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RESOLUTION NO. 2010-101

ZONING APPLICATION VPB-10-026

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING WITH CONDITIONS THE APPLICATION OF LEONARD & GRACE BERBRICK, LOCATED AT 17701 SW 92nd COURT; PALMETTO BAY, FLORIDA APPROVING WITH CONDITIONS THE SHED AMNESTY VARIANCE REQUEST FOR SHED SETBACK REQUIREMENTS AND SHED SIZE, TO SETBACK 3.2 FEET FROM THE NORTH INTERIOR PROPERTY LINE WHERE 20 FEET IS REQUIRED; AND A 3.2 FEET SETBACK ON THE EAST REAR PROPERTY LINE WHERE 7.5 FEET IS REQUIRED ON A PARCEL ZONED E-M, AT A SIZE OF 145.20 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 October 18, 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 October 18, 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 17701 SW 92nd Court, 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 a non-use variance application requesting relief from setback requirements in order
8 to allow an existing shed (12' x 12.10' = 145.20 sq. ft.) to have a setback of 3.2 feet from the north interior
9 property line where 20 feet is required, and a 3.2 feet setback on the east rear property line where 7.5 feet is
10 required on a parcel zoned E-M.
11

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

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

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

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

4
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.

8
9 Section 4. Order.

10
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 a setback variance to keep a shed located 3.2
13 feet from the north interior property line where 20 feet is required, and a 3.2 feet setback on the east rear
14 property line where 7.5 feet is required on a parcel zoned E-M. The existing shed is in keeping with the basic
15 intent and purpose of the zoning and land use regulations. Approval of this application is in character with
16 the existing use of the property and is consistent with the Village's Comprehensive Plan. The Village Council
17 approves the survey prepared for Leonard Berbrick and Grace Berbrick; S. Scott Choos, Esquire; Attorneys'
18 Title Insurance Fund, Inc.; First Bankers Mortgage Services, Inc., its successors and/or assigns as their
19 interests may appear, consisting of one (1) sheet, survey dated December 4, 1996.

20
21 B. The Village Council conditions/modifies the approval as follows:

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

31
32 This is a final order.

33
34 Section 5. Record.

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

40
41 Section 6. This resolution shall take effect immediately upon approval.

42 PASSED and ADOPTED this 18th day of October, 2010.

1 Attest:

2 Meighan Alexander
3 Meighan Alexander
4 Village Clerk

Eugene P. Flinn, Jr.
Eugene P. Flinn, Jr.
Mayor

5
6 APPROVED AS TO FORM:

7
8 Eve A. Boutsis
9 Eve A. Boutsis,
10 Village Attorney

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12
13 FINAL VOTE AT ADOPTION:

14 Council Member Ed Feller	<u>ABSENT</u>
15 Council Member Howard Tendrich	<u>YES</u>
16 Council Member Shelley Stanczyk	<u>YES</u>
17 Vice-Mayor Brian Pariser	<u>YES</u>
18 Mayor Eugene P. Flinn, Jr.	<u>ABSENT</u>

19 Executed October 27, 2010