

RESOLUTION NO. 07-559Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, DENYING VARIANCE(S) FILED IN ACCORDANCE WITH DIVISION 3.5 OF THE TOWN OF MIAMI LAKES LAND DEVELOPMENT CODE TO WAIVE DIVISION 5.3A.2 TO PERMIT AN ACCESSORY STORAGE SHED IN THE RU-1Z ZONING DISTRICT WITH (1) 100 SQUARE FEET OF TOTAL AREA WHERE THE TOWN CODE ALLOWS 30 SQUARE FEET OF AREA PER STRUCTURE; AND (2) 10 FEET IN HEIGHT WHERE THE MAXIMUM HEIGHT IS 5 FEET, (COLLECTIVELY REFERRED TO AS THE "VARIANCE"), FOR PROPERTY LOCATED AT 15155 NW 89 COURT, MIAMI LAKES, FLORIDA; PROVIDING FINDINGS; PROVIDING FOR DENIAL; PROVIDING FOR APPEAL; PROVIDING FOR VIOLATION OF CONDITIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Division 3.5 of the Town of Miami Lakes Land Development Code ("Town Code"), Ernesto Valdes and Haydee C. Valdes (the "Applicant") has applied to the Town of Miami Lakes ("the Town") for approval of the following variance(s) to waive certain requirements of Division 5.3.A.2 of the Town Code to permit an accessory storage shed in the RU-1Z zoning district: (1) with 100 square feet of total area where the Town Code allows 30 square feet of area per structure; and (2) 10 feet in height where the maximum height is 5 feet, (collectively hereinafter referred to as "the Variance"), for property located at 15155 NW 89 Court, Miami Lakes, Florida, Folio #32-2021-005-0070; legally described as Lot 7, Block 1, of Alameda Northwest, according to the Plat thereof recorded in Plat Book 138, Page 99, of the Public Records of Miami-Dade County, Florida; and

WHEREAS, Division 3.5 of the Town Code 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 Town Code, proper notice has been mailed to the appropriate property owners of record; the public hearing on the Variance has been noticed for Tuesday, August 21, 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 denial of the Variance as set forth in the Staff Analysis and Recommendation (the "Staff Analysis"), attached as Exhibit "A," and incorporated into this Resolution by 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.

1. 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:
 - a. 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
 - b. 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
 - c. Conditions Not Created by Applicant. That the special conditions and circumstances do not result from the actions of the Applicant; and

- d. 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
 - e. 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
 - f. 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
 - g. 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.
2. 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:
- a. An objection was filed by an adjoining or directly affected property owners; and
 - b. Approval of this Variance is not justified by practical difficulty on the part of the Applicant.

Section 3. Approval/Denial.

The Variance, as described above, is denied.

Section 4. Conditions.

[If Town Council approves Variance in Section 3 with conditions, the following conditions, if any, in this Section shall apply.]

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 a Writ of Certiorari to the Circuit Court of Miami-Dade County, Florida, 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 any of the approval(s) granted in this Resolution. The Applicant understands and acknowledges that it must comply with all other applicable requirements of the Town Code before it may commence construction or operation, and that the foregoing approval(s) in this Resolution may be revoked by the Town 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 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 Town 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 denied by the application of the hardship and practical difficulty standards in Division 3.5(f) (1) and (2) of the Town Code by Mary Collins and Seconded by 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	no
Councilmember Richard Pulido	yes
Councilmember Nancy Simon	absent

PASSED AND ADOPTED this day of 21st day of August, 2007.

This Resolution was filed in the Office of the Town Clerk on this 30th day of August, 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 Seyota 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 07-22
Ernesto Valdes & Haydee C. Valdes
15155 N. W. 89th Court
Miami Lakes, FL 33018**

Date: August 21, 2007

Request:

The applicants, Ernesto Valdes and Haydee C. Valdes are requesting the following non-use variances to permit the maintenance and continued use of a storage shed in connection with an existing single family residence:

1. A Variance pursuant to Division 3.5 of the Town Code from Division 5.3.A.2., of the Town Code for Single Family and Two Family Residences; RU-1Z Accessory Structures:

Accessory storage sheds which are no larger than 30 Sq. Ft. and five (5') feet high or less and not visible from the street or adjoining properties, may be located from a rear or interior side property line and for corner lots shall comply with the side street setbacks for the main structure and are not required to match the architectural style and construction materials of the main residence.

Storage sheds larger than 30 Sq. Ft. and higher than five (5') feet are not permitted.

To permit an accessory storage shed with one hundred (100) square feet of total area; where thirty (30) square feet of area per structure is allowed.

2. A Variance pursuant to Division 3.5 of the Town Code from Division 5.3.A.2., of the Town Code for Single Family and Two Family Residences; RU-1Z Accessory Structures:

Accessory storage sheds which are no larger than 30 Sq. Ft. and five (5') feet high or less and not visible from the street or adjoining properties, may be located from a rear or interior side property line and for corner lots shall comply with the side street setbacks for the main structure and are not required to match the architectural style and construction materials of the main residence.

Storage sheds larger than 30 Sq. Ft. and higher than five (5') feet are not permitted.

To permit an accessory storage shed with ten (10') feet in height, where five (5') feet of height is allowed.

Applicable Code Section:

Request #1 & #2: Division 5.3 Accessory Structures

- A. Accessory structures associated with single family and two family residences shall comply with the following: (Attachment A: Division 5.3)

1. Accessory structures such as barbecue grills, play equipment, tents, detached canopies, trellises, etc. whether or not permanently attached to the ground, shall only be permitted in the rear or side yards and must comply with the same height and setback regulations from adjoining properties as accessory buildings.

Above-ground swimming pools and hot tubs shall comply with the same setbacks as swimming pools in Section 5.13.

Accessory structures not permanently attached to the ground, including temporary play equipment, 5' high or less, shall only be permitted in the rear or side yards and may be located 2' from a rear or interior side property line and for corner lots shall comply with the side street setbacks for the main structure.

Ornamental landscape features such as statues or fountains less than four (4) feet high and decorative ponds less than 24 inches deep are permitted as accessory structures within any required yard.

2. Accessory storage sheds which are no larger than 30 sq. ft. and 5' high or less and not visible from the street or adjoining properties, may be located 2' from a rear or interior side property line and for corner lots shall comply with the side street setbacks for the main structure and are not required to match the architectural style and construction materials of the main residence. (Attachment B: Division 4.2.E.)

Storage sheds larger than 30 sq. ft. and or higher than 5' are not permitted.

Background:

Folio No. 32-2021-005-0070

Legal Description:

ALAMEDA NORTHWEST PB 138-99 LOT 7 BLK 1 LOT SIZE 5157 SQ FT F/A/U 30
2021-001- 0140 & 0141 OR 18546-1444 0399 1

Zoning of Property: RU-1Z – 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-1Z – Single Family Residential)

Surrounding Property:

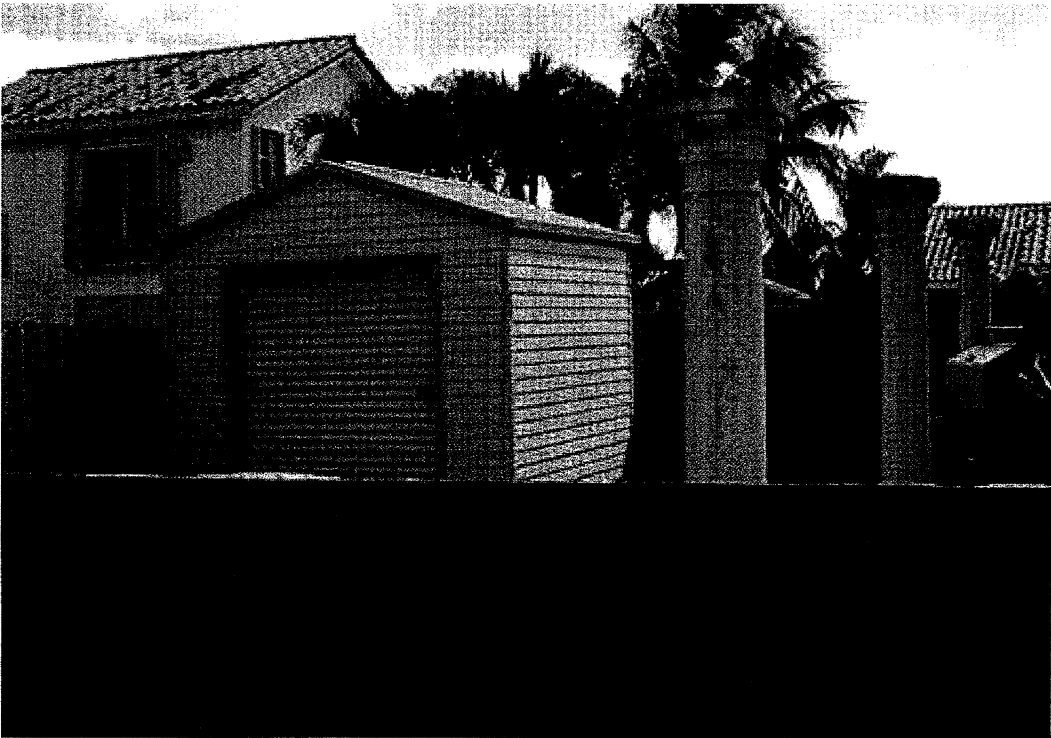
- North: Low Density Residential; (RU-1Z)
- East: Low Density Residential; (RU-1Z)
- South: Low Density Residential; (RU-1Z)
- West: Low Density Residential; (RU-1Z)

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 one story, 3 bedroom, 2 bath residence located between N.W. 89th Court and N.W. 89th Avenue on N.W. 152nd Street. The residence as per County Tax Assessors records was constructed in 1991 and contains approximately 2,289 sq. ft. on a 5,157 sq. ft. lot.

Subject Property Location Map:



Open Violations / Zoning History:

There is a Warning of Violation which was issued on December 20, 2005, Case Number C2005-1544 for maintaining an over sized accessory structure on the subject property, at 15155 N.W. 89th Court without a permit, in addition there are paved areas which are currently under Code Enforcement review and may be addressed as a separate application.

Typical Deed Restrictions Summary:

The following deed restriction data is provided for informational purposes only, and shall not be considered by the Council in providing its determination.

Typical deed restrictions in the area provide that no storage shed of any kind or size shall be placed on any lot at any time, either temporarily or permanently except as may have been originally installed by the developer.

Proposal:

The applicant is requesting the maintenance and continued use of an existing oversized storage shed located in the rear yard of a zero-lot line residential parcel. The accessory structure is larger in size and height than permitted. The Town Development Regulations as per Section 5.3 for Accessory Structures provides that accessory storage sheds larger than 30 square feet, and higher than 5' feet are not permitted. The subject oversized storage shed with 100' square feet of total area is located approximately two feet 3 inches (2'-3") from the interior side and three feet two inches (3'-2") from the rear property line, and measures 10' feet in height, where 5' feet of height is permitted. This application will allow the subject over-sized accessory structure to remain in the rear yard of the premises.

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 requests are 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 review, it is staff's opinion that the variance requests do not meet all of the hardship variance criteria. However, should the Council desire to approve the application by practical difficulty on part of the applicant and approve by extraordinary (5 votes) vote of the Council the following analysis is provided.

Analysis:

The subject RU-1Z zoned parcel of land is located at 15155 N.W. 89th Court, with approximate dimensions of 50.0' x 106.0', in this area the Town's Comprehensive Development Plan (CDP) designation is Low Density Residential which 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 two non-use variances in connection with the maintenance and continued use of a storage shed for a single family residence. The requested storage shed is larger than the permitted accessory storage sheds which are to be no larger than 30 square feet and five (5') feet high or less and not visible from the street or adjoining properties. The proposed storage shed would be 100 square feet in size and ten (10') feet in height, setback approximately three feet two inches (3'-2") from the rear property line and two feet three inches (2'-3") from the interior side property line. Storage sheds larger than 30 Sq. Ft. and higher than five (5') feet are not permitted.

Staff is not supportive of the requested storage shed which is more than three times the size of the permitted accessory storage sheds. The proposed 100 Sq. Ft. wood storage shed does not match the architectural style and construction materials of the main residence and is ten (10') feet in height, which would visually impact adjacent properties.

Staff feels that the subject request would negatively affect the stability and appearance of the Miami Lakes community. The placement of and the continued use of the subject storage shed would not be in keeping with the typical Miami Lakes neighborhood pattern. This application would not be compatible with the area, the RU-1Z neighborhood pattern is a tight dense pattern that would make it difficult to minimize the aural and visual impact of the shed on the adjacent properties. Additionally, staff is of the opinion that should the request not be granted, such denial would still permit the reasonable use of the premises, the property can be utilized in accordance with the RU-1Z 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:

Division 5.3 Accessory Structures

A. Accessory structures associated with single family and two family residences shall comply with the following:

1. Accessory structures such as barbecue grills, play equipment, tents, detached canopies, trellises, etc. whether or not permanently attached to the ground, shall only be permitted in the rear or side yards and must comply with the same height and setback regulations from adjoining properties as accessory buildings.

Above-ground swimming pools and hot tubs shall comply with the same setbacks as swimming pools in Section 5.13.

Accessory structures not permanently attached to the ground, including temporary play equipment, 5' high or less, shall only be permitted in the rear or side yards and may be located 2' from a rear or interior side property line and for corner lots shall comply with the side street setbacks for the main structure.

Ornamental landscape features such as statues or fountains less than four (4) feet high and decorative ponds less than 24 inches deep are permitted as accessory structures within any required yard.

2. Accessory storage sheds which are no larger than 30 sq. ft. and 5' high or less and not visible from the street or adjoining properties, may be located 2' from a rear or interior side property line and for corner lots shall comply with the side street setbacks for the main structure and are not required to match the architectural style and construction materials of the main residence.
Storage sheds larger than 30 sq. ft. and or higher than 5' are not permitted.

ATTACHMENT B:

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'	15'	50%	1500 sq. ft. min.	35' 2 stories
<u>RU-1Z Access. Structures</u>			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