

RESOLUTION NO. 06-441Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING A VARIANCE FILED IN ACCORDANCE WITH DIVISION 3.5 OF THE TOWN CODE TO WAIVE DIVISION 5.9.B.1.A AND DIVISION 4.2.E OF THE TOWN CODE TO PERMIT A FENCE IN THE RU-1 ZONING DISTRICT ON THE SIDE STREET PROPERTY LINE WITH A ZERO FOOT (0') SETBACK WHERE 15 FEET IS REQUIRED (THE "VARIANCE"), FOR PROPERTY LOCATED AT 16771 N.W. 89TH PLACE, MIAMI LAKES, FLORIDA; PROVIDING FINDINGS; PROVIDING FOR APPROVAL; PROVIDING CONDITIONS OF APPROVAL; PROVIDING FOR APPEAL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Divisions 3.5 of the Town of Miami Lakes (the "Town") Land Development Code ("LDC"), Mirna L. Burgos and Joseph Canales (collectively, the "Applicant") has applied to the Town for approval of the following: a variance to waive Division 5.9.B.1.a and Division 4.2.E of the Town Code to permit a fence in the RU-1 zoning district on the side street property line with a zero foot (0') setback where 15 feet is required (the "Variance"), for property located at 16771 N.W. 89 Place, Miami Lakes, FL 33018, Folio # 32-2016-003-1130; (legally described as Lot 9, Block 4, GENESIS OAK GARDENS, according to the Plat thereof, as recorded in Plat Book 155, at Page 56 of the Public Records of Miami-Dade County, Florida); and

WHEREAS, Division 3.5 of the 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 LDC, proper notice has been mailed to the appropriate property owners of record; the public hearing on the Variance has been noticed for Tuesday, March 21, 2006 at 7:00 p.m. at Miami Lakes Middle School, 6425 Miami Lakeway

North, Miami Lakes, FL 33014; 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 denial of the Variance as set forth in the Staff Analysis and Recommendation dated March 21, 2006 (the “Staff Analysis”), 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.

- (a) **Variance.** In accordance with Division 3.5(f) of the Town Code, 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 requirements of Division 3.5(f)(1)(a) thru (g) of the Town Code, which are as follows:
1. **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
 2. **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
 3. **Conditions Not Created by Applicant.** That the special conditions and circumstances do not result from the actions of the Applicant; and
 4. **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

5. 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
6. 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
7. Not Injurious to Public Welfare or Intent of the Land Development Code. 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 with regard to the Variance; and/or

(b) the Applicant does not meet all of the criteria in Division 3.5(f)(1)(a) thru (g) of the Town Code, but the Town Council determines that:

1. No objections have been filed by adjoining or directly affected property owners; and
2. Approval of the Variance is justified by practical difficulty on the part of the Applicant.

Section 3. Approval.

The Variance requesting a fence in the RU-1 zoning district on the side street property line with a zero foot (0') setback is approved.

Section 4. Conditions of Approval.

The Variance is granted subject to the following conditions:

- (a) That the fence be set back a minimum of 50' from the front property line.
- (b) That the site plan be submitted to and meet the approval of the Building Department Director, upon the submittal of an application for a permit; said plan to include among

other things but not limited thereto, location of structure or structures, exists, entrances, drainage, walls, fences, landscaping, etc.

- (c) That in the approval of the site plan, the same be in accordance with that submitted for the hearing entitled "Boundary Survey" for 16771 N.W. 89th Place, Miami Lakes Florida, as prepared by Waldo F. Paez, Registered Land Surveyor State of Florida, Order No. 16771, and consisting of 1 sheet(s).
- (d) That pursuant to Division 6.3 of the LDC, the Applicant shall obtain a consent letter from all affected utility companies approving the encroachment of the replacement fence into the utility easement.
- (e) The Applicant shall record the Resolution in the public records of the Clerk of the Circuit and County Court and shall return the original order to the Town Clerk before a building permit is issued for the fence
- (f) The Applicant shall obtain a building permit and all requisite inspections for the replacement fence, at the setbacks 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 be deemed null and void.

Section 5. Appeal.

In accordance with Division 3.10 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.

Section 6. Violation of Conditions.

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

Section 7. Effective Date.

This Resolution shall take effect thirty (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 Land Development Code and the Florida Rules of Appellate

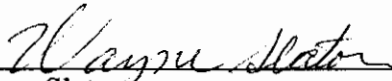
Procedure, the appeal shall stay the effectiveness of this Resolution until said appeal is resolved by a court of competent jurisdiction.

The foregoing resolution was moved upon the practical difficulty standard in Division 3.5(f)(2) of the Town Code by Robert Meador and Seconded by Nancy Simon, and upon being put to a vote the motion carried with each Council Member voting as follows:

Mayor Wayne Slaton	no
Vice Mayor Robert Meador	yes
Councilmember Roberto Alonso	absent
Councilmember Mary Collins	yes
Councilmember Michael Pizzi	yes
Councilmember Nancy Simon	yes
Councilmember Dorothy Cook	yes


PASSED AND ADOPTED this 21st day of March, 2006.

This Resolution was filed in the Office of the Town Clerk on this 21st day of March, 2006.




Wayne Slaton
MAYOR

ATTEST:



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.A.
TOWN ATTORNEY