

RESOLUTION NO. 02- 83 Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA; APPROVING A NON-USE VARIANCE FILED IN ACCORDANCE WITH SECTION 33-311 OF THE TOWN CODE FOR PROPERTY ZONED RU-1 LOCATED AT 8768 NW 169th TERRACE MIAMI LAKES, FLORIDA; TO PERMIT THE SINGLE FAMILY RESIDENCE TO SETBACK 24.8' FROM THE REAR (SOUTH PROPERTY LINE) WHERE 25' IS REQUIRED; PROVIDING FINDINGS; PROVIDING FOR APPROVAL; PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR RECORDATION; PROVIDING FOR APPEAL AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Section 33-311 of the Town Code ¹, Heriberto Bonet (the "Applicant") has applied to the Town for approval of the following three non-use variances:

1) a non-use variance of setback requirements to permit a covered terrace setback 14.8' (25' required) from the rear (south property line); 2) a non-use variance of setback requirements to permit the single-family residence setback 24.8' (25' required) from the rear (south) property line; and 3) non-use variance of lot coverage requirements to permit a lot coverage of 42.5% (35% permitted); and

WHEREAS, Section 33-311 of the Town Code sets forth the authority of the Town Council to consider and act upon an application for a non-use variance; and

WHEREAS, in accordance with Section 33-310 (c) & (d), proper notice has been mailed to the appropriate property owners of record; the public hearing on the Variance has been noticed for Tuesday, July 9, 2002 at 7:00 p.m. at Miami Lakes Middle School, 6245

¹ Pursuant to Section 8.3 of the Town Charter and Ordinance 2001-01, the applicable provisions of Chapter 33 of the Miami-Dade County Code of Ordinances serve as the Town's Zoning Code.

Miami Lakeway North, Miami Lakes, Florida; and all interested parties have had the opportunity to address their comments to the Town Council; and.

WHEREAS, the Miami-Dade County Director of Planning and Zoning (the "Director"), in her capacity as Town Staff, has reviewed the application and recommends approval of request #2 and denial of requests 1 & 3 without prejudice, as set forth in the Memorandum dated August 13, 2002 (the "Memorandum"), attached as exhibit "A," and incorporated into this Resolution by this 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.

In accordance with Section 33-311 (A) (4) (b) of the Town Code, The Town Council finds:

- (1) That request #2 for a non-use variance of the Town Code's setback requirements to permit the single family residence setback 24.8' (25' required) from the rear (south) property line maintains the basic intent and purpose of the zoning, subdivision and other land use regulations to protect the general welfare of the public, particularly as it affects the stability and appearance of the Town.
- (2) That request #2 is compatible with the surrounding land uses.
- (3) That request #2 is not detrimental to the Town.

Section 3. Approval.

The Town Council approves request #2 for a non-use variance from Section 33.50 (setbacks) of the Town Code for property located at 8768 NW 169th Terrace to allow

the single family residence to setback 24.8' from the rear (south) property line where 25' are required. The balance of the application (request numbers 1 and 3) is hereby denied without prejudice.

Section 4. Conditions of Approval - None.

Section 5. Recordation.

The decision of the Town Council to approve the non-use variance shall be recorded on the official zoning maps of the Town.

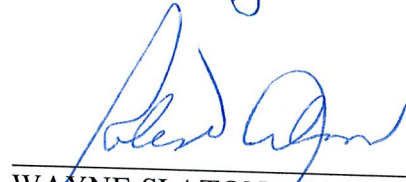
Section 6. Effective Date.

This resolution shall become effective immediately upon its adoption.

Section 7. Appeal.

In accordance with Section 33-312 and 33-316 of the Town Code, the Applicant, or any aggrieved property owner in the area, may appeal the decision of the Town Council by filing of a notice of appeal in accordance with the Florida Rules of Appellate Procedure.

PASSED AND ADOPTED this 13th day of August 2002.



WAYNE SLATON, MAYOR
ROBERTO ALONSO, VICE MAYOR

ATTEST:



BEATRIS M. ARGUELLES, CMC
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



WEISS, SEROTA, HELFMAN, PASTORIZA & GUEDES, P.A.
TOWN ATTORNEY

Council voted _____ as follows:	
Mayor Wayne Slaton	_____
Vice Mayor Roberto Alonso	_____
Councilmember Mary Collins	_____
Councilmember Robert Meador	_____
Councilmember Michael Pizzi	_____
Councilmember Nancy Simon	_____
Councilmember Peter Thomson	_____

EXHIBIT "A"

MIAMI-DADE COUNTY DEPARTMENT OF PLANNING AND ZONING RECOMMENDATION TO THE TOWN OF MIAMI LAKES COUNCIL

APPLICANT: Heriberto Bonet

PH: Z02-91 (02-7-MLB-2)

SECTION: 16-52-40

DATE: August 13, 2002

COMMISSION DISTRICT: 13

ITEM NO.: C

A. INTRODUCTION

o REQUESTS:

- (1) NON-USE VARIANCE OF SETBACK REQUIREMENTS to permit a covered terrace setback 14.8' (25' required) from the rear (south) property line.
- (2) NON-USE VARIANCE OF SETBACK REQUIREMENTS to permit the single-family residence setback 24.8' (25' required) from the rear (south) property line.
- (3) NON-USE VARIANCE OF LOT COVERAGE REQUIREMENTS to permit a lot coverage of 42.5% (35% permitted).

A plan is on file and may be examined in the Zoning Department entitled "Aluminum Open Terrace," as prepared by Rafael E. Droz-Seda, P.E., consisting of 1 sheet and dated signed and sealed 11/19/01 and a survey as prepared by J.H. Manucy, Inc., dated signed and sealed 10/23/01. Plan may be modified at public hearing.

o SUMMARY OF REQUESTS:

These requests will allow the applicant to maintain an existing aluminum covered terrace setback closer than permitted from the rear (south) property line, an existing single family residence setback closer than permitted from the rear (south) property line, and it will allow the existing single family residence and aluminum covered terrace addition with a greater lot coverage than permitted.

o LOCATION:

8768 N.W. 169 Terrace, Town of Miami Lakes, Florida.

o SIZE: 61.23' x 98'

o IMPACT:

The approval of these requests will allow the applicant to maintain an existing residence and aluminum covered terrace addition, which provides protection from the elements for the residents while enjoying the rear yard area. However, the reduced rear setback area would visually impact the surrounding properties.

B. ZONING HEARINGS HISTORY: None

R02-83

C. COMPREHENSIVE DEVELOPMENT MASTER PLAN (CDMP):

The Adopted 2005 and 2015 Land Use plan designates the subject property as being within the Urban Development Boundary for **low density residential**. The residential densities allowed in this category shall range from a minimum of 2.5 to a maximum of 6.0 units per gross acre. This density category is generally characterized by single family housing, e.g., single-family detached, cluster zero lot line and townhouses. It could include low-rise apartments with extensive surrounding open space or a mixture of housing types provided that the maximum gross density is not exceeded.

D. NEIGHBORHOOD CHARACTERISTICS:

EXISTING ZONING

EXISTING LAND USE DESIGNATION

SUBJECT PROPERTY:

RU-1, single family residence

Residential, 2.5 to 6.0 du

SURROUNDING PROPERTY:

NORTH: RU-1; single family residence

Residential, 2.5 to 6.0 du

SOUTH: RU-1; single family residence

Residential, 2.5 to 6.0 du

EAST: RU-1; single family residence

Residential, 2.5 to 6.0 du

WEST: RU-1; single family residence

Residential, 2.5 to 6.0 du

The subject residence is located in the west side of the Town of Miami Lakes, on the west side of SW 87 Avenue, south of the Canal. The lot is located within the Serenity Point single-family subdivision, a recently developed neighborhood. There are new homes under construction to the north with recently constructed homes to the east and west of the subject property. The rear yard is enclosed with a six (6) foot high wood fence.

E. SITE AND BUILDINGS:

Site Plan Review:

Scale/Utilization of Site:

Unacceptable

Location of Buildings:

Unacceptable

Compatibility:

Unacceptable

Landscape Treatment:

N/A

Open Space:

N/A

Buffering:

N/A

Access:

Acceptable

Parking Layout/Circulation:

N/A

Visibility/Visual Screening:	Unacceptable
Energy Considerations:	N/A
Roof Installations:	N/A
Service Areas:	N/A
Signage:	N/A
Urban Design:	N/A

F. PERTINENT REQUIREMENTS/STANDARDS:

Upon appeal or direct application in specific cases, the Town Council shall hear and grant applications for **non-use variances** from the terms of the zoning and subdivision regulations and may grant a non-use variance upon a showing by the applicant that the non-use variance maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community and provided that the non-use variance will be otherwise compatible with the surrounding land uses and would not be detrimental to the community. No showing of unnecessary hardship to the land is required.

G. NEIGHBORHOOD SERVICES:

DERM	No objection
Public Works	No objection
Parks	No objection
MDTA	No objection
Fire Rescue	No objection
Police	No objection
Schools	No comment

H. ANALYSIS:

This recommendation is being issued by the Miami-Dade County Planning and Zoning Department acting as staff to the Town of Miami Lakes. In this capacity staff notes that the Third District Court of Appeals has held invalid for Miami-Dade County, the Miami-Dade County zoning standards for non-use variances, special exceptions, unusual uses, new uses requiring a public hearing, and modifications of conditions and covenants. The Miami-Dade County Attorney's Office is seeking a review of the decision in the Florida Supreme Court. While the case is pending, the decision is presently in effect and binding on all parties in the unincorporated portions of the county. Its impact has been to suspend consideration of zoning applications in the unincorporated portions of the county for most special exceptions, unusual uses, non-use variances, and modification of conditions and covenants until the decision is modified or reversed or modified standards are enacted. The Town of Miami Lakes has zoning standards similar to those struck down by the Third District Court of Appeal but has decided to allow hearings under these standards to go forward. The Miami-Dade County Planning and Zoning Department recognizes the binding effect of the court decision on all Miami-Dade County decisions but in rendering this recommendation makes no comment as to its legal impact on the zoning decisions of the Town of Miami Lakes. The recommendation is addressed only to the land use impacts of the application.

This application was deferred from the July 9, 2002 meeting of the Town of Miami Lakes Council. The subject property is located at 8768 NW 169 Terrace, Town of Miami Lakes, Florida, with dimensions of 61.23' x 98' in the RU-1 district. The applicant is seeking to maintain an existing residence setback 24.8' (25' required) from the rear (south) property line, an aluminum covered terrace addition setback 14.8' (25' required) from the rear (south) property line, and a lot coverage of 42.5% (35% permitted).

The Department of Environmental Resources Management (**DERM**) has **no objections** to this application and has indicated that it meets the Level of Service (LOS) standards set forth in the Master Plan. The **Public Works Department** also has **no objections** to this application and has indicated that this application meets traffic concurrency criteria for an Initial Development Order.

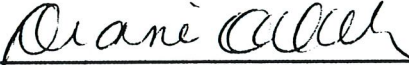
The approval of request #1 would allow the applicant to maintain an existing 10' x 26' aluminum covered terrace addition to the rear of an existing single-family residence. Said structure is being used to provide shelter from the elements for the residents and their guests while enjoying the rear yard area. In conjunction with same, request #3 would allow the increase of the lot coverage of the existing single-family residence and aluminum covered terrace addition to a maximum of 42.5%. Staff is of the opinion that the increase of the lot coverage and the reduction of the rear setback area are too excessive and are **incompatible** with the surrounding area. However, staff is supportive of request #2, to allow the maintenance and continued use of an existing single-family residence setback closer than permitted to the rear property line, since said variance is minimal and is probably due to an inadvertent construction error. Staff is of the opinion that the approval of request #2 is **compatible** with the surrounding area since the impact will be minor and will not negatively impact the surrounding properties. As such, the approval of request #2 will not be overly intrusive to the surrounding area. However, requests #1 & #3 do not maintain the basic intent and purpose of the zoning code since it would affect the appearance of the community, would adversely impact the surrounding area and could generate similar requests in this community.

I. RECOMMENDATION:

Approval of request #2, and denial without prejudice of requests #1 and # 3.

J. CONDITIONS: None.

DATE INSPECTED: 06/24/02
DATE TYPED: 06/24/02
DATE REVISED: 06/24/02; 06/25/02; 07/01/02; 07/24/02
DATE FINALIZED: 07/24/02
DO'QW:AJT:MTF:REM:TA


Diane O'Quinn Williams, Director
Miami-Dade County Department of
Planning and Zoning

R-02-83