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RESOLUTION NO. 2010-112

ZONING APPLICATION VPB-10-038

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING WITH CONDITIONS THE APPLICATION OF RONALD & BARBARA KUESTER LOCATED AT 8925 SW 171st STREET; PALMETTO BAY, FLORIDA; APPROVING WITH CONDITIONS THE SHED AMNESTY VARIANCE REQUEST FOR SHED SETBACK REQUIREMENTS AND SHED SIZE, TO SETBACK 3 FEET FROM THE EAST INTERIOR PROPERTY LINE WHERE 20 FEET IS REQUIRED ON A PARCEL ZONED E-M, AT A SIZE OF 240 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 8925 SW 171st Street, Palmetto Bay, Florida.

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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 20' = 240 sq. ft.) to have a setback of 3 feet from the east interior property
9 line where 20 feet is required on a parcel zoned E-M.

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

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

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

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

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 feet
13 from the east interior property line where 20 feet is required on a parcel zoned E-M. As the shed size
14 exceeds 150 square feet for the shed amnesty administrative variance process, the applicants have adhered to
15 the Village's Shed Amnesty Variance process. The existing shed is in keeping with the basic intent and
16 purpose of the zoning and land use regulations. Approval of this application is in character with the existing
17 use of the property and is consistent with the Village's Comprehensive Plan. The Village Council approves
18 the survey prepared for Ronald & Barbara Kuester; consisting of one (1) sheet, dated stamped received
19 August 8, 2010. The Applicants accepted the conditions imposed by Council under subsection (4)(B) below.

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.

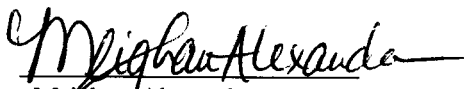
35 The record shall consist of the notice of hearing, the application, documents submitted by the
36 applicant and the applicant's representatives to the Village of Palmetto Bay Planning and Zoning Department
37 in connection with the applications, the Village's recommendation and attached cover sheet 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.

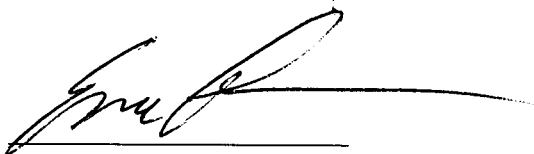
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41 Section 6. This resolution shall take effect immediately upon approval.

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


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Attest:


Meghan Alexander
Village Clerk


Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:


Eve A. Boutsis,
Village Attorney

FINAL VOTE AT ADOPTION:

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

Executed October 27, 2010