

RESOLUTION NO. 03-114 Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA; APPROVING NON-USE VARIANCES FILED IN ACCORDANCE WITH SECTION 33-311 OF THE TOWN CODE FOR PROPERTY ZONED RU-1 LOCATED AT 8340 NW 159th TERRACE, MIAMI LAKES, FLORIDA; TO PERMIT A SWIMMING POOL SETBACK 5 FEET WHERE 7.5 FEET IS REQUIRED FROM THE REAR (SOUTH) PROPERTY LINE AND SETBACK 7.5 FEET WHERE 10 FEET IS REQUIRED FROM THE INTERIOR SIDE (WEST) PROPERTY LINE; TO PERMIT A CABANA BATH/STORAGE CLOSET AND GAZEBO SETBACK 5 FEET WHERE 7.5 FEET IS REQUIRED FROM THE INTERIOR SIDE (EAST) PROPERTY LINE; TO PERMIT A RESIDENCE SETBACK 7.03 FEET FROM THE INTERIOR SIDE (EAST) PROPERTY LINE WHERE 7.5 FEET IS REQUIRED AND 7.06 FEET WAS PREVIOUSLY APPROVED; AND TO PERMIT A SINGLE FAMILY RESIDENCE WITH A LOT COVERAGE OF 35.07% WHERE 35% IS PERMITTED; PROVIDING FINDINGS; PROVIDING FOR APPROVAL; PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR RECORDATION; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR APPEAL

WHEREAS, pursuant to Section 33-311 of the Town Code ¹, **Hector and Maria Maestri** (the “Applicant”) has applied to the Town for approval of the following non-use variances (collectively referred to as the “Variance”): (1) a non-use variance of setback requirements (Section 33-50 of the Code) to permit a swimming pool setback 5 feet where 7.5 feet is required from the rear (south) property line and setback 7.5 feet where 10 feet is required from the interior side (west) property line; (2) a non-use variance of setback requirements to permit a cabana bath/storage closet and gazebo setback 5 feet where 7.5 feet is required from the interior side (east) property line; (3) a non-use variance of setback requirements to permit a residence setback 7.03 feet from the interior side (east) property line

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.

where 7.5 feet is required and 7.06 feet was previously approved; and (4) a non-use variance of lot coverage requirements (Section 33-49 of the Code) to permit a single family residence with a lot coverage of 35.07% where 35% is 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), proper notice has been mailed to the appropriate property owners of record; the public hearing on the Variance has been noticed for Thursday, January 9, 2003 at 7:00 p.m. at Miami Lakes Middle School, 6425 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 the Variance with conditions, as set forth in the Recommendation dated January 9, 2003, (the "Recommendation"), 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 the Variance 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 the Variance is compatible with the surrounding land uses.
- (3) That the Variance is not detrimental to the Town.

Section 3. Approval.

The Town Council grants the Variance subject to conditions provided for in Section 4 of this Resolution.

Section 4. Conditions of Approval.

The Variance is granted and the Applicant shall comply with the following conditions:

1. That a site plan be submitted to and meet the approval from the Town of Miami Lakes upon the submittal of an application for a building permit and/or Certificate of Use and Occupancy; said plan to include among other things, but limited thereto, location of structure or structures, exits and entrances, drainage, walls, fences, landscaping, etc.
2. That in the approval of the plan, the same be substantially in accordance with the submitted plan for the hearing entitled "Proposed Addition for Mr. & Mrs. Maestri," as prepared by Albert O. Gonzalez, dated and signed and sealed 08/21/02, consisting of 1 sheet and 2 elevation pages, as it pertains to the variance related construction. Except as may be specified by any zoning resolution applicable to the subject property, any future additions on the property which conform to the Zoning Code requirements will not require further public hearing action. Plans may be modified at public hearing.
3. That the Use be established and maintained in accordance with the approved plan
4. That the applicants submit to the Department of its review and approval a landscaping plan which indicates the type and size of plant material, to include, but not be limited to, travelers trees, a minimum of 8' high at the time of planting and installed 12' on center, or areca palms, a minimum of 8' high at the time of planting and installed 5' on center, or similar plants which will provide similar buffering along the property lines which surround the rear yard area and are approved by the Department of

planning and zoning prior to the issuance of a building permit and to be installed prior to final zoning inspection.

Section 5. Recordation.

The decision of the Town Council to approve the 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 9th day of January 2003.

Wayne Slaton
WAYNE SLATON, MAYOR

ATTEST:

Beatris M. Arguelles
BEATRIS M. ARGUELLES, CMC
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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

Collins/Simon

Council voted <u>7-0</u> as follows:	
Mayor Wayne Slaton	<u>[Signature]</u>
Vice Mayor Roberto Alonso	<u>[Signature]</u>
Councilmember Mary Collins	<u>[Signature]</u>
Councilmember Robert Meador	<u>[Signature]</u>
Councilmember Michael Pizzi	<u>[Signature]</u>
Councilmember Nancy Simon	<u>[Signature]</u>
Councilmember Peter Thomson	<u>[Signature]</u>

EXHIBIT "A"

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

APPLICANT: Hector & Maria Maestri

PH: Z02-252

SECTION: 15-52-40

DATE: January 9, 2003

COMMISSION DISTRICT: 13

ITEM NO.: 1

A. INTRODUCTION

o REQUESTS:

1. Non-use variance of setback requirements to permit a swimming pool setback 5' (7.5' required) from the rear (south) property line and setback 7.5' (10' required) from the interior side (west) property line.
2. Non-use variance of setback requirements to permit a cabana bath/storage closet and gazebo setback 5' (7.5' required) from the interior side (east) property line.
3. Non-use variance of setback requirements to permit a residence setback 7.03' (7.5' required) (7.06' previously approved) from the interior side (east) property line.
4. Non-use variance of lot coverage requirements to permit a residence with a lot coverage of 35.07% (35% allowed).

A plan is on file and may be examined in the Zoning Department entitled "Proposed Addition for Mr. & Mrs. Maestri," as prepared by Albert O. Gonzalez, dated signed and sealed 8/21/02, consisting of 1 sheet and 2 elevation pages. Plans may be modified at public hearing.

o SUMMARY OF REQUESTS:

The requests will allow a proposed swimming pool, a cabana bath/storage closet and gazebo, and existing single family residence to setback closer to property lines than permitted, and to permit a total lot coverage which exceeds Code requirements (non-use variances of Sections 33-49 and 33-50 of the Code).

o LOCATION:

8340 N.W. 159 Terrace, Miami Lakes, Florida.

o SIZE: 10,167 square feet.

o IMPACT:

The approval of this application will have a minor impact on the surrounding area.

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B. ZONING HISTORY:

In 1990 the Board of County Commissioners approved Resolution Z-139-090, which included a rezoning from AU & RU-1, a non-use variance to permit access to a public street by means of a private drive, and an unusual use to permit an entrance feature with a gate house and entrance and exit control gates.

In 1992 Administrative Variance AV-157-92 approved a single family residence setback 7.06' from the interior side (east) property line where 7.5' is required.

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:

<u>ZONING</u>	<u>LAND USE PLAN DESIGNATION</u>
<u>Subject Property:</u>	
RU-1; single family residence	Residential, 2.5 to 6.0 dua
<u>Surrounding Properties:</u>	
NORTH: RU-1; single family residence	Residential, 2.5 to 6.0 dua
SOUTH: RU-1; single family residence	Residential, 2.5 to 6.0 dua
EAST: RU-1; single family residence	Residential, 2.5 to 6.0 dua
WEST: RU-1; single family residence	Residential, 2.5 to 6.0 dua

The subject parcel is located within a private gated community in the Miami Lakes area. The subject residence is located on the southern curve of N.W. 159 Terrace. This subdivision is fully developed, except for a few scattered vacant lots.

E. SITE AND BUILDINGS:

Site Plan Review:
 Scale/Utilization of Site: **Acceptable**
 Location of Buildings: **Acceptable**

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Compatibility:	Acceptable
Landscape Treatment:	Unacceptable
Open Space:	Acceptable
Buffering:	Unacceptable
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 Department of Planning and Zoning 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

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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 Appeals but has decided to allow hearings under these standards to go forward. The Miami-Dade County Department of Planning and Zoning 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 seeks non-use variances of Sections 33-49 and 33-50 of the Code to permit a proposed swimming pool to setback 5' from the rear (south) property line where 7.5' is required and to setback 7.5' from the interior side (west) property line where 10' is required. A proposed cabana bath/storage closet and gazebo will setback 5' from the interior side (east) property line where 7.5' is required. The existing single family residence is setback 7.03' (7.5' required) (7.06' previously approved) from the interior side (east) property line. The total lot coverage will be 35.07% where 35% is permitted.

The Department of Environmental Resources (DERM) has stated that this application meets the minimum requirements of Chapter 24 of the Code and **DERM** has **no objections** to this application since said application does not entail any environmental concern. The **Public Works Department** has **no objections** to this application and has stated that the approval of same will not generate any additional daily peak hour vehicle trips.

The rear yard of the subject property is long, narrow, and irregularly shaped. The applicants seek to enhance the outdoor amenities of this area by proposing the construction of a swimming pool and a cabana bath/storage closet and a gazebo. The 2.5' encroachment of the proposed swimming pool into the rear (south) setback area will be the only rear setback encroachment. The swimming pool will encroach no more than 2.5' into the interior side (west) setback area. The proposed cabana bath/storage closet and gazebo will encroach no more than 2.5' into the interior side (east) setback area. While the rear yard area is surrounded by a 6' high CBS wall, all or portions of five (5) property lines of abutting residential parcels abut the rear yard of the subject property. While the proposed outdoor amenities are typical of the types of recreational structures which are placed in rear yard areas, due to the number of abutting residential parcels and the applicants' need to place portions of said structures within setback areas, staff feels that any potential intrusion of the proposed outdoor amenities should be mitigated by the provision of additional landscaped buffering. Staff recommends that the applicants install said additional landscaped buffering along the property lines which surround the rear yard area. The request to permit the existing single family residence to encroach 0.03' more than previously approved into the interior side (east) setback area is a minor variance and probably the result of an inadvertent construction error. The requested total lot coverage, which exceeds Code requirements by only 0.07%, is also minor and will not be intrusive to the surrounding area.

This application will be **consistent** with the Comprehensive Development Master Plan (CDMP) and with the installation of the aforementioned additional landscaping, the encroachments will be **compatible** with the neighboring area.

I. **RECOMMENDATION:** Approval with conditions.

J. **CONDITIONS:**

1. That a site plan be submitted to and meet with the approval of the Town of Miami Lakes upon the submittal of an application for a building permit and/or Certificate of Use and Occupancy; said plan to include among other things but not be limited thereto, location of structure or structures, exits and entrances, drainage, walls, fences, landscaping, etc.
2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled "Proposed Addition for Mr. & Mrs. Maestri," as prepared by Albert O. Gonzalez, dated signed and sealed 8/21/02, consisting of 1 sheet and 2 elevation pages, as it pertains to the variance related construction. Except as specified by any zoning resolution applicable to the subject property, any future additions on the property which conform to the Zoning Code requirements of the Town of Miami Lakes will not require further public hearing action. Plans may be modified at public hearing.
3. That the use be established and maintained in accordance with the approved plan.
4. That the applicants submit to the Department for its review and approval a landscaping plan which indicates the type and size of plant material, to include, but not be limited to, travelers trees, a minimum of 8' high at the time of planting and installed 12' on center, or areca palms, a minimum of 8' high at the time of planting, and installed 5' on center, or similar plants which will provide similar buffering along the property lines which surround the rear yard area, and are approved by the Department of Planning and Zoning, prior to the issuance of a building permit and to be installed prior to final zoning inspection.

DATE INSPECTED: 12/12/02
DATE TYPED: 12/12/02
DATE REVISED: 12/30/02
DATE FINALIZED: 12/30/02
GEO:DO'QW:AJT:MTF:DBM



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