

RESOLUTION NO. 08- 613 Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, PERTAINING TO VARIANCE REQUESTS FILED IN ACCORDANCE WITH DIVISION 3.5 OF THE TOWN OF MIAMI LAKES LAND DEVELOPMENT CODE: 1) GRANTING A VARIANCE TO WAIVE DIVISIONS 5.2.A.3 AND 4.2.E TO PERMIT AN EXISTING ACCESSORY BUILDING ROOF OVERHANG (THE "TIKI GRILL AREA") SETBACK 3 FEET FROM THE INTERIOR (SOUTH) SIDE PROPERTY LINE WHERE 5 FEET IS REQUIRED; 2) GRANTING A VARIANCE TO WAIVE DIVISION 5.7.A.3 TO PERMIT AN EXISTING PAVED REAR YARD DECK SETBACK 3 FEET FROM THE INTERIOR (SOUTH) SIDE PROPERTY LINE WHERE 5 FEET IS REQUIRED; 3) GRANTING A VARIANCE TO WAIVE DIVISION 5.2.A.4 TO PERMIT AN EXISTING ACCESSORY BUILDING (THE "TIKI SEATING AREA") DETACHED 8 FEET FROM THE RESIDENCE WHERE ACCESSORY BUILDINGS DETACHED A MINIMUM OF 10 FEET FROM THE RESIDENCE ARE PERMITTED; 4) GRANTING A VARIANCE TO WAIVE DIVISION 5.2.A.4 TO PERMIT AN EXISTING ACCESSORY BUILDING (THE "TIKI SEATING AREA") DETACHED FROM THE RESIDENCE 5 FEET FROM ROOF OVERHANGS WHERE ACCESSORY BUILDINGS DETACHED FROM THE RESIDENCE A MINIMUM OF 6 FEET FROM ROOF OVERHANGS ARE PERMITTED; 5) GRANTING A VARIANCE TO WAIVE DIVISION 5.2.A.4 TO PERMIT AN EXISTING ACCESSORY BUILDING (THE "TIKI SEATING AREA") SPACED APART FROM ANOTHER ACCESSORY BUILDING (THE "TIKI GRILL AREA") WITH 6 INCHES FROM ROOF OVERHANGS WHERE ACCESSORY BUILDINGS ARE REQUIRED TO BE SPACED APART FROM ANOTHER ACCESSORY BUILDING A MINIMUM OF 6 FEET FROM ROOF OVERHANGS; 6) GRANTING A VARIANCE TO WAIVE DIVISION 5.2.A.4 TO PERMIT AN EXISTING ACCESSORY BUILDING (THE "TIKI SEATING AREA") SPACED APART 7 FEET FROM ANOTHER ACCESSORY BUILDING (THE "TIKI GRILL AREA") WHERE ACCESSORY BUILDINGS ARE REQUIRED TO BE SPACED APART A MINIMUM OF 10 FEET FROM ANOTHER ACCESSORY BUILDING; AND 7) GRANTING

A VARIANCE TO WAIVE DIVISIONS 5.2.A.1 AND 4.2.E TO PERMIT AN EXISTING ACCESSORY BUILDING (THE "TIKI GRILL AREA") WITH 171 SQUARE FEET OF ROOF AREA WHERE AN ACCESSORY BUILDING EXCEEDING 150 SQUARE FEET OF ROOFED AREA, INCLUDING ROOF OVERHANGS, IS NOT PERMITTED, FOR PROPERTY LOCATED AT 16159 NW 79th AVENUE, MIAMI LAKES, FLORIDA IN THE RU-1 ZONING DISTRICT; PROVIDING FINDINGS; PROVIDING FOR GRANTING THE REQUESTS COLLECTIVELY REFERRED TO AS THE "VARIANCE;" PROVIDING FOR CONDITIONS; PROVIDING FOR APPEAL; PROVIDING FOR VIOLATION OF CONDITIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Division 3.5 of the Town of Miami Lakes Land Development Code (the "Town LDC"), Odalys Frontela and Haydee Rodriguez (the "Applicant") has applied to the Town of Miami Lakes (the "Town") for approval of several variances to waive: 1) Divisions 5.2.A.3 and 4.2.E to permit an existing accessory building roof overhang (the "Tiki Grill Area") setback 6 inches from the interior (south) side property line where 5 feet is required; 2) Division 5.7.A.3 to permit an existing paved rear yard deck setback 3 feet from the interior (south) side property line where 5 feet is required; 3) Division 5.2.A.4 to permit an existing accessory building (the "Tiki Seating Area") detached 8 feet from the residence where accessory buildings detached a minimum of 10 feet from the residence are permitted; 4) Division 5.2.A.4 to permit an existing accessory building (the "Tiki Seating Area") detached from the residence 5 feet from roof overhangs where accessory buildings detached from the residence a minimum of 6 feet from roof overhangs are permitted; 5) Division 5.2.A.4 to permit an existing accessory building (the "Tiki Seating Area") spaced apart from another

accessory building (the "Tiki Grill Area") with 6 inches from roof overhangs where accessory buildings are required to be spaced apart from another accessory building a minimum of 6 feet from roof overhangs; 6) Division 5.2.A.4 to permit an existing accessory building (the "Tiki Seating Area") spaced apart 7 feet from another accessory building (the "Tiki Grill Area") where accessory buildings are required to be spaced apart a minimum of 10 feet from another accessory building; and 7) Divisions 5.2.A.1 and 4.2.E to permit an existing accessory building (the "Tiki Grill Area") with 171 square feet of roof area where an accessory building exceeding 150 square feet of roofed area, including roof overhangs, is not permitted (the "Variance"), for property located at 16159 NW 79th Avenue, Miami Lakes, Florida, in the RU-1 zoning district, Folio #32-2015-037-0010, and legally described as Lot 1, Block 1 of OAK PLACE SUBDIVISION according to the Plat thereof recorded in Plat Book 155 Page 81 of the Public Records of Miami-Dade County, Florida; and

WHEREAS, Division 3.5 of the Town LDC sets forth the authority of the Town Council to consider and act upon an application for a Variance; and

WHEREAS, in accordance with Division 3.9 of the Town LDC, proper notice has been mailed to the appropriate property owners of record; the public hearing on the Variance was noticed for November 20, 2007 at 7:00 p.m. at Miami Lakes Middle School, 6425 Miami Lakeway North, Miami Lakes, Florida 33014 and was continued at the request of the Applicant to the public hearing on December 18, 2007 at 6:00 p.m. and by the Town Council to the hearing on January 22, 2008 at 6:00 p.m.; and all

interested parties have had the opportunity to address their comments to the Town Council; and

WHEREAS, Town Staff has reviewed the application and recommends modified approval of Request #1 subject to conditions and approval of Requests #2, #3, #4, #5, #6, and #7 subject to conditions as set forth in the Staff Analysis and Recommendation, on file in the Town of Miami Lakes Clerk's Office and incorporated into this Resolution by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals.

The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Findings.

1. In accordance with Division 3.5(f) of the Town LDC, the Town Council, having considered the testimony and evidence in the record presented by all parties, finds that the Applicant does not meet all of the criteria of Division 3.5(f)(1)(a) thru (g) of the Town LDC, which are as follows:
 - a. Variance Consistent with Authorized Powers. That the variance is in fact a variance as set forth in the Land Development Code and within the province of the Town Council; and
 - b. Existence of Special Conditions or Circumstances. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district; and
 - c. Conditions Not Created by Applicant. That the special conditions and circumstances do not result from the actions of the Applicant:
and

- d. Special Privileges Not Conferred. That granting the variance requested will not confer on the Applicant any special privilege that is denied by this Land Development Code to other similarly situated lands, buildings, or structures in the same zoning district; and
 - e. Hardship Conditions Exist. That literal interpretation of the provisions of this Land Development Code would deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Land Development Code and would work unnecessary and undue hardship on the applicant. The purchase of property, which is an illegal nonconformity with this Land Development Code shall not be considered a hardship for granting of a variance, nor shall conditions peculiar to the property owner be considered; and
 - f. Only the Minimum Variance Granted. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure; and
 - g. Not Injurious to Public Welfare or Intent of the Town LDC. That the grant of the variance will be in harmony with the general intent and purpose of the Comprehensive Plan and this Land Development Code and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
2. The Applicant does not meet all of the criteria in Division 3.5(f)(1)(a) thru (g) of the Town LDC, but the Town Council has determined that:
- a. Objections have not been filed by adjoining or directly affected property owners; and
 - b. Approval of this Variance is justified by practical difficulty on the part of the Applicant.

Section 3. Grant/Denial.

The Variance request to permit:

- 1. an existing accessory building roof overhang (the "Tiki Grill Area") setback 6 inches from the interior (south) side property line where 5 feet is required was modified to a 3 feet setback from the interior (south) side property line and is hereby granted; and

2. an existing paved rear yard deck setback 3 feet from the interior (south) side property line where 5 feet is required is hereby granted; and
3. an existing accessory building (the "Tiki Seating Area") detached 8 feet from the residence where accessory buildings detached a minimum of 10 feet from the residence are permitted is hereby granted; and
4. an existing accessory building (the "Tiki Seating Area") detached from the residence 5 feet from roof overhangs where accessory buildings detached from the residence a minimum of 6 feet from roof overhangs are permitted is hereby granted; and
5. an existing accessory building (the "Tiki Seating Area") spaced apart from another accessory building ("Tiki Grill Area") with 6 inches from roof overhangs where accessory buildings are required to be spaced apart from another accessory building a minimum of 6 feet from roof overhangs is hereby granted; and
6. an existing accessory building (the "Tiki Seating Area") spaced apart 7 feet from another accessory building (the "Tiki Grill Area") where accessory buildings are required to be spaced apart a minimum of 10 feet from another accessory building is hereby granted; and
7. an existing accessory building (the "Tiki Grill Area") with 171 square feet of roof area where an accessory building exceeding 150 square feet of roofed area, including roof overhangs, is not permitted is hereby granted.

Section 4. Conditions.

The Variances(s) are granted subject to the following conditions:

1. The site plan shall be submitted to and meet the approval of the Building Official, upon the submittal of an application for a permit and/or Certificate of Use and Occupancy. The site plan shall include, but not be limited to, location of structure or structures, exits, entrances, drainage, walls, fences, and landscaping.
2. The approvals granted herein shall be in accordance with the submitted plan for the hearing entitled "Sketch of Survey" for 16159 NW 79 Avenue, Miami Lakes, Florida, as prepared by Eduardo Ensenat Surveying, Inc., Registered Land Surveyor State of Florida, No. 4613, Job No. 2000-315, and consisting of one (1) sheet. The approved gazebo plans shall be substantially in accordance with the plans submitted for the hearing entitled Proposed Grill Gazebo and Tiki

Bar for Odalys Frontela Residence located at 16159 NW 79 Avenue, Miami Lakes, Florida; consisting of one (1) sheet, prepared by Raul R. Sosa Architect, Inc. dated, signed, and sealed November 28, 2007.

3. The Applicant shall not enclose the subject accessory buildings.
4. The Applicant shall buffer and screen the Tiki Accessory Buildings from view by a privacy fence, wall, or two (2) lot trees to be planted along the interior south side property line in compliance with Chapter 18-A Landscaping Requirements for Lot Trees.
5. The Applicant shall not be permitted any additional accessory buildings on the subject property.
6. The Applicant shall record the Resolution in the Official Records of Miami-Dade County, Florida and shall return a copy of the recorded Resolution to the Town Clerk before a permit is issued.
7. The Applicant shall obtain a building permit, for all request(s) approved herein, within one (1) year of the date of this approval. If a building permit is not obtained or an extension granted within the prescribed time limit then, this approval shall become null and void.

Section 5. Appeal.

In accordance with Division 3.10 of the Town LDC, the Applicant, or any aggrieved property owner in the area, may appeal the decision of the Town Council by filing a Writ of Certiorari to the Circuit Court of Miami-Dade County, Florida, in accordance with the Florida Rules of Appellate Procedure.

Section 6. Violation of Conditions.

Failure to adhere to the terms and conditions of this Resolution in Section 4, if any, shall be considered a violation of the Town LDC and persons found violating the conditions shall be subject to the penalties prescribed by the Town LDC, including but not limited to, the revocation of any of the approval(s) granted in this Resolution. The Applicant understands and acknowledges that it must comply with all other applicable requirements of the Town LDC before it may commence construction or operation, and that the foregoing approval(s), if any, in this Resolution may be revoked by the Town at any time upon a determination that the Applicant is in non-compliance with the Town LDC.

Section 7. Effective Date.

This Resolution shall take effect 30 days following the date it is filed with the Town Clerk. If during that time frame, the decision of the Town Council is appealed as provided in the Town LDC and the Florida Rules of Appellate Procedure, the appeal shall stay the effectiveness of this Resolution until said appeal is resolved by a court of competent jurisdiction.


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The foregoing Resolution was adopted by motion by Councilmember Michael Pizzi and seconded by Councilmember Mary Collins, by a vote of 6-0 with each Councilmember voting as follows:

Mayor Wayne Slaton	Absent
Vice-Mayor Nancy Simon	Yes
Councilmember Roberto Alonso	Yes
Councilmember Mary Collins	Yes
Councilmember Robert Meador II	Yes
Councilmember Michael Pizzi	Yes
Councilmember Richard Pulido	Yes


PASSED AND ADOPTED this 22 day of January 2008.

This Resolution was filed in the Office of the Town Clerk on this 15 day of February, 2008.




WAYNE SLATON
MAYOR

ATTEST:



DEBRA EASTMAN, MMC
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR USE ONLY BY THE TOWN OF MIAMI LAKES:



WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
TOWN ATTORNEY