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**RESOLUTION NO. 2013-51**

**ZONING APPLICATION VPB-13-007**

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; DENYING THE SETBACK VARIANCE REQUEST FOR MICHAEL E. & BARBARA J. BASS, 15800 SW 82<sup>ND</sup> AVENUE TO PERMIT AN ADDITION TO AN EXISTING CANVAS CARPORT WITHIN THE SETBACKS ON A PARCEL ZONED E-S; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Applicants, Michael E. Bass and Barbara J. Bass, made an application pursuant to section 30-30.6 of the Village's Land Development Code to obtain a variance of setback requirements to permit an addition to an existing canvas carports within the setbacks on a parcel zoned E-S, bearing the address 15800 SW 82nd Avenue, and folio number 3350270380620; and,

WHEREAS, the applicants seek a setback variance to permit the carport expansion on a site containing a single-family home to setback 15feet from the (north) interior side where 20 feet is required and 8.5 feet to the adjacent home where a 10 foot setback is required; and,

WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial hearing on the application at Village Hall, 9705 East Hibiscus Street on May 20, 2013; and,

WHEREAS, the Mayor and Village Council finds, based on substantial competent evidence in the record, that the application for a setback variance should be denied as inconsistent with the standards delineated in 30-30.6, of the Land Development Code; and,

WHEREAS, based on the foregoing finding, the Mayor and Village Council determined to deny the application, 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 public hearing on the present applications was held on May 20, 2013, in accordance with the Village's "Quasi-judicial hearing procedures." Pursuant to the testimony and evidence presented during the hearing, the Village Council makes the following findings of fact, conclusions of law and final order.

Section 2. Findings of fact.

1. The applicants are requesting a variance of setback requirements to permit the carport expansion on a site containing a single-family home to setback 15feet from the North interior side and 8.5 feet to the adjacent home, where 20 feet are required for the interior side setback and a 10 foot setback is required from the building. The existing canopy was approved in March 2004 under Village permit

1 number B-2004-591. That structure was erected with a six foot interior setback and an eight foot  
2 separation to the house. The applicable code at time of permitting was Section 33-50, of the Miami-  
3 Dade County Zoning Code, which permitted a two foot interior setback and did not provide a  
4 building separation requirement.  
5

6 2. In December of 2009, the Village changed the canvas canopy setbacks to be consistent with all  
7 general accessory structures as delineated under Section 30-50.5. The property is located within the  
8 Estate Suburban Single-Family District (E-S).  
9

10 3. The subject property is an interior lot located within the Clinton Grove Estates Subdivision, and  
11 is conforming in size and configuration. The existing home on the site complies with all setback  
12 requirements. An existing canopy was permitted and erected in March of 2004, (B-2004-591) with  
13 setbacks of six (6) feet to the interior (north) side and 8 feet from the home. That canvas carport  
14 was subject to the Miami-Dade County Zoning Code, which permitted carports to be setback two  
15 (2) feet from an interior side property line with no required separation from the home.  
16

17 4. The Applicants are now seeking to increase the area of that existing carport by 182 sq. ft. In  
18 December of 2009, the Village adopted its own Land Development Code, which changed the  
19 canopy setbacks to 20' from the interior side and established a separation to the home of ten (10)  
20 feet.  
21

22 5. The Applicants' proposed expansion encroaches into both setbacks. Though the setbacks of the  
23 existing canopy are nonconforming, it does not constitute a special condition or circumstance that  
24 would permit approval the Applicants' current request.  
25

26 6. By virtue of the Council's action in 2009, the development standard changed and all future  
27 structures are to comply with the new standards. There are no special conditions or circumstances  
28 which are peculiar to the land or existing structures on site that would support granting the variance  
29 request pursuant to the second criteria of 30-30.6(b).  
30

31 7. The request for the variance is the result of the applicants' actions as they have chosen a site that  
32 does not meet existing setbacks. The applicants' have the option to relocate the proposed carport  
33 without resorting to a variance request.  
34

35 8. Granting the request will give the applicants' a special privilege by allowing them to encroach into  
36 a required setback whereas other property owners who homes and lots conform to current code  
37 could not.  
38

39 9. A reduction of the required setback would be considered contrary to the development standard  
40 required by others homeowners within the same zoning designation of E-S.  
41

42 10. The Comprehensive plan does not address residential canopy carports.  
43

44 11. The property meets all zoning requirements as to lot size, depth, frontage etc. Therefore, there  
45 is no evidence in the record that the current use would result in an unnecessary hardship as there is

1 no illegal nonconformity, nor any physical limitations to the land. The applicants are entitled to  
2 construct and or remodel a single family home within the permitted code provisions.  
3

4 12. The request is not in harmony with the general intent and purpose of the Comprehensive Plan  
5 because the setbacks of the proposed addition to the single-family home would not be compatible  
6 with the existing setbacks of the single-family homes in the surrounding neighborhood.  
7

8 13. No one spoke in opposition to the applicants' requests.  
9

10 14. The Village Council had not substantive disclosures regarding ex parte communications and the  
11 applicant raised no objections as to the form or content of any disclosures by the Council.  
12

13 Section 3. Conclusions of law.

14 Pursuant to Section 30-30.6 of the Code, the request for a variance is denied.  
15

16 Section 4. Order.

17 1. Pursuant to Section 30-30.6 of the Code, the request for a variance is denied.  
18

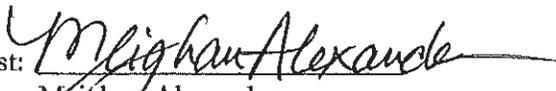
19 2. This is a final order.  
20

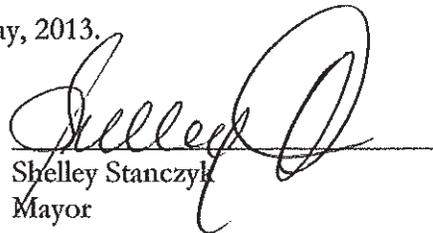
21 Section 5. Record.

22 The record shall consist of the notice of hearing, the applications, documents submitted by  
23 the applicant and the applicants' representatives to the Village of Palmetto Bay Department of  
24 Planning and Zoning in connection with the applications, the county recommendation and attached  
25 cover sheet and documents, the testimony of sworn witnesses and documents presented at the  
26 quasi-judicial hearing, and the tape and minutes of the hearing. The record shall be maintained by  
27 the Village Clerk.  
28

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

30 PASSED and ADOPTED this 20<sup>th</sup> day of May, 2013.

31  
32 Attest:   
33 Meighan Alexander  
34 Village Clerk  
35  
36

  
Shelley Stanczyk  
Mayor

1 APPROVED AS TO FORM:  
2

3  
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5 \_\_\_\_\_  
6 Eve A. Boutsis  
7 Village Attorney  
8

9 FINAL VOTE AT ADOPTION:  
10

- |                                 |            |
|---------------------------------|------------|
| 11 Council Member Patrick Fiore | <u>NO</u>  |
| 12 Council Member Tim Schaffer  | <u>YES</u> |
| 13 Council Member Joan Lindsay  | <u>YES</u> |
| 14                              |            |
| 15 Council Member Joan Lindsay  | <u>YES</u> |
| 16                              |            |
| 17 Vice-Mayor John DuBois       | <u>NO</u>  |
| 18                              |            |
| 19 Mayor Shelley Stanczyk       | <u>YES</u> |