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RESOLUTION NO. 08-91

ZONING APPLICATION 08-007

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING THE APPLICATION OF CRAIG GROSSENBACHER AND LOURDES ORTA PURSUANT TO SECTION 33-311 OF THE MIAMI-DADE COUNTY CODE FOR A NON-USE VARIANCE OF SETBACK REQUIREMENTS ON PROPERTY ZONED EU-1C AT THE ADDRESS OF 7245 SW 167TH STREET; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the applicant made an application for a non-use variance of setback requirements in order to install a pool at 7245 SW 167th Street, 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 October 14, 2008; and,

WHEREAS, the Mayor and Village Council finds, based on substantial competent evidence in the record, that the application pursuant to section 33-311, of the Miami-Dade County Code, as adopted by the Village relating to the non-use setback variance request to install a pool 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, 2008 in accordance with the Village's "Quasi-judicial hearing procedures" Ordinance, found at 2-105, of the Village's Code of Ordinances. Pursuant to the hearing, the Village Council makes the following findings of fact, conclusions of law and order.

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Section 2. Findings of fact.

The subject property is located at 7245 SW 167th Street, Palmetto Bay, Florida. The applicant, Craig K. Grossenbacher & wife Lourdes Orta, have submitted an application requesting a setback variance to allow a pool to setback 12'-9" from the interior side (east) property line where 20 feet is required.

The proposed pool is to be located in the northeast corner of the property, 12'8" south of the rear property line to the pool's edge and 12'-9" from the interior east property line.

The properties immediately to the north, west and south are encompassed by single-family homes and are located within the EU-1C and RU-1 zoning districts. The property to the east, consists of a tree hammock and is located within the EU-1C zoning district currently own by the Deering Estate.

The subject property consists of approximately .384 net acres. It is the opinion of the Village's Planning and Zoning Department that the requested variance be approved.

The original plat for this area consisted of lots with 50 foot frontage. This plat configuration is inconsistent with the underlying EU-1C zoning classification requiring one residential unit per 2.5 gross acres. As a result, each platted lot fails to meet the requirements of the existing zoning district, including frontage, depth, width, and setback requirements. Due to this unique situation, Miami-Dade County, as the predecessor Planning and Zoning Department for this area, received and approved various requests for multiple variances in order to permit the construction and expansion of homes on similar, undersized EU-1C platted parcels within this area.

The variance request, pursuant to 33-311(A)(4)(b), is in keeping with the existing development pattern in the area. The underlying zoning district, BU-1C, appears to conflict with the underlying platting and division of the land. As a result, compliance with the BU-1C zoning requirements would require a developer/property owner to purchase two or three parcels, and combine those parcels under a unity of title. Without the ability to obtain a variance the property owners within the area would not be able to build anything on the subdivided and platted lots. The current applicants would never have been entitled to build on the existing .384 net acre lot. The current residential use of the property and the proposed ancillary use, via the construction of a pool, is compatible with the surrounding uses. The variance should not affect the stability and appearance of the community. The general welfare does not appear to be affected by the variance request. As there is no actual hardship, the criteria of the alternative non-use variance provisions of 33-311(A)(4)(c) are not met.

The applicant has submitted a site plan and pool layout plan showing the proposed pool. Approval of the setback variance will allow the applicant to construct the proposed pool.

The applicant spoke in support of her request. No comments were received from the public.

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2 Section 3. Conclusions of law.

3 The adopted 2005 Village of Palmetto Bay Comprehensive Plan Future Land Use Map designates
4 the site as Estate Density Residential. The residential density allowed in this category is less than 2.5
5 dwelling units per gross acre. The current platting makes the parcel legal, nonconforming. The
6 proposed use is consistent with the Village of Palmetto Bay's Comprehensive Plan.
7

8 In evaluating an application for a Non-Use Variance of Setback Regulations, Section 33-311(A)(4)(b)
9 and (c) provides that the Village Council take into consideration, among other factors, the extent to
10 which:

11 General Requirements under 33-311:

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14 1. The development permitted by the application, if granted, conforms to the Comprehensive
15 Plan for the Village of Palmetto Bay, Florida; is consistent with applicable area or neighborhood
16 studies or plans, and would serve a public benefit warranting the granting of the application at the
17 time it is considered.
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19 2. The development permitted by the application, if granted, will have a favorable or
20 unfavorable impact on the environmental and natural resources of the Village of Palmetto Bay,
21 including consideration of the means and estimated cost necessary to minimize the adverse impacts;
22 the extent to which alternatives to alleviate adverse impacts may have a substantial impact on the on
23 the natural and human environment; and whether any irreversible or irretrievable comment of
24 natural resources will occur as a result of the propose development;
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26 3. The development permitted by the application, if granted, will have a favorable or
27 unfavorable impact to the economy of the Village of Palmetto Bay, Florida;
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29 4. The development permitted by the application, if granted will efficiently use or unduly
30 burden water, sewer and solid waste disposal:
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32 5. The development permitted by the application, if granted, will efficiently use or unduly
33 burden or affect public transportation facilities, including mass transit, roads, streets and highways
34 which have been constructed or planned and budgeted for construction, and if the development is
35 or will be accessible by public or private roads, streets or highways.
36

37 Specific requirements under 33-311(A)(4)(b), non-use variance standard requirements: the non-use
38 variance maintains the basic intent and purpose of the zoning, subdivision and other land use
39 regulations, which is to protect the general welfare of the public, particularly as it affects the stability
40 and appearance of the community and provided that the variance will be otherwise compatible with
41 the surrounding land uses and would not be detrimental to the community. No showing of
42 unnecessary hardship to the land is required.
43

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

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8 Based upon the platted, legal, non-conforming lot, and similar conditions on adjoining lots, the
9 variance request pursuant to 33-311(A)(4)(b) is approved. As there is no hardship, the variance
10 request is denied under 33-311(A)(4)(c).

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12 Section 4. Order.

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14 The proposed pool is in keeping with the basic intent and purpose of the zoning and land use
15 regulations. Approval of this application is in character with the existing use of the property, and is
16 consistent with the Village's Comprehensive Plan. Therefore, pursuant to Section 33-311(A)(4)(b),
17 recommends approval of the plans entitled "Lourdes M. Orta Residence," as prepared by Van Kirk
18 and Sons, Inc., consisting of two (2) sheets, date stamped received 9/12/2008.

19
20 The Village Council recommends denial pursuant to section 33-311(A)(4)(c). The request shall
21 proceed forward under section 33-311(a)(4)(b).

22
23 Additional conditions.

- 24
25 1. Use of the Property is to meet the requirements of Chapter 24, of the Miami-Dade
26 County Code relating to the requirements and review of the Miami-Dade County
27 Department of Environmental Resource Management (DERM).
28 2. Use of the property is to meet the requirements and policies of all other applicable
29 departments/agencies as part of the building permit submittal process.
30 3. This is a final order.
31

32 Section 5. Record.

33 The record shall consist of the notice of hearing, the applications, documents submitted by
34 the applicant and the applicant's representatives to the Miami-Dade County Department of Planning
35 and Zoning in connection with the applications, the county recommendation and attached cover
36 sheet and documents, the testimony of sworn witnesses and documents presented at the quasi-
37 judicial hearing, and the tape and minutes of the hearing. The record shall be maintained by the
38 Village clerk.
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1 Section 6. This resolution shall take effect immediately upon approval.

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3 PASSED and ADOPTED this 14th day of October, 2008.

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Attest:



Meighan Rader
Village Clerk



Eugene P. Flinn, Jr.
Mayor

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11 APPROVED AS TO FORM:

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

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FINAL VOTE AT ADOPTION:

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Council Member Ed Feller YES

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Council Member Paul Neidhart YES

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Council Member Shelley Stanczyk YES

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Vice-Mayor Linda Robinson Absent

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Mayor Eugene P. Flinn, Jr. NO

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