

RESOLUTION NO. 07-530Z

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-1Z ZONING DISTRICT ON THE SIDE YARD PROPERTY LINE WITH A ZERO (0') FOOT SETBACK WHERE 15 FEET IS REQUIRED (THE "VARIANCE"), FOR PROPERTY LOCATED AT 15200 N.W. 89 AVENUE, MIAMI LAKES, FLORIDA; 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"), Richard Aguiar and Dominica Aguiar (the "Applicants") have 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-1Z zoning district on the side yard property line with a zero (0') foot setback where 15 feet is required, for property located at 15200 N.W. 89 Avenue, Miami Lakes, Florida, Folio #32-2021-007-0060; (legally described as Lot 6, Block 9, WEST LAKES GARDENS 2ND ADDITION, as recorded in Plat Book 141, at page 25 of the Public Records of Miami-Dade County); 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, May 22, 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 Variance, as set forth in the Staff Analysis and Recommendation dated May 22, 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) 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 the property is the same size and shape as other lots in the subdivision; and
 3. Conditions Not Created by Applicant. That the applicant could comply with the requirements as to what is permitted by the Code; and
 4. Special Privileges Not Conferred. That if hardship variances are granted the property would have a special privilege that is denied by this Land Development Code to other similarly situated lands, buildings, or structures in the same zoning district.
 5. Hardship Conditions Exist. That a literal interpretation of the provisions of this Land Development Code would not 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 not create unnecessary and undue hardship on the applicant; and

6. Only the Minimum Variance Granted. That the requested variances are not necessary to allow the reasonable use of the land, building, or structure.
7. Not Injurious to Public Welfare or Intent of the Land Development Code. If granted the variances will not be injurious to the area involved or otherwise detrimental to the public welfare.

With regard to the Variance; 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 this variance is justified by practical difficulty on the part of the Applicants.

Section 3. Approval/Denial.

The variance requesting a waiver of a 15 feet side street setback to zero (0') for a fence in the RU-1Z Zero Lot Line Single Family Residential zoning district is approved.

Section 4. Conditions of Approval.

The Variance is granted subject to the following conditions:

- (a) That a 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, exits, entrances, drainage, walls, fences and landscaping.
- (b) That in the approval of the Plan, the same be in accordance with that submitted for the hearing entitled "Boundary Survey" for Lot 6, Block 9 of "West Lakes Gardens 2nd Addition" According to the Plat Thereof as described in Plat Book 141 at Page 25 of the public records of Miami-Dade County, Florida, as prepared by Juan J. Bonfill, Registered Land Surveyor State of Florida No. 3179, dated 10-07-95, and consisting of 2 sheets. Except as modified herein to setback the

requested fence a minimum of 35' from the front property line setback 0' from the side street (south) property line.

- (c) That the Applicant obtain a letter from all utility companies concerned approving the encroachment of the fence, into the utility easement.
- (d) 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 fence.
- (e) The Applicant shall obtain a building permit and all requisite inspections for the requested fence, at the setbacks approved herein, within one 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 Vice Mayor Mary Collins and Seconded by Councilmember

Roberto Alonso, 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 22nd day of May, 2007.

This Resolution was filed in the Office of the Town Clerk on this 31st day of May, 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.L.
TOWN ATTORNEY