

RESOLUTION NO. 07- 594 Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, DENYING A VARIANCE SUBMITTED IN ACCORDANCE WITH DIVISION 3.5 OF THE TOWN OF MIAMI LAKES LAND DEVELOPMENT CODE TO WAIVE DIVISIONS 5.9.B.1.a AND 4.2.E TO PERMIT A FENCE SETBACK 0 FEET FROM THE FRONT (EAST) PROPERTY LINE WHERE 20 FEET IS REQUIRED FOR A SINGLE FAMILY RESIDENCE IN THE RU-1Z ZONING DISTRICT (THE "VARIANCE"), FOR PROPERTY LOCATED AT 14784 NW 87th 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 (the "Town LDC"), Alfredo Darna and Amelia Darna (the "Applicant") has applied to the Town of Miami Lakes (the "Town") for approval of a variance to waive requirements of Divisions 5.9.B.1.a and 4.2.E to permit a fence setback 0 feet from the front (east) property line where 20 feet is required for a single family residence in the RU-1Z zoning district (the "Variance"), for property located at 14784 NW 87th Court, Miami Lakes, Florida, Folio #32-2021-021-0170 legally described as Lot 4, Block 3 of WEST LAKES GARDENS ESTATES, according to the Plat thereof recorded in Plat Book 148, Page 43 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 November 20, 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 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 not justified by practical difficulty on the part of the Applicant.

Section 3. Approval/Denial.

The Variance for the fence setback 0 feet from the front (east) property line is hereby 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 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.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

The foregoing Resolution was denied by the application of the standards in Division 3.5(f)(1) and (2) of the Town LDC by Michael Pizzi and Seconded by Nancy Simon, and upon being put to a vote the motion carried 4-2-1 with each Council Member voting as follows:

Mayor Wayne Slaton	<u>no</u>
Vice Mayor Nancy Simon	<u>yes</u>
Councilmember Roberto Alonso	<u>absent</u>
Councilmember Mary Collins	<u>no</u>
Councilmember Robert Meador II	<u>no</u>
Councilmember Michael Pizzi	<u>yes</u>
Councilmember Richard Pulido	<u>no</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:

Mary 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
Thru: Alex Rey, Town Manager 
From: Maria Crowley, Director of Planning and Zoning 
Subject: Hearing Number: ZH-07-38
Applicant: Alfredo Darna and Amelia Darna
Folio: 32-2021-021-0170
Location: 14784 NW 87 Court
Miami Lakes, FL 33018
Date: November 20, 2007

REQUEST(S)

Alfredo Darna and Amelia Darna (the "Applicant") are requesting the following variance submitted in accordance with the Town of Miami Lakes Land Development Code ("Town Code") to permit an existing fence in connection with a single family residence:

1. A Variance pursuant to Division 3.5 of the Town Code from Divisions 4.2.E and 5.9.B.1.a, of the Town Code for Single Family and Two Family Residences; Location Restrictions: No fences, walls or gates shall be permitted within a required front yard or side yard facing a street. Fences in RU-1Z shall be setback a minimum of twenty (20) feet from the front property line in order to comply with the front yard setback requirement.

Variance Request:

To permit a fence setback zero (0) feet from the RU-1Z required front (east) property line where twenty (20) feet is required.

APPLICABLE CODE SECTION(S)

Request #1:

Division 4.2.E Development Regulations for Single Family (Attachment A)

Division 5.9 Fence, Walls and Gates

B. Single Family and Two Family Residences:

1. Location Restrictions:

- a. No fences, walls or gates shall be permitted within a required front yard or side yard facing a street. However, perimeter walls surrounding subdivisions which are approved through the site plan review process are permitted along sides facing a street or rear yards facing a street.

Complete Copy of Division 5.9 (Attachment B)

SUMMARY OF PROPOSAL AND RECOMMENDATION

The applicant is proposing to legalize an existing decorative fence within the required front yard, setback zero (0) feet where a twenty (20) feet setback is required. (See **Exhibit 1** Pictures of the subject property)

Staff Recommendation: Denial Without Prejudice of **Request #1.**

BACKGROUND

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

Future Land Use Designation: Low Density Residential

Low Density Residential (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.

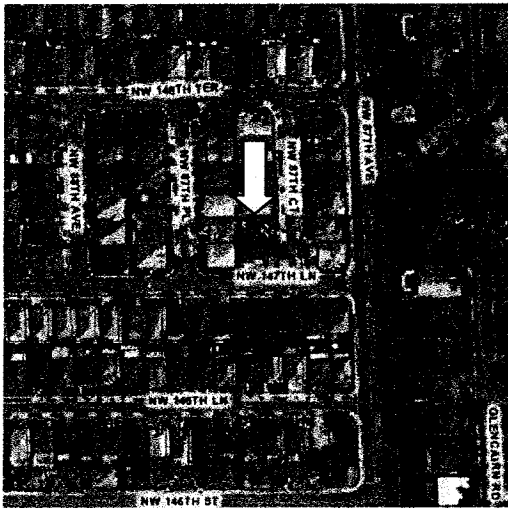
Subject Property:

The subject property is a residential parcel and is located within a fully developed subdivision. The applicant's property is a two stories, 4 bedrooms, 3 baths residence located on the north side of NW 147th Lane. The subject property as per County Tax Assessors records was constructed in 1996 and contains approximately 2,754 square feet on a 5,708 square feet lot. An existing decorative fence shown on the attached survey and pictures is situated on the southeast corner of the subject property.

Surrounding Property:

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

Subject Property Location Map:



Open Building Permit(s) / Open Code Compliance Violation(s) / Zoning History:

There is an open Building Permit for the subject property which was issued on May 4, 2007, Permit Number B2007-1583 for iron work for fence. There is an open Code Compliance Warning of Violation which was issued on March 1, 2007, Case Number C2007-0177 for the construction of an iron and stucco fence on the front of the property and adding iron spikes to the concrete fence on the south side of property without first obtaining a Building Permit.

Typical Deed Restrictions Summary:

The following deed restrictions 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 fence, wall or other enclosure shall be erected, placed, or altered within twenty-five (25) feet of the front line, and in the case of a corner lot, within the building setback area for the side yard adjoining the street, of any lot.

VARIANCE CRITERIA

Division 3.5(f) of the Town Code allows the Council to approve non-use variances based upon seven (7) hardship criteria.

Notwithstanding the hardship criteria should the 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.	<u>Variance Consistent with Authorized Powers</u>	The variance requests are correctly in front of the Council.	YES
b.	<u>Existence of Special Conditions or Circumstances</u>	The property is not the same size and shape as other lots in the subdivision.	YES
c.	<u>Conditions Not Created by Applicant</u>	The applicant could comply with the requirements to what is permitted by code.	NO
d.	<u>Special Privileges Not Conferred</u>	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.	NO
e.	<u>Hardship Conditions Exist</u>	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.	NO
f.	<u>Only the Minimum Variance Granted</u>	The requested variances are not necessary to allow the reasonable use of the land, building, or structure.	NO
g.	<u>Not Injurious to Public Welfare or Intent of the Land Development Code</u>	If granted, the variances will not be injurious to the area involved or otherwise detrimental to the public welfare.	YES

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 residential parcel of land is located at 14784 NW 87th Court, with approximately 5,708 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 are consistent with the CDP and do not create any impact on the Levels of Service (LOS) standards.

The approval of this application will allow the legalization of a decorative fence to be located zero (0) feet from the front property line within a ten (10) feet wide utility easement. Front yard fences are required to meet a front yard setback of twenty (20) feet. The subject fence is a railing style fence with minimal impact due to the fact that it is situated at the midpoint of a circular drive with approximately eleven (11) feet in length.

Staff is of the opinion that the subject request should be denied based on the prominent corner location of the subject fence, and impact on the utility easement, as well as to surrounding properties. Although staff notes that the applicant has indicated the need for the fence in terms of protection, and that the fence is an open railing style, staff is not supportive and feels that the typical Miami Lakes pattern of not permitting a fence within the required front yard should be maintained. Thus the subject application would 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 AND CONDITION(S)

Recommendation: Denial Without Prejudice of **Request #1.**

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		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
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

ATTACHMENT B**Division 5.9 Fence, Walls and Gates****A. All Districts****1. Appearance:**

- a. The frame work or structural supports for any permitted fence, wall or enclosure shall face the interior of the lot; or in the case of a double faced fence, wall or enclosure, it shall have an identical design on both sides, so that the exterior of such improvement shall have a finished appearance. Each side of a CBS wall shall be completely finished with stucco and paint. Each side of a decorative masonry wall shall be completely painted. Chain link fences must be either vinyl coated or covered by a hedge. Slats of vinyl, plastic or similar material shall not be permitted to be inserted or weaved into the chain link fences.
- b. If a wall or fence is to be placed on a shared property line, consent for access must be obtained from the adjoining property owner(s) prior to finishing the opposite side of the wall. If such consent cannot be obtained, the property owner erecting the wall must present proof that a request for access approval was mailed to every adjacent property owner, by certified mail, return receipt requested, to the mailing address(es) as listed in the most current Miami-Dade County tax roll, and the mailing was returned undeliverable or the adjacent property owner(s) failed to respond to the request within thirty (30) days after receipt. Upon such a showing, the property owner erecting the wall shall not be required to finish the opposite side of the wall.
- c. Barbed wire fences and barbed wire topped fences or walls shall be permitted only in the AU and IU Zoning Districts. When mounted on top of fences or walls such barbed wire must be placed on an angle extension of not more than sixteen (16) inches on top of walls or fences at least eight (8) feet in height. This extension shall contain no more than three (3) strands of barbed wire and shall not extend over official rights-of-way or over property under different ownership. Fences charged with electricity shall not be permitted within the Town limits. Neither shall any wall, fence or similar structure erected in any district contain material or substance such as broken glass, spikes, nails, barbs or similar materials designed to inflict pain or injury on any person or animal.

2. Measurement of Height:

- a. The height of a wall or fence shall be the vertical distance measured from the elevation of the property where the wall or fence is located to the top of the wall or fence. The maximum permitted height of a wall or fence on a property shall be measured from the natural height and contours of the land. Virgin land may not be increased or decreased in elevation to affect the permitted (or required) height of a wall, hedge or fence. A fence or wall shall not exceed the

maximum permitted height when measured from the adjoining property.

- b. Fences, walls, gates or columns not located within the required yards may be constructed up to the maximum permitted height for the primary structures of the zoning district in which the property is located.

3. Corner Visibility:

No structure, hedge, shrub or planting which obstructs sight lines at elevations between two and a half (2.5) and eight (8) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the outer edge of the paved streets extended and a line connecting them at points twenty-five (25) feet from the intersection of the extended street lines. The same height sight-line limitations shall apply on any lot within ten (10) feet from the intersection of a street right-of-way line with the edge of a driveway pavement. No tree shall be permitted to remain within such distances or such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight-lines. Waivers of the corner visibility requirements may be administratively approved by the Public Works Director.

4. Perimeter Walls Surrounding Subdivisions:

- a. Walls surrounding subdivisions and abutting zoned or dedicated right-of-ways shall comply with the Plats Section, 3.8B.16. of this code.
- b. No changes, alterations, or modifications of any kind shall be made to the perimeter wall surrounding a subdivision without the prior written approval of the Town. Exterior surfaces of perimeter walls shall be of uniform colors to be determined by the homeowners association, or by the Town pursuant to color guidelines to be adopted by the Town council, and the perimeter walls shall be maintained by the homeowners association or property owner(s) if an association does not exist.

B. Single Family and Two Family Residences:

1. Location Restrictions:

- a. No fences, walls or gates shall be permitted within a required front yard or side yard facing a street. However, perimeter walls surrounding subdivisions which are approved through the site plan review process are permitted along sides facing a street or rear yards facing a street.
- b. On properties abutting lakefronts, fences or walls are not permitted beyond the top of the slope toward the lake, or waterside of the survey tie line.

2. Height:

- a. Where permitted, the maximum height of all fences, walls or decorative columns located within a required yard shall be 6'. Decorative open see-through type gates and decorative columns that are not more than sixteen (16) inches wide and spaced a minimum of 8' apart, shall be permitted to exceed the maximum permitted height of the wall by 18".
- b. Height between different districts. Where an RU District abuts another district, a fence, wall or hedge on the RU property may be erected or maintained on the common property line of the height permitted in the abutting district.