

RESOLUTION NO. 07-517Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING VARIANCES FILED IN ACCORDANCE WITH DIVISION 3.5 OF THE TOWN LAND DEVELOPMENT CODE TO (1) WAIVE SECTION 5.2.A.1 OF THE LAND DEVELOPMENT CODE TO PERMIT AN ACCESSORY GAZEBO WITH 295.87 SQUARE FEET OF ROOFED AREA WHERE 150 SQUARE FEET IS ALLOWED; AND (2) TO PERMIT AN EXISTING ACCESSORY BUILDING TO THE RU-1Z RESIDENCE AS PER DIVISION 5.2.A.2, WITH 29.0 PERCENT TOTAL LOT COVERAGE OF ALL ACCESSORY BUILDINGS IN THE REQUIRED REAR YARD, WHERE THE TOTAL LOT COVERAGE OF ALL ACCESSORY BUILDINGS IN THE REQUIRED REAR YARD ARE NOT PERMITTED TO EXCEED MORE THAN 20.0 PERCENT OF THE AREA OF THE REQUIRED REAR YARD; (3) WAIVE SECTION 5.2.A.3 OF THE LAND DEVELOPMENT CODE TO PERMIT AN ACCESSORY GAZEBO IN THE RU-1Z DISTRICT WITH A 4.47 FOOT REAR SETBACK WHERE 5 FEET IS REQUIRED (COLLECTIVELY, "THE VARIANCES"), FOR A SINGLE FAMILY RESIDENCE LOCATED AT 14151 N.W. 87 COURT, MIAMI LAKES, FLORIDA; (4) TO PERMIT AN EXISTING ACCESSORY BUILDING TO THE RU-1Z RESIDENCE AS PER DIVISION 4.2.E., SETBACK 6.20 FEET FROM THE RU-1Z REQUIRED SIDE STREET (SOUTH) PROPERTY LINE WHERE 15 FEET IS REQUIRED; PROVIDING FINDINGS; PROVIDING FOR APPROVAL; PROVIDING CONDITIONS OF APPROVAL; PROVIDING FOR APPEAL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Division 3.5 of the Town of Miami Lakes (the "Town") Land Development Code ("LDC"), Pedro Roque and Angela Roque (the "Applicants") have applied to the Town for approval of the following: (1) a variance to waive Section 5.2.A.1 of the Land Development Code to permit an accessory gazebo with 295.87 square feet of roofed area where 75 square feet is allowed; and (2) to permit an existing accessory building to the RU-1Z

residence as per Division 5.2.A.2, with 29.0 percent total lot coverage of all accessory buildings in the required rear yard, where the total lot coverage of all accessory buildings in the required rear yard are not permitted to exceed more than 20.0 percent of the area of the required rear yard; (3) to waive Section 5.2.A.3 of the Land Development Code to permit an accessory gazebo in the RU-1Z District with a 4.47 foot rear setback where 5 feet is required; and (4) to permit an existing accessory building to the RU-1Z residence as per Division 4.2.E., setback 6.20 feet from the RU-1Z required side street (south) property line where 15 feet is required (collectively, the “Variances”), for an existing single family residence located at 14151 N.W. 87th Court, Miami Lakes, Florida, legal description: Folio # 32-2021-0102-0600; Lot 7, Block 3 of Avalon Estates, Plat Book 146, Page 55 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, February 20th, 2007, 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 approval of the variances, with conditions, as set forth in the Staff Analysis and Recommendation dated February 20th, 2007 (the “Staff Analysis”), 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.

- (a) In accordance with Division 3.5 (f)5.2.A of the Town Code, the Town Council, having considered the testimony and evidence in the record presented by all parties, finds that: the Applicants do 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 Variances and/or

- (b) The Applicants do 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 3 of the Variances is justified by practical difficulty on the part of the Applicant.

Section 3. Approval / Stet.

The Variances requesting the Town to:

- (a) Variance No. 1 requesting waiver of 150 square foot roofed area to 282 square feet of roofed area is approved.
- (b) Variance No. 2 requesting a waiver allowing an accessory building to occupy 29 percent of lot coverage is approved.
- (c) Variance No. 3 requesting waiver of a 5 foot rear setback to 4.47 feet is denied.
- (d) Variance No. 4 requesting to permit an existing accessory building to the RU-1Z residence as per Division 4.2.E., setback 6.20 feet from the RU-1Z required side street (south) property line where 15 feet is required is approved.

Section 4. Conditions of Approval.

The Variances are granted subject to the following conditions:

1. 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 and/or Certificate of Use and Occupancy; said plan to include among other things but not limited thereto, location of structure or structures, exists, entrances, drainage, walls, fences, landscaping, etc.

2. That in the approval of the gazebo location, the same be in accordance with that submitted for the hearing entitled "Boundary Survey" for 14151 N.W. 87 Court, Miami Lakes Fl., as prepared by Miguel Espinosa Land Surveying, Inc., Registered Land Surveyor State of Florida, No. 5101, Survey No. S-3462, and consisting of 1 sheet. The approved plan shall be substantially in accordance with the plan submitted for the hearing entitled Gazebo Amnesty / Site Plan – Floor Plan prepared by Milton Cubas, P.E., Inc., dated March 2, 2006; Approving the requested single family residence gazebo accessory building setback a minimum of 7.30 feet from the rear property line, setback 6.20 from the side street property line and a required 25 foot rear property line setback unencumbered by any additional building. Except as may be modified by any zoning resolution applicable to the subject property.
3. That the applicant must obtain a letter from all utility companies concerned approving the encroachment of the gazebo, into the utility easement.
4. That the applicant shall eliminate the 23.375 square foot storage area that encroaches on the rear setback.
5. The applicant shall buffer and screen the gazebo from view of the street by a privacy fence, wall or shrubs measuring a maximum height of six feet. If the privacy fence, wall or shrubs do not completely screen the gazebo, the applicant shall be required to use planted or potted trees to further aid in screening the gazebo from view of the street.
6. 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 permit is issued for the gazebo accessory building.
7. The applicant shall obtain a permit and all requisite inspections for the requested accessory building, at the setbacks approved herein, within one year of the date of this approval. If a 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 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.

Variance 1 and 2 of the foregoing Resolution was moved upon the practical difficulty standard in Division 3.5(f)(2) of the Town Code by Councilmember Roberto Alonso and Seconded by Vice Mayor Mary Collins, and upon being put to a vote the motion carried with each Council Member voting as follows:

Mayor Wayne Slaton	yes
Vice Mayor Mary Collins	yes
Councilmember Roberto Alonso	yes
Councilmember Robert Meador	yes
Councilmember Michael Pizzi	yes
Councilmember Richard Pulido	yes
Councilmember Nancy Simon	yes

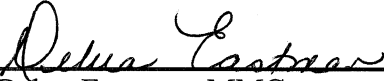
PASSED AND ADOPTED this 20th day of February, 2007.

This Resolution was filed in the Office of the Town Clerk on this 23rd day of April, 2007.



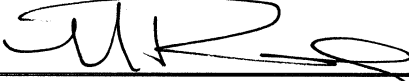
Wayne Slaton
MAYOR

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.A.
TOWN ATTORNEY