

RESOLUTION NO. 08- 690 Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, PERTAINING TO REQUESTS FILED BY JOSE E. LEMUS IN ACCORDANCE WITH DIVISIONS 3.4, 4.3(e)2.d AND 3.5 OF THE TOWN OF MIAMI LAKES LAND DEVELOPMENT CODE (THE "TOWN LDC"); APPROVING 1) A SITE PLAN FOR AN ENCLOSED AIR-CONDITIONED SPACE; 2) GRANTING A VARIANCE REQUEST TO WAIVE DIVISION 4.3(d)17.a OF THE TOWN LDC TO PERMIT A PROPOSED ATTACHED CANOPY CONSTRUCTED OF CBS CONSTRUCTION TO MATCH THE RESIDENCE; 3) GRANTING A VARIANCE TO WAIVE DIVISION 4.3(d)17.c OF THE TOWN LDC TO PERMIT A PROPOSED ATTACHED CANOPY EXTENDING ABOVE THE HEIGHT OF THE PATIO WALLS; 4) GRANTING A MODIFIED VARIANCE TO DIVISION 6.5(b)6.c(1) OF THE TOWN LDC TO PERMIT A PROPOSED ATTACHED CANOPY WITH A TOTAL OF 225 SQUARE FEET IN AREA WATERWARD OF THE TOP OF SLOPE BUT LANDWARD OF THE WATER'S EDGE 5) DENYING A VARIANCE TO DIVISION 6.5(b)6.d(2) OF THE TOWN LDC TO PERMIT A TOTAL OF 594.25 SQUARE FEET OF PROPOSED DECK AREA WATERWARD OF THE TOP OF SLOPE; 6) DENYING A VARIANCE TO DIVISION 6.5(b)6.b(1) OF THE TOWN LDC TO PERMIT AN EXISTING FENCE 26 FEET BEYOND THE TOP OF THE SLOPE TOWARD THE LAKE, OR WATERSIDE OF THE SURVEY TIE LINE; 7) DENYING A VARIANCE TO DIVISION 4.3(d)19 OF THE TOWN LDC TO PERMIT AN EXISTING ACCESSORY STORAGE SHED WITH 60 SQUARE FEET OF TOTAL AREA; 8) DENYING A VARIANCE TO DIVISION 4.3(d)19 OF THE TOWN LDC TO PERMIT AN EXISTING ACCESSORY STORAGE SHED WITH 8 FEET IN HEIGHT, FOR PROPERTY LOCATED AT 6789 CROOKED PALM LANE, MIAMI LAKES, FLORIDA ZONED RU-TH; PROVIDING FINDINGS; PROVIDING FOR APPROVING WITH CONDITIONS THE SITE PLAN; PROVIDING FOR GRANTING AND DENYING THE VARIANCES; PROVIDING FOR CONDITIONS;

**PROVIDING FOR APPEAL; PROVIDING FOR VIOLATION OF CONDITIONS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Division 3.4 and 4.3(e)2.d of the Town of Miami Lakes Land Development Code (the “Town LDC”), Jose E. Lemus (the “Applicant”) has applied to the Town of Miami Lakes (the “Town”) for approval of a Site Plan for enclosure of air-conditioned space, for property located at 6789 Crooked Palm Lane, Miami Lakes, FL 33014, zoned RU-TH, Folio # 32-2023-006-0290, legally described as Lot 29, Block 1, of MIAMI LAKES LAKE HILDA TOWNHOUSE SECTION, according to the Plat thereof recorded in Plat Book 81, Page 72, of the Public Records of Miami-Dade County, Florida (the “Property”); and

**WHEREAS**, Division 3.4 of the Town LDC sets forth the authority of the Town Council to consider and act upon an application to approve a site; and

**WHEREAS**, pursuant to Division 3.4 of the Town LDC, the Applicant has requested Site Plan approval to enclose and air condition an approximately 100 square foot patio area to provide for a relocated and expanded kitchen/dining area; and

**WHEREAS**, pursuant to Division 3.5 of the Town LDC, the Applicant has applied to the Town for approval of several variances to waive: 2) Division 4.3(d)17.a of the Town LDC to permit a proposed attached canopy constructed of CBS construction to match the residence where canopies covering patios of townhouses shall only consist of a metal frame covered with canvas, vinyl or cloth and be of a uniform size, color, pitch, pattern and design throughout the development or sections of the development; 3) Division 4.3(d)17.c of the Town LDC to

permit a proposed attached canopy extending above the height of the patio walls where supports for attached, open or screened canopies shall not extend past the height or length of the privacy walls; 4) Division 6.5(b)6.c(1) of the Town LDC to permit a proposed attached canopy with a total of 594.25 square feet in area waterward of the top of slope but landward of the water's edge where an open sided structure that is placed waterward of the top of slope shall not exceed 150 square feet in area; 5) Division 6.5(b)6.d(2) of the Town LDC to permit a total of 594.25 square feet of proposed deck area waterward of the top of slope where a maximum of 225 square feet of deck area placed waterward of the top of slope is permitted; 6) Division 6.5(b)6.b(1) of the Town LDC to permit an existing fence 26 feet beyond the top of the slope toward the lake, or waterside of the survey tie line where fences or walls which restrict access or block views from adjacent properties are not permitted beyond the top of the slope toward the lake, or waterside of the survey tie line; 7) Division 4.3(d)19 of the Town LDC to permit an existing accessory storage shed with 60 square feet of total area where sheds larger than 50 sq. ft. are not permitted; 8) Division 4.3(d)19 of the Town LDC to permit an existing accessory storage shed with 8 feet in height where sheds higher than 6 feet are not permitted., (the "Variance") for the Property; 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 21, 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 as to Requests #1, #2, and #3; modified approval subject to conditions as to Request #4, reducing the Canopy width from 13 feet to 9 feet permitting 225 square feet in Canopy area waterward of the top of the slope; denial without prejudice as to Requests #5, #6, #7, and #8 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 3.4 of the Town LDC, the Town Council, having considered the testimony and evidence in the record presented by all parties, finds that the Applicant's request as modified is in the public interest as follows:
  - (a) The Request is consistent with the Comprehensive Plan and the purpose and intent of the zoning district in which it is located.
  - (b) The Request is in conformance with all applicable regulations of the zoning district in which it is located.
  - (c) The Request is in conformance with the Town requirements including the design and construction of streets, utility facilities and other essential services.

(d) The Request is consistent with good design standards in respect to all external relationships including but not limited to:

1. Relationship to adjoining properties.
2. Internal circulation, both vehicular and pedestrian.
3. Disposition of open space, use of screening or buffering and preservation of existing natural features including trees.
4. Building arrangements both between buildings in the proposed development and those adjoining the site.

(e) The Request is in conformance with the Town policy in respect to sufficiency of ownership, guarantee for completion of all required improvements and the guarantee for continued maintenance.

2. In accordance with Division 3.5(f)(1) 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; 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.

3. In accordance with Division 3.5(f)(2) of the Town LDC, the Town Council, having considered the testimony and evidence in the record presented by all parties, finds that the balance of the weight of the factors for consideration under practical difficulty does support approval of variance requests #2 and #3, and #4 as modified, as provided in 3.5(f)(2)(a) thru (g) of the Town LDC as follows;

- a. The Town has received written support of the specifically identified variance requests from adjoining property owners;
- b. The variances are compatible with development patterns in the Town;
- c. The essential character of the neighborhood will be preserved;
- d. The variances can be approved without causing substantial detriment to adjoining properties;
- e. The variances will do substantial justice to the property owner as well as to other property owners justifying a relaxation of this Land Development Code to provide substantial relief;
- f. The plight of the applicant is not due to unique circumstances of the property and/or applicant which would render conformity with the strict requirements of the Land Development Code unnecessarily burdensome; and
- g. The special conditions and circumstances which exist are not the result of actions beyond the control of the applicant.

4. In accordance with Division 3.5(f)(2) of the Town LDC, the Town Council, having considered the testimony and evidence in the record presented by all parties, finds that the balance of the weight of the factors for consideration under

practical difficulty does not support approval of variance requests #5, #6, #7 and #8 as modified, as provided in 3.5(f)(2)(a) thru (g) of the Town LDC as follows;

- a. The Town has received written support of the specifically identified variance requests from adjoining property owners;
- b. The variances are not compatible with development patterns in the Town;
- c. The essential character of the neighborhood will not be preserved;
- d. The variances can not be approved without causing substantial detriment to adjoining properties;
- e. The variances will not do substantial justice to the property owner as well as to other property owners justifying a relaxation of this Land Development Code to provide substantial relief;
- f. The plight of the applicant is not due to unique circumstances of the property and/or applicant which would render conformity with the strict requirements of the Land Development Code unnecessarily burdensome; and
- g. The special conditions and circumstances which exist are not the result of actions beyond the control of the applicant.

**Section 3. Grant//Denial.**

1. The Site Plan request, subject to conditions, for the 100 square enclosed air-conditioned space on the Property is hereby approved with conditions.

The Variance request to permit:

2. a proposed attached canopy constructed of CBS construction to match the residence where canopies covering patios of townhouses shall only consist of a metal frame covered with canvas, vinyl or cloth and be of a uniform size, color, pitch, pattern and design throughout the development or sections of the development, is hereby granted.
3. a proposed attached canopy extending above the height of the patio walls where supports for attached, open or screened canopies shall not extend past the height or length of the privacy walls, is hereby granted.

4. a proposed attached canopy with a total of 225 square feet in area waterward of the top of slope but landward of the water's edge where an open sided structure that is placed waterward of the top of slope shall not exceed 150 square feet in area, is hereby granted.
5. a total of 594.25 square feet of proposed deck area waterward of the top of slope where a maximum of 225 square feet of deck area placed waterward of the top of slope is permitted, is hereby denied without prejudice.
6. an existing fence 26 feet beyond the top of the slope toward the lake, or waterside of the survey tie line where fences or walls which restrict access or block views from adjacent properties are not permitted beyond the top of the slope toward the lake, or waterside of the survey tie line, is hereby denied without prejudice.
7. an existing accessory storage shed with 60 square feet of total area where sheds larger than 50 sq. ft. are not permitted, is hereby denied without prejudice.
8. an existing accessory storage shed with 8 feet in height where sheds higher than 6 feet are not permitted, is hereby denied without prejudice.

**Section 4. Conditions.**

1. The site plan shall be submitted to and meet the approval of the Building Official, upon the submittal of a building permit application and/or Certificate of Use / Occupancy. The site plan shall include, but not be limited to, location of structure or structures, exits, entrances, walls, fences, and landscaping.
2. The approvals granted herein shall be in accordance with the submitted plan for the hearing entitled "Boundary Survey" for 6789 Crooked Palm Lane, Miami Lakes, Florida, as prepared by Nova Surveyors Inc., Professional Land Surveyor and Mapper, Registered Land Surveyor State of Florida, No. 2534, Survey No. 8-0000113-1, and consisting of two (2) sheets dated January 2, 2008. The approved plans shall be substantially in accordance with the plans submitted for the hearing, subject to the modifications required herein, entitled Open Terrace and Remodeling for Lemus Residence located at 6789 Crooked Palm Lane, Miami Lakes, Florida; Consisting of sheet (A-1 thru A-6, P-1 and E-1) prepared by Pablo R. Garcia, P.E., dated signed and sealed May 20, 2008. The approval of the attached canopy shall be to permit a maximum 225 square foot canopy area and deck area waterward of the top of slope.



3. The Applicant shall maintain and paint the trellis and canopy to match the residence and not be permitted any additional accessory buildings on the subject property.
4. The Applicant shall comply with all code enforcement actions within 60 days of the effective date of this development approval. Failure to comply with outstanding code enforcement actions within 60 days of the effective date of this development approval will recommence all code enforcement actions.
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 ROBERT MEADOR, by a vote of 4-0 with each Town Councilmember voting as follows:

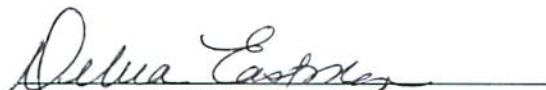
Mayor Michael Pizzi	<u>yes</u>
Vice-Mayor Richard Pulido	<u>absent</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember Robert Meador II	<u>yes</u>
Councilmember Nick Perdomo	<u>absent</u>
Councilmember Nancy Simon	<u>yes</u>
Councilmember	<u>-</u>

PASSED AND ADOPTED this 21st day of Oct. 2008.


This Resolution was filed in the Office of the Town Clerk on this 5 day of November, 2008.

  
\_\_\_\_\_  
MICHAEL PIZZI  
MAYOR

ATTEST:

  
\_\_\_\_\_  
DEBRA EASTMAN, MMC  
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR USE ONLY BY THE TOWN OF MIAMI LAKES:

  
\_\_\_\_\_  
WEISS SEROTA HELFMAN PASTORIZA  
COLE & BONISKE, P.L.  
TOWN ATTORNEY