

RESOLUTION NO. 08- 701 Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, PERTAINING TO A VARIANCE REQUEST FILED BY LUIS AND IDANIA GARCIA IN ACCORDANCE WITH DIVISION 3.5 OF THE TOWN OF MIAMI LAKES LAND DEVELOPMENT CODE (THE "TOWN LDC") DENYING A VARIANCE TO WAIVE 1) DIVISION 4.3(d)19 OF THE TOWN LDC TO PERMIT AN EXISTING ACCESSORY BUILDING (TIKI HUT) EXTENDING ABOVE THE HEIGHT OF THE PATIO WALLS; FOR PROPERTY LOCATED AT 7375 BIG CYPRESS COURT, MIAMI LAKES, FLORIDA ZONED RU-TH (TOWNHOUSE DISTRICT); PROVIDING FINDINGS; PROVIDING FOR DENYING THE REQUEST; 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"), Luis Garcia and Idania C. Garcia (the "Applicant") have applied to the Town of Miami Lakes (the "Town") for approval of a variance to waive: 1) Division 4.3(d)19 of the Town LDC to permit an existing accessory building (Tiki Hut) extending above the height of the patio walls where accessory structures such as gazebos, and trellises, etc. are only permitted within the patio walled areas and shall not extend above the height of the patio walls; for property located at 7375 Big Cypress Court, Miami Lakes, Florida, Zoned RU-TH (Townhouse District), Folio # 32-2023-007-0490, legally described as Lot 8, Block 4, of MIAMI LAKES GOLF COURSE VILLAGE, according to the Plat thereof recorded in Plat Book 84, Page 7, 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, September 16, 2008, at 6:00 P.M. at Miami Lakes Middle School, 6425 Miami Lakeway North, Miami Lakes, Florida 33014; and continued to October 21, 2008 at 6:00 P.M.; and continued to November 18, 2008 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 denial without prejudice of Request #1 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
 - 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. 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 the variance request 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 variance is compatible with development patterns in the Town;

- c. The essential character of the neighborhood will not be preserved;
- d. The variance can not be approved without causing substantial detriment to adjoining properties;
- e. The variance 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 accessory building (Tiki Hut) extending above the height of the patio walls where accessory structures such as gazebos, and trellises, etc. are only permitted within the patio walled areas and shall not extend above the height of the patio walls, is hereby denied without prejudice.

Section 4. Conditions.

[If Town Council grants the Variance in Section 3, in whole or in part, the following conditions, if any, in this Section shall apply.]

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 Michael Pizzi, by a vote of 7-1 with each Town Councilmember voting as follows:

Mayor Michael Pizzi	<u>yes</u>
Vice-Mayor Richard Pulido	<u>yes</u>
Councilmember Mary Collins	<u>no</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