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RESOLUTION NO. 08-93

ZONING APPLICATION 08-004

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING THE APPLICATION OF DEERING PROPERTIES, LLC; PURSUANT TO SECTION 33-311 OF THE MIAMI-DADE COUNTY CODE FOR A NON-USE VARIANCE OF PARKING REQUIREMENTS ON PROPERTY ZONED BU-2 AT THE ADDRESS OF 7290 SW 168TH STREET; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the applicant made an application for a non-use variance of parking requirements at 7290 SW 168th 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 find, 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 parking variance request 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 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 application 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 Mayor and Village Council make the following findings of fact, conclusions of law and order.

Section 2. Findings of fact.

37 The subject property is located at 7290 SW 168th Street, Palmetto Bay, Florida. The applicant,
38 Deering Properties LLC, has submitted an application requesting a non-use variance of parking
39 requirements to permit 51 parking spaces, where 65 parking spaces are required, to accommodate
40 two (2) restaurants and an ice cream shop on a property zoned BU-2, Special Business District. The
41 property already contains a Starbucks Café and a dance studio.
42

43 The properties immediately to the north and west are encompassed by retail and office type
44 businesses and are located within the BU-2 zoning districts. The property to the east and south

1 consists of a protected rock pine forest and is located within the EU-1C zoning district currently
2 owned by the Deering Estate.

3
4 The subject property consists of approximately 1.0254 net acres. The structure was constructed
5 based on the parking ratio requirement of one (1) space per 250 sq.ft. of retail. Restaurant use,
6 which is considered a more intense use, requires parking at a ratio of one (1) space per 50 sq. ft. of
7 patron space. In the opinion of the Village's Planning and Zoning Staff the application should have
8 been denied. In the opinion of Zoning Staff, the variance request pursuant to 33-311(A)(4)(b) is not
9 in keeping with the existing development pattern in the area in that it is not compatible with the
10 surrounding zoning and land use regulations. As there is no actual hardship, the criteria of the
11 alternative non-use variance provisions of 33-311(A)(4)(c) are not met. Staff was of the opinion that
12 neighborhood services such as roadways and right-of-ways may be impacted by this application due
13 to the additional traffic that may be generated by the proposed restaurant uses. The lack of parking
14 on site may create a spill-over effect onto the right-of-ways and adjacent properties.

15
16 The applicant submitted a site plan showing the proposed location of the restaurants. Approval of
17 the non-use variance of parking requirements would allow the applicant to accommodate the
18 proposed Italian and Bar-B-Q restaurants.

19
20 Attorneys for the Applicant: Jerry Proctor and Brian Adler presented the application to the Village.
21 Mr. Proctor indicated that the property is zoned BU-2, which is a much more intense use than the
22 BU-1 type uses proposed for the single-story site. The applicant has submitted a parking study,
23 which was prepared by Richard Garcia & Associates, Inc. Richard Garcia, the parking consultant
24 for the applicant testified as to national studies and analysis of the required parking at the site, which
25 he believes is 18 spaces less than that required under the code. According to the parking study,
26 peak use would result in 47 parking spaces being used, which is less than the 51 spaces provided and
27 65 spaces that are required. The remainder of the units, other than the two restaurant uses and ice
28 cream shop, are calculated at one parking space per every 250 sq. ft. of retail use and one parking
29 space for every 300 sq. ft. of office use.

30
31 The public hearing was opened and the following persons testified:

32
33 Eric Tullberg requested that the current landscaping buffer be preserved, and that 8 bike racks (two
34 double racks) be installed on site.

35
36 A letter from Scott Silver, owner of the Palmetto Bay Village Center, was introduced in support of
37 the application. Another letter, issued by Steven Kirk was introduced to support the applicant's
38 request. Four emails were received by the Village in support of the request and were introduced in
39 the record. One of these four emails was issued by Beth Kibler who also appeared at the hearing
40 and spoke in support of the application and requested approval of the application.

41
42 Council Person Neidhart requested that the applicant obtain off-site parking for employees at
43 Colonial Bank, across the street from the site; or at some County owned property (Deering).
44 Additionally, he requested applicant to improve SW 168th Street for on-street, parallel parking.
45 Testimony was had that SW 168th Street is a County owned road, and depending on funding, the

1 County would improve on-street parking along SW 168th Street, adjacent to applicant's property.
2 The applicant and adjoining property owners would be responsible for landscaping, lighting and
3 bricks.
4

5 Mr. Proctor offered to report back to the Village Council on the off-site parking efforts and also as
6 to actual parking conditions of the site, prior to issuance of the certificates of occupancy, should the
7 variance be granted. This offer was rejected by the Village Council.
8

9 Mayor Flinn, Council Person Dr. Feller, and Council Person Stanczyk spoke in favor of the
10 application.
11

12 Section 3. Conclusions of law.

13 The adopted 2005 Village of Palmetto Bay Comprehensive Plan, Future Land Use Map designates
14 the site as Business and Office.
15

16 In evaluating an application for a Non-Use Variance of Parking Regulations, Section 33-311(A)(4)(b)
17 and (c) provides that the Village Council take into consideration, among other factors, the extent to
18 which:
19

20 General Requirements under 33-311:
21

22 1. The development permitted by the application, if granted, conforms to the Comprehensive
23 Plan for the Village of Palmetto Bay, Florida; is consistent with applicable area or neighborhood
24 studies or plans, and would serve a public benefit warranting the granting of the application at the
25 time it is considered.
26

27 2. The development permitted by the application, if granted, will have a favorable or
28 unfavorable impact on the environmental and natural resources of the Village of Palmetto Bay,
29 including consideration of the means and estimated cost necessary to minimize the adverse impacts;
30 the extent to which alternatives to alleviate adverse impacts may have a substantial impact on the on
31 the natural and human environment; and whether any irreversible or irretrievable comment of
32 natural resources will occur as a result of the propose development;
33

34 3. The development permitted by the application, if granted, will have a favorable or
35 unfavorable impact to the economy of the Village of Palmetto Bay, Florida;
36

37 4. The development permitted by the application, if granted, will efficiently use or
38 unduly burden water, sewer and solid waste disposal:
39

40 5. The development permitted by the application, if granted, will efficiently use or
41 unduly burden or affect public transportation facilities, including mass transit, roads, streets and
42 highways which have been constructed or planned and budgeted for construction, and if the
43 development is or will be accessible by public or private roads, streets or highways.
44

1 Specific requirements under 33-311(A)(4)(b), non-use variance standard requirements: the non-use
2 variance maintains the basic intent and purpose of the zoning, subdivision and other land use
3 regulations, which is to protect the general welfare of the public, particularly as it affects the stability
4 and appearance of the community and provided that the variance will be otherwise compatible with
5 the surrounding land uses and would not be detrimental to the community. No showing of
6 unnecessary hardship to the land is required.
7

8 Alternative standards under alternative non-use variance standard of 33-311(A)(4)(c) which requires
9 that the variance will not be contrary to the public interest, where owing to special conditions, a
10 literal enforcement of the provisions thereof will result in unnecessary hardship, and so the spirit of
11 the regulations shall be observed and substantial justice done; provided, that the non-use variance
12 will be in harmony with the general purpose and intent of the regulation, and that the same is the
13 minimum non-use variance that will permit the reasonable use of the premises.
14

15 Section 4. Order.
16

17 The proposed non-use variance of parking reduction is in keeping with the basic intent and purpose
18 of the zoning and land use regulations. Approval of this application would be in character with the
19 existing use of the property. The proposed use is consistent with the Village's Comprehensive Plan.
20 Pursuant to Section 33-311(A)(4)(b), the Village Council approves the non-use parking variance
21 request, under the plans entitled "Old Cutler Market" as prepared by Fortin, Leavy, Skiles, Inc.
22 consisting of one (1) sheet, date stamped received 9/12/2008.
23

24 The Village Council denies the request pursuant to section 33-311(A)(4)(c). The request shall
25 proceed forward under section 33-311(a)(4)(b).
26

27 Additional conditions.
28

- 29 1. Use of the Property is to meet the requirements of Chapter 24, of the Miami-Dade
30 County Code relating to the requirements and review of the Miami-Dade County
31 Department of Environmental Resource Management (DERM).
- 32 2. Use of the property is to meet the requirements and policies of all other applicable
33 departments/agencies as part of the building permit submittal process.
- 34 3. The applicant shall install racks for eight bikes (two double racks).
- 35 4. This is a final order.
36

37 Section 5. Record.

38 The record shall consist of the notice of hearing, the application, documents submitted by
39 the applicant and the applicant's representatives to the Village of Palmetto Bay Planning and Zoning
40 Department in connection with the applications, the Village's recommendation and attached cover
41 sheet and documents, the testimony of sworn witnesses and documents presented at the quasi-
42 judicial hearing, and the tape and minutes of the hearing. The record shall be maintained by the
43 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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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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23

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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29

Mayor Eugene P. Flinn, Jr. YES

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