

RESOLUTION NO. 2022-63

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A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF PALMETTO BAY, FLORIDA, RELATING TO AN ADMINISTRATIVE APPEAL OF BUILDING PERMIT BLD-2021-8059 FOR INTERIOR/EXTERIOR REMODELING AT 7201 SW 174TH STREET FOR A RESIDENTIAL GROUP HOME FOR SIX (6) OR FEWER RESIDENTS; PROVIDING FOR CONFLICT, SEVERABILITY AND EFFECTIVE DATE.

WHEREAS, on April 29, 2022, the Village Building Department issued a permit (the “Permit”) for interior and exterior work at 7201 SW 174 Street, a residential property owned by 7201 SW 174th Street Investments, LLC, (the “Appellee”) and

WHEREAS, the residential property is intended to be a “Group Home” for up to six (6) residents and support staff pursuant to Section 419.001, Florida Statutes, which is a permitted use in any zoning classification in the Village; and

WHEREAS, on May 11th, 2022, an administrative appeal, pursuant to Sections 30-30.14(c) and 2-106 of the Village Code, was filed by Mr. William Vozzolo (the “Appellant”) challenging the validity of the Permit; and

WHEREAS, the Village, through the Department of Community and Economic Development, filed a staff report dated for the hearing on July 11, 2022; and

WHEREAS, upon the filing of the appeal, a Stop Work Order was issued by the Building Official through the date of the hearing; and

WHEREAS, on July 11th, 2022, the Council held a public, quasi-judicial hearing to consider the appeal.

NOW THEREFORE, BASED ON THE PLEADINGS, STAFF REPORT, WITNESS TESTIMONY AND DOCUMENTATION, THE MAYOR AND VILLAGE COUNCIL DETERMINES AS FOLLOWS:

41 **Section 1.** That the above recitals are incorporated as if set forth
42 in full.

43
44 **Section 2.** The Appellant has filed an eight (8) page document
45 with supporting Exhibits, which are attached to this Resolution as
46 Composite Exhibit “A”.

47
48 **Section 3.** The Village has filed a fifteen (15) page Staff Report
49 with supporting Exhibits, which are attached to this Resolution as
50 Composite Exhibit “B”.

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52 **Section 4. Appellant’s Issues.**

53
54 The Appellant has raised myriad issues as to why the group
55 home should not be approved. There are two categories:

56
57 A. Zoning Code and Building regulations concerning: (i) noise, (ii)
58 traffic, (iii) safety, (iv) aesthetics, (v) decreased property values, (vi)
59 density, (vii) incompatibility with the existing residential character of
60 the neighborhood; (viii) an R-4 Florida Building Code classification
61 would allow for up to sixteen (16) Residents; (ix) discrepancies and
62 incomplete information in the Permit documentation; (x) commercial
63 uses contemplated on the property; (xi) the driveway entrance is
64 improperly located; (xii) other group homes are closer to US 1; (xiii) a
65 commercial generator is proposed, with frequent testing; (xiv)
66 signage might be placed on the property; (xv) the sewer system was
67 improperly documented; and (xvi), the entire process was rushed
68 through building and zoning

69
70 B. A second set of issues raised by the Appellant concern the approvals
71 issued by the Miami-Dade County Department of Regulatory
72 Economic Resources (DERM) for a fire code permit, and a State of
73 Florida Department of Health permit used by DERM for an on-site
74 sewage treatment and disposal system.

75
76 The Appellant argues that the Permit applications contain conflicting
77 information regarding the current and intended uses of the property.
78 Attachments to the application show that the Appellee has classified
79 the property as “commercial” to obtain some Permits and
80 “residential” for others. In an application for DERM – Appellant’s

81 Exhibit “B” – the words “residential” was crossed out for the current
82 use of the property and “commercial” is written instead. In the
83 application for a construction Permit, submitted to the State’s
84 Department of Health for an onsite Sewage Treatment and Disposal
85 System, the Appellee again, as shown in Exhibit “C”, represented the
86 property as commercial. These matters are in contradiction to the
87 letter first sent to the Village that the property would be residential.

88
89 The Appellee does not specify what non-residential uses will take
90 place and how many individuals, including staff, will be onsite, and
91 has also submitted conflicting documents as to whether minors or
92 adults too will receive treatment.

93
94 **Section 5. The Village Response**

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96 A. The issues raised by the Appellant in Section (B) above are not
97 within the jurisdiction of the Village for determination. Permits
98 issued by DERM are appealed to the Miami-Dade County Board of
99 Rules and Appeals (BORA); an appeal of a Fire Code permit is
100 directed to the Miami Dade County Fire Safety Appeals Board; and
101 an appeal of the State of Florida Department of Health permit used
102 by DERM must be heard by either the Florida Department of Health
103 or the Miami-Dade County Board of Health. The installation permit,
104 testing and maintenance of a fire safety and alarm system is the
105 purview of Miami-Dade County.

106
107 B. A group home is, pursuant to Section 419.001, and Future Land
108 Use Element Policy 1.1.7 of the Village’s Comprehensive Land Use
109 Plan, allowed in all residential land use categories. Additionally,
110 Housing Element Objective 3.5 of the Comprehensive Plan calls for
111 the Village to provide opportunities for group homes. It is
112 specifically denominated as a residential, non-commercial use.

113
114 C. The Building Permit, issued under the Florida Building Code’s
115 classification of R-4, which is not a zoning classification, and the
116 Village Code only allows the property up to six (6) residents,
117 pursuant to a group home as defined in Land Development Code
118 30-40.2. This is in addition to the supervisory and supportive staff
119 allowed under both Section 319.001 and the Village Code.
120 Moreover, the “16” resident issue only applies in the Village’s multi-

121 family zoning, and the State and Village Codes denominate this
122 use as a “single family unit”.

123

124 D. Regarding the Appellant’s assertion that the process was rushed
125 through, the zoning reviews of the application shows denials on
126 January 5, February 26, March 8, March 29, and April 13 before an
127 approval was given with, among others, the following conditions:

128

129 “[T]he proposed facility cannot exceed six (6) residents” and
130 “All construction and future operations of the subject
131 property must comply with Section 30-50.6, the E-1 One
132 Acre Estate Single Family Zoning District and Section 30-
133 50.3 (a)(4) for Group Home Compliance, additionally as
134 stated in the Comprehensive Plan Policy 2.2.7 and
135 Objective 3.5”.

136

137 E. The building permit application evinces that the residential
138 character of the property remains. There are no exterior
139 enlargements, signing or other façade changes, and will continue
140 as a single-family home.

141

142 F. There was a timely reservation of an address, which was extended
143 in April, and survey showing the One Thousand (1000) Foot
144 distance separation was provided.

145

146 G. The property has a single driveway entrance off 174th Street. The
147 architectural style is consistent with other homes at Old Cutler and
148 174th Street. Further, six (6) parking spaces will be added to ensure
149 the safe and orderly use of the property.

150

151 H. The building Permit does not indicate any commercial activities,
152 which is available to any resident of the area through the Special
153 Event Permit procedure.

154

155 I. The current location of the ten (10) existing Group Homes in the
156 Village are not “clustered”; they exist in the R-1; E-M Estate
157 Modified; and E-1 classifications.

158

159 J. The Building and CED staffs did not identify any traffic, density or
160 safety concerns, and this residential use does not require a traffic

161 study. The single width driveway is gated, enclosed on two (2)
162 sides by walls on the east and south, and by a chain link fence on
163 the north and west. Additionally, the existing six (6) bedrooms will
164 be converted to three.

165
166 K. Signage is not permitted on the property. A commercial generator
167 is not required, and there is no code requirement for testing of a
168 residential generator.

169
170 L. At the time the building Permit issued, a contractor had been
171 identified, and no owner-builder affidavit was required. A Notice of
172 Commencement does not occur until the initial inspection; the Stop
173 Work Order has halted all inspections.

174

175 **Section 6. Finding of Facts**

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177 A. Section 419.001, Florida Statutes, and Village Land Development
178 Code Section 30-40.3, allows a Group Home of up to six (6)
179 residents, and supportive and supervisory staff, to be permitted in
180 any zoning classification in the Village.

181

182 B. The Building Department's R-4 classification is not a zoning
183 classification and only six (6) residents, not up to sixteen (16), are
184 allowed.

185

186 C. The property is deemed a "single family unit" residential property,
187 and is required to comply with all zoning regulations applicable in
188 the E-1 district.

189

190 D. Fire Code decisions must be appealed to the Miami-Dade County
191 Fire Appeals Board. Permits issued by the State, Department of
192 Health and used by DERM for sewage treatment and disposal
193 must be appealed either to Miami-Dade County's or the State of
194 Florida's Departments of Health.

195

196 E. The Group Home is One Thousand (1000) feet from any other
197 Group Home in the Village.

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199 F. No signage is allowed, no traffic study is required, and no
200 generator if installed has required testing in a residential area.

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G. Appellant’s Exhibits “B” and “C” show inconsistencies with the residential designation of the property.

Section 7. Legal Requirements

In a de novo quasi-judicial hearing, the parties must prove through substantial competent evidence that their position should prevail. The test is not which party provides more such evidence as the other, there must simply be **some** substantial competent evidence upon which the final decision is based. “Substantial competent evidence is that amount of evidence that a reasonable mind might accept as adequate to justify a conclusion” *DeGroot v. Sheffield*, 95 So.2d 912 (Fla.1957).

The Staff Report and Exhibits are deemed to be competent substantial evidence.

Only the factual testimony and the Exhibits of the Appellant are deemed competent substantial evidence. As the courts have said: “The objections of a large number of residents of the affected neighborhood are not a sound basis for the denial of a permit. The quasi-judicial function of a board must be exercised on the basis of facts adduced; numerous objections by adjoining landowners may not properly be given even a cumulative effect. While the facts disclosed by adjoining neighbors should be considered, the courts have said that a mere poll of the neighboring landowners does not serve to assist the board in determining whether the [permit] applied for is consistent with the public convenience or welfare or whether it will tend to devalue the neighboring property”. *City of Apopka v. Orange County*, 299 So.2d 657 (4th DCA 1974).

Section 8. Order

Based on the pleadings, staff report, witness testimony and documentation, it is the decision of the Mayor and Village Council **to grant the appellant’s appeal.**

PASSED AND ADOPTED this 11th day of July, 2022.

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ATTEST:

DocuSigned by:
Missy Arocha
Missy Arocha
Village Clerk

DocuSigned by:
Karyn Cunningham
Karyn Cunningham
Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

DocuSigned by:
John C. Dellagloria, Esq.
John C. Dellagloria
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore	<u>YES</u>
Council Member Steve Cody	<u>NO</u>
Council Member Marsha Matson	<u>YES</u>
Vice-Mayor Leanne Tellam	<u>NO</u>
Mayor Karyn Cunningham	<u>YES</u>
