to provide
3 additional parking and recreational amenities for the entire Village community.
4

5 4. The Land Use Map of the Comprehensive Plan designates this site for Village
6 Mixed-Use which would allow the construction of a parking lot for the Village, as a large
7 portion of the PBVC is designated for Park Use and GU. The parking lot does not add
8 habitable or leaseable space and is a benefit to the community at large. Based upon the
9 foregoing, the Village Council finds that it will not generate excessive noise or traffic, does
10 not pose any greater fire hazard, contribute to overcrowding of people, will not provoke a
11 nuisance nor be incompatible with the area concerned.
12

13 Section 4. Order.

14 Additional conditions.

15
16 The Village Council approves the modification request pursuant to 33-311(A)(7), provided
17 the following conditions are complied with:
18

- 19 1. The applicant, PBVC, executes and records the proffered covenant to modify the
20 existing Declaration of Restrictions in order to reflect the modified site plan
21 approved by the Village Council, to include prior approvals and this approval. The
22 addition of the modified site plan shall be identified as: as prepared by Wolfberg
23 Alvares date stamped received October 31, 2007, and shall continue to include all
24 prior site plans identified in prior recorded declaration of restrictive covenants. In
25 no other way shall the existing covenants be modified or superseded.
26
- 27 2. The applicant must meet the minimum requirements of Chapter 24 of the Code of
28 Miami-Dade County and comply with all DERM conditions as set forth in their
29 memorandum pertaining to this application, once submitted.
30
- 31 3. The applicants must meet the minimum requirements of all other applicable
32 departments/agencies as part of the building permit submittal process, including the
33 Florida Department of Community Affairs.
34
- 35 4. The Village shall attempt to relocate all existing trees affected by the proposed
36 temporary parking areas and permanent parking structure to another location within
37 the OPD site.
38
- 39 5. The Village shall provide an additional grouping of native trees and landscaping at
40 the northern boundary of the site to restore the visual buffer and lost canopy. The
41 applicant shall submit a landscape plan to be reviewed and approved by the Village.
42

43 This is a final order.

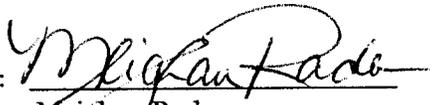
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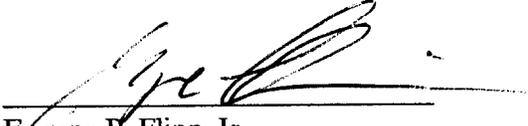
Section 5. Record.

The record shall consist of the notice of hearing, the applications, documents submitted by the applicant and the applicant's representatives to the Village's Department of Community Development 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, and the tape and minutes of the hearing. The record shall be maintained by the Village Clerk.

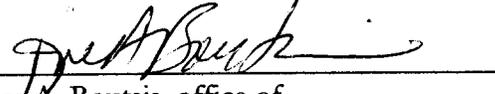
Section 6. This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this 3rd day of March, 2008.

Attest: 
Meighan Rader
Village Clerk


Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:


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

FINAL VOTE AT ADOPTION:

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