

RESOLUTION NO. 08- 038 Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, PERTAINING TO SEVERAL VARIANCE REQUESTS FILED IN ACCORDANCE WITH DIVISION 3.5 OF THE TOWN OF MIAMI LAKES LAND DEVELOPMENT CODE (THE "TOWN LDC"): 1) DENYING A VARIANCE TO WAIVE DIVISIONS 5.6.A.2 AND 4.2.E OF THE TOWN LDC TO PERMIT AN EXISTING ATTACHED CANOPY CONSTRUCTED OF ALUMINUM WHERE CANOPIES MAY ONLY BE CONSTRUCTED OF CANVAS, FABRIC OR VINYL, AND PIPE OR CBS CONSTRUCTION TO MATCH THE RESIDENCE; 2) DENYING A VARIANCE TO WAIVE DIVISIONS 5.6.A.2 AND 4.2.E OF THE TOWN LDC TO PERMIT AN EXISTING ATTACHED CANOPY SETBACK 17.2 FEET FROM THE REAR (SOUTH) PROPERTY LINE WHERE A 25 FOOT SETBACK IS REQUIRED; 3) GRANTING A VARIANCE TO DIVISION 5.2.A.1 AND 4.2.E OF THE TOWN LDC TO PERMIT AN EXISTING ACCESSORY BUILDING WITH 169 SQUARE FEET OF ROOF AREA WHERE AN ACCESSORY BUILDING EXCEEDING 150 SQUARE FEET OF ROOFED AREA, INCLUDING ROOF OVERHANGS, IS NOT PERMITTED; AND 4) GRANTING A VARIANCE TO DIVISIONS 5.2.A.3 AND 4.2.E OF THE TOWN LDC TO PERMIT AN EXISTING ACCESSORY BUILDING ROOF OVERHANG SETBACK 3.5 FEET FROM THE INTERIOR (WEST) SIDE PROPERTY LINE WHERE 4 FEET IS REQUIRED, FOR PROPERTY LOCATED AT 8794 NW 163RD TERRACE, MIAMI LAKES, FLORIDA IN THE RU-1B 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"), Allen D. Avila and Carmen Mendoza (the "Applicant") has applied to

the Town of Miami Lakes (the "Town") for approval of several variances to waive: 1) Divisions 5.6.A.2 and 4.2.E of the Town LDC to permit an existing attached canopy constructed of aluminum where canopies may only be constructed of canvas, fabric or vinyl, and pipe or CBS construction to match the residence; 2) Divisions 5.6.A.2 and 4.2.E of the Town LDC to permit an existing attached canopy setback 17.2 feet from the rear (south) property line where a 25 foot setback is required; 3) Division 5.2.A.1 and 4.2.E of the Town LDC to permit an existing accessory building with 169 square feet of roof area where an accessory building exceeding 150 square feet of roofed area, including roof overhangs, is not permitted; and 4) Divisions 5.2.A.3 and 4.2.E of the Town LDC to permit an existing accessory building roof overhang setback 3.5 feet from the interior (west) side property line where 4 feet is required (the "Variance") for property located at 8794 NW 163rd Terrace, Miami Lakes, Florida, in the RU-1B zoning district, Folio #30-2016-002-0760, legally described as Lot 7 Block 2 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 was mailed to the appropriate property owners of record; the public hearing on the Variance was noticed for Tuesday, March 18, 2008, at 6:00 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 subject to conditions of Requests #3 and #4; and denial without prejudice of Requests #1 and #2 as set forth in the Town of Miami Lakes Staff Analysis and Recommendation, a copy of which is 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
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- 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 in part is justified by practical difficulty on the part of the Applicant by extraordinary (5) votes of the Town Council.

Section 3. Grant//Denial.

The Variance request to permit:

1. an existing attached canopy constructed of aluminum where canopies may only be constructed of canvas, fabric or vinyl, and pipe or CBS construction to match the residence is hereby denied.
 2. an existing attached canopy setback 17.2 feet from the rear (south) property line where a 25 foot setback is required is hereby denied.
 3. an existing accessory building with 169 square feet of roof area where an accessory building exceeding 150 square feet of roofed area, including roof overhangs, is not permitted is hereby granted.
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4. an existing accessory building roof overhang setback 3.5 feet from the interior (west) side property line where 4 feet is required is hereby granted.

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 plan for the hearing entitled "Boundary Survey" for 8794 NW 163 Terrace, Miami Lakes, Florida, as prepared by Caribbean Land Surveyors, Inc., Registered Land Surveyor State of Florida, No. 5505, Order No. 0712-40, and consisting of one (1) sheet.
3. The Applicant shall buffer the accessory building from view by planting two lot trees along the rear south property line in keeping with Landscape Code 18-A requirements.
4. 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.
5. 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, 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 contained in 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 as provided herein by Councilmember MARY COLLINS and seconded by Councilmember Roberto Alonso, by a vote of 7-0 with each Town 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>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 18 day of March 2008.

This Resolution was filed in the Office of the Town Clerk on this 14 day of April, 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:

Kathryn M. Helfman
WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
TOWN ATTORNEY