

RESOLUTION NO. 07- 583Z

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 4.2.E TO PERMIT A RESIDENCE SETBACK 10.33 FEET FROM THE REQUIRED REAR (WEST) PROPERTY LINE WHERE 25 FEET IS REQUIRED FOR A SINGLE FAMILY RESIDENCE IN THE RU-1 ZONING DISTRICT (THE "VARIANCE") FOR PROPERTY LINE LOCATED AT 7001 TORPHIN PLACE, 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"), Luis LaRosa and Lorena LaRosa (the "Applicant") has applied to the Town of Miami Lakes (the "Town") for approval of a variance to waive Division 4.2.E to permit a residence setback 10.33 feet from the required rear (west) property line where 25 feet is required for a single family residence in the RU-1 zoning district (the "Variance") for property located at 7001 Torphin Place, Miami Lakes, Florida, Folio #32-2014-004-1510 legally described as Lot 50, Block 4 of Miami Lakes Loch Lomond according to the Plat thereof recorded in Plat Book 76 Page 91 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 residence setback 10.33 feet from the required rear (west) property line to allow the trellis and gazebo extension with a maximum height of 18 feet 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, exists, entrances, drainage, walls, fences, landscaping.

2. The approval of the trellis and gazebo extension of the residence shall be in accordance with the submitted "Boundary Survey" and Plans for 7001 Torphin Place, Miami, FL., as prepared by Keri Land Surveying, Inc., Professional Land Surveyor, Registered Land Surveyor State of Florida, No. 5721, Project No. 12142, and consisting of 1 sheet; and Site Plans by Luis LaRosa Architects, Inc., consisting of sheets SP-1, D-1, A-1 thru A-8, dated, signed and sealed on February 23, 2007.
3. The Applicant must obtain a letter from all utility companies concerned approving the encroachment of the paved areas into the utility easement.
4. The Applicant shall maintain and paint the trellis and gazebo extension to match the residence, and shall buffer and screen the trellis and gazebo extension from view by a privacy fence, wall, or two live oak lot trees to be planted along the rear west property line in compliance with Chapter 18-A Landscaping Requirements for lot trees.
5. The Applicant shall not enclose the gazebo and shall not be permitted any additional accessory buildings on the subject property.
6. The Applicant shall record this Resolution in the Official Records of Miami-Dade County, Florida and shall return the a copy of the recorded Resolution to the Town Clerk before a permit is issued.
7. The Applicant shall obtain a building permit within one year of the date of this approval for the trellis and gazebo extension 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.

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.

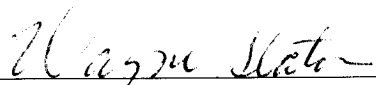
This Resolution shall take effect 30 days following the date it is filed with the Town Clerk. If during that time frame, the decision of the Town Council is appealed as provided in the Town LDC and the Florida Rules of Appellate Procedure, the appeal shall stay the effectiveness of this Resolution until 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	<u>yes</u>
Councilmember Nancy Simon	<u>yes</u>

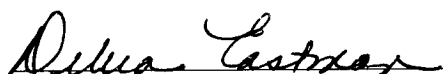
PASSED AND ADOPTED this 16 day of Oct. 2007.

This Resolution was filed in the Office of the Town Clerk on this 19 day of Oct., 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 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 07-33
Luis Larosa and Lorena Larosa
7001 Torphin Place
Miami Lakes, FL 33014

Date: October 16, 2007

Request:

The applicants, Luis Larosa and Lorena Larosa are requesting the following variances submitted in accordance with the Town of Miami Lakes Land Development Code ("Town Code") to permit a proposed single family residence to encroach into the required rear setback:

1. A Variance pursuant to Division 3.5 of the Town Code from Division 4.2.E., of the Town Code for Single Family and Two Family Residential Districts:

Variance Request:

To permit a residence as per Division 4.2.E., setback 10.33 feet from the RU-1 Required Rear (west) property line where 25.00 feet is required.

Applicable Code Section:

Request #1: Division 4.2.E
Development Regulations for Single Family and Two Family Districts

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

(Attachment A: Division 4.2.E.)

Background: Folio No. 32-2014-004-1510

Zoning of Property: RU-1 – Single Family Residential

Future Land Use Designation:

The future land use designation In the Town’s Comprehensive Plan for the Subject property: LD – Low Density Residential and the property is zoned (RU-1 – Single Family Residential)

Surrounding Property:

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

Low Density (LD) - The residential densities allowed in this category shall range from a minimum of 1.0 to a maximum of 6.0 dwelling units per gross acre. This density category is generally characterized by single family housing, e.g., single family detached, cluster, zero lot-line and townhouses. It could include low-rise apartments with extensive surrounding open space or a mixture of housing types provided that the maximum gross density is not exceeded.

Subject Property:

The subject property is a vacant residential parcel and is located within a fully developed subdivision. The applicant’s property is proposed to be is a one story, 4 bedroom, 5 bath residence located on the north side of Torphin Place. The subject property as per County Tax Assessors records is comprised of an approximately 11,500 sq. ft lot. A proposed residence addition as shown on the enclosed plans would be encroaching on the rear west property line.

Subject Property Location Map:



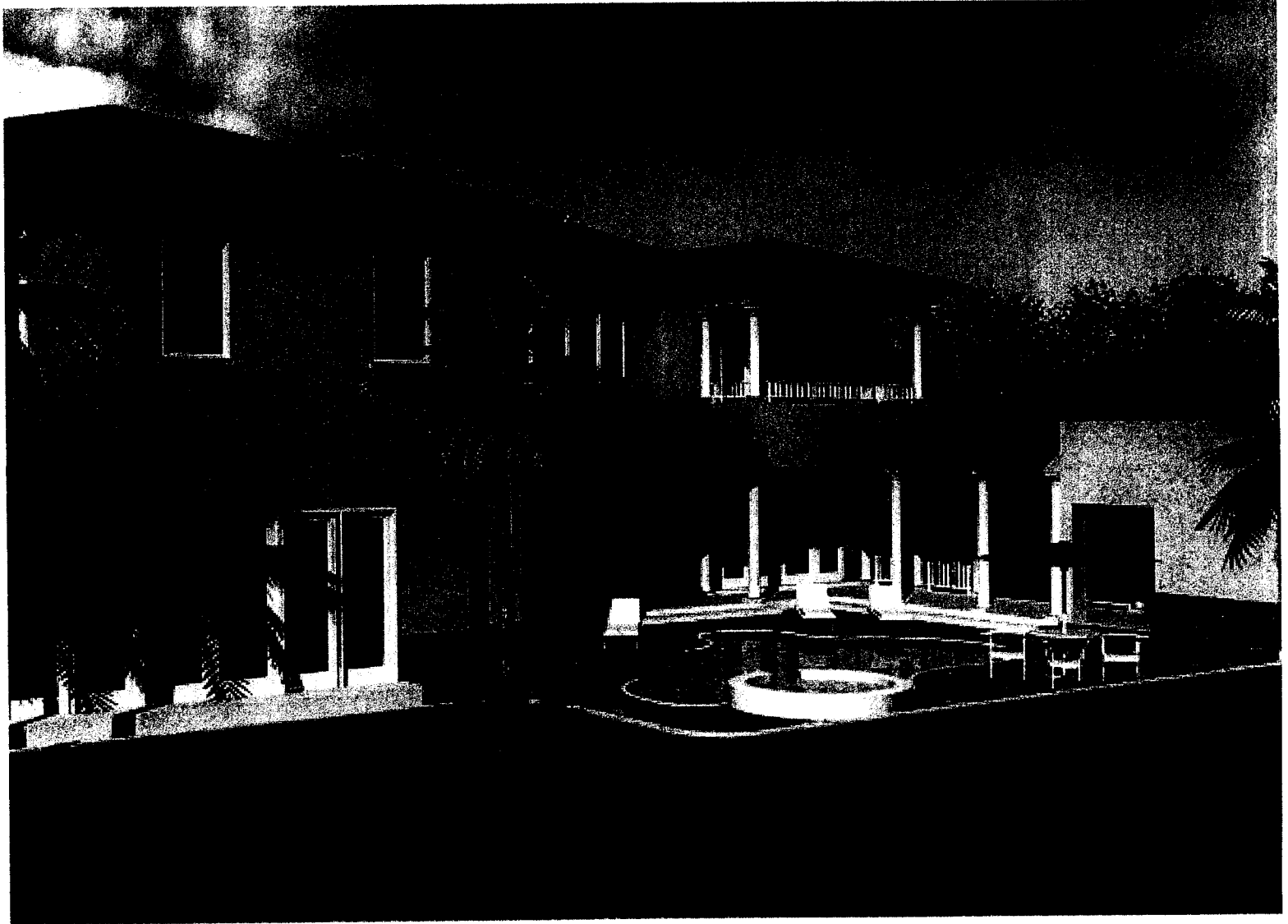
Open Violations / Zoning History:

There are two open permits (B2006-4662 for the new home, and B2007-2909 for the pool), 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 no dwelling shall be located on any lot nearer than 25 feet to the rear property line.



Proposal:

The applicant is proposing to permit a portion of a residence 16.0 feet in width located 10.33 feet from the rear property line. The residential trellis and gazebo extension will provide additional living space for the applicant. This application will allow the residential trellis and gazebo extension to be permitted closer than allowed to the rear (west) property line. The Land Development Code RU-1 zoning requirements as per Ordinance 04-53 for the Town of Miami Lakes provides that the proposed extension to the single family residence shall be permitted setback a minimum of 25 feet from the rear property line. The proposed trellis and gazebo extension to the single family residence setback 10.33 feet from the rear property line does not comply with the required twenty-five foot (25') setback currently in effect. This application is part of the process in terms of assuring that the proposed residence to the subject property is properly permitted. (See Attachment B)

Variance Criteria:

Division 3.5(f) of the Town Code allows the Council to approve non-use variances based upon seven hardship criteria.

Notwithstanding the hardship criteria should the Town Council by extraordinary (5 votes) vote determine that the variance is justified by practical difficulty on the part of the applicant, and no objections from adjoining or directly affected property owners have been filed to the application, a variance may be approved as requested or approved with conditions.

Compliance of request with variance criteria:

- a. Variance Consistent with Authorized Powers. **YES** – The variance request is correctly in front of the Council.
- b. Existence of Special Conditions or Circumstances. **NO** – The property is the same size and shape as other lots in the subdivision.
- c. Conditions Not Created by Applicant. **NO** – The applicant could comply with the requirements to what is permitted by code.
- d. Special Privileges Not Conferred. **NO** – If a hardship variance is granted the property would have a special privilege that is denied by this Land Development Code to other similarly situated lands, buildings, or structures in the same zoning district.
- 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 variance is 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 variance 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 request does 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 parcel of land is located at 7001 Torphin Place, with dimensions of approximately 75.0' x 115.0', in this area the Town's Comprehensive Development Plan (CDP) permits development up to a maximum of 6.0 dwelling units per gross acre. The variance request for the subject residence within this development is consistent with the CDP and does not create any impact on the levels of service (LOS) standards.

The applicant is proposing to permit a portion of a residence 16.0 feet in width located 10.33 feet from the rear property line. The residential trellis and gazebo extension will provide additional living space for the applicant. This application will allow the residential trellis and gazebo extension to be permitted closer than allowed to the rear (west) property line. The Land Development Code RU-1 zoning requirements as per Ordinance 04-53 for the Town of Miami Lakes provides that the proposed extension to the single family residence shall be permitted setback a minimum of 25 feet from the rear property line. The proposed trellis and gazebo extension to the single family residence setback 10.33 feet from the rear property line does not comply with the required twenty-five foot (25') setback currently in effect.

The approval of this application will allow the proposed residence extension which would provide additional living space for the residents. Staff is of the opinion that the subject request should be approved subject to conditions, the trellis and gazebo extension complies with the side street setback and is limited in terms of impact to the surrounding properties.

Staff feels that approval of the 16.0 foot in width encroachment, setback 10.33 feet from the rear property line should be buffered by landscaping and would have minimal impact provided that the trellis and gazebo extension remain open and that the height be limited to maximum of 18.0 feet; though this gazebo is technically part of the residence due to the fact that it connects to the main house through a breezeway, functionally this will serve as an accessory structure. Therefore approval of the 10.33 foot rear yard setback is recommended. Staff notes that this application with the recommended landscape buffering and the restriction that no further accessory buildings be permitted 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 request 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 trellis and gazebo extension location, shall be in accordance with the submitted "Boundary Survey" and Plans for 7001 Torphin Place, Miami Lakes Fl., as prepared by Keri Land Surveying, Inc., Professional Land Surveyor, Registered Land Surveyor State of Florida, No. 5721, Project No. 12142, and consisting of 1 sheet; and Site Plans by Luis LaRosa Architects, Inc., consisting of sheets SP-1, D-1, A-1 thru A-8, dated signed and sealed on February 23, 2007. The approval of the trellis and gazebo extension shall be based on a minimum setback of 10.33 feet from the rear property line, and a maximum height of 18.0 feet.
3. The Applicant must obtain a letter from all utility companies concerned approving the encroachment of the paved areas into the utility easement.
4. The applicant shall maintain and paint the trellis and gazebo to match the residence, and shall buffer and screen the trellis and gazebo extension from view by a privacy fence, wall, or two live oak lot trees to be planted along the rear west property line in compliance with Chapter 18-A Landscaping Requirements for lot trees.
5. The applicant shall not enclose the gazebo and shall not be permitted any additional accessory buildings on the subject property.
6. 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 trellis and gazebo extension.
7. The applicant shall obtain a building permit within one year of the date of this approval for the trellis and gazebo at the setback 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:

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'	15'	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