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**RESOLUTION NO. 09-40**

**ZONING APPLICATION [08-003]**

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING THE APPLICATION OF MIAMI-DADE FIRE RESCUE AND PALMETTO BAY VILLAGE CENTER, WHICH IS LOCATED AT 17777-18001 OLD CUTLER ROAD, FOR SITE PLAN MODIFICATION AND AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS IN LIEU OF UNITY OF TITLE; PROVIDING FOR PUBLIC HEARING; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the applicants made applications for the issuance of a declaration of restrictive covenants in lieu of unity of title, as described in the staff report of the Village Attorney as presented to Planning and Zoning Department of the Village of Palmetto Bay, which is attached to this resolution; and,

WHEREAS, on April 13, 2009, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial hearing on the application at the Deering Estate, 16701 SW 72 Avenue, Palmetto Bay, Florida; and,

WHEREAS, the underlying 2006 declaration of restrictions in lieu of unity of title and pursuant to section 33-303, Miami-Dade County Code, the applicants, 17777 Old Cutler Road, LLC, d/b/a Palmetto Bay Village Center (PBVC) and the Miami-Dade Fire Rescue Department are required to hold a public hearing to modify the underlying site plan for the property; and,

WHEREAS, the Mayor and Village Council finds, based on substantial competent evidence in the record, that the application for the amendment of the attached declaration of restrictive covenants in lieu of unity of title, which is consistent with the Village of Palmetto Bay'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 public hearing on the present application was held on April 13, 2009, 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           1.       The applicant, 17777 Old Cutler Road, LLC, d/b/a Palmetto Bay Village Center  
2           ("PBVC") owns and operates the office park at the northeast corner of SW 184<sup>th</sup> Street and  
3           Old Cutler Road, which property currently maintains the address of 17777-18001 Old Cutler  
4           Road, Palmetto Bay, Florida. The co-applicant, Miami-Dade County Fire Rescue shall own  
5           the facility and land and provide fire rescue services from the proposed site, upon approval  
6           of the Village Council of the underlying request.  
7

8           2.       The property is encumbered by a 1985 Declaration of Restrictive Covenants, which  
9           covenants regulate certain uses of the property.  
10

11           3.       Section 33-257 of the Miami-Dade County Code, which code section was adopted by  
12           the Village Council on May 5, 2003, authorized the Village to replace the "unity of title"  
13           requirement contained in the 1985 Declaration of Restrictive Covenants with the 2006  
14           Declaration of Restrictive Covenants in Lieu of Unity of Title, which allowed the property to  
15           have multiple owners under a master operating agreement, and compliance with the  
16           remainder of the 1985 restrictions.  
17

18           4.       The Palmetto Bay Village Center (PBVC) structures were originally constructed  
19           within an Office Park District (OPD), which land and construction was tied to a detailed  
20           declarations of restrictions ("the 1985 restrictions"). All the relevant land use restriction  
21           portions of the 1985 restrictions remain in full force and effect; of particular interest are the  
22           Old Cutler Road view restriction precluding view of the office buildings (the three specific  
23           former Burger King Buildings); and the 75% resident approval of all those properties within  
24           500 feet of the PBVC to any application by the property owner to change zoning for the  
25           purposes of residential construction on Tract II and B (along the far south/east portion of  
26           the site and the far west area adjacent to most of the Old Cutler Road tree area). Please  
27           note, the proposed fire station is not within Tract II or B.  
28

29           5.       Previously, in 2006, the Village revised one of the 1985 restrictions, solely as to the  
30           unity of title requirement. The Village allowed there to be more than one owner of the  
31           PBVC site, provided the specific "declaration of restrictions in lieu of unity of title"  
32           (hereinafter "2006 restrictions") were complied with by all property owners. These 2006  
33           restrictions, incorporated all the remaining 1985 restrictions (particularly the two most  
34           relevant provisions listed above as to view from Old Cutler and development preconditions  
35           as to Tract II or B). The 2006 restrictions simply allowed the land to be separated. It  
36           requires all owners are to comply with the underlying 1985 restrictions. The 2006  
37           restrictions also specifically tied the property to a specific site plan (which through  
38           subsequent public hearings has been amended). Pursuant to the 2006 restrictions, the only  
39           way to amend the site plan is by public hearing. The 2006 restrictions also require a Master  
40           Easement and Operation agreement, amongst the owners to ensure maintenance of  
41           property, roadways, easements, and, of course, maintain compliance with the 1985  
42           restrictions.  
43

44           6.       The Village, subsequent to the 2006 restrictions, has held two different public  
45           hearings to modify the 2006 restrictions – solely to allow the approved PBVC site plan to be

1 modified. These two revisions include: the allowance of easement and parking area on  
2 PBVC for the use of the Ludovici Park and Public Library; and the allowance for PBVC to  
3 build a parking garage.  
4

5 7. Thereafter, on June 9, 2008, the Village enacted the VMU District for most of the  
6 PBVC. The VMU District covers 41.59 acres of the approximately 80 acres of the PBVC  
7 property (17777 – 18001 Old Cutler Road). The zoning ordinance incorporates by reference  
8 the underlying 1985 restrictions (approved under the 1985 Office Park Development zoning  
9 resolution for the former Burger King site), and specifically states that the more restrictive  
10 sections of either the zoning ordinance or the 1985 restrictions would apply to the  
11 underlying property. In short, this ordinance rezoned the Palmetto Bay Village Center  
12 property from Office Park District (OPD) to the VMU District. The VMU does not include  
13 Tract II or B, which remains consistent with the relevant 1985 restrictions. It also  
14 incorporates, by specific reference the Old Cutler restriction on view of the three former  
15 Burger King office buildings.  
16

17 8. The VMU District, as enacted, contemplates administrative site plan review of  
18 permitted uses. In other words, permitted uses within the District do not require a public  
19 hearing. Under the VMU District, fire stations or sub-stations, are permitted as allowable, as  
20 of right, use within the District.  
21

22 9. This matter is before the Village Council, for public hearing, due to the underlying  
23 2006 restrictions, which ties the entire affected property to a specific site plan. The relevant  
24 portion of that document provides that the applicant, PBVC, must request a public hearing  
25 in order to be able to modify its site plan. Therefore, the request to install the fire station on  
26 the property must be approved at a public hearing, to modify the site plan referenced in the  
27 2006 restrictions.  
28

29 10. To reconcile the 2006 restrictions and the intent of the VMU district, the request for  
30 the Council to consider is as follows: to approve the site plan modification to approve the  
31 inclusion of the fire station and to modify the 2006 restriction, solely as to the site plan  
32 public hearing section – to conform to the intent of the VMU ordinance. In other words,  
33 the VMU ordinance, which incorporates the 1985 restrictions, allows certain permitted uses,  
34 without public hearing. These permitted uses include fire stations or sub-stations, which  
35 should be reviewed administratively by the Planning and Zoning Department.  
36

37 11. However, as the 2006 restriction is more stringent, tying the property to a site plan,  
38 every zoning application, even an “as of right” permitted use under VMU would require a  
39 public hearing. Again, this is because the entire 41.59 acres VMU district is tied to the 2006  
40 restriction, public hearing site plan requirement. In order to reconcile the VMU District  
41 administrative review process and the 2006 restrictions requirement, it is the request to  
42 change the site plan language to reflect the intent that permitted uses under the VMU district  
43 do not require a public hearing, and may proceed with administrative review. However, all  
44 other requests, including any modifications to any of the declaration of restriction provisions  
45 would require a public hearing. This modification of the 2006 restrictions would reconcile

1 the intent of the Council and continue to ensure compliance with the 1985 restrictions. It  
2 would also allow continued force of the remaining provisions of the 2006 restrictions as to  
3 the duties and obligations of the individual owners of the property.  
4

5 12. Miami-Dade Fire Rescue has also requested that it be provided an exemption from  
6 the Master Easement and Operation requirement of the 2006 restrictions. The Fire Rescue  
7 property and use, accepts that it will have to ensure compliance with the remaining  
8 provisions of the 2006 restrictions, and will have to execute cross-easements for access,  
9 utilities, etc. The Fire Department has agreed to individually covenant to maintain  
10 landscaping and ensure its own compliance with the 1985 restrictions, but, does not want to  
11 be tied to the Master Operation documents. In other words, the Fire Department is  
12 concerned with the possible assessment against them for remainder of the lands' (land  
13 owners') compliance with the 1985 covenants and other general expenses relating to  
14 remainder of the property. The operations agreement would operate as a Common Area  
15 Maintenance (CAM) type cost that the Fire Department is seeking a waiver from by the  
16 Village Council.  
17

18 13. The site plan modification under the 2006 restrictions requires a public hearing for a  
19 modification. As the specific use would be an allowed use under VMU, this is a unique  
20 situation, in that the new zoning district has superseded the prior review criteria of 33-311 of  
21 the Miami-Dade County Code, as to site plan modifications. Additionally, as the fire station  
22 is a government facility, it can be reviewed as a governmental use under 33-303. Therefore,  
23 in evaluating the application for a change of use, Section 33-303, of the Miami-Dade County  
24 Code, as adopted by the Village, provides that the Village Council take into consideration,  
25 among other factors:  
26

- 27 a. the type of function involved, the public need therefore;
- 28 b. the existing land use pattern in the area;
- 29 c. alternative locations for the facility; and
- 30 d. the nature of the impact of the facility on the surrounding property.  
31

32 14. The subject 80 +/- acre property known as the Palmetto Bay Village Center, is  
33 located on the east side of Old Cutler Road, between theoretical S.W. 177<sup>th</sup> Street and  
34 theoretical S.W. 184<sup>th</sup> Street, Palmetto Bay, Florida. The applicant is requesting to modify a  
35 set of plans that were previously approved, after public hearing.  
36

37 15. The applicants desires to modify the plans to allow for the construction of a two-  
38 story, three-bay c.b.s, fire rescue station containing approximately 10,000 sq. ft., designed to  
39 accommodate up to twelve (12) firefighters/paramedics, 24 hours a day, 7 days a week. The  
40 fire station is to be built on approximately 1.08 acres within the Palmetto Bay Village Center  
41 approximately 200 feet East of Old Cutler Road and just northwest of Building B. The  
42 modification, if approved by the Village Council, shall also require a modification of the  
43 associated declaration of restrictions, so that the attached site plans associated with the  
44 declarations correctly reflect the construction, location (site plan) associated with the  
45 proposed fire rescue station.

1  
2 16. The properties to the North are developed with single family residences and are  
3 zoned EU-2, Estate Single Family District. The property immediately adjacent to the North  
4 is the site of the Village's public library and Ludovici Park. The Village Site obtained a 33-  
5 303, government use designation in 2007. The properties to the west are zoned, EU-1,  
6 Estate Single Family Residential and EU-2, Estate Single Family Residential District. A  
7 portion of the eastern boundary of the property is designated environmentally protected land  
8 and belongs to Biscayne National Park.  
9

10 17. The applicants have submitted a site plan, floor plans and elevations showing the  
11 development of the proposed fire rescue station. The Village Council takes notice of staff  
12 comment that the fire rescue station is consistent with the existing use and is in accordance  
13 with the Village's adopted Comprehensive Plan and the 1985 Declaration of Restrictive  
14 Covenants associated with the site.  
15

16 18. The existing covenants at PBVC, at page four, section 7, indicates that "the [PBVC]  
17 will continue to maintain native vegetation on the portion of their property located adjacent  
18 to Old Cutler Road and the north and south boundaries with the intent to obscure any  
19 visibility of the [Burger King] office building from Old Cutler Road. All landscaping plans  
20 will be reviewed and approved prior to by the Village's Department of Planning and  
21 Zoning."  
22

23 19. The Village Council takes note that the Village and Miami-Dade County have sought  
24 to provide a location for a fire station within Palmetto Bay for over six years. The stations  
25 serving the Village of Palmetto Bay include Station No. 50 located at 9798 Hibiscus Street  
26 and Station No. 4 located 9201 SW 52 Street. There is a public need for a fire station. The  
27 existing land use pattern in the area is predominantly residential, with the PBVC office  
28 complex adjacent to the specific site for the fire station. Alternative locations have been  
29 sought for the fire station, including within the front buffer area, west of the VMU and on  
30 the southern border. The Village Council in approving the VMU District rejected any use of  
31 these areas, and continued enforcement of the provisions in the 1985 Covenant. The Fire  
32 Department has also attempted to purchase land in the neighboring municipality of the  
33 Town of Cutler Bay, to no avail.  
34

35 20. The Village Council is specifically aware that there currently do not appear to be  
36 alternative sites available for the fire station. Miami-Dade County has the funds appropriated  
37 to construct the station. The impact to surrounding properties would be favorable as they  
38 would be able to more readily obtain fire department services. This site would not impact  
39 environmental wetlands nor require a wetland permit (as the alternative sites may have  
40 required).  
41

42 The public hearing was opened and the following persons testified:  
43

44 Scott W. Mendelsberg, Assistant Director Budget, Planning and Grants, Miami-Dade Fire  
45 Rescue Department spoke in favor of the application. Also in attendance were Carlos Heredia,  
46

1 Planning Section Supervisor, Miami-Dade Fire Rescue Department; Scott Silver, PBVC, 17777 Old  
2 Culter Road, LLC.; Angel Lamela, Architect and Facility Manager, Miami-Dade Fire Rescue  
3 Department. Station proposed is to be Green, Silver LEED Certified.  
4

5 Henry Clifford of the Village's Fire Service Committee spoke in favor of the site  
6 recommended.  
7

8 Beth Kibbler, resident, supported the application.  
9

10  
11 Section 3. Conclusions of law.

12 The site plan modification is granted, pursuant to Section 33-303 for "Government Uses"  
13 and 33-257 of the Miami-Dade County Code, as is the applicants' request to amend  
14 Paragraphs 1 and 3, as reflected in the attached declaration of restriction in lieu of unity of  
15 title is hereby granted. The revised declaration of restrictions in lieu of unity of title is  
16 attached as exhibit 1 to this resolution and incorporated by reference into this resolution.  
17 The modification would be in keeping with the basic intent and purpose of the zoning and  
18 land use regulations, is in character with the existing use of the property, and consistent with  
19 the Village's Comprehensive Plan.  
20

21 Section 4. Order.

22 The applicants' request pursuant to the underlying 2006 declaration of restrictions in lieu of  
23 unity of title authorized under 33-257 and 33-303 of the Miami-Dade County Code of  
24 Ordinances, as adopted by the Village to provide a fire rescue station that will serve the  
25 municipalities of Palmetto Bay and Cutler Bay is approved, with conditions:  
26

27 Additional conditions.  
28

- 29 1. The plans entitled "Proposed Fire Station No. 62" as prepared by Miami Dade Fire  
30 Rescue Facilities and Construction, Architect, Angle H. Lamela, consisting of 2 sheets, dated  
31 stamped received March 20, 2009 are approved.  
32
- 33 2. The applicants shall meet the minimum requirements of Chapter 24 of the Code of  
34 Miami-Dade County.  
35
- 36 3. The applicants shall meet the minimum requirements of all other applicable  
37 departments/agencies as part of the building permit submittal process.  
38
- 39 4. The applicants shall relocate all existing trees affected by the proposed fire rescue station  
40 on site.  
41

- 1 5. The proposed structure shall be compatible in architectural design with that of the  
2 adjacent public library and shall make every effort to incorporate green building  
3 elements.  
4
- 5 6. The applicants shall incorporate energy efficient outdoor lighting fixtures that are  
6 compatible or similar in design with that of the adjacent public library  
7
- 8 7. The applicants shall provide a space for the collection and storage of recyclables  
9
- 10 8. The applicants shall provide roof location and install conduit from the electrical room  
11 for future Photovoltaic System (PV) installation. A minimum of 300 sq. ft. or larger of  
12 roof area in a south or west direction shall be dedicated and clear of vent pipes and other  
13 obstructions to allow for the installation of a future PV system.  
14
- 15 9. The applicants shall install Energy Star Appliances that use 10-50% less energy and water  
16 than standard models.  
17
- 18 10. The applicants shall provide an Indoor Air Quality Management Plan on the  
19 construction drawings that, at minimum includes protecting ducts during construction  
20 and changing the filters and vacuuming the ducts prior to occupancy.  
21
- 22 11. The applicants shall provide secure bike parking in accordance with section 30-70.11 of  
23 the Village of Palmetto Bay Land Development Code.  
24
- 25 12. The applicants shall work with the Art in Public Places Advisory Board in addressing its  
26 Art in Public Places requirement. Miami-Dade County funding requirement for art in  
27 public places, should be added to the Village's requirement, for the Village's  
28 disbursement in relation to creation of one art piece.  
29
- 30 13. The attached covenant shall be executed by the applicants, which covenant requires the  
31 following: modification of Paragraph 1 to the existing 2006 covenant, which would state  
32 as follows: "No modification shall be effected to the underlying property without the  
33 consent of the then owners of the Property, and the submittal of an application to  
34 modify the plan in compliance with the permitted uses listed in the Village's Mixed Use  
35 (VMU) District, for administrative review. Any conditional uses or other modifications  
36 other than those as-of-right, permitted uses, including but not limited to any covenant  
37 modifications would require approval of the then owners of the property, and the  
38 submittal of the application at public hearing before the Village Council of the Village of  
39 Palmetto Bay, Florida."  
40
- 41 14. Paragraph 3, relating to an "Easement and Operating Agreement" for the property  
42 would provide an exception for the Miami-Dade County Fire Department site, allowing  
43 the Fire Department to opt out of the Operating Agreement. The Fire Department  
44 would be required to execute mutual ingress, egress, utility, pedestrian and vehicular

1 traffic and construction easements and individually covenant to maintain the landscaping  
2 within the site plan area and individually comply with the 1985 restrictions, as applicable.  
3

4 15. The applicants' project does not require Chapter 360, Florida Statutes, review for  
5 Regional Impact. On March 26, 2009, staff has conferred with Mike McDaniel, Chief,  
6 Office of Comprehensive Planning with Florida Department of Community Affairs. A  
7 fire station is not within the review criteria for a Regional Impact Determination.  
8

9 16. The applicants shall seek to install a stop light at entrance of theoretical SW 177<sup>th</sup> Street  
10 for exiting of Fire Department.  
11

12 Section 5. Record.

13 The record shall consist of the notice of hearing, the application, documents submitted by  
14 the applicants and the applicants' representatives to the Miami-Dade County Department of  
15 Planning and Zoning in connection with the applications, the county recommendation and attached  
16 cover sheet and documents, the testimony of sworn witnesses and documents presented at the  
17 quasi-judicial hearing, and the tape and minutes of the hearing. The record shall be maintained by  
18 the Village Clerk.  
19

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

21 PASSED and ADOPTED this 13<sup>th</sup> day of April, 2009.

22 Attest:

23 Meighan Rader  
24 Meighan Rader  
25 Village Clerk

26 Eugene P. Flinn, Jr.  
27 Eugene P. Flinn, Jr.  
28 Mayor

29 APPROVED AS TO FORM:

30 Eve A. Boutsis  
31 Eve A. Boutsis, office of  
32 Village Attorney

33 FINAL VOTE AT ADOPTION:

34 Council Member Ed Feller YES  
35 Council Member Howard Tendrich YES  
36 Council Member Shelley Stanczyk YES  
37 Vice-Mayor Brian W. Pariser YES  
38 Mayor Eugene P. Flinn, Jr. YES