

RESOLUTION NO. 07-546Z

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 WAIVE DIVISION 5.9.B.1.B., OF THE TOWN CODE FOR SINGLE FAMILY AND TWO FAMILY RESIDENCES 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 TO PERMIT A FENCE, NINE FEET SIX INCHES (9'-6") BEYOND THE TOP OF THE SLOPE TOWARD THE LAKE, OR WATERSIDE OF THE SURVEY TIE LINE FOR A PROPERTY LOCATED AT 6475 SOUTH MIAMI LAKEWAY, 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"), Cynthia Jerez Morales (the "Applicant") has applied to the Town for approval of the following: a variance to waive Division 5.9.B.1.b., of the Town Code which provides that for Single Family and Two Family Residences 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 to permit a fence, nine feet six inches (9'-6") beyond the top of the slope toward the lake, or waterside of the survey tie line.

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, June 19, 2007, at 6:30 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 June 9, 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 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.
- (b) The Applicant does 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 Variance requesting the Town to permit a fence, nine feet six inches (9'-6"") beyond the top of the slope toward the lake, or waterside of the survey tie line where fences or walls are not permitted beyond the top of the slope toward the lake, or waterside of the survey tie line is approved.

Section 4. Conditions of Approval.

The Variance is 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 "Survey" for Lot 34, Block 13 of "Miami Lakes Section Three Subdivision" According to the Plat Thereof as described in Plat Book 70 at Page 76 and 77 of the public records of Miami-Dade County, Florida, as prepared by All County Surveyors, Professional Surveyor and Mapper William B. Groover, Registered Land Surveyor State of Florida No. 5190, invoice No. 06-26488, dated 1-20-06, and consisting of 1 sheet. Except as modified herein to setback the requested fence a maximum of 9'-6" beyond the top of the slope toward the lake, or waterside of the survey tie line.
3. 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.
4. 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 variance of the foregoing resolution was moved upon the practical difficulty standard in Division 3.5(f) of the Town Code by R. Meador and Seconded by N.S. 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	<u>yes</u>

PASSED AND ADOPTED this 19th day of June 2007.

This Resolution was filed in the Office of the Town Clerk on this 26 day of June, 2007.

Mary Collins
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

To: Honorable Mayor and Town Council

From: Alex Rey, Town Manager

Subject: Hearing # - ZH 07-16
Cynthia Morales
6475 South Miami Lakeway
Miami Lakes, FL 33014

Date: June 19, 2007

Request:

The applicant, Cynthia Morales is 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.b., of the Town Code for Single Family and Two Family Residences; Location Restrictions: 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.

To permit a fence, nine feet six inches (9'-6") beyond the top of the slope toward the lake, or waterside of the survey tie line where fences or walls are not permitted beyond the top of the slope toward the lake, or waterside of the survey tie line.

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.

- 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.
(Attachment A: Division 5.9.B & 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. 32-2024-008-0420

Legal Description:

24 52 40 MIAMI LAKES SEC 3 PB 78-47 LOT 34 & INT IN & TO LAKE BLK 13 LOT SIZE SITE VALUE F/A/U 30-2024-008-0420 OR 20695-3215 0802 5

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:

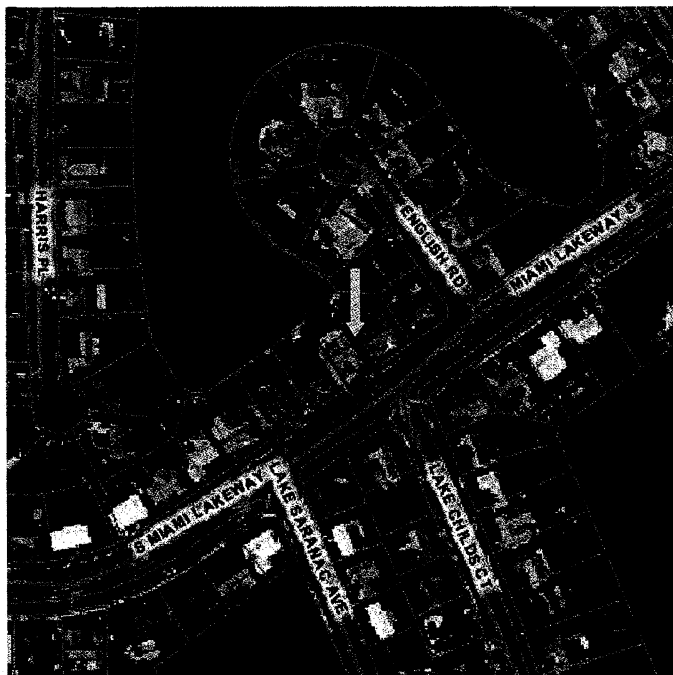
- North: Low Density Residential; (RU-1)
- East: Low Density Residential; (RU-1)
- South: Low Density Residential; (RU-1)
- West: Lake; (RU-1)

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 one story, 4 bedroom, 2 bath residence located on west of English Road and north of S. Miami Lakeway. The residence as per County Tax Assessors records was constructed in 1964 and contains approximately 2,143 sq. ft. on a lake front lot. A fence as shown on the enclosed survey is proposed, said fence would be situated to enclose an existing pool parallel to the rear north side property line facing the lake.

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. Typical deed restrictions in the area provided that no fence, wall, hedge or mass planting, or other enclosure shall be erected toward the lake beyond the top of the lake slope as such slope is indicated on the plat.



Proposal:

The applicant is proposing to build a metal fence and metal gate enclosure. The fence provides security and safety for the applicant and the property. This application will allow the rear yard fence to remain closer than permitted to the waterside of the survey tie line along the north property line. The Land Development Code RU-1 zoning requirements as per Ordinance 04-53 for the Town of Miami Lakes, provides that fences or walls are not permitted beyond the top of the slope toward the lake, or waterside of the survey tie line. The fence is proposed to enclose an existing pool and will be placed parallel to the rear property line, 9'-6" beyond the top of the slope toward the lake, or waterside of the survey tie line.

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 6475 South Miami Lakeway, with dimensions of approximately 75.00' x 154.09', 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 as per Land Development Code RU-1 zoning requirements which provide that for 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. The proposed fence will enclose an existing pool and is proposed to be placed parallel to the rear property line, 9'-6" beyond the top of the slope toward the lake, or waterside of the survey tie line.

The approval of this application will allow the proposed fence setback 9'-6" from the water's edge which would enclose the existing pool, providing additional privacy and security for the residents. Although, staff is of the opinion that landscaping can be utilized to effectively provide privacy waterward of the top slope, staff notes that in this case the use of landscaping is not a viable option because of the location of the existing pool. In fact the survey tie line runs across the pool, therefore staff feels that the requested variance to permit the proposed fence 9'-6" beyond the top of slope toward the lake is necessary to secure the pool area, and should be approved subject to the ample setback which provides approximately +/- 45 feet to the water's edge. The provision of the ample rear yard to be maintained open thereby allows for unrestricted access and unblocked views from adjacent properties in order to limit the fence's impact to surrounding properties. Staff notes that this application with the proposed fence at the setback provided 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, 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 "Survey" for Lot 34, Block 13 of "Miami Lakes Section Three Subdivision" According to the Plat Thereof as described in Plat Book 70 at Page 76 and 77 of the public records of Miami-Dade County, Florida, as prepared by All County Suveyors, Professional Surveyor and Mapper William B. Groover, Registered Land Surveyor State of Florida No. 5190, invoice No. 06-26488, dated 1-20-06, and consisting of 1 sheet. Except as modified herein to setback the requested fence a maximum of 9'-6" beyond the top of the slope toward the lake, or waterside of the survey tie line.
3. 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.
4. 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:

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.
- 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.

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)
<u>RU-1</u>	7,500 sq. ft.	75'	25'	<u>25'</u>	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
RU-1Z	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