

1 RESOLUTION NO. 05-32

2
3 ZONING APPLICATION Z-00-357

4
5 A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF
6 THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO
7 ZONING; COMPLYING WITH THE CIRCUIT COURT OF THE
8 ELEVENTH JUDICIAL CIRCUIT'S MANDATE TO THE VILLAGE
9 COUNCIL UNDER THE ACTION ENTITLED ALEMAR INVEST.
10 CORP. V. MIAMI-DADE COUNTY, CASE NO.: 01-131-AP TO
11 APPROVE THE APPLICATION OF ALEMAR INVESTMENTS
12 CORP., N.V. FOR (1) A SPECIAL EXCEPTION TO PERMIT A
13 RESIDENTIAL DEVELOPMENT IN THE BU-IA ZONE; (2) NON-
14 USE VARIANCE OF SETBACK REQUIREMENTS TO PERMIT A
15 RESIDENTIAL BUILDING TO SETBACK 15' FROM THE FRONT
16 (WEST) PROPERTY LINE AND 15' FROM THE INTERIOR SIDE
17 (NORTH) PROPERTY LINE; (3) NON-USE VARIANCE OF
18 SETBACK REQUIREMENTS TO PERMIT AN ACCESSORY
19 BUILDING TO SETBACK 14' FROM THE REAR (EAST)
20 PROPERTY LINE; AND (4) NON-USE VARIANCE OF SPACING
21 REQUIREMENTS TO PERMIT A SPACING OF 15' BETWEEN
22 BUILDINGS; PROVIDING AN EFFECTIVE DATE.

23
24 WHEREAS, the applicant, Alemar Investments Corp., N.V., made applications
25 for: (1) a special exception to permit a residential development in the BU-IA zone; (2)
26 non-use variance of setback requirements to permit a residential building to setback 15'
27 (25' required) from the front (west) property line and 15' (20' required) from the interior
28 side (north) property line; (3) non-use variance of setback requirements to permit an
29 accessory building to setback 14' (20' required) from the rear (east) property line; and (4)
30 non-use variance of spacing requirements to permit a spacing of 15' (30' required)
31 between buildings, as described in the Miami-Dade Department of Planning and Zoning
32 Recommendation, which is attached to this resolution; and

33
34 WHEREAS, on March 14th, 2001, the community council after holding a quasi-
35 judicial hearing on the application denied without prejudice the applicant's requests and
36 issued resolution no. CZAB13-4-01; and

37
38 WHEREAS, on April 23 2001, applicant timely filed a petition for writ of
39 certiorari to the Circuit Court of the Eleventh Judicial Circuit, wherein the court
40 reviewed the quasi-judicial record (the "Record") to determine whether (1) due process

1 was afforded in the proceeding; (2) the correct law was applied; and (3) there was
2 competent substantial evidence in the record to support the community council's ruling;
3 and

4 **WHEREAS**, the applicant requested the court to "issue its writ of certiorari
5 quashing the community council's resolution and remanding the action back with
6 directions to approve the applicant's application, and for such other and further
7 proceedings as shall be deemed appropriate"; and
8

9 **WHEREAS**, the court filed its opinion on June 1, 2004 and granted the
10 applicant's petition for certiorari, without opinion; and
11

12 **WHEREAS**, on July 21st, 2004, the court issued its mandate to the lower tribunal,
13 to undertake "such further proceedings ... in said cause in accordance with the opinion of
14 this Court ..."; and
15

16 **WHEREAS**, due to the incorporation of the Village of Palmetto Bay, and due to
17 the assumption by the village of all zoning responsibilities for property located within its
18 jurisdiction, the mandate by the court is directed to the village council, which now has
19 jurisdiction over the underlying application; and
20

21 **WHEREAS**, the mayor and village council finds, based upon the July 21st, 2004
22 decision of the circuit court under case no.: 01-131-AP, that there was substantial
23 competent evidence in the community council record, that the application for: (1) a
24 special exception to permit a residential development in the BU-IA zone; (2) non-use
25 variance of setback requirements to permit a residential building to setback 15' (25'
26 required) from the front (west) property line and 15' (20' required) from the interior side
27 (north) property line; (3) non-use variance of setback requirements to permit an accessory
28 building to setback 14' (20' required) from the rear (east) property line; and (4) non-use
29 variance of spacing requirements to permit a spacing of 15' (30' required) between
30 buildings was consistent with the Miami-Dade County comprehensive plan and the
31 applicable land development regulations; and
32

33 **WHEREAS**, based on the Record and the findings of the Circuit Court of the
34 Eleventh Judicial Circuit, the mayor and village council hereby approve the applications
35 for the special exception and variances as mandated by the court;
36

37 **NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND**
38 **VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS**
39 **FOLLOWS:**
40

1 Section 1. A hearing on the present application was held on May 2, 2005. The
2 village council, in compliance with the Circuit Court of the Eleventh Judicial Circuit's
3 mandate to the village council under the action *Aleamar Invest. Corp. v. Miami-Dade*
4 *County*, case no.: 01-131-AP approves the application of *Aleamar Investments Corp.*,
5 N.V. for (1) a special exception to permit a residential development in the BU-1A zone;
6 (2) non-use variance of setback requirements to permit a residential building to setback
7 15' from the front (west) property line and 15' from the interior side (north) property
8 line; (3) non-use variance of setback requirements to permit an accessory building to
9 setback 14' from the rear (east) property line; and (4) non-use variance of spacing
10 requirements to permit a spacing of 15' between buildings.

11
12 Section 2. Findings of fact.

13 1. The applicant is *Aleamar Investments Corp., N.V.* The property is vacant
14 land, zoned BU-1A, located at the Southeast corner of S.W. 97th Avenue & theoretical
15 S.W. 178 Street, Miami-Dade County, Florida, and bears the legal description of:

16
17 The north ½ of the SW ¼ of the NW ¼ of the SW ¼ of Section 33, Township 55
18 South, Range 40 East, less the west 40; thereof for the right-of-way.

19
20 2. The applicant is requesting approval for (1) a special exception to permit a
21 residential development in the BU-IA zone; (2) non-use variance of setback requirements
22 to permit a residential building to setback 15' from the front (west) property line and 15'
23 from the interior side (north) property line; (3) non-use variance of setback requirements
24 to permit an accessory building to setback 14' from the rear (east) property line; and (4)
25 non-use variance of spacing requirements to permit a spacing of 15' between buildings.

26
27 3. The village council adopts the cover sheet to, and the county
28 recommendation to the community council and any attached documents thereto, the
29 testimony of sworn witnesses and documents presented at the quasi-judicial hearing
30 before the community council on March 14, 2001, the applicant's petition for writ of
31 certiorari to the Circuit Court of the Eleventh Judicial Circuit under the matter entitled
32 "*Aleamar Investments Corp., N.V. v. Miami-Dade County*, case no.: 01-131-AP, the
33 Circuit Court's June 1, 2004 *per curium* (without opinion) order granting appellant's
34 petition for certiorari, and the court's July 21st, 2004 mandate to the village as its findings
35 of fact.

36
37
38
39 Section 3. Conclusions of law.

1 Based upon the July 21st, 2004 mandate of the Circuit Court of the Eleventh
2 Judicial Circuit in the matter entitled "*Alemar Investments Corp., N.V. v. Miami-Dade*
3 *County*, case no.: 01-131-AP, and the court's June 1, 2004 *per curium* (without opinion)
4 order granting appellant's petition for certiorari to quash the decision of the community
5 council and approving the application of applicant, the council finds that there is
6 competent substantial evidence in the record to support applicant's requests. Further, the
7 village council finds that the community council erred by failing to adhere to the essential
8 requirements of law when it in denied the applicant's requests as presented on March 14,
9 2001.

10
11 Section 4. Order.

12 The village council quashes the decision of the community council under
13 resolution CZAB 13-4-01. The village council based upon the July 21st 2004 mandate of
14 the Circuit Court under case no. 01-131-AP approves the applicant's requests. Further,
15 the village council adopts the portions of the county recommendation, entitled Pertinent
16 Requirements/Standards, and Recommendation to approve the applicant's requests, with
17 conditions:

18
19 1. That the site plan be submitted to and meet with the approval of the
20 Director upon the submittal of an application for a building permit and/or
21 Certificate of Use and Occupancy; said plan to include among other things, but not
22 be limited thereto, location of structure or structures, types, sizes and location of
23 signs, light standards, off-street parking areas, exits and entrances, drainage, wall,
24 fences, landscaping, etc.;

25
26 2. That in the approval of the plan, the same be substantially in accordance
27 with that submitted for the hearing entitled "VillaLante Residential & Commercial
28 Complex," as prepared by Joaquin Shelby Aguirre, consisting of 18 sheets and
29 dated 9/15/00;

30
31 3. That the use be established and maintained in accordance with the approved
32 plan;

33
34 4. That the applicant submit to the Department for its review and approval a
35 landscaping plan which indicates the type and size of plant material prior to the
36 issuance of a building permit and to be installed prior to the issuance of a
37 Certificate of Use and Occupancy;

1 5. That the applicant obtain a Certificate of Use and Occupancy from the
2 Department, upon compliance with all terms and conditions, the same subject to
3 cancellation upon violation of any of the conditions;
4

5 6. That the applicant comply with all applicable conditions and requirements
6 of the Miami-Dade County Department of Environmental Resource Management
7 (DERM) as contained in their memorandum pertaining to the underlying
8 application, which document is attached and incorporated by reference into this
9 resolution.; and
10

11 7. That the applicant complies with all applicable conditions and requirements
12 of the Public Works Department as contained in their memorandum pertaining to
13 the underlying application, which document is attached and incorporated by
14 reference into this resolution.
15

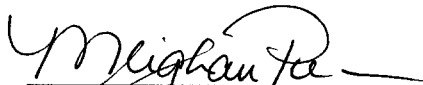
16 Section 5. Record.

17 The record shall consist of the notice of hearing, the applications, documents
18 submitted by the applicant and the applicant's representatives to the Miami-Dade County
19 Department of Planning and Zoning in connection with the applications, the county
20 recommendation and attached cover sheet and documents, the testimony of sworn
21 witnesses and documents presented at the quasi-judicial hearing before the community
22 council on March 14, 2001, the applicant's petition for writ of certiorari to the Circuit
23 Court of the Eleventh Judicial Circuit under the matter entitled "*Alemar Investments*
24 *Corp., N.V. v. Miami-Dade County*, case no.: 01-131-AP, the Circuit Court's June 1,
25 2004 *per curium* (without opinion) order granting appellant's petition for certiorari, and
26 the Circuit Court's July 21st, 2004 mandate to the village council. The record shall be
27 maintained by the village clerk.
28

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

30 **PASSED and ADOPTED this [2] day of May, 2005.**

31
32 Attest:



33 Meighan Pier
34 Village Clerk
35
36
37


Eugene P. Flinn, Jr.
Mayor

1 APPROVED AS TO FORM:

2
3 *Joe A. Bantz*
4 Nagin Gallop Figueredo, Office of
5 Village Attorney

6
7
8 FINAL VOTE AT ADOPTION:

9
10 Council Member Ed Feller YES

11
12 Council Member Paul Neidhart YES

13
14 Council Member John Breder YES

15
16 Vice-Mayor Linda Robinson YES

17
18 Mayor Eugene P. Flinn, Jr. YES

19
20
21