

RESOLUTION NO. 09- 732Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, PERTAINING TO SEVERAL VARIANCE REQUESTS FILED BY JUAN C. VALIENTE AND MADELEN VALIENTE IN ACCORDANCE WITH DIVISION 3.5 OF THE TOWN OF MIAMI LAKES LAND DEVELOPMENT CODE (THE "TOWN LDC") GRANTING A VARIANCE TO WAIVE: 1) DIVISION 4.2(e)7 OF THE TOWN LDC TO PERMIT A PROPOSED SWIMMING POOL EXTENDING 10 FEET WATERWARD OF THE TOP OF SLOPE BUT LANDWARD OF THE WATER'S EDGE; AND 2) DIVISION 6.5(b)6.d(2) OF THE TOWN LDC TO PERMIT 585 SQUARE FEET OF PROPOSED DECK WATERWARD OF THE TOP OF THE SLOPE, FOR PROPERTY LOCATED AT 16242 NW 79 AVENUE, MIAMI LAKES, FLORIDA IN THE RU-1 ZONING DISTRICT; PROVIDING FINDINGS; PROVIDING FOR GRANTING 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 C. Valiente and Madelen Valiente (the "Applicant") have applied to the Town of Miami Lakes (the "Town") for approval of several variances to waive: 1) Division 4.2(e)7 of the Town LDC to permit a proposed swimming pool extending 10 feet waterward of the top of slope but landward of the water's edge where pools are not permitted; and 2) Division 6.5(b)6.d(2) of the Town LDC to permit 585 square feet of proposed deck waterward of the top of the slope where a maximum of 225 square feet is permitted, (the "Variance") for property located at 16242 NW 79 Avenue, Miami Lakes, Florida, in the RU-1 zoning district, Folio #32-2015-009-0320, legally described as Lot 17, Block 17 of 4TH

ADDITION TO ROYAL OAKS SUBDIVISION, according to the Plat thereof recorded in Plat Book 131, Page 53 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, February 17, 2009, at 6:00 P.M. at Miami Lakes Middle School, 6425 Miami Lakeway North, Miami Lakes, Florida 33014; and continued to March 17, 2009 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 as to Requests #1 (limit pool to 8 feet beyond top of slope) and #2 (reduce depth of decking beyond the top of slope by 2 feet, resulting in approximately 485 feet of decking beyond the top of the slope) 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 support approval of the Variance 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 some of the adjoining property owners;
- b. The Variance is compatible with development patterns in the Town;
- c. The essential character of the neighborhood will be preserved;
- d. The Variance can be approved without causing substantial detriment to adjoining properties;
- e. The Variance 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.

Section 3. Grant//Denial.

The variance request to permit:

1. a proposed swimming pool extending 10 feet waterward of the top of slope but landward of the water's edge where pools are not permitted, is hereby granted.
2. 585 square feet of proposed deck waterward of the top of the slope where a maximum of 225 square feet is permitted, is hereby granted.

Section 4. Conditions.

The variances 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 approved plans shall be substantially in accordance with the plans submitted for the hearing entitled Proposed Pool and Deck for Mr. Valiente located at 16242 NW 79 Avenue Miami Lakes, Florida; entitled Site Plan, consisting of 1 sheet prepared by Alberto O. Gonzalez, Architect, AR-0011963.
3. The Applicant shall obtain a building permit, for all requests 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.

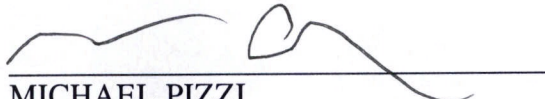
This Resolution shall take effect 30 days following the date it is filed with the Town Clerk. If during that time frame, the decision of the Town Council is appealed as provided in the Town LDC and the Florida Rules of Appellate Procedure, the appeal shall stay the effectiveness of this Resolution until said appeal is resolved by a court of competent jurisdiction.

The foregoing Resolution was adopted by motion as provided herein by Councilmember Nancy Simon and seconded by Councilmember George Lopez, by a vote of 6-1 with each Town Councilmember voting as follows:

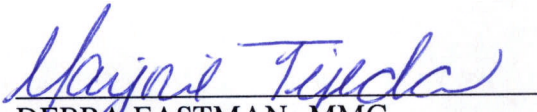
Mayor Michael Pizzi	<u>yes</u>
Vice-Mayor Richard Pulido	<u>yes</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember George Lopez	<u>yes</u>
Councilmember Robert Meador II	<u>no</u>
Councilmember Nick Perdomo	<u>yes</u>
Councilmember Nancy Simon	<u>yes</u>

PASSED AND ADOPTED this 17 day of March 2009.


This Resolution was filed in the Office of the Town Clerk on this 9 day of April, 2009.


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