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**RESOLUTION NO. 2010-85**

ZONING APPLICATION VPB-10-020

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING WITH CONDITIONS THE APPLICATION OF LAIRD A. & SHARON P. HAXTON, LOCATED AT 7500 SW 136<sup>TH</sup> STREET, PALMETTO BAY, FLORIDA APPROVING WITH CONDITIONS THE SHED AMNESTY VARIANCE REQUEST FOR SHED SETBACK REQUIREMENTS, TO SETBACK 4.89 FEET FROM THE WEST INTERIOR PROPERTY LINE WHERE 20 FEET IS REQUIRED ON A PARCEL ZONED E-M, AT A SIZE OF 604.608 SQUARE FEET, 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.

Section 2. Findings of fact.

The subject property is located at 7500 SW 136<sup>th</sup> Street, Palmetto Bay, Florida.

1 The Council held a public hearing and no one spoke on the application. The Council incorporates by  
2 reference the minutes, audio tape, and transcript (if transcribed) into its findings of fact.  
3

4 The applicants submitted an application requesting a setback variance to allow an existing shed (20.10' x  
5 30.08' = 604.608 square feet) to have a setback of 4.89 feet from the west interior property line where 20 feet  
6 is required on a parcel zoned E-M. The size of the shed exceeds 150 square feet. The administrative variance  
7 process does not apply as the shed do not meet the size requirement of the administrative process.  
8

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

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

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

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

41 Section 3. Conclusions of law.

42 1. The Application is in compliance with the adopted 2005 Village of Palmetto Bay  
43 Comprehensive Plan, and Future Land Use Map.  
44

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

5           Section 4.       Order.  
6

7           A.       The Council, pursuant to Section 33-311(4)(b), of the Miami-Dade County Code as applied  
8 by the Village, approves with conditions the Applicant's requests for a setback variance to allow an existing  
9 shed (20.10' x 30.08' = 604.608 square feet) to have a setback of 4.89 feet from the west interior property line  
10 where 20 feet is required on a parcel zoned E-M. The size of the shed is over 150 square feet. The existing  
11 shed is in keeping with the basic intent and purpose of the zoning and land use regulations. Approval of this  
12 application is in character with the existing use of the property and is consistent with the Village's  
13 Comprehensive Plan. The Village Council approves the survey prepared for Laird A. Haxton, consisting of  
14 one (1) sheet, survey dated July 19, 2010. The survey was prepared by P(3)SM, LLC. Application denied  
15 under Section 33-311(4)(c) of the Code as there is no hardship.  
16

17           B.       The Village Council conditions/modifies the approval as follows:  
18

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


28           This is a final order.  
29

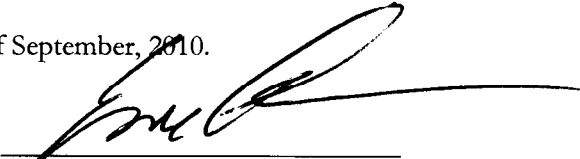
30           Section 5.       Record.

31           The record shall consist of the notice of hearing, the application, documents submitted by the  
32 applicant and the applicant's representatives to the Village of Palmetto Bay Planning and Zoning Department  
33 in connection with the applications, the Village's recommendation and attached cover sheet and documents,  
34 the testimony of sworn witnesses and documents presented at the quasi-judicial hearing, and the tape and  
35 minutes of the hearing. The record shall be maintained by the Village Clerk.  
36


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

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

39           Attest:   
40           Meighan Alexander  
41           Village Clerk  
42

  
43           Eugene P. Flinn, Jr.  
44           Mayor  
45

1 APPROVED AS TO FORM:

2  
3   
4 Eve D. Boutsis,  
5 Village Attorney

6  
7 FINAL VOTE AT ADOPTION:

- 8
- 9 Council Member Ed Feller YES
- 10
- 11 Council Member Howard Tendrich YES
- 12
- 13 Council Member Shelley Stanczyk YES
- 14
- 15 Vice-Mayor Brian Pariser YES
- 16
- 17 Mayor Eugene P. Flinn, Jr. YES