

RESOLUTION NO. 08- 700 Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, PERTAINING TO SEVERAL VARIANCE REQUESTS FILED BY ROBERTO PEREZ AND OSVALDO SOLER IN ACCORDANCE WITH DIVISION 3.5 OF THE TOWN OF MIAMI LAKES LAND DEVELOPMENT CODE (THE "TOWN LDC"); 1) DENYING A VARIANCE REQUEST TO WAIVE DIVISION 5.8(a)3 OF THE TOWN LDC TO PERMIT AN EXISTING DRIVEWAY SETBACK 1.65 FEET FROM THE INTERIOR (EAST) SIDE PROPERTY LINE; 2) DENYING A VARIANCE REQUEST TO WAIVE DIVISION 5.8(a)3 OF THE TOWN LDC TO PERMIT AN EXISTING DRIVEWAY SETBACK 1.20 FEET FROM THE INTERIOR (WEST) SIDE PROPERTY LINE; 3) GRANTING A MODIFIED VARIANCE TO WAIVE DIVISION 5.8(a)6 OF THE TOWN LDC TO PERMIT AN EXISTING IMPERVIOUS AREA OF 65.5% FOR DRIVEWAYS; 4) DENYING A VARIANCE REQUEST TO WAIVE DIVISION 5.7(a)2 OF THE TOWN LDC TO PERMIT AN EXISTING 4.60 FEET WIDE PAVED WALKWAY WITHIN THE REQUIRED (EAST) SIDE YARD; 5) DENYING A VARIANCE REQUEST TO WAIVE DIVISION 5.7(a)2 OF THE TOWN LDC TO PERMIT AN EXISTING PAVED SIDE YARD DECK SETBACK .40 FEET FROM THE INTERIOR (EAST) PROPERTY LINE; 6) DENYING A VARIANCE REQUEST TO WAIVE DIVISION 5.7(a)2 OF THE TOWN LDC TO PERMIT AN EXISTING 4.54 FEET WIDE PAVED WALKWAY WITHIN THE REQUIRED (WEST) SIDE YARD; 7) DENYING A VARIANCE REQUEST TO WAIVE DIVISION 5.7(a)2 OF THE TOWN LDC TO PERMIT AN EXISTING PAVED SIDE YARD DECK SETBACK .46 FEET FROM THE INTERIOR (WEST) PROPERTY LINE; 8) DENYING A VARIANCE REQUEST TO WAIVE DIVISION 5.7(a)3 OF THE TOWN LDC TO PERMIT AN EXISTING PAVED REAR DECK SETBACK .21 FEET FROM THE INTERIOR (WEST) SIDE PROPERTY LINE; AND 9) GRANTING A MODIFIED VARIANCE TO WAIVE DIVISION 5.7(a)5 OF THE TOWN LDC TO PERMIT AN EXISTING LOT COVERAGE OF 58.7% FOR IMPERVIOUS AREAS, FOR PROPERTY LOCATED AT 8757 NW 139TH STREET,

MIAMI LAKES, FLORIDA IN THE RU-1A 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"), Roberto L. Perez and Osvaldo Soler (the "Applicant") have applied to the Town of Miami Lakes (the "Town") for approval of several variances to waive: 1) Division 5.8(a)3 of the Town LDC to permit an existing driveway setback 1.65 feet from the interior (east) side property line where a 5 foot setback is required; 2) Division 5.8(a)3 of the Town LDC to permit an existing driveway setback 1.20 feet from the interior (west) side property line where a 5 foot setback is required; 3) Division 5.8(a)6 of the Town LDC to permit an existing impervious area of 70.2% for driveways where 60% is permitted; 4) Division 5.7(a)2 of the Town LDC to permit an existing 4.60 feet wide paved walkway, where 3 feet is permitted within the required (east) side yard; 5) Division 5.7(a)2 of the Town LDC to permit an existing paved side yard deck setback .40 feet from the interior (east) property line where a 2 foot setback is required; 6) Division 5.7(a)2 of the Town LDC to permit an existing 4.54 feet wide paved walkway, where 3 feet is permitted within the required (west) side yard; 7) Division 5.7(a)2 of the Town LDC to permit an existing paved side yard deck setback .46 feet from the interior (west) property line where a 2 foot setback is required; 8) Division 5.7(a)3 of the Town LDC to permit an existing paved rear deck setback .21 feet from the interior (west) side property line where a 5 foot setback is required; and 9) Division

5.7(a)5 of the Town LDC to permit an existing lot coverage of 70% for impervious areas where 50% is permitted (the "Variance") for property located at 8757 NW 139th Street, Miami Lakes, Florida, in the RU-1A zoning district, Folio #32-2021-029-0370, legally described as Lot 15, Block 3 of FLORINDA ESTATES, according to the Plat thereof recorded in Plat Book 163, Page 014 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 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 modified approval subject to conditions of Requests #3 and #9 (Providing for a reduction of the side yard deck areas to a 3 foot wide side yard walkway; allowing for impervious area of 65.5% for driveways where 60% is permitted, and allowing for a total imperious area lot coverage of 58.7% where 50% is permitted.), and denial without prejudice of Requests #1, #2, #4, #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 3.5(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

- 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.

The Variance request to permit:

- 1. an existing driveway setback 1.65 feet from the interior (east) side property line where a 5 foot setback is required, is hereby denied without prejudice.
- 2. an existing driveway setback 1.20 feet from the interior (west) side property line where a 5 foot setback is required, is hereby denied without prejudice.
- 3. an existing impervious area of 65.5% for driveways where 60% is permitted, is hereby granted.
- 4. an existing 4.60 feet wide paved walkway, where 3 feet is permitted within the required (east) side yard, is hereby denied without prejudice.
- 5. an existing paved side yard deck setback .40 feet from the interior (east) property line where a 2 foot setback is required, is hereby denied without prejudice.
- 6. an existing 4.54 feet wide paved walkway, where 3 feet is permitted within the required (west) side yard, is hereby denied without prejudice.

7. an existing paved side yard deck setback .46 feet from the interior (west) property line where a 2 foot setback is required, is hereby denied without prejudice.
8. an existing paved rear deck setback .21 feet from the interior (west) side property line where a 5 foot setback is required, is hereby denied without prejudice.
9. an existing lot coverage of 58.7% for impervious areas where 50% is permitted, is hereby granted.

Section 4. Conditions.

The approved Variance requests #3 and #9 as modified herein 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 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 "Sketch of Survey" for 8757 NW 139 Street, Miami Lakes, Florida, as prepared by Miguel Garay Land Surveyor, Registered Land Surveyor State of Florida, No. 6592, Order No. 8-5238F, and consisting of one (1) sheet dated August 5, 2008 as modified herein.
3. All building permits required pursuant to code enforcement actions shall be obtained 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 result in additional fines and penalties.
4. The Applicant shall obtain a building permit, for all other 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 Richard Pulido and seconded by Councilmember Mary Collins, by a vote of 5-0 with each Town Councilmember voting as follows: 0


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

PASSED AND ADOPTED this 18 day of November 2008.


This Resolution was filed in the Office of the Town Clerk on this 9 day of December, 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