

RESOLUTION NO. 07- 582Z

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 1) DIVISION 6.5.B.6.C TO PERMIT AN ACCESSORY BUILDING WITH 368 SQUARE FEET OF ROOFED AREA WHERE 150 SQUARE FEET IS PERMITTED; 2) DIVISION 6.5.B.6.C TO PERMIT A 16 FOOT ACCESSORY BUILDING WHERE THE MAXIMUM HEIGHT OF AN OPEN SIDED STRUCTURE OR GAZEBO THAT IS PLACED WATERWARD OF THE TOP OF SLOPE IS NOT PERMITTED TO EXCEED ONE STORY WITH A MAXIMUM HEIGHT OF 15 FEET MEASURED FROM THE HEIGHT OF THE UNDISTURBED LAND WHERE IT IS PLACED; 3) DIVISION 6.5.B.6.D(2) TO PERMIT AN ACCESSORY BUILDING WITH 465 SQUARE FEET OF DECK AREA WATERWARD OF THE TOP OF SLOPE WHERE 225 SQUARE FEET OF DECK AREA IS PERMITTED; 4) DIVISION 6.5.B.6.D(2) TO PERMIT A 28 FOOT ACCESSORY BUILDING WHERE THE MAXIMUM HEIGHT OF DECKS WATERWARD OF THE TOP OF SLOPE THAT DO NOT ALTER THE ESTABLISHED SLOPE IS NOT PERMITTED TO EXCEED A MAXIMUM HEIGHT OF 18 FEET MEASURED AT ANY POINT ALONG THE DECK; 5) DIVISION 5.2.A.4 TO PERMIT AN ACCESSORY BUILDING WITH A MINIMUM SPACE OF 7 FEET FROM THE RESIDENCE TO THE ACCESSORY BUILDING WHERE A MINIMUM OF 10 FEET FROM THE RESIDENCE IS REQUIRED; AND 6) DIVISION 5.2.A.4 TO PERMIT 2 FEET OF SPACE BETWEEN THE ROOF OVERHANG OF AN ACCESSORY BUILDING AND THE RESIDENCE WHERE A MINIMUM OF 6 FEET IS REQUIRED IN THE SINGLE FAMILY RESIDENCE IN THE RU-1 ZONING DISTRICT ("THE VARIANCE") FOR PROPERTY LOCATED AT 7367 SABAL 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 (the “Town LDC”), Antonio Gestido and Jeanette Cadena (aka Jeanette Cardenas) (the “Applicant”) has applied to the Town of Miami Lakes (the “Town”) for approval of a variance to waive certain requirements of 1) Division 6.5.B.6.C to permit an accessory building with 368 square feet of roofed area where 150 square feet is permitted; 2) Division 6.5.B.6.C to permit a 16 foot accessory building where the maximum height of an open sided structure or gazebo that is placed waterward of the top of slope is not permitted to exceed one story with a maximum height of 15 feet measured from the height of the undisturbed land where it is placed; 3) Division 6.5.B.6.D(2) to permit an accessory building with 465 square feet of deck area waterward of the top of slope where 225 square feet of deck area is permitted; 4) Division 6.5.B.6.D(2) to permit a 28 foot accessory building where the maximum height of decks waterward of the top of slope that do not alter the established slope is not permitted to exceed a maximum height of 18 feet measured at any point along the deck; 5) Division 5.2.A.4 to permit an accessory building with a minimum space of 7 feet from the residence to the accessory building where a minimum of 10 feet from the residence is required; and 6) Division 5.2.A.4 to permit 2 feet of space between the roof overhang of an accessory building and the residence where a minimum of 6 feet is required in the single family residence in the RU-1 zoning district (the “Variance”) for property located at 7367 Sabal Drive, Miami Lakes, Florida Folio #32-2023-008-0880, legally described as Lot 42, Block 31 of MIAMI LAKES SECTION SEVEN according to the Plat thereof recorded in Plat Book 84 Page 34 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 October 16, 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 approval of the Variance with conditions 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; 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 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 for the:

- 1) accessory building with 368 square feet of roofed area is hereby approved with conditions; and
- 2) 16 foot accessory building where the maximum height of an open sided structure or gazebo that is placed waterward of the top of slope is not permitted to exceed one story with a maximum height of 15 feet measured from the height of the undisturbed land is hereby approved with conditions; and

- 3) accessory building with 465 square feet of deck area waterward of the top of slope is hereby approved with conditions; and
- 4) 28 foot accessory building where the maximum height of decks waterward of the top of slope that do not alter the established slope is not permitted to exceed a maximum height of 18 feet measured at any point along the deck is hereby approved with conditions; and
- 5) an accessory building with a minimum space of 7 feet from the residence to the accessory building is hereby approved with conditions; and
- 6) 2 feet of space between the roof overhang of an accessory building and the residence is hereby approved with conditions.

Section 4. Conditions.

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

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 gazebo and deck location shall be in accordance with the submitted "Boundary Survey" for 7367 Sabal Drive, Miami Lakes, Florida, as prepared by Eduardo Ensenat Surveying, Inc., Registered Land Surveyor State of Florida, No. 4613, Job No. 2007-45, and consisting of 1 sheet. The approved gazebo plans shall be substantially in accordance with the plans submitted for the hearing entitled Proposed Variance Request for Tony and Jeanette Gestido for property located at 7367 Sabal Drive, Miami Lakes, FL., consisting of sheets SP-1 and A-1 prepared by Luis LaRosa Architects, Inc., dated, signed, and sealed August 28, 2007.
3. The Applicant shall not enclose the gazebo and shall not be permitted any additional accessory buildings on the subject property.
4. The Applicant shall record this Resolution in the Official Records of Miami-Dade County, Florida and shall return a copy of the recorded Resolution to the Town Clerk before a permit is issued.
5. The Applicant shall obtain a building permit within one year of the date of this approval for the gazebo and deck setbacks approved herein. If a building 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 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 NANCY SIMON, and upon being put to a vote the motion carried 7-0 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 yes

Councilmember Nancy Simon yes

PASSED AND ADOPTED this 16th day of Oct. 2007.

This Resolution was filed in the Office of the Town Clerk on this 19 day of Oct, 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:

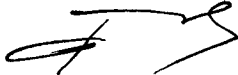
Nancy Stupar
WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
TOWN ATTORNEY



EXHIBIT A

TOWN OF MIAMI LAKES MEMORANDUM

To: Honorable Mayor and Town Council

From: Alex Rey, Town Manager 

Subject: Hearing # - ZH 07-29
Antonio Gestido and Jeanette Cardenas (AKA Jeanette Cadena)
7367 Sabal Drive
Miami Lakes, FL 33014

Date: October 16, 2007

Request:

The applicants, Antonio Gestido and Jeanette Cardenas are requesting the following non-use variances to permit a proposed accessory building and deck in connection with an existing single family residence:

1. A Variance pursuant to Division 3.5 of the Town Code from Division 6.5, of the Town Code for Supplementary Use Regulations, Waterfront Properties:

Variance Request:

To permit a proposed accessory building to the RU-1 residence as per Division 6.5.B.6.c, with 368.00 square feet of roofed area where 150 square feet of roofed area is permitted.

2. A Variance pursuant to Division 3.5 of the Town Code from Division 6.5, of the Town Code for Supplementary Use Regulations, Waterfront Properties:

Variance Request:

To permit a proposed one story accessory building to the RU-1 residence as per Division 6.5.B.6.c, with 16'-0" maximum height, where the maximum height of an open sided structure or gazebo that is placed waterward of the top of slope is not permitted to exceed one story with a maximum height of 15'-0" measured from the height of the undisturbed land where it is placed.

3. A Variance pursuant to Division 3.5 of the Town Code from Division 6.5, of the Town Code for Supplementary Use Regulations, Waterfront Properties:

Variance Request:

To permit a proposed accessory building deck to the RU-1 residence as per Division 6.5.B.6.d.(2), with 465.00 square feet of deck area waterward of the top of slope where 225 square feet of deck area is permitted.

4. A Variance pursuant to Division 3.5 of the Town Code from Division 6.5, of the Town Code for Supplementary Use Regulations, Waterfront Properties:

Variance Request:

To permit a proposed accessory building deck to the RU-1 residence as per Division 6.5.B.6.d.(2), with a 28" maximum height, where the maximum height of decks waterward of the top of slope that do not alter the established slope is not permitted to exceed a maximum height of 18" measured at any point along the deck.

5. A Variance pursuant to Division 3.5 of the Town Code from Division 5.2, of the Town Code for Allowable Encroachments into the Required Yards and Exceptions to the Maximum Permitted Heights, Accessory Buildings:

Variance Request:

To permit a proposed accessory building to the RU-1 residence as per Division 5.2.A.4., detached a minimum of 7' from the residence where accessory buildings detached a minimum of 10' from the residence are permitted.

6. A Variance pursuant to Division 3.5 of the Town Code from Division 5.2, of the Town Code for Allowable Encroachments into the Required Yards and Exceptions to the Maximum Permitted Heights, Accessory Buildings:

Variance Request:

To permit a proposed accessory building to the RU-1 residence as per Division 5.2.A.4., detached a minimum of 2' from roof overhangs where accessory buildings detached a minimum of 6' from roof overhangs are permitted.

Applicable Code Section:

Request #1, #2, #3 & #4 Division 6.5 Waterfront Properties

B. Development and Use Restrictions

6. The placement of the following accessory improvements and landscaping shall be permitted waterward of the top of slope on a lot, parcel or tract, subject to the following conditions:

c. Open Sided Structures, Gazebos

- (1) Only one open sided structure shall be permitted waterward of the top of slope but landward of the water's edge, subject to compliance with the side setback requirements for decks in this section and accessory building lot coverage requirements of the zoning district in which the structure is located; provided, however, the rear setback requirement from the water's edge shall be zero (0) feet. In no event shall an open sided structure or gazebo that is placed waterward of the top of slope exceed fifteen (15) feet in height, measured from the height of the undisturbed land where it is placed, nor shall it exceed 150 square feet in area. Open sided structures, 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.

d. Steps and Decks

- (1) At grade steps no wider than four (4) feet, and leading from the top of the slope or tie line towards the lake, dock, open sided structure, gazebo or deck, shall be permitted waterward of the top of slope and landward of the water's edge.
- (2) Decks that do not alter the established slope by more than eighteen (18) inches at any point along the deck, with a maximum size of 225 sq. ft. per lot or parcel, including the footprint of a gazebo, shall be permitted waterward of the top of slope. The deck area shall be set back a minimum of 7.5' from the interior side property lines and 15' from a side facing a street and subject to all lot coverage requirements for impervious area contained else where in this code.
(Attachment A: Division 6.5)

Request #5 & #6

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'. (Attachment B: Division 5.2)

Background: *Folio No. 32-2023-008-0880*

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:

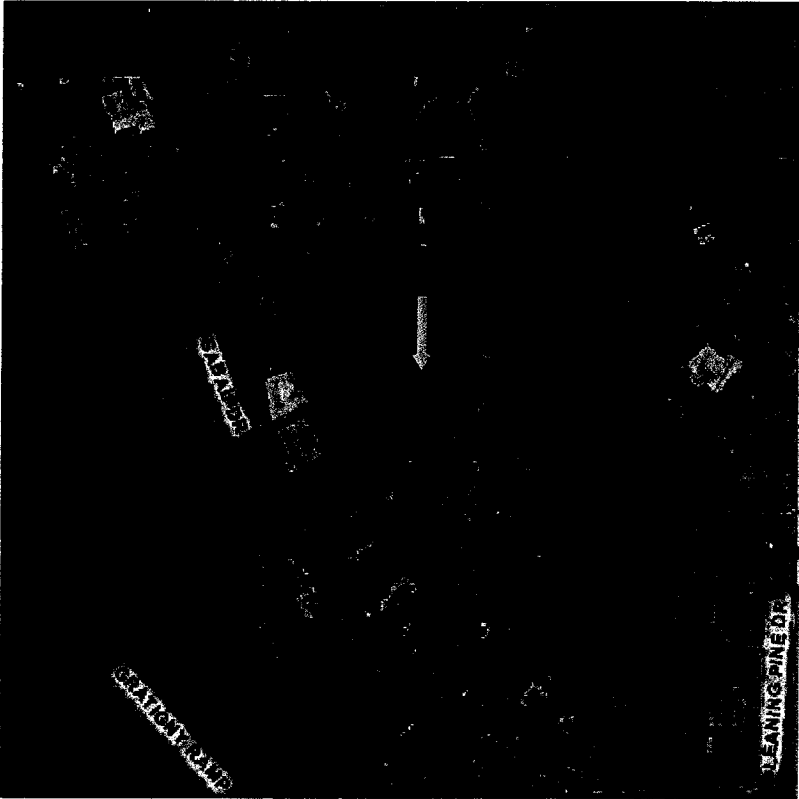
North: Low Density Residential; (RU-1)
East: Low Density Residential; (Lake)
South: Low Density Residential; (RU-1)
West: Low Density Residential; (RU-1)

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 residential parcel and is located within a fully developed residential subdivision. The applicant's property is a one story, 3 bedroom, 2 bath residence located on the north side of Sabal Drive. The residence as per County Tax Assessors records contains approximately 2,483 sq. ft and was constructed in 1968. A Gazebo accessory building as shown on the enclosed plans is proposed to be situated on the northwest corner of the subject property.

Subject Property Location Map:



Open Violations / Zoning History:

There is one open permit (B2007-2459 for the new home), and no violations on the subject property.

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 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 permitted.

Proposal:

The applicant is proposing to permit a gazebo accessory building with 368 square feet of roofed area and a maximum height of 16'-0". Also the gazebo is proposed with a deck area measuring a total of 465 square feet constructed at a height of 28 inches from the established slope where the maximum height of decks waterward of the top of slope that do not alter the established slope is not permitted to exceed a maximum height of 18" measured at any point along the deck. (See Attachment C)

The gazebo will provide additional outdoor living space for the applicant. The Land Development Code RU-1 zoning requirements as per Ordinance 04-63 for the Town of Miami Lakes provides that an accessory building to the single family residence shall be permitted with a maximum height of fifteen (15'-0") feet, and shall not exceed one-hundred fifty (150) square feet of roofed area including roof overhangs nor shall the deck area of a deck waterward of the top of slope exceed 225 square feet. The gazebo will be comprised of an open sided seating area and wet bar to be detached a minimum of 7' from the residence where accessory buildings detached a minimum of 10' from the residence are permitted, and detached a minimum of 2' from roof overhangs where accessory buildings detached a minimum of 6' from roof overhangs are permitted. This application will allow the subject oversized gazebo accessory building to be permitted situated closer than permitted to the main residence on the northwest corner of the subject property.

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 oversized subject parcel of land is located at 7367 Sabal Drive, with approximately 10,687.5 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 requests 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 proposing to permit an existing gazebo accessory building with 368 square feet of roofed area and a maximum height of 16'-0" as per request #1 and #2. The Land Development Code RU-1 zoning requirements as per Ordinance 04-63 for the Town of Miami Lakes provides that an accessory building to the single family residence shall be permitted with a maximum height of fifteen (15'-0") feet, and shall not exceed one-hundred fifty (150) square feet of roofed area including roof overhangs. Staff notes that the subject property is a waterfront parcel of land located with the rear yard facing the lake shore, and that the proposed gazebo to the single family residence will be located with ample interior side spacing from the interior side property lines where 7'-5" feet minimum setbacks are required (See Attachment A & B: Development Regulations)

The gazebo accessory building will be comprised of an open sided seating area and wet bar on a deck area measuring 465.00 square feet which will be situated beyond the top of slope along side the water's edge. The 465.00 square foot deck area is constructed at a height of 28 inches from the established slope where a deck height of 18 inches is permitted. This application will allow the subject oversized gazebo to be permitted as proposed on the southeast corner of the subject property

The approval of this application will allow the above mentioned proposed accessory building and deck to this single family residence which would provide additional outdoor living space for the residents. Staff is of the opinion that the gazebo accessory building request should be approved provided that it remain open and that no further accessory buildings be permitted on the subject site. The gazebo's impact is diminished due to the over-sized lot's waterward location, and proposed interior side spacing which diminishes the impact to nearby properties. The Gazebo is proposed at a size of 368 square feet which comprises approximately 19.2% lot coverage of the required rear yard (75'x25 '= 1,875 square foot rear yard) where a typical RU-1 required rear yard would be allowed up to 20% lot coverage for accessory structures. Additionally, staff feels that the requested height variance to permit 16'-0" where 15'-0" required is minor and should be approved. The impact to surrounding properties is further minimized due to the fact that the rear yard faces the lake shore. Therefore approval of request #1 for the additional size to allow 242 square feet of roof area including roof overhangs, where 150 square feet of roof area is permitted and request #2 for the 16'-0" height is recommended, along with Request #3 & #4 for the deck area 368 square feet in size where 225 square feet in size is permitted, and the deck height of 28 inches where a maximum deck height of 18 inches is permitted is also recommended. Additionally, request #5 and #6 which would allow the gazebo to be detached a minimum of 7' from the residence

where accessory buildings detached a minimum of 10' from the residence are permitted, and detached a minimum of 2' from roof overhangs where accessory buildings detached a minimum of 6' from roof overhangs are permitted are also recommended for approval. This application will allow the subject over sized gazebo accessory building to be permitted situated closer than permitted to the subject main residence on the northwest corner of the subject property. Staff notes that this application with the proposed setbacks would be compatible with the area minimizing aural and visual impact on the adjacent properties while affording the applicant reasonable use of this land.

The variance requests based on practical difficulty are recommended, and would do substantial justice to the applicant as well as to other property owners in the district, a lesser relaxation is justified in order to give substantial relief. Accordingly, staff recommends approval of the subject application with conditions.

Recommendation: Approval with Conditions

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 gazebo and deck location, shall be in accordance with the plans submitted for the hearing entitled "Boundary Survey" for 7367 Sabal Drive, Miami Lakes Fl., as prepared by Eduardo Ensenat Surveying, Inc., Registered Land Surveyor State of Florida, No. 4613, Job No. 2007-45, and consisting of 1 sheet. The approved gazebo plans shall be substantially in accordance with the plans submitted for the hearing entitled Proposed Variance Request for Tony and Jeanette Gestido for property located at 7367 Sabal Drive, Miami Lakes, Fl.; Consisting of Sheets SP-1 and A-1 prepared by Luis LaRosa Architects, Inc., dated signed and sealed August 28, 2007; Approving the requested single family residence, one-storey gazebo accessory building with a maximum height of sixteen feet (16'-0"), and roof area including roof overhangs of 368 square feet.
3. The applicant shall not enclose the gazebo and shall not be permitted any additional accessory buildings on the subject property.
4. The applicant shall record the Resolution in the Official Records of Miami-Dade County, Florida and shall return a copy of the recorded Resolution to the Town Clerk before a permit is issued for the gazebo and deck.

5. The applicant shall obtain a building permit within one year of the date of this approval for the gazebo and deck at the setbacks approved herein. If a building 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 6.5 WATERFRONT PROPERTIES

This division shall govern the placement of accessory improvements and landscaping waterward of the top of the slope or tie line in the rear or side yards of lakefront or canal front properties. This division shall not apply to the placement of accessory improvements landward of the top of the slope of such lakes or canals, which are permitted as accessory structures and uses otherwise under this Code. This division shall also apply to improvements into lakes or canals which are privately or publicly owned or maintained. No permit shall be issued for improvements into a lake or canal until the applicant receives approval from the owner of the portion of the lake or canal or the governmental authority or homeowners association having jurisdiction over the portion of the lake or canal where the proposed improvements will be constructed.

B. Development and Use Restrictions

1. In all zoning districts, allowable structures and improvements waterward of the top of the slope or waterward of a bulkhead on a lake or canal shall require approval through the Site Plan Review process.
2. No powerboat or other mechanically powered water craft or device propelled by anything other than manpower, sail or 12 volt electric trolling motor shall be used or operated on a privately owned lake. Where a lake abuts a body of water designated by a governmental authority to be within the geographical limits of or defined as a canal, power boats or mechanically powered craft are permitted.
3. Shoreline contours and established slopes of any lake or canal and the lots above or below water may not be changed or modified with the exception of interlocking block, concrete, wood or similar material bulkheads or decks as permitted in this division.
4. Townhouse properties that have side privacy walls extending past the residence towards the lake may construct decks between the walls that modify the established slope.
5. No lot shall be increased in size by filling in the water upon which it abuts.
6. The placement of the following accessory improvements and landscaping shall be permitted waterward of the top of slope on a lot, parcel or tract, subject to the following conditions:
 - a. Docks
 - (1) Docks shall either be floated or be placed on pilings at right angles to the water's edge or shoreline, except as otherwise provided herein.

- (2) The width of all docks on a single lot, parcel or tract collectively shall not exceed thirty (30) percent of the lot's width at the water's edge. However, a dock that is placed parallel to the lot and that does not extend more than six (6) feet beyond the water's edge may exceed 30% of the lot's width but may not encroach into the required side setbacks for docks in this section.
- (3) No dock shall project past the water's edge more than one-half (1/2) the length of the lot's shoreline frontage as measured at the water's edge, or twenty (20) percent of the lake or canal width at its widest point, whichever is smaller. In no event shall a dock exceed twenty-five (25) feet in length. For purposes of this section, the length shall be the perpendicular dimension measured from the water's edge (the average low ground water elevation) to the farthest point of the dock (including floating docks) extending into the lake.
- (4) Docks in all zoning districts shall be setback 7.5' on interior side property lines and 15' on side property lines facing a street.
- (5) Only one (1) dock shall be permitted for each principal building on the subject lot, parcel or tract.
- (6) Enclosed or roofed structures, open sided gazebos shall not be permitted on docks or waterward of the water's edge.

b. Landscaping, Hedges, Rocks, Rip Rap, Bulkheads

- (1) Landscaping or hedges waterward of the top of slope but landward of the water's edge are allowed; however, hedges or mass plantings shall be placed no closer than ten (10) feet from the water's edge. No hedge or mass plantings shall exceed two and a half (2 ½) feet in height waterward of the top of the slope. Fences, wall or rocks arranged to form a fence or wall or objects which restrict access or block views from adjacent properties are not permitted beyond the top of the slope toward the lake, or waterside of the survey tie line.
- (2) A Rip-rap, interlocking block, concrete, wood or similar material bulkhead running parallel to the water's edge is permitted waterward of the top of slope. The bulkhead shall not extend more than one (1) foot below the water's edge and no higher than one (1) foot above the existing grade.

c. Open Sided Structures, Gazebos

- (1) Only one open sided structure shall be permitted waterward of the top of slope but landward of the water's edge, subject to compliance with the side setback requirements for decks in this section and accessory building lot coverage requirements of the zoning district in which the structure is located; provided, however, the rear setback requirement from the water's edge shall be zero (0) feet. In no event shall an open sided structure or gazebo that is placed waterward of the top of slope exceed fifteen (15) feet in height, measured from the height of the undisturbed land where it is placed, nor shall it exceed 150 square feet in area. Open sided structures, 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.

d. Steps and Decks

- (1) At grade steps no wider than four (4) feet, and leading from the top of the slope or tie line towards the lake, dock, open sided structure, gazebo or deck, shall be permitted waterward of the top of slope and landward of the water's edge.
- (2) Decks that do not alter the established slope by more than eighteen (18) inches at any point along the deck, with a maximum size of 225 sq. ft. per lot or parcel, including the footprint of a gazebo, shall be permitted waterward of the top of slope. The deck area shall be set back a minimum of 7.5' from the interior side property lines and 15' from a side facing a street and subject to all lot coverage requirements for impervious area contained else where in this code.

ATTACHMENT B:

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.