

**RESOLUTION NO. 07-544 Z**

**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 LAND DEVELOPMENT CODE TO (1) WAIVE SECTION 5.2.A.3 OF THE LAND DEVELOPMENT CODE TO PERMIT AN ACCESSORY CHICKEE HUT IN THE RU-1 DISTRICT WITH A 3 FOOT REAR SETBACK WHERE 5 FEET IS REQUIRED; AND (2) WAIVE SECTION 5.2.A.3 OF THE LAND DEVELOPMENT CODE TO PERMIT AN ACCESSORY CHICKEE HUT IN THE RU-1 DISTRICT WITH A 4 FOOT INTERIOR SIDE SETBACK WHERE 5 FEET IS REQUIRED (COLLECTIVELY, “THE VARIANCES”), FOR A SINGLE FAMILY RESIDENCE LOCATED AT 14270 SABAL DRIVE, 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”), Ray Bautista and Odalys Bautista (the “Applicants”) have applied to the Town for approval of the following: (1) a variance to waive Section 5.2.A.3 of the Land Development Code to permit an accessory Chickee Hut in the RU-1 District with a 3 foot rear setback where 5 feet is required; and (2) to waive Section 5.2.A.3 of the Land Development Code to permit an accessory Chickee Hut in the RU-1 District with a 4 foot interior side setback where 5 feet is required (collectively, the “Variances”), for an existing single family residence located at 14270 Sabal Drive, Miami Lakes, Florida, legal description: Folio # 32-2023-008-0250; Lot 25, Block 30 of Subdivision Miami Lakes Section Seven, Plat Book 84, Page 34 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, January 16, 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 January 16, 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 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 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 the Variance is justified by practical difficulty on the part of the Applicant.

**Section 3. Approval / Denial.**

The Variances requesting the Town to:

- (a) Variance No. 1 requesting waiver of a 5 foot rear setback to 3 feet is approved.
- (b) Variance No. 2 requesting waiver of a 5 foot interior side setback to 4 feet 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, exits, 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 14270 Sabal Drive, Miami Lakes Fl., as prepared by Global Dimensions, Inc., Registered Land Surveyor State of Florida, No. 4843, and consisting of 1 sheet.
- 3. That the applicant must shall buffer and screen the Chickee Hut completely from view by a privacy fence, wall or shrubs measuring a maximum height to six (6) feet. If the fence, wall or shrubs do not completely screen the Chickee Hut, the Applicant shall be required to use planted or potted trees trees to screen the Chickee Hut from view of the street.
- 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 Chickee Hut.
- 5. The applicant shall obtain a permit and all requisite inspections for the requested Chickee Hut, 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 H. Simon and Seconded by R. Meador and upon being put to a vote the motion carried with each Council Member voting as follows:

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

PASSED AND ADOPTED this 16 day of January 2007.

This Resolution was filed in the Office of the Town Clerk on this 26 day of June, 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

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# EXHIBIT A

## TOWN OF MIAMI LAKES MEMORANDUM

**To:** Honorable Mayor and Town Council

**From:** Alex Rey, Town Manager

A handwritten signature in black ink, appearing to be 'A. Rey'.

**Subject:** Hearing # - ZH 07-03  
Ray Bautista and Odalys Bautista  
14270 Sabal Drive  
Miami Lakes, FL 33014

**Date:** January 16, 2007

### Request:

The applicants, Ray Bautista and Odalys Bautista are requesting the following non-use variances to permit an existing Chickee Hut accessory building to be setback 3' from the rear property line and 4' from the interior side property line:

1. A Variance pursuant to Division 3.5 of the Town Code from Division 5.2.A.3., of the Town Code for Single Family and Two Family Residential Districts:

To permit an existing accessory structure to the residence as per Division 5.2.A.3., setback 3 feet from the RU-1 Required Rear (north) property line where 5 feet is required.

2. A Variance pursuant to Division 3.5 of the Town Code from Division 5.2.A.3., of the Town Code for Single Family and Two Family Residential Districts:

To permit an existing accessory structure to the residence as per Division 5.2.A.3., setback 4 feet from the RU-1 Required Interior Side (east) property line where 5 feet is required.

### Applicable Code Section:

#### Request #1 & #2      Division 5.2 Accessory Buildings

- A. One story accessory buildings shall be permitted within the required rear yard of single family or duplex residences if they comply with the following:

1. Each accessory building shall not exceed 150 sq. ft. (75 sq. ft. in the zero lot line developments) of roofed area (including roof overhangs) and enclosed storage areas in each individual accessory building shall not exceed 60 sq. ft (30 sq. ft. in the zero lot line developments).
2. The total lot coverage of all accessory buildings in the required rear yard shall not exceed more than 20% of the area of the required rear yard.
3. Accessory buildings shall be setback a minimum of five (5) feet from a rear or interior side property line or for corner lots shall comply with the side street setbacks for the main structure. Roof overhangs shall be permitted to project a maximum of twelve (12) inches into the required 5' side and rear setbacks.  
(Attachment A: Division 5.2)

### **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. 32-2023-008-0250**

#### **Legal Description:**

MIAMI LAKES SEC 7 PB 84-34 LOT 25 BLK 30 LOT SIZE SITE VALUE OR 20590  
1177 0702 5 COC 21663-0335 09 2003 1

**Zoning of Property:**     RU-1 – Single Family Residential

#### **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-1 – Single Family Residential)



**Surrounding Property:**

North: Low Density Residential; (RU-1)

East: Low Density Residential; (RU-1)

South: Low Density Residential; (RU-1)

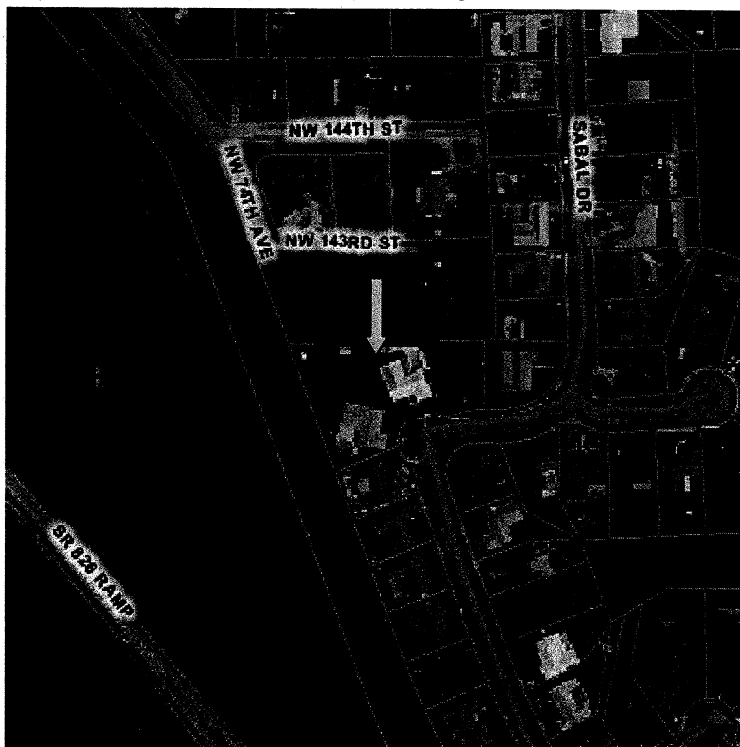
West: Low Density Residential; (RU-1) & Transportation; (SR 826)

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:**

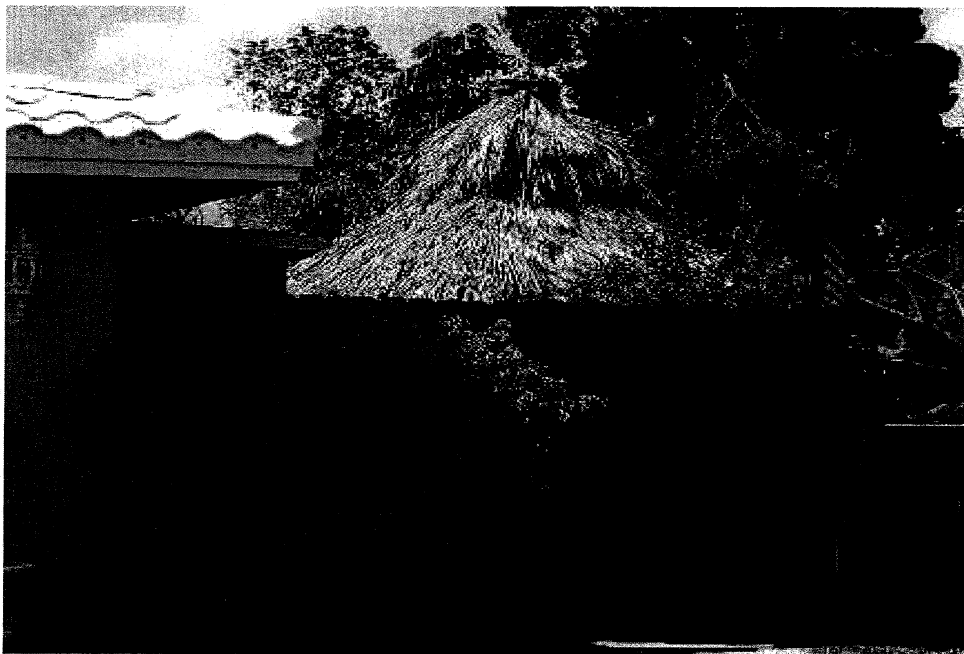
The subject property is a residential parcel and is located within a fully developed subdivision. The applicant's property is a one story, 5 bedroom, 3 bath residence located on the north side of Sabal Drive. The residence as per County Tax Assessors records contains approximately 2,608 sq. ft and was constructed in 1968. An existing Chickee Hut accessory building as shown on the enclosed survey and pictures is situated on the northeast corner of the subject property.

**Subject Property Location Map:**



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

There is a Warning of Violation which was issued on May 1, 2006, Case Number C2006-0482 for failure to obtain a building permit to build a chickee hut on the subject property at 14270 Sabal Drive. Typical deed restrictions in the area provided that for gazebos and other similar constructed elements the plans, specifications, and location of all contemplated improvements and modifications shall meet the requirements of all applicable local codes and ordinances of the local governing agency issuing permits for construction. This application is part of the process in terms of assuring that the accessory building to the subject property is properly legalized.



## **Proposal:**

The applicant is proposing to legalize an existing Chickee Hut 11.80 feet in width located 3.00 feet from the rear property line and 4.00 feet from the interior side property line. The Chickee Hut provides additional outdoor living space for the applicant. This application will allow the 139.24 square foot Chickee Hut to remain closer than permitted to the rear and interior side property lines. The Land Development Code RU-1 zoning requirements as per Ordinance 04-63 for the Town of Miami Lakes provides that the existing accessory building to the single family residence shall be permitted setback a minimum of 5 feet from the rear property line and 5 feet from the interior side property line. The existing Chickee Hut to the single family residence setback 3 feet from the rear property line and 4 feet from the interior side property line does not comply with the required five foot (5') 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 irregular shaped subject parcel of land is located at 14270 Sabal Drive, with approximately 13,090 square feet of lot area. The Town's Comprehensive Development Plan (CDP) designates the subject property for low density residential development which permits 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 applicant is seeking a non-use variance of location setback restrictions prohibiting a single family residence accessory building to be permitted within five feet of the rear and interior side property lines. The existing Chickee Hut accessory building to the single family residence would be setback 3 feet from the rear (north) property line and 4 feet from the interior side (east) property line than currently permitted by code. The subject Chickee Hut is 139.24 square feet in size and measures 14.5 feet in height.

The approval of this application will allow the legalization of the above mentioned existing accessory building to this single family residence which would provide additional outdoor living space for the residents. Staff is of the opinion that the subject request should be approved subject to conditions, the Chickee Hut is well maintained but is clearly viewed from the street. Staff feels that approval of the rear and interior side property line encroachment, setback 3 feet from the rear property line and 4 feet from the interior side property line should be approved subject to buffering by landscaping to limit its impact to surrounding properties. The impact can be minimized by landscaping and due to the fact that the rear yard faces a neighbor's rear yard and the State Road 826 / Canal to the west. Therefore approval of request #1 for the 3 foot rear property line setback and request #2 for the 4 foot interior side property line setback is recommended. Staff notes that this application with the recommended buffering 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.

**Recommendation:** Approval with Conditions

## **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 14270 Sabal Drive, Miami Lakes Fl., as prepared by Global Dimensions, Inc., Registered Land Surveyor State of Florida, No. 4843, and consisting of 1 sheet. Approving the requested single family residence chickee hut accessory building setback a minimum of 3 feet from the rear property line, and 4 feet from the interior side property line. Except as may be modified by any zoning resolution applicable to the subject property.
3. That the Applicant shall buffer and screen the chickee hut completely 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 chickee hut, the applicant shall be required to use planted or potted trees to further aid in screening the chickee hut from view of the street.
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 chickee hut.
5. The applicant shall obtain a permit and all requisite inspections for the requested chickee hut, 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:**

### **Division 5.2 Accessory Buildings**

- A. One story accessory buildings shall be permitted within the required rear yard of single family or duplex residences if they comply with the following:
1. Each accessory building shall not exceed 150 sq. ft. (75 sq. ft. in the zero lot line developments) of roofed area (including roof overhangs) and enclosed storage areas in each individual accessory building shall not exceed 60 sq. ft (30 sq. ft. in the zero lot line developments).
  2. The total lot coverage of all accessory buildings in the required rear yard shall not exceed more than 20% of the area of the required rear yard.
  3. Accessory buildings shall be setback a minimum of five (5) feet from a rear or interior side property line or for corner lots shall comply with the side street setbacks for the main structure. Roof overhangs shall be permitted to project a maximum of twelve (12) inches into the required 5' side and rear setbacks.
  4. Accessory buildings shall be detached a minimum of 10' from the residence and a minimum of 6' from roof overhangs (detached 5' from the main residence and 3' from any roof overhangs in the zero lot line developments). Accessory buildings shall be spaced apart from each other the same distance requirements as from the main residence.
  5. Accessory buildings shall be limited to one story with a maximum height of 15'.
  6. Allowable accessory buildings, with the exception of chickee huts as defined in this code, shall be constructed and finished to match the existing residence (including roofing material) or designed in an architectural style complimentary to the existing residence.
  7. Accessory buildings shall be limited to uses that are accessory to the main use, including but not limited to garages, carports, pergolas, cabanas, gazebos etc. Sleeping or guest rooms shall not be permitted in detached accessory buildings.
  8. Accessory buildings may contain heating and air conditioning, washers and dryers, toilets, bar sinks and showers. An outdoor built-in barbecue grill or similar cooking equipment shall be allowed as an accessory structure.
  9. No permit shall be issued for an accessory building for any use unless the principal building exists on the lot, or unless a permit is obtained simultaneously for both buildings and construction progresses concurrently.