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**RESOLUTION NO. 08-92**

ZONING APPLICATION 08-006

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; DENYING THE APPLICATION OF MARCELO AND MARCELA SUAREZ PURSUANT TO SECTION 33-311 OF THE MIAMI-DADE COUNTY CODE FOR A NON-USE VARIANCE OF SETBACK REQUIREMENTS ON PROPERTY ZONED EU-1 AT THE ADDRESS OF 16155 SW 73<sup>RD</sup> PLACE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the applicant made an application for a non-use variance of setback requirements in order to install a shed at 16155 SW 73<sup>rd</sup> Place, 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 is not consistent with the Village's Comprehensive Plan and not consistent with the applicable land development regulations; 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 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.

1  
2           Section 2.       Findings of fact.

3    On July 15, 1992, pursuant to Zoning Resolution 4-ZAB-253-92, the Metropolitan Dade County  
4    Zoning Appeals Board approved, with conditions, a non-use variance of certain setback  
5    requirements to permit the continued use of an already constructed tennis court and the associated  
6    10 foot fence (where an 8 foot fence was permitted). The tennis court was approved with a nine (9)  
7    foot setback (where code required 20 feet) (and despite receiving prior zoning approval for a 10 foot  
8    setback) from the interior-side (south) property line and setback 45 feet (75 feet required; 50 feet  
9    previously approved) from the front (SE/ly property line) (Parcel B). The applicant also sought, and  
10   obtained approval to continue to use an existing 13.7 feet by 15.2 feet gazebo (adjacent to tennis  
11   court), which gazebo was setback 63 feet (75 feet required) from the front (SE/ly property line)  
12   (Parcel B).

13  
14   On July 15, 1992, pursuant to Zoning Resolution 4-ZAB-253-92, the Board denied the applicant's  
15   request for a non-use variance of the County's subdivision regulations to permit the continued use  
16   of an existing wrought iron fence with concrete columns varying from 5.65 feet to 6.3 feet (6 feet  
17   permitted) and located within a mapped street, SW 73<sup>rd</sup> Place, where no structures are permitted.  
18   This condition was corrected with appropriate building permits on October 24<sup>th</sup>, 2007.

19  
20   On May 12, 2008, pursuant to Zoning Resolution No. 08-44, the Mayor and Village Council of the  
21   Village of Palmetto Bay denied the applicants' request for a Non-Use Variance of setback  
22   requirements to allow an existing, 24 foot by 30 foot, shed to setback from the front property line  
23   where 75 feet is required.

24  
25   Neighborhood services would not be impacted by this application. This structure was constructed in  
26   violation of required setbacks. The variance, if granted, would bring the structure into code  
27   compliance.

28  
29   The applicant's property is located at 16155 SW 73 Place, Palmetto Bay, Florida. The applicant,  
30   Marcelo and wife Marcela Suarez, submitted a substantially modified application requesting a  
31   setback variance to allow a 239 sq.ft. shed to setback nine feet two inches (9'-2") from the interior  
32   side (west) property line where 20 feet is required.

33  
34   On May 12, 2008 the Village Council, pursuant to Resolution No. 08-44, denied the applicants  
35   request for a non-use variance of setback requirements to permit a 24 foot by 30 foot shed to  
36   setback 8.95 feet from the front property line where 75 feet is required. The applicant's counsel,  
37   Simon Ferro, advised that a substantially modified request from the prior application was to be  
38   heard by counsel.

39  
40   The shed is located in the northwest corner of the property between the tennis court and a wood  
41   fence. The wood fence is approximately 4 feet inside the property's west boundary line. The shed is  
42   turned on a northwest-southeast angle, with the left rear corner of the shed located approximately  
43   nine feet two inches (9'-2") from the west boundary line of the property and the front of the shed

1 extending beyond the 20 feet required setback. The shed is surrounded by extensive landscaping and  
2 is anchored by matured Banyan Trees. The landscaping and wood fence blocks the view of the shed  
3 from the surrounding properties.  
4

5 The properties immediately to the east, south and west are encompass by single-family homes and  
6 are located within the EU-1 and EU-M zoning district. The property to the north, consist of a  
7 mango grove and is located within the EU-2 zoning district currently own by the Deering Estate.  
8 The applicant's counsel indicated that he obtained objection waivers from the surrounding three  
9 property owners.  
10

11 The request under the current application is argued to be substantially and materially different from  
12 the previous request which was denied by the Village Council. The shed under the current  
13 application now appears to comply with the front setback requirements of the EU-1 zoning district  
14 classification. During the initial application and hearing process, the Planning and Zoning  
15 Department analyzed the property from two different perspectives to try to determine the front of  
16 the property, as the property lay-out does not conform to the County's zoning definition for the  
17 front of the property. Under the Miami-Dade County Code, the narrowest portion of a property is  
18 considered the front. For this property, the legal front would be the west side of the site. In this  
19 case, the actual front of the property is the south. In either case, the front and side setbacks cannot  
20 be met for this already constructed shed located within the legal front setback. Subsequent to that  
21 hearing, the applicants, as part of this request submitted documentation from Miami- Dade County  
22 which legally established the west property line as the interior side, versus the front.  
23

24 Additionally, the applicant provided more accurate information relating to the shed which reflects  
25 that the she is substantially smaller than in the prior request, 239 sq. ft. versus the 720 sq.ft.  
26 However, the application involves the same shed in the same location. The modification relates to  
27 the fact that the applicants have provided accurate information as to the size of the shed. In the  
28 prior application, the applicants provided misinformation as to the size and intended use of the  
29 shed. The applicants previously advised that the shed would be used as a children's play house. The  
30 applicants now confirms the actual size of the structure and confirms that the use is intended as a  
31 lawn maintenance and storage shed.  
32

33 The Planning and Zoning Department recommended approval of the variance request pursuant to  
34 33-311(A)(4)(b), finding that the application was in keeping with the existing development pattern in  
35 the area in that it is compatible with the surrounding zoning and land use regulations. The Planning  
36 and Zoning Department found there was no actual hardship, the criteria of the alternative non-use  
37 variance provisions of 33-311(A)(4)(c) were not met.  
38

39 The applicant has submitted a site plan, floor plans and elevations showing the existing shed.  
40 Approval of the setback variance would allow the applicant to provide a 239 sq.ft. shed.  
41

42 The public hearing was opened and no resident spoke to the application.  
43

44 Mayor Flinn asked and Mr. Ferro confirmed that the shed had been built without a permit in 2007  
45 by the applicant (not a prior owner). Dr. Feller indicated that he had been to the site and indicated

1 that this application was the same application as heard in May, 2008. Mayor Flinn advised that any  
2 landscaping issues are the result of the applicant's actions of doing work without a permit and that  
3 the request intended to lessen setbacks for a shed that could be located elsewhere on the property.  
4

5  
6 Section 3. Conclusions of law.

7 The adopted 2005 Village of Palmetto Bay Comprehensive Plan, Future Land Use Map designates  
8 the site as Estate Density Residential. The residential density allowed in this category is less than 2.5  
9 dwelling units per gross acre. The proposed use is not consistent with the Village of Palmetto Bay's  
10 Comprehensive Plan as it relates to single family homes within estate density residential land use  
11 designation.  
12

13 In evaluating an application for a Non-Use Variance of Setback Regulations, Section 33-311(A)(4)(b)  
14 and (c) provides that the Village Council take into consideration, among other factors, the extent to  
15 which:  
16

17 General Requirements under 33-311:  
18

19 1. The development permitted by the application, if granted, conforms to the Comprehensive  
20 Plan for the Village of Palmetto Bay, Florida; is consistent with applicable area or neighborhood  
21 studies or plans, and would serve a public benefit warranting the granting of the application at the  
22 time it is considered.  
23

24 2. The development permitted by the application, if granted, will have a favorable or  
25 unfavorable impact on the environmental and natural resources of the Village of Palmetto Bay,  
26 including consideration of the means and estimated cost necessary to minimize the adverse impacts;  
27 the extent to which alternatives to alleviate adverse impacts may have a substantial impact on the on  
28 the natural and human environment; and whether any irreversible or irretrievable loss of  
29 natural resources will occur as a result of the proposed development;  
30

31 3. The development permitted by the application, if granted, will have a favorable or  
32 unfavorable impact to the economy of the Village of Palmetto Bay, Florida;  
33

34 4. The development permitted by the application, if granted will efficiently use or unduly  
35 burden water, sewer and solid waste disposal;  
36

37 5. The development permitted by the application, if granted, will efficiently use or unduly  
38 burden or affect public transportation facilities, including mass transit, roads, streets and highways  
39 which have been constructed or planned and budgeted for construction, and if the development is  
40 or will be accessible by public or private roads, streets or highways.  
41

42 Specific requirements under 33-311(A)(4)(b), non-use variance standard requirements: the non-use  
43 variance maintains the basic intent and purpose of the zoning, subdivision and other land use  
44 regulations, which is to protect the general welfare of the public, particularly as it affects the stability

1 and appearance of the community and provided that the variance will be otherwise compatible with  
2 the surrounding land uses and would not be detrimental to the community. No showing of  
3 unnecessary hardship to the land is required.  
4

5 Alternative standards under alternative non-use variance standard of 33-311(A)(4)(c) which requires  
6 that the variance will not be contrary to the public interest, where owing to special conditions, a  
7 literal enforcement of the provisions thereof will result in unnecessary hardship, and so the spirit of  
8 the regulations shall be observed and substantial justice done; provided, that the non-use variance  
9 will be in harmony with the general purpose and intent of the regulation, and that the same is the  
10 minimum non-use variance that will permit the reasonable use of the premises.  
11

12 Based upon the finding that the application was not substantially different and as the use would be  
13 inconsistent with the land use regulations, and incompatible with the surrounding area due to the  
14 infringement of the side setback, the variance request pursuant to 33-311(A)(4)(b) is denied. As  
15 there is no hardship, the variance request is also denied under 33-311(A)(4)(c).  
16

17 Section 4. Order.  
18

19 The existing shed would not be in keeping with the basic intent and purpose of the zoning and land  
20 use regulations. Approval of this application would not be in character with the existing use of the  
21 property, and would not be consistent with the Village's Comprehensive Plan relating to large  
22 parcels of Estate Density Residential. Therefore, the Village Council, pursuant to Section 33-  
23 311(A)(4)(b) denies of the survey as prepared by Gunter Group Inc. entitled, 16155 SW 73<sup>rd</sup> Place,  
24 Miami, FL consisting of one (1) sheet, dated stamped received 9/15/2008.  
25

26 The Village Council finds no hardship and therefore also denies the request pursuant to section 33-  
27 311(A)(4)(c).  
28

29 Additional conditions.  
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 Miami-Dade County Department of Planning  
36 and Zoning in connection with the applications, the county recommendation and attached cover  
37 sheet and documents, the testimony of sworn witnesses and documents presented at the quasi-  
38 judicial hearing, and the tape and minutes of the hearing. The record shall be maintained by the  
39 Village clerk.  
40

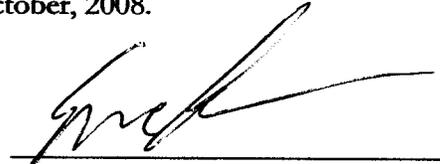
1            Section 6.        This resolution shall take effect immediately upon approval.

2  
3            PASSED and ADOPTED this 14<sup>th</sup> day of October, 2008.

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6            Attest:

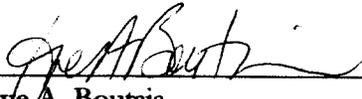


7            Meighan Rader  
8            Village Clerk



9            Eugene P. Flinn, Jr.  
10            Mayor

11            APPROVED AS TO FORM:

12  
13            

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

17  
18  
19  
20            FINAL VOTE AT ADOPTION:

21            Council Member Ed Feller            YES

22            Council Member Paul Neidhart        YES

23            Council Member Shelley Stanczyk     YES

24            Vice-Mayor Linda Robinson           Absent

25            Mayor Eugene P. Flinn, Jr.            YES