

**RESOLUTION NO. 07-545 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 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 (0') FOOT SETBACK WHERE 15 FEET IS REQUIRED (THE "VARIANCE"), FOR PROPERTY LOCATED AT 15633 N.W. 81 COURT, 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"), Rolando Farradas and Aymee Farradas (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-1 zoning district on the side street property line with a zero (0') foot setback where 15 feet is required, for property located at 15633 N.W. 81 Court, Miami Lakes, Florida, Folio #32-2015-040-0300; (legally described as Lot 4, Block 10, SILVERCREST ESTATES 1<sup>ST</sup> ADDITION, as recorded in Plat Book 157, at page 23 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 have been noticed for Tuesday, June 19, 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 has provided a Staff Analysis and Recommendation dated June 19, 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 a hardship variance is 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; and
  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; and
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-1 Single Family Residential zoning district is approved.

### **Section 4. Conditions.**

- a) That the 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.
- b) That in the approval of the plan, the same be in accordance with that submitted for the hearing entitled "Boundary Survey" for Lot 4, Block 10 of "Silvercrest Lake Estates First Addition" According to the Plat Thereof as described in Plat Book 157 at Page 23 of the public records of Miami-Dade County, Florida, as prepared by Rege Alguesvives, Registered Land Surveyor State of Florida No. 4327, dated 05-24-06, and consisting of 1 sheet. Except as modified herein to setback the requested fence a minimum of 35' from the front property line, and setback 24 inches from the side street (south) property line.

- c) That the applicant must 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. 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 R. Alonso and Seconded by N. Simon, and upon being put to a vote the motion carried 6-0 with each Council Member voting as follows:

Mayor Wayne Slaton	<u>yes</u>
Vice Mayor Mary Collins	<u>absent</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

yes

PASSED AND ADOPTED this 19 day of June 2007.

This Resolution was filed in the Office of the Town Clerk on this 24 day of June, 2007.

Wayne Slaton  
Wayne Slaton  
MAYOR

ATTEST:

Debra Eastman  
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  
Weiss Serota Helfman Pastoriza  
Cole & Boniske, P.L.  
TOWN ATTORNEY



# EXHIBIT A

## TOWN OF MIAMI LAKES MEMORANDUM

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**To:** Honorable Mayor and Town Council

**From:** Alex Rey, Town Manager

**Subject:** Hearing # - ZH 07-12  
Rolando Farradas and Aymee Farradas  
15633 N. W. 81<sup>st</sup> Court  
Miami Lakes, FL 33018

**Date:** June 19, 2007

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### Request:

This application was deferred from the May 19, 2007 Town Council Zoning meeting in order to allow the applicants to present a letter of recommendation from the Silvercrest Homeowners Association. The applicants, Rolando Farradas and Aymee Farradas 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-1 Required Side Street (south) 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. 32-2015-040-0300**

**Legal Description:**

SILVERCEST LAKE ESTATES 1ST ADDN PB 157-23 T-20206 LOT 4 BLK 10 LOT SIZE 9378 SQ FT M/L FAU 32-2015-001-0690 0700

**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)

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 single family residential parcel and is located within a fully developed subdivision. The applicant's property is a two story, 5 bedroom, 4 bath residence located on the corner of N.W. 81<sup>st</sup> Court and N.W. 156th Terrace. The residence as per County Tax Assessors records was constructed in 2002 and contains approximately 2,880 sq. ft. on a 9,378 sq. ft. lot.

## Subject Property Location Map:



## Open Permits / Violations:

There are no open permits or violations on the subject property. 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 permit a fence which would provide security and safety for the applicant and the property. This application will allow the proposed fence to be placed closer than permitted to the side street property line, within a 10' Utility Easement. The RU-1 zoning requirements previous to the adoption of Town Ordinance 04-53 on June 17, 2004 provided for fences along the property line to a maximum height of six feet (6'). The Land Development Code 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 as per Division 5.9 of the Town Code. (Attachment B: Division 5.9.B)

## **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 15633 N.W. 81 Court, with dimensions of approximately 86.51'x 105.25', 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 applicant is 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 fence would be setback closer than currently permitted by Code for the RU-1 side street (south) property line. The subject fence is proposed to be setback zero feet (0') where fifteen Feet (15') is required, and would be located adjacent to a ten foot (10') wide utility easement. The subject fence has received approval by the Silvercrest Homeowner's Association at the setbacks requested.

Staff notes that the Miami-Dade County RU-1 zoning requirements previous to the adoption of Town Ordinance 04-53 on June 17, 2004 provided for fences along the property line to a maximum height of six feet (6') for this subdivision. However, the Town of Miami Lakes Land Development Code now in effect as per Ordinance 04-53 provides that no fence, wall or gate shall be permitted within a required front yard or side yard facing a street.

The approval of this application will allow the proposed fence which would provide additional privacy and security for the residents. Additionally, staff notes that on the Silvercrest Lakes Estates Homeowners Association (HOA) letter dated June 7, 2007 the HOA provides approval of the subject fence setback 0' feet from the sidewalks edge. Also staff notes the presence of the existing mechanical equipment placed along the side yard which should be buffered from view. However, staff feels that landscaping could be utilized to shield the mechanical equipment, and is unable to support the subject request even on a modified basis because of the 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. The placement of the proposed fence within the required side street setback for the RU-1 zoned residence would not be in keeping with the typical Miami Lakes RU-1 neighborhood pattern. Additionally, staff is of the opinion that should the request not be granted, such denial would still permit the reasonable use of the premises. Since the property can be utilized in accordance with the RU-1 zoning standards, and all ancillary uses thereto. As such, staff recommends denial without prejudice of this application.

**Recommendation:** Denial without prejudice.

**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)
<b>RU-1</b>	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
<b>RU-1 Access. Structures</b>			Not permitted	5'	5'	15'	20% of required rear yard	150 sq. ft. max. size per structure	15' 1 story
<b>RU-1B</b>	6,000 sq. ft.	60'	25'	25'	6'	10'	40%	1800 sq. ft. min.	35' 2 stories
<b>RU-1B Access. Structures</b>			Not permitted	5'	5'	10'	20% of required rear yard	150 sq. ft. max. size per structure	15' 1 story
<b>RU-1A</b>	5,000 sq. ft.	50'	25'	25'	5'	10'	40%	1700 sq. ft. min.	35' 2 stories
<b>RU-1A Access. Structures</b>			Not permitted	5'	5'	10'	20% of required rear yard	150 sq. ft. max. size per structure	15' 1 story
<b>RU-1Z</b>	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
<b>RU-1Z Access. Structures</b>			Not permitted	5'	5'	15'	20% of required rear yard	75 sq. ft. max. size per structure	15' 1 story
<b>RU-2</b>	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
<b>RU-2 Access. Structures</b>			Not permitted	5'	5'	15'	20% of required rear yard	150 sq. ft. max. size per structure	15' 1 story

## **ATTACHMENT B:**

### **Division 5.9 Fence, Walls and Gates**

#### **A. All Districts**

##### **1. Appearance:**

- a. The frame work or structural supports for any permitted fence, wall or enclosure shall face the interior of the lot; or in the case of a double faced fence, wall or enclosure, it shall have an identical design on both sides, so that the exterior of such improvement shall have a finished appearance. Each side of a CBS wall shall be completely finished with stucco and paint. Each side of a decorative masonry wall shall be completely painted. Chain link fences must be either vinyl coated or covered by a hedge. Slats of vinyl, plastic or similar material shall not be permitted to be inserted or weaved into the chain link fences.
- b. If a wall or fence is to be placed on a shared property line, consent for access must be obtained from the adjoining property owner(s) prior to finishing the opposite side of the wall. If such consent cannot be obtained, the property owner erecting the wall must present proof that a request for access approval was mailed to every adjacent property owner, by certified mail, return receipt requested, to the mailing address(es) as listed in the most current Miami-Dade County tax roll, and the mailing was returned undeliverable or the adjacent property owner(s) failed to respond to the request within thirty (30) days after receipt. Upon such a showing, the property owner erecting the wall shall not be required to finish the opposite side of the wall.
- c. Barbed wire fences and barbed wire topped fences or walls shall be permitted only in the AU and IU Zoning Districts. When mounted on top of fences or walls such barbed wire must be placed on an angle extension of not more than sixteen (16) inches on top of walls or fences at least eight (8) feet in height. This extension shall contain no more than three (3) strands of barbed wire and shall not extend over official rights-of-way or over property under different ownership. Fences charged with electricity shall not be permitted within the Town limits. Neither shall any wall, fence or similar structure erected in any district contain material or substance such as broken glass, spikes, nails, barbs or similar materials designed to inflict pain or injury on any person or animal.

##### **2. Measurement of Height:**

- a. The height of a wall or fence shall be the vertical distance measured from the elevation of the property where the wall or fence is located to the top of the wall or fence. The maximum permitted height of a wall or fence on a property shall be measured from the natural height and contours of the land. Virgin land may not be increased or decreased in elevation to affect the permitted (or required) height of a wall, hedge or fence. A fence or wall shall not exceed the maximum permitted height when measured from the adjoining property.
- b. Fences, walls, gates or columns not located within the required yards may be constructed up to the maximum permitted height for the primary structures of the zoning district in which the property is located.

3. Corner Visibility:

No structure, hedge, shrub or planting which obstructs sight lines at elevations between two and a half (2.5) and eight (8) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the outer edge of the paved streets extended and a line connecting them at points twenty-five (25) feet from the intersection of the extended street lines. The same height sight-line limitations shall apply on any lot within ten (10) feet from the intersection of a street right-of-way line with the edge of a driveway pavement. No tree shall be permitted to remain within such distances or such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight-lines. Waivers of the corner visibility requirements may be administratively approved by the Public Works Director.

4. Perimeter Walls Surrounding Subdivisions:

- a. Walls surrounding subdivisions and abutting zoned or dedicated right-of-ways shall comply with the Plats Section, 3.8B.16. of this code.
- b. No changes, alterations, or modifications of any kind shall be made to the perimeter wall surrounding a subdivision without the prior written approval of the Town. Exterior surfaces of perimeter walls shall be of uniform colors to be determined by the homeowners association, or by the Town pursuant to color guidelines to be adopted by the Town council, and the perimeter walls shall be maintained by the homeowners association or property owner(s) if an association does not exist.

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.
- b. On properties abutting lakefronts, fences or walls are not permitted beyond the top of the slope toward the lake, or waterside of the survey tie line.

2. Height:

- a. Where permitted, the maximum height of all fences, walls or decorative columns located within a required yard shall be 6'. Decorative open see-through type gates and decorative columns that are not more than sixteen (16) inches wide and spaced a minimum of 8' apart, shall be permitted to exceed the maximum permitted height of the wall by 18".
- b. Height between different districts. Where an RU District abuts another district, a fence, wall or hedge on the RU property may be erected or maintained on the common property line of the height permitted in the abutting district.