

RESOLUTION NO. 07-602Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, PERTAINING TO VARIANCE REQUESTS FILED IN ACCORDANCE WITH DIVISION 3.5 OF THE TOWN OF MIAMI LAKES LAND DEVELOPMENT CODE: 1) GRANTING A VARIANCE TO WAIVE DIVISION 6.5.B.6.d.(2) TO PERMIT AN ACCESSORY BUILDING DECK WITH 400 SQUARE FEET OF DECK AREA WATERWARD OF THE TOP OF THE SLOPE WHERE 225 SQUARE FEET OF DECK AREA IS PERMITTED; 2) GRANTING A VARIANCE TO WAIVE DIVISION 5.9.B.1.b TO PERMIT A FENCE 35.5 FEET IN LENGTH PLACED 33 FEET BEYOND THE TOP OF THE SLOPE TOWARD THE LAKE OR WATERSIDE OF THE SURVEY TIE LINE WHERE FENCES OR WALLS ARE NOT PERMITTED BEYOND THE TOP OF THE SLOPE TOWARD THE LAKE OR WATERSIDE OF THE SURVEY TIE LINE; 3) DENYING A VARIANCE TO WAIVE DIVISION 5.7.A.2 TO PERMIT AN EXISTING 7.5 FEET WIDE PAVED WALKWAY WHERE 3 FEET IS PERMITTED WITHIN THE INTERIOR (EAST) SIDE YARD; 4) DENYING A VARIANCE TO WAIVE DIVISION 5.7.A.2 TO PERMIT AN EXISTING 8.93 FEET WIDE PAVED WALKWAY WHERE 3 FEET IS PERMITTED WITHIN THE INTERIOR (WEST) SIDE YARD; 5) GRANTING A VARIANCE TO WAIVE DIVISION 5.7.A.3 TO PERMIT AN EXISTING PAVED REAR DECK SETBACK 3 FEET FROM THE INTERIOR SIDE PROPERTY LINE WHERE 5 FEET IS REQUIRED FROM THE INTERIOR (EAST) SIDE PROPERTY LINE; 6) DENYING A VARIANCE TO WAIVE DIVISION 5.7.A.3 TO PERMIT AN EXISTING PAVED REAR DECK SETBACK 0 FEET FROM THE INTERIOR SIDE PROPERTY LINE WHERE 5 FEET IS REQUIRED FROM THE INTERIOR (WEST) SIDE PROPERTY LINE; AND 7) DENYING A VARIANCE TO WAIVE DIVISION 5.7.A.5 TO PERMIT LOT COVERAGE OF 62% FOR IMPERVIOUS AREAS WHERE 50% IS PERMITTED, FOR PROPERTY LOCATED AT 8432 NW 168TH TERRACE, MIAMI LAKES, FLORIDA IN THE RU-1 ZONING DISTRICT; PROVIDING FINDINGS; PROVIDING FOR GRANTING IN PART AND DENYING IN PART THE REQUESTS COLLECTIVELY REFERRED TO AS THE "VARIANCE;" PROVIDING FOR

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”), Juan Cruz, Yojanet Martinez, Yadelkis C. Martinez, and Santa Cruz (the “Applicant”) has applied to the Town of Miami Lakes (the “Town”) for approval of several variances to waive: 1) Division 6.5.B.6.d.(2) to permit an accessory building deck with 600 square feet of deck area waterward of the top of the slope where 225 square feet of deck area is permitted; 2) Division 5.9.B.1.b to permit a fence 33 feet beyond the top of the slope toward the lake or waterside of the survey tie line where fences or walls are not permitted beyond the top of the slope toward the lake or waterside of the survey tie line; 3) Division 5.7.A.2 to permit an existing 7.5 feet wide paved walkway where 3 feet is permitted within the interior (east) side yard; 4) Division 5.7.A.2 to permit an existing 8.93 feet wide paved walkway where 3 feet is permitted within the interior (west) side yard; 5) Division 5.7.A.3 to permit an existing paved rear deck setback 3 feet from the interior side property line where 5 feet is required from the interior (east) side property line; 6) Division 5.7.A.3 to permit an existing paved rear deck setback 0 feet from the interior side property line where 5 feet is required from the interior (west) side property line; and 7) Division 5.7.A.5 to permit lot coverage of 62% for impervious areas where 50% is permitted (the “Variance”) for property located at 8432 NW 168th Terrace, Miami Lakes, Florida in the RU-1 zoning district; Folio #32-2015-017-0660, and legally described as Lot 11, Block 29 of EIGHT ADDITION TO ROYAL OAKS, according to the Plat thereof recorded in Plat Book 136, Page 58 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, November 20, 2007 at 7:00 p.m. at Miami Lakes Middle School, 6425 Miami Lakeway North, Miami Lakes, Florida 33014 and the hearing was continued to December 18, 2007 at 6:00 p.m.; 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 Requests #1 and #2, denial without prejudice of Requests #3, #4, #6, and #7 and approval subject to conditions of Request #5 as set forth in the Town of Miami Lakes Staff Analysis and Recommendation, on file in the Town of Miami Lakes Clerk's Office, 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 criteria 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 the Variance in part is justified by practical difficulty on the part of the Applicant.

Section 3. Grant / Denial.

The Variance request to permit:

1. an accessory building deck with 600 square feet of deck area waterward of the top of the slope was modified and is hereby granted to allow 400 square feet of deck area waterward of the top of the slope where 225 square feet of deck area is permitted; and
2. the fence 33 feet beyond the top of the slope toward the lake or waterside of the survey tie line was modified and is hereby granted to allow a fence 35.5 feet in length 33 feet beyond the top of the slope toward the lake or waterside of the survey tie line where fences or walls are not permitted beyond the top of the slope toward the lake or waterside of the survey; and
3. the existing 7.5 feet wide paved walkway where 3 feet is permitted within the interior (east) side yard is hereby denied; and
4. the existing 8.93 feet wide paved walkway where 3 feet is permitted within the interior (west) side yard is hereby denied; and
5. the existing paved rear deck setback 3 feet from the interior side property line where 5 feet is required from the interior (east) side property line is hereby granted; and
6. the existing paved rear deck setback 0 feet from the interior side property line where 5 feet is required from the interior (west) side property line is hereby denied; and
7. lot coverage of 62% for impervious areas where 50% is permitted is hereby denied.

Section 4. Conditions.

The Variance(s) are granted subject to the following 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, and landscaping.
2. The approvals granted herein shall be in accordance with the submitted plans for the hearing entitled "Boundary Survey" for 8432 NW 168 Terrace, Miami Lakes, Florida as prepared by Unitec Surveying, Inc., Registered Land Surveyor State of Florida, No. 3590, Job No. 06-71223, and consisting of two sheets, dated September 5, 2006.

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 adopted by motion to grant in part with conditions and deny in part the Applicant's Variance as provided in Sections 2 and 3 herein by Councilmember Roberto Alonso and seconded by Councilmember Nancy Simon, by a vote of 5-0, with each Councilmember voting as follows:

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

PASSED AND ADOPTED this 18th day of December 2007.

This Resolution was filed in the Office of the Town Clerk on this 7th day of February, 2008.

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:

MSO
WEISS SEROTA HELLMAN PASTORIZA
COLE & BONISKE, P.L.
TOWN ATTORNEY