

RESOLUTION NO. 07- 593 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 6.8.B TO PERMIT THE REPLACEMENT OF AN EXISTING ROOF WITH A METAL ROOF WHERE REPLACEMENT WITH SIMILAR BARREL TILE ROOFING MATERIAL AS ORIGINALLY INSTALLED IS REQUIRED FOR A SINGLE FAMILY RESIDENCE IN THE RU-1 ZONING DISTRICT (THE "VARIANCE") FOR PROPERTY LOCATED AT 14421 LAKE SARANAC AVENUE, 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"), Charles Gutierrez and Belkis Gutierrez (the "Applicant") has applied to the Town of Miami Lakes (the "Town") for approval of a variance to waive certain requirements of Division 6.8.B of the Town LDC to permit the replacement of an existing roof with a metal roof where replacement with similar barrel tile roofing material as originally installed is required for a single family residence in the RU-1 zoning district (the "Variance") for property located at 14421 Lake Saranac Avenue, Miami Lakes, Florida, Folio #32-2024-003-2590 legally described as Lot 31, Block 10 of MIAMI LAKES SECTION ONE according to the Plat thereof recorded in Plat Book 75 Page 35 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 was mailed to the appropriate property owners of record; the public hearing on the Variance was noticed for Tuesday, October 16, 2007 at 7:00 p.m., and was continued to November 20, 2007, 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 recommended 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; 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 replacement of an existing roof with a metal roof is hereby approved with conditions

Section 4. Conditions.

- 1. The Applicant shall submit the roof system for the residence as per the “Boundary Survey” submitted for the hearing for 14421 Lake Saranac Avenue, Miami Lakes, Fl., as prepared by Nova Surveyors, Inc., Registered Land Surveyor State of Florida No. 5204,

Survey No. 97-2296, and consisting of 2 sheets, to meet with the approval of the Building Official, upon the submittal of an application for a permit.

2. The approved roofing system, shall be a system having obtained product approval from Miami Dade County, in accordance with plans submitted for the hearing entitled “Residential Addition & Renovation for Mr. and Mrs. Gutierrez, Site Plan and Roof Framing Plan”, for the subject residence at 14421 Lake Saranac Avenue, Miami Lakes, Florida; consisting of 2 sheets, prepared by Carlos Figueroa, AIA, P.A.; dated, signed, and sealed on March 3, 2007.
3. 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.
4. The Applicant shall obtain a building permit, for all request(s) approved herein, within one (1) year of the date of this approval. 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 in Section 4, if any, 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), if any, 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.

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The foregoing Resolution was approved with conditions by the application of the practical difficulty standard in Division 3.5(f (2) of the Town LDC by Michael Pizzi and Seconded by Mary Collins, and upon being put to a vote the motion carried 6-0 with each Council Member voting as follows:

Mayor Wayne Slaton	<u>yes</u>
Vice Mayor Nancy Simon	<u>yes</u>
Councilmember Roberto Alonso	<u>absent</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember Robert Meador II	<u>yes</u>
Councilmember Michael Pizzi	<u>yes</u>
Councilmember Richard Pulido	<u>yes</u>

PASSED AND ADOPTED this 20 day of November 2007.

This Resolution was filed in the Office of the Town Clerk on this 6 day of December, 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 Serota Helfman Pastoriza
WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
TOWN ATTORNEY



EXHIBIT A

**TOWN OF MIAMI LAKES
MEMORANDUM**

To: Honorable Mayor and Town Council
From: Alex Rey, Town Manager 
Subject: Variance #ZH 07-28
Charles Gutierrez and Belkis Gutierrez
14421 Lake Saranac Avenue
Miami Lakes, FL 33014
Date: October 16, 2007

Request:

The applicants are requesting the following variance submitted in accordance with the Town of Miami Lakes Land Development Code ("Town Code") to permit a proposed new metal roof in connection with a single family residence:

1. Variance pursuant to Division 3.5 of the Town Code from Division 6.8.B., of the Town Code for Roofs. Division 6.8.B requires that all single family or two family roof materials shall be replaced or repaired with similar types of roofing material as originally installed on the residence. Existing gravel or asphalt shingle pitched roofs may be replaced with tile.

Variance Request:

To permit the replacement of an existing roof to the RU-1 residence with a metal roof where replacement with similar barrel tile roofing material as originally installed is required.

Applicable Code Section:

Request #1: Division 6.8 Roofs

- A. All new roofs with a pitch equal to or greater than 2 1/2 shall be constructed of barrel tile or flat cement tile. Other roofing materials may be approved by the Town Council at a public hearing through the site plan review process. However, flat asphalt shingles on pitched roofs are not permitted for new construction or for additions to existing buildings.

- B. All single family or two family roof materials shall be replaced or repaired with similar types of roofing material as originally installed on the residence. Existing gravel or asphalt shingle pitched roofs may be replaced with tile.

Background:

Folio No. 32-2024-003-2590

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:

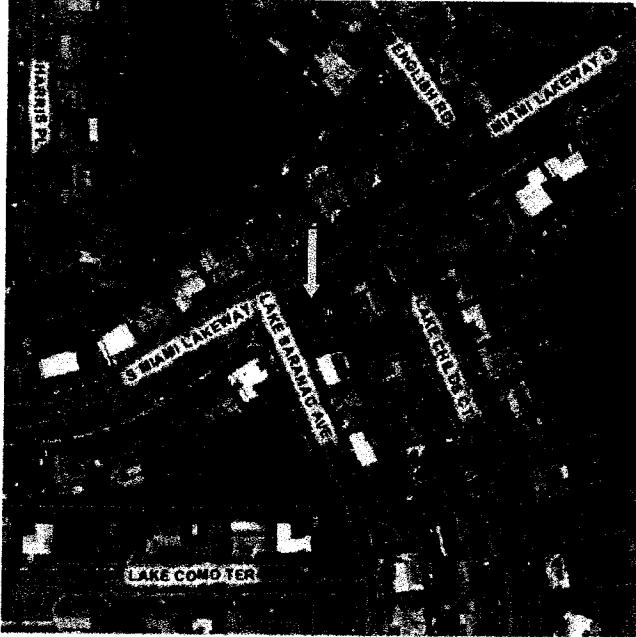
North: Low Density Residential; (RU-1), single family residence
East: Low Density Residential; (RU-1), single family residence
South: Low Density Residential; (RU-1), single family residence
West: Low Density Residential; (RU-1), single family residence

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 located within a fully developed single family residential subdivision. The applicant's property is a one-story, 3 bedroom, 1 bath residence located at on the east side of Lake Saranac Avenue. The residence as per County Tax Assessors records was constructed in 1964 and contains approximately 1,673 square feet.

Subject Property Location Map:



Open Violations / Zoning History:

There is an open permit (2007-0786 for re-roof), 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 permitted only cement or clay tile roofs.

Proposal:

The applicant is proposing to replace a tile roof with a proposed new metal roof on the subject property. The applicant's tile roof had been damaged by hurricane winds and needed to be replaced. The proposed new metal roof system has been selected by the applicant because it affords ease in maintenance, has desirable fire and heat resistive properties and if damaged by hurricane force winds only the affected panel would have to be replaced. This application will allow the installation of the proposed metal roof instead of the Town Code required replacement with similar types of roofing material as per the tile originally installed on the residence.

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 RU-1 zoned parcel of land is located at 14421 Lake Saranac, with an approximately 1,673 size residence. 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 seeking a variance of roof restrictions providing that all single family or two family roof materials shall be replaced or repaired with similar types of roofing material as originally installed on the residence. The applicant's tile roof had been damaged by hurricane force winds and needed to be replaced. The proposed new metal roof system has been selected by the applicant because it affords ease in maintenance, has desirable fire and heat resistive properties, and if damaged by hurricane force winds only the affected panel would have to be replaced.

This application will allow the installation of the proposed metal roof instead of the Town Code required replacement with similar types of roofing material as originally installed on the residence. Staff notes that the replacement metal roof system has been submitted as per a standing metal tile profile.

The approval of this application will allow replacement of the previous tile roof with the above-mentioned metal roof system. Staff is of the opinion that the subject roof request would not be compatible with the barrel tile or flat cement tile as required by Code and as currently in use throughout the Miami Lakes community. The provision to incorporate the desired heat resistive and maintenance characteristics can be incorporated within the barrel roof tile systems with additional insulation or other type of metal roofs that are in keeping with the general barrel tile appearance. Staff notes that this application would be not 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 is not recommended, and would not do substantial justice to the applicant as well as to other property owners in the district, a lesser relaxation is not justified in order to give substantial relief. Accordingly, staff recommends denial of the subject application.

Recommendation: Denial without prejudice

AR:MIC