

RESOLUTION NO. 07-532Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING 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 9012 N.W. 147th TERRACE, 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"), Libardo I. Osorio and Jilma J. Osorio (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 9012 N.W. 147th Terrace, Miami Lakes, Florida, Folio #32-2021-009-0420; (legally described as Lot 1, Block 7, FLORIDA TROPICAL ESTATES SECTION THREE, as recorded in Plat Book 141, at page 24 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 1, Block 7 of "Florida Tropical Estates Section Three" According to the Plat Thereof as described in Plat Book 141 at Page 24 of the public records of Miami-Dade County, Florida, as prepared by George Ibarra, Registered Land Surveyor State of Florida No. 2534, dated 8-23-04, 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 (east) property line, and to reduce the rear deck area to provide a 3 foot rear setback and a 4 foot setback from the side street 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 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 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.

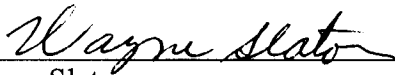
This Resolution shall take effect thirty (30) days following the date it is filed with the Town Clerk. If during that time frame, the decision of the Town Council is appealed as provided in the Land Development Code and the Florida Rules of Appellate Procedure, the appeal shall stay the effectiveness of this Resolution until said appeal is resolved by a court of competent jurisdiction.

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 Richard Pulido, 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

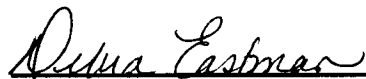
PASSED AND ADOPTED this 22nd day of May, 2007.

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



EXHIBIT A

TOWN OF MIAMI LAKES MEMORANDUM

To: Honorable Mayor and Town Council

From: Alex Rey, Town Manager

Subject: Hearing # - ZH 07-09
Libardo I. Osorio and Jilma J. Osorio
9012 N. W. 147th Terrace
Miami Lakes, FL 33018

Date: May 22, 2007

Request:

The applicants, Libardo I. Osorio and Jilma J. Osorio are requesting the following non-use variance to permit a proposed fence in connection with an existing single family residence:

1. A Variance pursuant to Division 3.5 of the Town Code from Division 5.9.B.1.a., of the Town Code for Single Family and Two Family Residences; Location Restrictions: No fences, walls or gates shall be permitted within a required front yard or side yard facing a street.

To permit a fence as per Division 4.2.E., setback zero feet (0') from the RU-1Z Required Side Street (east) property line where fifteen feet (15') is required.

Applicable Code Section:

Request #1: Division 5.9 Fence, Walls and Gates

B. Single Family and Two Family Residences:

1. Location Restrictions:

- a. No fences, walls or gates shall be permitted within a required front yard or side yard facing a street. However, perimeter walls surrounding subdivisions which are approved through the site plan review process are permitted along sides facing a street or rear yards facing a street. (Attachment A: Division 4.2.E.)

Division 6.3 Easements

- A. Where real property is encumbered by one (1) or more easements for drainage purposes, canal maintenance, access, water, sewage and gas, telephone or power lines, fire lanes, or the like and the easement is of record, by deed, survey, plat, zoning map or otherwise, and is of notice to the Town, no permit shall be issued unless the applicant therefore secures from the easement owner a written statement that the proposed use, building or structures, if installed in the proposed manner, will not interfere with the owner's reasonable use of the easement.

Background:

Folio No. 32-2021-009-0420

Legal Description:

FLORIDA TROPICAL ESTATES SEC 3 PB 141-24 LOT 1 BLK 7 LOT SIZE 5545 SQ FT
F/A/U 30-2021-001-0093 OR 15790-5077 0193 1

Zoning of Property: RU-1Z – Zero Lot Line Single Family

Future Land Use Designation:

The future land use designation In the Town's Comprehensive Plan for the Subject property: LD – Low Density Residential and the property is zoned (RU-1Z – Zero Lot Line Single Family)

Surrounding Property:

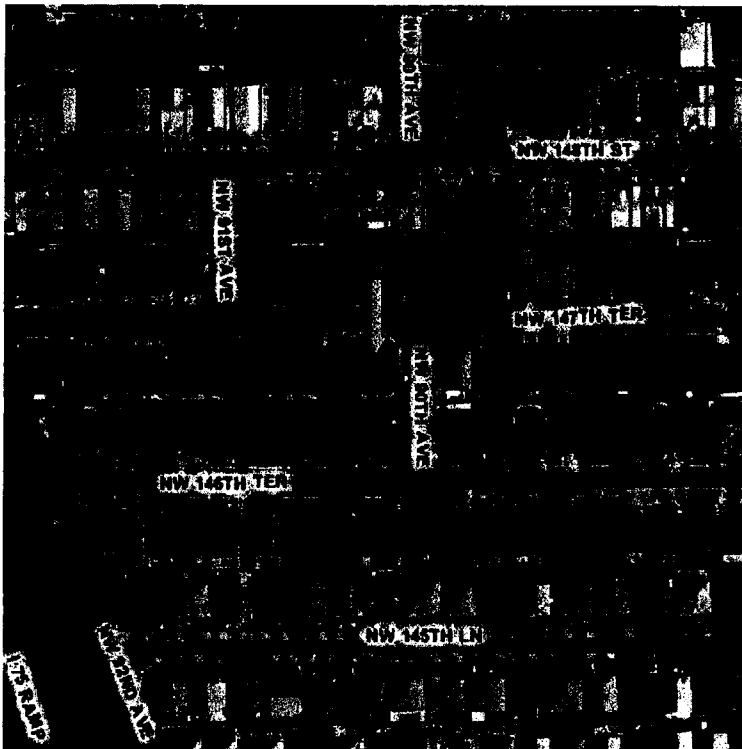
North: Low Density Residential; (RU-1Z)
East: Low Density Residential; (RU-1Z)
South: Low Density Residential; (RU-1Z)
West: Low Density Residential; (RU-1Z)

Low Density (LD) - The residential densities allowed in this category shall range from a minimum of 1.0 to a maximum of 6.0 dwelling 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.

Subject Property:

The subject property is a zero lot line parcel and is located within a fully developed zero lot line subdivision. The applicant's property is a two story, 4 bedroom, 2 bath residence located on the corner of N.W. 90th Avenue and N.W. 147th Terrace. The residence as per County Tax Assessors records was constructed in 1992 and contains approximately 2,426 sq. ft. on a 5,545 sq. ft. lot. A proposed concrete fence would replace a wooden fence as shown on the enclosed pictures said fence would be situated along the side yard property line facing the street.

Subject Property Location Map:



Open Permits / Violations / and Typical Deed Restrictions in the Area:

There are no open permits or violations on the subject property. Also, there are pavers installed over a required utility easement which is currently under Code Enforcement review and may be addressed as a separate application. Typical deed restrictions in the area provided that no fence, wall or other enclosure shall be erected, placed, or altered within 25 feet of the front line, and in the case of a corner lot, within the building setback area for the side yard adjoining the street, of any lot.



Proposal:

The applicant is proposing to build a pre-cast concrete fence and metal gate enclosure. The fence provides security and safety for the applicant and the property. This application will allow the fence to remain closer than permitted to the side street property line, within a 10' Utility Easement. The Land Development Code RU-1Z zoning requirements as per Ordinance 04-53 for the Town of Miami Lakes, provides that no fence, wall or gate shall be permitted within a required front yard or side yard facing a street. The proposed fence facing a side street setback zero feet (0') does not comply with the required fifteen foot (15') setback currently in effect.

Variance Criteria:

Division 3.5(f) of the Town Code allows the Council to approve non-use variances based upon seven hardship criteria.

Notwithstanding the hardship criteria should the Town Council by extraordinary (5 votes) vote determine that the variance is justified by practical difficulty on the part of the applicant, and no objections from adjoining or directly affected property owners have been filed to the application, a variance may be approved as requested or approved with conditions.

Compliance of request with variance criteria:

- a. Variance Consistent with Authorized Powers. **YES** – The variance request is correctly in front of the Council.
- b. Existence of Special Conditions or Circumstances. **NO** – The property is the same size and shape as other lots in the subdivision.
- c. Conditions Not Created by Applicant. **NO** – The applicant could comply with the requirements to what is permitted by code.
- d. Special Privileges Not Conferred. **NO** – 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.
- e. Hardship Conditions Exist. **NO** - 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.
- f. Only the Minimum Variance Granted. **NO** – The requested variances are not necessary to allow the reasonable use of the land, building, or structure.
- g. Not Injurious to Public Welfare or Intent of the Land Development Code. **YES** - If granted the variances will not be injurious to the area involved or otherwise detrimental to the public welfare.

Based on the above analysis, it is staff's opinion that the variance request does not meet all of the variance criteria as required and therefore must be justified by practical difficulty on part of the applicant and approved by extraordinary (5 votes) vote of the Council.

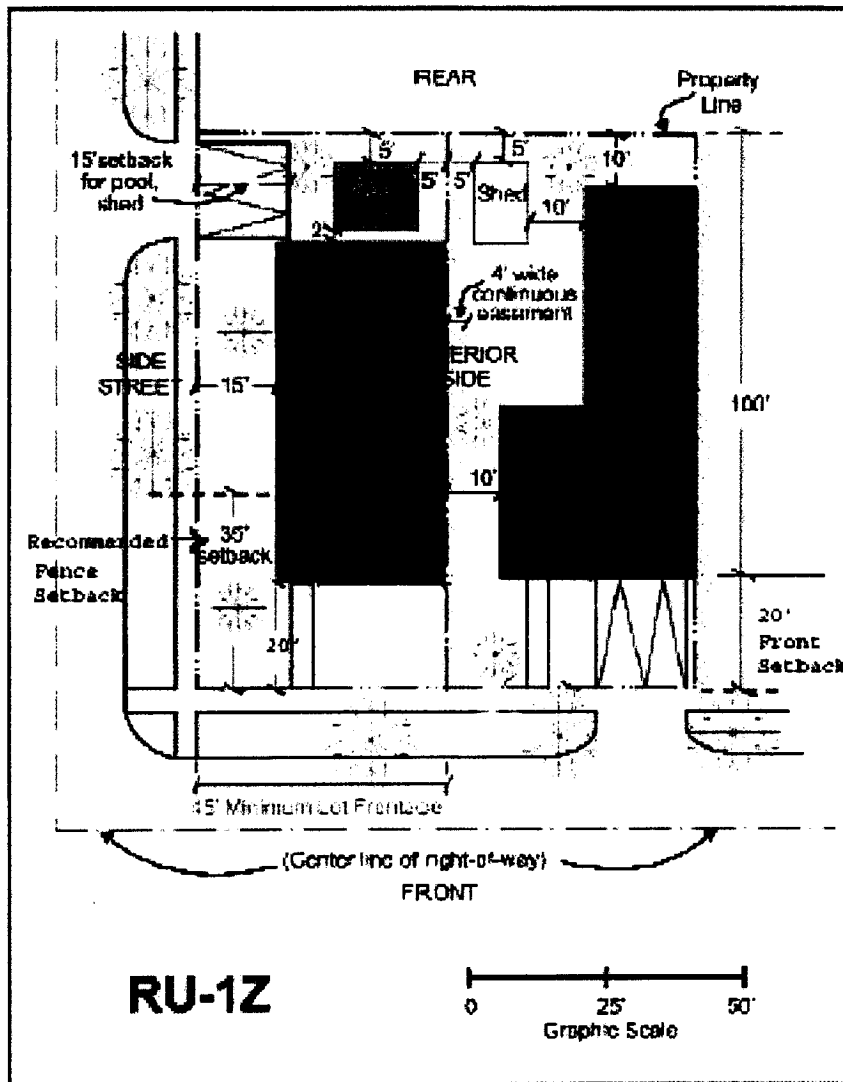
Analysis:

The subject parcel of land is located at 9012 N.W. 147th Terrace, with dimensions of 60.00' x 94.57', in this area the Town's Comprehensive Development Plan (CDP) permits development up to a maximum of 6.0 dwelling units per gross acre. The variance request for the subject residence within this development is consistent with the CDP and does not create any impact on the levels of service (LOS) standards.

The applicants are seeking a non-use variance of location restrictions prohibiting fences, walls or gates to be permitted within the required front yard or side yard facing a street. The proposed pre-cast concrete fence and would be setback closer than currently permitted by code for the RU-1Z side street (east) property line. The subject fence is proposed to be setback zero feet (0') where fifteen Feet (15') is required within a ten foot (10') wide utility easement.

The approval of this application will allow the proposed fence which would provide additional privacy and security for the residents. However, staff is of the opinion that the subject request should be approved on a modified basis, the proposed fence should be limited in terms of its impact on the utility easement, and to surrounding properties. Staff feels that a lengthwise encroachment on the utility easement would be excessive and difficult to maintain, as well as diminishing the available yard area for the subject property. Additionally, the existing rear deck area should be reduced to diminish the impact on the easement as well as drainage onto the adjoining property. Therefore, a reduction of the rear deck area is recommended to provide a 3 foot rear setback and a 4 foot setback from the side street property line. The proposed fence setback of 0' is recommended but on a modified basis to allow a comparable rear and side yard area as for a RU-1Z non-corner lot, which would typically be (10'x70' for the side and 40'x15' for the rear = approximately 1300 sq.ft.). The proportional rear and side yard area for the corner RU-1Z lot would be (35'x15' for the rear and 15'x 52' for the side= approximately 1305 sq.ft.). As modified herein, staff is of the opinion that this application would be compatible with the area minimizing aural and visual impact on the adjacent properties while affording the applicant reasonable use of this land. Accordingly, staff recommends approval of the subject request with conditions. (Please see figure below)

Recommendation: Modified approval with conditions of the request to permit a proposed fence to be located, setback zero Feet (0') from the required Side Street property line, for a length not to exceed a minimum of thirty five (35') setback from the front property line.



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 plan, the same be in accordance with that submitted for the hearing entitled "Boundary Survey" for Lot 1, Block 7 of "Florida Tropical Estates Section Three" According to the Plat Thereof as described in Plat Book 141 at Page 24 of the public records of Miami-Dade County, Florida, as prepared by George Ibarra, Registered Land Surveyor State of Florida No. 2534, dated 8-23-04, 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 (east) property line, and to reduce the rear deck area to provide a 3 foot rear setback and a 4 foot setback from the side street property line. Except as may be modified by any zoning resolution applicable to the subject property.
3. That the applicant must paint the pre-cast concrete fence to match the residence and obtain a letter from all utility companies concerned approving the encroachment of the fence, into the utility easement.
4. 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.
5. The applicant shall obtain a 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 permit is not obtained or an extension granted within the prescribed time limit then this approval shall become null and void.

AR:MIC

ATTACHMENT A:

4.2.E. Development Regulations for Single Family and Two Family Districts

	Min. Lot Size	Min. Lot Width (4)	Front Setback (5)	Rear Setback (7)	Interior Side Setback	Street Side Setback	Max. Lot Coverage (1) (2) (3)	Building Size	Max. Height (6)
RU-1	7,500 sq. ft.	75'	25'	25'	10% of lot width, 5' min. 7.5' Max.	15'	40% for 1 story/ 35% for 2 story	2,000 sq. ft. min.	35' 2 stories
RU-1 Access. Structures			Not permitted	5'	5'	15'	20% of required rear yard	150 sq. ft. max. size per structure	15' 1 story
RU-1B	6,000 sq. ft.	60'	25'	25'	6'	10'	40%	1800 sq. ft. min.	35' 2 stories
RU-1B Access. Structures			Not permitted	5'	5'	10'	20% of required rear yard	150 sq. ft. max. size per structure	15' 1 story
RU-1A	5,000 sq. ft.	50'	25'	25'	5'	10'	40%	1700 sq. ft. min.	35' 2 stories
RU-1A Access. Structures			Not permitted	5'	5'	10'	20% of required rear yard	150 sq. ft. max. size per structure	15' 1 story
<u>RU-1Z</u>	4,500 sq. ft.	45'	20'	10' one story/ 15' two story	0' / 10'	<u>15'</u>	50%	1500 sq. ft. min.	35' 2 stories
RU-1Z Access. Structures			Not permitted	5'	5'	15'	20% of required rear yard	75 sq. ft. max. size per structure	15' 1 story
RU-2	7,500 sq. ft.	75'	25'	25'	7.5'	15'	40% for 1 story/ 35% for 2 story	900 sq. ft. min. per unit	35' 2 stories
RU-2 Access. Structures			Not permitted	5'	5'	15'	20% of required rear yard	150 sq. ft. max. size per structure	15' 1 story