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**RESOLUTION NO. 2010-78**

ZONING APPLICATION VPB-10-010

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING WITH CONDITIONS THE APPLICATION OF KENNETH W. AND MYRTLE V. YEE, LOCATED AT 14135 SW 88<sup>TH</sup> AVENUE; PALMETTO BAY, FLORIDA APPROVING WITH CONDITIONS THE SHED AMNESTY VARIANCE REQUEST FOR TWO SHED SETBACK REQUIREMENTS AND SHED SIZE, FOR SHED 1 TO SETBACK 7.03 FEET FROM THE SOUTH PROPERTY LINE WHERE 20 FEET IS REQUIRED; AND SHED 2 TO HAVE A SETBACK OF 6.06 FEET FROM THE SOUTH PROPERTY LINE WHERE 20 FEET IS REQUIRED ON A PARCEL ZONED E-M, AT A SIZE OF 268.034 SQUARE FEET FOR SHED 1 AND 121.968 SQUARE FEET FOR SHED TWO; AS PROVIDED FOR UNDER SECTION 33-311, OF THE COUNTY CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on February 2, 2009, the Village Council pursuant to Ordinance Number 09-03 (“Shed Amnesty Ordinance”) provided for an 18 month shed amnesty program that would allow existing nonconforming sheds to be permitted provided certain conditions are met; and

WHEREAS, the Village created a Shed Administrative Variance process for sheds located more than 3 feet from the property line and under 150 square feet, all other sheds would have to adhere to the provisions of Section 33-311(4)(b) or (c) of the Miami-Dade County Code, and apply for a quasi-judicial hearing for a setback variance; and,

WHEREAS, Planning and Zoning Department issued a recommendation of approval of the shed; and,

WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial hearing on the application at the Deering Estate on September 20, 2010; 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 above requests, find that the application, as amended by Council Action 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 amended (modified/conditioned) by Council Action 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 September 20, 2010 in accordance with the Village’s “Quasi-judicial hearing procedures” Ordinance, found at Section 2-107, of the Village’s Code of Ordinances. Pursuant to the hearing, the Mayor and Village Council make the following findings of fact, and conclusions of law.

1            Section 2.            Findings of fact.

2            The subject property is located at 14135 SW 88<sup>th</sup> Avenue, Palmetto Bay, Florida.  
3

4            The Council held a public hearing and no one spoke on the application. The Council incorporates by  
5            reference the minutes, audio tape, and transcript (if transcribed) into its findings of fact.  
6

7            The applicants submitted an application requesting setback variances for two sheds to allow existing shed no.  
8            1 (12.20' x 21.97' = 268.034 square feet) to have a setback of 7.03 feet from the south property line where 20  
9            feet is required; and shed no. 2 (12.10' x 10.08' = 121.968 square feet) to have a setback of 6.06 feet from the  
10           south property line where 20 feet is required on a parcel zoned E-M. Shed 1 exceeds the 150 square foot size  
11           for the administrative variance process.  
12

13           The Mayor and Village Council of the Village of Palmetto Bay recognized that many sheds have been built on  
14           residential properties without a building permit, particularly after Hurricane Andrew or other hurricane  
15           events. Due to the emergency and security risk situation after hurricanes often permits were not sought by the  
16           homeowners. Often, the Village cannot determine whether the sheds were built due to the aftermath of  
17           Hurricane Andrew or more recently. In an effort to facilitate legalization and permitting of these structures  
18           to ensure that these structures comply with the Florida Building Code, and to obtain compliance within the  
19           community, the Village Council desires to create an 18 month amnesty program to legalize shed structures  
20           that meet certain requirements of an administrative zoning review and approval process. As such, the Mayor  
21           and Village Council adopted an amendment to Chapter 30 of the Village's Code of Ordinances entitled "Shed  
22           Amnesty Program" under Ordinance 09-03.  
23

24           The amnesty period was for an 18-month period starting in February 2009. Failure to apply for amnesty  
25           within the 18-month period shall not cure the violation and each property owner may be liable for civil  
26           citations for violation of this Code. This amnesty for certain sheds shall only apply to residential properties  
27           within the Village of Palmetto Bay. It shall not apply to commercial properties.

28           In order to issue a permit so that the property owner or representative can call for required inspections, the  
29           applicant shall be required to apply for a building permit with the Building Department and provide the  
30           Department a detailed set of plans. The application and plans will be processed as per the applicable building  
31           code requirements at the time of the shed's construction, provided, there is clearly established evidence of  
32           when the shed was constructed. If there is no evidence of when the shed was constructed, the shed shall  
33           comply with the current version of the Florida Building Code. Double permit fees shall be waived; only the  
34           "original" amnesty permit fee to obtain a building permit shall apply.  
35

36           If the ancillary shed is within the side or rear setbacks, is less than 150 square feet; and provided that the  
37           location of the shed is more than 3 feet from any point on the structure to the existing side and rear property  
38           lines, or a distance required by the Florida Building Code, then the ancillary shed may remain in its current  
39           location, upon administrative zoning review and building permit approval as provided above. Any shed of  
40           greater size than 150 square feet and/or located within 3 feet of an adjacent property line, then, that shed  
41           must either apply for a zoning non-use non-administrative variance hearing, which would need to be granted  
42           by the Village Council pursuant to the criteria of Section 33-311(4)(b) or (4)(c) of the Code; or have the shed  
43           removed.  
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1           Section 3.           Conclusions of law.

2           1.       The Application is in compliance with the adopted 2005 Village of Palmetto Bay  
3 Comprehensive Plan, and Future Land Use Map.

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5           2.       The standard of review for a variance is found at Section 33-311(4)(b) and (c), of the Miami-  
6 Dade County Code. That the Applicant's request for a setback variance is in compliance with the applicable  
7 standards, as conditioned below.

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9           Section 4.           Order.

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11 A.       The Council, pursuant to Section 33-311(4)(b), of the Miami-Dade County Code as applied by the  
12 Village, approves with conditions the Applicant's request for setback variances for two sheds to allow existing  
13 shed no. 1 (12.20' x 21.97' = 268.034 square feet) to have a setback of 7.03 feet from the south property line  
14 where 20 feet is required; and shed no. 2 (12.10' x 10.08' = 121.968 square feet) to have a setback of 6.06 feet  
15 from the south property line where 20 feet is required on a parcel zoned E-M. The shed no. 1 exceeds 150  
16 square feet for the shed amnesty administrative variance process, the applicant has adhered to the Village's  
17 Shed Amnesty Variance process. The existing sheds are in keeping with the basic intent and purpose of the  
18 zoning and land use regulations. Approval of this application is in character with the existing use of the  
19 property and is consistent with the Village's Comprehensive Plan. The Village Council approves the survey  
20 prepared for Kenneth W. Yee and Myrtle V. Yee, consisting of one (1) sheet, survey dated June 7, 2010. This  
21 survey was prepared by P(3)SM, LLC. Application denied under Section 33-311(4)(c) of the Code as there is  
22 no hardship.

23  
24           B.       The Village Council conditions/modifies the approval as follows:

- 25  
26           1.       The applicant is to comply with the requirements of all other applicable  
27 departments/agencies as part of the Village of Palmetto Bay building permit submittal  
28 process.  
29           2.       The applicant is to comply with the landscaping and screening requirements and all the  
30 requirements imposed by the Village of Palmetto Bay.  
31           3.       The applicant is to comply with all the requirements of Ordinance Number 09-03 (Shed  
32 Amnesty Ordinance).  
33           4.       Applicants must complete permitting within 60 days of this Zoning approval.

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35           This is a final order.

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37           Section 5.           Record.

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

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

1 PASSED and ADOPTED this 20] day of September, 2010.

2  
3 Attest:

4 Meighan Alexander  
5 Meighan Alexander  
6 Village Clerk

7 Eugene P. Flinn, Jr.  
8 Eugene P. Flinn, Jr.  
9 Mayor

10 APPROVED AS TO FORM:

11 Eve A. Boutsis  
12 Eve A. Boutsis,  
13 Village Attorney

14 FINAL VOTE AT ADOPTION:

15 Council Member Ed Feller YES

16 Council Member Howard Tendrich YES

17 Council Member Shelley Stanczyk YES

18 Vice-Mayor Brian Pariser YES

19 Mayor Eugene P. Flinn, Jr. YES