

RESOLUTION NO. 07- 596 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 DIVISIONS 5.6.A.2 AND 4.2.E TO PERMIT AN ATTACHED CANOPY SETBACK 5 FEET FROM THE 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 16380 NW 91ST COURT, 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"), Nelson and Luisa Grillo (the "Applicant") has applied to the Town of Miami Lakes (the "Town") for approval of a variance to waive requirements of Divisions 5.6.A.2 and 4.2.E to permit an attached canopy setback 5 feet from the 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 16380 NW 91ST Court, Miami Lakes, Florida, Folio #32-2016-002-0590 legally described as Lot 59, Block 1 of ROYAL GARDENS ESTATES according to the Plat thereof recorded in Plat Book 155, Page 4 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 modified approval of the request 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 attached canopy setback 5 feet from the rear (west) property line is hereby approved on a modified basis to allow for 432 square feet of the attached canopy to be set back 17 feet from the rear (west) property line with conditions.

Section 4. Conditions.

- 1. The site plan shall be submitted to and meet the approval of the Building Official, upon the submittal of an application for a permit and/or Certificate of Use and Occupancy. The site plan shall include, but not be limited to, location of structure or structures, exits, entrances, drainage, walls, fences, landscaping.
- 2. The approvals granted herein shall be in accordance with the submitted plans for the hearing entitled "Plan of Survey" for 16380 NW 91st Court, Miami Lakes Florida, as prepared by Mario Prats Jr. & Associates, Inc., Registered Land

Surveyor State of Florida, No. 3332, File No. 17042, and consisting of 1 sheet; and the plans entitled "Patio Addition for Grillo Residence Located at 16380 NW 91st Court, Miami Lakes, Florida," consisting of three (3) sheets and dated August 22, 2007.

3. The Applicant shall not enclose the subject attached canopy.
4. The Applicant shall not be permitted any additional accessory buildings on the subject property.
5. The Applicant shall maintain and paint the attached canopy to match the residence, and shall buffer and screen the canopy extension from view by a privacy fence, wall, or two (2) live oak lot trees to be planted along the rear west property line in compliance with Chapter 18A-Landscaping requirements for lot trees.
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.
7. 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 Mary Collins and Seconded by Robert Meador, and upon being put to a vote the motion carried 5-0-2 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>absent</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:

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 *AR*

From: Maria Crowley, Director of Planning and Zoning *M Crowley*

Subject: Hearing Number: ZH 07-35
 Applicant: Nelson Grillo and Luisa Grillo
 Folio: 32-2016-002-0590
 Location: 16380 NW 91 Court
 Miami Lakes, FL 33018

Date: November 20, 2007

REQUEST(S)

Nelson Grillo and Luisa Grillo (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 canopy attached to a single family residence to encroach into the required rear yard setback:

1. A Variance pursuant to Division 3.5 of the Town Code from Divisions 5.6.A.2 and 4.2.E., of the Town Code for Single Family and Two Family Residential Districts; Canopies attached to the main residence and open on two sides shall not be included in the lot coverage calculations but must comply with the required rear and side setbacks for the main residence.

Variance Request:

To permit an attached canopy as per Division 4.2.E., setback five (5) feet from the RU-1 required rear (west) property line where twenty-five (25) feet is required.

APPLICABLE CODE SECTION(S)

Request #1:

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

Division 5.6 Canopies

- A. Single Family and Two Family Residences:
 2. Required Rear Yard:

Canopies attached to the main residence and open on two sides shall not be included in the lot coverage calculations but must comply with the required rear and side setbacks for the main residence. Detached Canopies in the rear yards shall comply with the setback and lot coverage restrictions for accessory buildings and with the exception of chickee huts as defined in this code may only be constructed of canvas, fabric or vinyl and pipe or CBS construction to match the residence.

Complete Copy of Division 5.6 (Attachment B)

SUMMARY OF PROPOSAL AND RECOMMENDATION

The applicant is proposing to legalize a rear yard attached terrace canopy; the terrace canopy is attached to the main residence and constructed with a wood roof. The L-Shaped canopy is comprised of approximately 720 square feet of roofed area, and is located five (5) feet from the rear property line where twenty-five (25) feet is required. (See **Exhibit 1** Pictures of subject property)

Staff Recommendation:

Modified Approval Subject to Conditions of **Request #1.**

Approval Subject to Conditions on a modified basis to allow for a 432 square feet portion, "the longer leg" of the attached canopy to be setback seventeen (17) feet from the rear property line.

BACKGROUND

Zoning of Property:

RU-1 – 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.

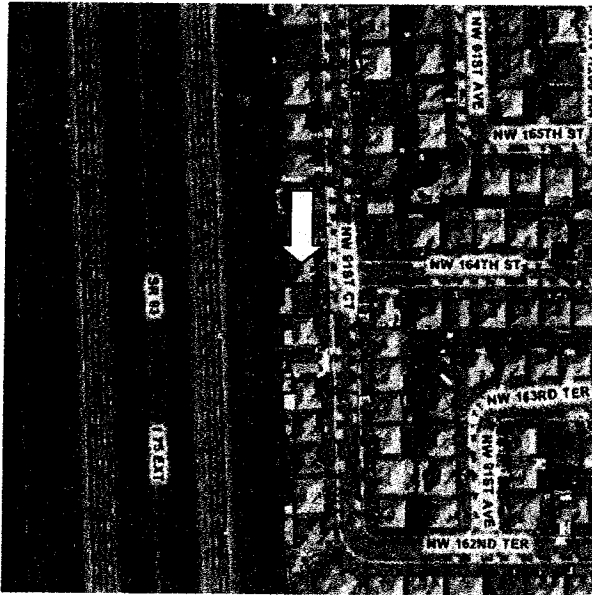
Subject Property:

The subject property is a residential parcel and is located within a fully developed subdivision. The applicant's property is a one story, 3 bedrooms, 2 baths residence located on the west side of NW 91st Court. The subject property as per County Tax Assessors records was constructed in 2000 and contains approximately 1,530 square feet on a 6,000 square feet lot. An existing attached rear terrace canopy as shown on the attached survey and pictures is situated on the rear yard of the subject property.

Surrounding Property:

North: Low Density Residential (LD); Single Family Residential (RU-1)
East: Low Density Residential (LD); Single Family Residential (RU-1)
South: Low Density Residential (LD); Single Family Residential (RU-1)
West: Transportation; (I-75 Expressway)

Subject Property Location Map:



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

There is an open Code Compliance Warning of Violation which was issued on January 18, 2007, Case Number C2007-0045 for the construction of an aluminum/wood roofed terrace on the subject property without a 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 dwelling shall be located on any lot nearer than twenty-five (25) feet to the rear property line.

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.	NO
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 16380 NW 91st Court with dimensions of approximately 60.0' x 100.0'. 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 request is 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 rear yard attached terrace canopy located five (5) feet from the rear property line where a twenty-five (25) feet setback is required. The terrace canopy is attached to the main residence and constructed with a wood roof. The L-Shaped canopy is comprised of approximately 720

square feet of roofed area, the "longer leg" measures (12' x 36') 432 square feet and the "shorter leg" measures (24' x 12') 288 square feet. The shorter leg has a greater impact because the twelve (12) feet wide encroachment is setback five (5) feet from the rear property line, where the longer leg has a thirty-six (36) feet long width which is setback seventeen (17) feet from the rear property line.

Staff is of the opinion that the subject request should be approved on a modified basis subject to conditions. The subject residence rear yard faces the I-75 Interstate right-of-way and is limited in terms of impact to the surrounding properties. Additionally, since the subject residence would be allowed by Code an extension of (4' x 48' = 192 square feet) which maintains a twenty-five (25) feet setback from the rear yard as well as 300 square feet of accessory building totaling an allowable area of 492 square feet, staff feels that approval of the longer leg encroachment totaling 432 square feet, and setback seventeen (17) feet could be supported.

Therefore, modified approval of the subject application is recommended to allow for approval of the longer leg of the attached canopy for a 432 square feet area of canopy setback seventeen (17) feet from the rear yard provided that it should be buffered by landscaping. The shorter leg encroachment totaling 288 square feet is recommended to be denied. Staff notes that this application with the recommended reduced area for the canopy, landscape buffering and the rear yard facing the I-75 Expressway corridor 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 is 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 on a modified basis of the subject application with conditions.

RECOMMENDATION AND CONDITION(S)

Recommendation:

Modified Approval Subject to Conditions of
Request #1.

Approval Subject to Conditions on a modified basis to allow for a 432 square feet portion, "the longer leg" of the attached canopy to be setback seventeen (17) feet from the rear property line.

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 building permit and/or Certificate of Use and Occupancy. The site plan shall include, but not be limited to, location of structure or structures, exits, entrances, drainage, walls, fences, and landscaping.
2. The approval granted herein shall be in accordance with the plans submitted for the hearing entitled "Plan of Survey" for 16380 NW 91 Court, Miami Lakes, Florida as prepared by Mario Prats, Jr. & Associates, Inc., Registered Land Surveyor State of Florida, No. 3332, File No. 17042, and consisting of one (1) sheet; and the plans entitled Patio Addition for Grillo Residence located at 16380 NW 91 Court, Miami Lakes, Florida; consisting of three (3) sheets, dated August 22, 2007.
3. The applicant shall not enclose the subject attached canopy.

4. The applicant shall not be permitted any additional accessory building(s) on the subject property.
5. The applicant shall maintain and paint the attached canopy to match the residence, and shall buffer and screen the canopy extension from view by a privacy fence, wall, or two (2) live oak lot trees to be planted along the rear west property line in compliance with Chapter 18-A Landscaping Requirements for Lot Trees.
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.
7. 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.

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'	<u>15'</u>	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 5.6 Canopies

A. Single Family and Two Family Residences:

1. Required Front and Side Yard:

Detached or attached canopies are not permitted within the required front and side yards.

2. Required Rear Yard:

Canopies attached to the main residence and open on two sides shall not be included in the lot coverage calculations but must comply with the required rear and side setbacks for the main residence. Detached Canopies in the rear yards shall comply with the setback and lot coverage restrictions for accessory buildings and with the exception of chickee huts as defined in this code may only be constructed of canvas, fabric or vinyl and pipe or CBS construction to match the residence.