

**RESOLUTION NO. 07-573 Z**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING WITH CONDITIONS A VARIANCE SUBMITTED IN ACCORDANCE WITH DIVISION 3.5 OF THE TOWN OF MIAMI LAKES LAND DEVELOPMENT CODE TO WAIVE DIVISION 5.9.B(1)(b) TO PERMIT A FENCE IN THE RU-1 ZONING DISTRICT, 26 FEET BEYOND THE TOP OF THE SLOPE TOWARD THE LAKE OR WATERSIDE OF THE SURVEY LINE, REFERRED TO AS THE "VARIANCE", FOR PROPERTY LOCATED AT 6860 LOCH NESS DRIVE, MIAMI LAKES, FLORIDA; PROVIDING FINDINGS; PROVIDING FOR APPROVAL WITH CONDITIONS; 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 LDC"), John F. Dias and Silvia R. Ibarra-Dias (the "Applicant") has applied to the Town of Miami Lakes ("the Town") for approval of a variance to waive certain requirements of Division 5.9.B(1)(b) of the Town LDC to permit a fence in the RU-1 zoning district, 26 feet beyond the top of the slope toward the lake or waterside of the survey line, hereinafter referred to as "the Variance", for property located at 6860 Loch Ness Drive, Miami Lakes, Florida, Folio #32-2014-010-0730 legally described as Lot 5, Block 4, of Miami Lakes Loch Ness Section, according to the Plat thereof recorded in Plat Book 93, Page 45, of the Public Records of Miami-Dade County, Florida; and

**WHEREAS**, Division 3.5 of the Town 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 Town LDC, proper notice has been mailed to the appropriate property owners of record; the public hearing on the Variance has been

noticed for September 18, 2007 at 7:00 p.m. at Miami Lakes Middle School, 6425 Miami Lakeway North, Miami Lakes, Florida 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 without prejudice 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 LDC, 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 LDC, 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.
  - c. Conditions Not Created by Applicant. That the special conditions and circumstances do not result from the actions of the Applicant.
  - 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.

- 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.
  - 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.
  - g. Not Injurious to Public Welfare or Intent of the Town LDC. 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 LDC, but the Town Council has determined that:
- a. Objections have not been filed by adjoining or directly affected property owners; and
  - b. Approval of this Variance is justified by practical difficulty on the part of the Applicant.

**Section 3. Approval/Denial.**

The Variance, as described above, is approved with conditions.

**Section 4. Conditions.**

- 1. The site plan shall be submitted to and meet the approval of the Building Official, upon the submittal of an application for a permit and/or Certificate of Use and Occupancy. The site plan shall include among other things, but not limited to, location of structure or structures, exits, entrances, drainage, walls, fences, landscaping.
- 2. The approval of the fence location, the same be in accordance with the submitted "Sketch of Survey" for 6860 Loch Ness Dr., Miami Lakes Fl., as prepared by

Campa & Associates, Inc.; Jose L. Campa, Professional Land Surveyor, Registered Land Surveyor State of Florida, Order No. 2010, and consisting of 1 sheet. The approval of the fence location shall be based on a maximum of 26.0 feet beyond the top of the slope toward the lake, or waterside of the survey tie line.

3. The Applicant shall record this Resolution in the Official Records of Miami-Dade County, Florida and shall return the original Resolution to the Town Clerk before a permit is issued.
4. The Applicant shall obtain a permit for the fence at the setbacks approved herein, within one year of the date of this approval.
5. 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 LDC, 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 LDC and persons found violating the conditions shall be subject to the penalties prescribed by the Town LDC, 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 LDC 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 LDC.

**Section 7. Effective Date.**

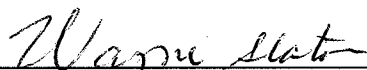
This Resolution shall take effect 30 days following the date it is filed with the Town Clerk. If during that time frame, the decision of the Town Council is appealed as provided in the Town LDC and the Florida Rules of Appellate Procedure, the appeal shall stay the effectiveness of this Resolution until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

The foregoing Resolution was approved by the application of the practical difficulty standard in Division 3.5(f) (2) of the Town LDC 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	No
Vice Mayor Mary Collins	Yes
Councilmember Roberto Alonso	Yes
Councilmember Robert Meador	No
Councilmember Michael Pizzi	Yes
Councilmember Richard Pulido	Yes
Councilmember Nancy Simon	Yes

PASSED AND ADOPTED this 18th day of September, 2007.

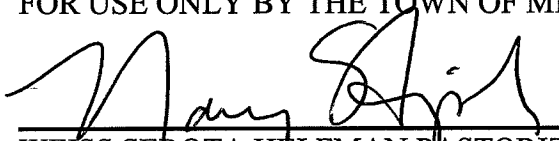
This Resolution was filed in the Office of the Town Clerk on this 19th day of September, 2007.

  
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WAYNE SLATON  
MAYOR

ATTEST:

  
\_\_\_\_\_  
DEBRA EASTMAN, MMC  
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR USE ONLY BY THE TOWN OF MIAMI LAKES:



WEISS SEROTA HELFMAN PASTORIZA  
COLE & BONISKE, P.L.  
TOWN ATTORNEY