

RESOLUTION No. 2007-46-553-Z-67

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, APPROVING THE APPLICATION OF ROSAIDA CUELLAR FOR NON-USE VARIANCES OF LOT COVERAGE AND SET-BACK REQUIREMENTS FOR THE EXISTING ADDITION OF BEDROOMS, BATHROOMS, STORAGE SPACE, SITTING ROOMS AND A TERRACE TO AN EXISTING SINGLE-FAMILY RESIDENCE; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR CONDITIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Rosaida Cuellar ("Applicant") owns certain property located at 20600 NW 33rd Avenue, more particularly described on Exhibit "A" attached hereto ("Property"), and

WHEREAS, the Applicant seeks the following approvals:

1. A NON-USE VARIANCE OF LOT COVERAGE REQUIREMENTS to permit the maintenance and continued use of an illegal addition of bedrooms, bathrooms, storage space, sitting rooms, and a terrace to an existing single-family residence resulting in a lot coverage of 42.6% (maximum permitted 35%);
2. A NON-USE VARIANCE OF SET-BACK REQUIREMENTS to permit the maintenance and continued use of an illegal addition of bedrooms, bathrooms, storage space, sitting rooms, and a terrace to an existing single-family residence to set back 13.8' from the rear (west) property line (minimum 25.0' required); and
3. A NON-USE VARIANCE OF SET-BACK REQUIREMENTS to permit the maintenance and continued use of an illegal addition of bedrooms, bathrooms, sitting rooms, and a terrace to an existing single-family residence to set back 5.6' from the interior side (south) property line (maximum 7.5' required).

WHEREAS, the City Council held a public hearing on the application on March 7, 2007, and

WHEREAS, the City's Planning & Zoning staff has made a determination that the application is consistent with the Comprehensive Development Master Plan, and

WHEREAS, the City's Planning & Zoning staff recommends approval of the application subject to certain conditions, and

WHEREAS, the City Council considered the testimony of the Applicant, if any, and

WHEREAS, the City Council also considered the testimony of the City's Planning & Zoning staff, and the Staff Report attached hereto as Exhibit "B," incorporated herein by reference,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

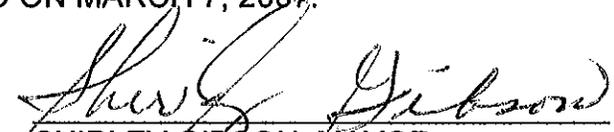
Section 2. APPROVAL: The City Council of the City of Miami Gardens, hereby approves the application submitted by the Applicant as follows:

1. A NON-USE VARIANCE OF LOT COVERAGE REQUIREMENTS to permit the maintenance and continued use of an illegal addition of bedrooms, bathrooms, storage space, sitting rooms, and a terrace to an existing single-family residence resulting in a lot coverage of 42.6% (maximum permitted 35%);
2. A NON-USE VARIANCE OF SET-BACK REQUIREMENTS to permit the maintenance and continued use of an illegal addition of bedrooms, bathrooms, storage space, sitting rooms, and a terrace to an existing single-family residence to set back 13.8' from the rear (west) property line (minimum 25.0' required); and
3. A NON-USE VARIANCE OF SET-BACK REQUIREMENTS to permit the maintenance and continued use of an illegal addition of bedrooms, bathrooms, sitting rooms, and a terrace to an existing single-family residence to set back 5.6' from the interior side (south) property line (maximum 7.5' required).

Section 3. CONDITIONS: The Applicant's request is approved subject to the condition that, within nine (9) months of this approval, the Applicant secure all necessary building permits so as to ensure consistency with the Florida Building Code; and that, upon the expiration of the appeal period, the Applicant submit a notarized affidavit attesting that the residence will be maintained solely for single-family occupancy.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS ZONING MEETING HELD ON MARCH 7, 2007.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Councilwoman Watson
SECONDED BY: Councilman Bratton

VOTE: 6-0

Mayor Shirley Gibson	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Vice Mayor Oscar Braynon, II	<input type="checkbox"/> (Yes)	<input type="checkbox"/> (No) Not present
Councilman Melvin L. Bratton	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilman Aaron Campbell	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilman André Williams	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilwoman Sharon Pritchett	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilwoman Barbara Watson	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)



City of Miami Gardens

1515 NW 167th Street, Bldg. 5, Suite 200
Miami Gardens, Florida 33169

Mayor Shirley Gibson
Vice Mayor Oscar Braynon II
Councilman Melvin L. Bratton
Councilman Aaron Campbell
Councilman André Williams
Councilwoman Sharon Pritchett
Councilwoman Barbara Watson

MEMORANDUM

To: The Honorable Mayor and City Council Members
From: Jay Marder, AICP, Development Services Director
Thru: Dr. Danny O. Crew, City Manager
Date: March 7, 2007
Re: PH-2007-000006 Public Hearing for Rosaida Cuellar regarding certain Non-Use Variances of Lot Coverage, Interior Side and Rear Setbacks Requirements

Summary

Applicant/Agent: Rosaida Cuellar
Location: 20600 N. W. 33rd Avenue, Miami Gardens, FL
Land Area: 7,500 Square Feet or ± 0.17 Acre
Future Land Use: Neighborhood
Existing Zoning: RU-1, Single-Family Residential District
Requested Action(s):

1. A NON-USE VARIANCE OF LOT COVERAGE REQUIREMENTS to permit the maintenance and continued use of an illegal addition of bedrooms, bathrooms, storage, sitting rooms, and terrace to an existing single-family residence resulting in a lot coverage of 42.6% (maximum permitted 35%);
2. A NON-USE VARIANCE OF SETBACK REQUIREMENTS to permit the maintenance and continued use of an illegal addition of bedrooms, bathrooms, storage, sitting rooms, and terrace to an existing single-family residence to set back 13.8' from the rear (west) property line (minimum 25.0' required);
3. A NON-USE VARIANCE OF SETBACK REQUIREMENTS to permit the maintenance and continued use of an illegal addition of bedrooms, bathrooms, sitting rooms, and terrace to an existing single-family residence to set back 5.6' from the interior side (south) property line (maximum 7.5' required).

9-A PUBLIC HEARING
RESOLUTION
ROSAIDA CUELLAR
NON-USE VARIANCE

Recommendation

Based on findings contained herein and generally summarized as follows:

- The Applicant's non-use variance requests to permit the maintenance and continued use of the existing addition of bedrooms, bathrooms, storage, sitting rooms, and terrace to her single-family residence do not change the use of the property. These requests do not change policies of the city's CDMP and are consistent with same;
- The Applicant's non-use variance requests to permit the maintenance and continued use of the existing addition of bedrooms, bathrooms, sitting rooms, and terrace to her single-family residence, maintain the basic intent and purpose of the Zoning Code and are otherwise compatible with the surrounding single-family residences.

Recommend therefore adoption of the attached resolution granting the requested non-use variance of lot coverage, rear and interior side setbacks requirements subject to the following conditions:

1. That, within nine (9) months of this approval, the Applicant secure all necessary building permits so as to ensure consistency with the Florida Building Code; and
2. That, upon the expiration of the appeal period, the Applicant submit a notarized affidavit attesting that the residence will be maintained solely for single-family occupancy.

REVIEW AND ANALYSIS

Neighborhood Land Use Characteristics

Property	Zoning	Existing Use	Future Land Use
Site	RU-1, Single Family District	Single-Family Dwelling	Low Density Residential
North	RU-1, Single Family District	Single-Family Dwelling	Low Density Residential
South	RU-1, Single Family District	Single-Family Dwelling	Low Density Residential
East	RU-1, Single Family District	Single-Family Dwelling	Low Density Residential
West	RU-1, Single Family District	Single-Family Dwelling	Low Density Residential

The site is located on the west side of N.W. 33rd Avenue, three (3) lots south of N.W. 207th Street. The properties on the same block face have all been developed with single-family homes. A public school, North County Elementary, is located across N.W. 33rd Avenue. (See Aerial, attached).

Consistency with City of Miami Gardens Comprehensive Development Master Plan

The site is designated Neighborhood on the Future Land Use Map of the Future Land Use Element of the City of Miami Gardens Comprehensive Development Master Plan (CDMP). Locational policies and criteria for low-density residential development apply to the site and surrounding neighborhood. The requested variances do not change the use of the property as a single-family home. Therefore, the proposal (a) does not impact policies of the CDMP and (b) is consistent with the CDMP.

Additional Analysis and Criteria

The Applicant, Ms. Rosaida Cuellar, is seeking approval for the maintenance and continued use of a nonconforming addition of bedrooms, bathrooms, storage, sitting rooms, and terrace to her single-family residence located at 20600 N.W. 33rd Avenue. As per the attached plans, the addition has resulted in a total building footprint of 42.6%, which exceeds the maximum lot coverage of 35% permitted under the RU-1 zoning district regulations. Additionally, the attached plans show the terrace and sitting room addition to set back 13.8' (minimum 25' required) from the rear property line. The existing addition also provides a 5.6-foot interior side setback, which does not meet the side setback standards set forth in the Code, which requires RU-1 platted lots to provide a side setback of 10% of the width of said lots to a maximum of 7.5 feet. Hence, the Applicant's requests for a departure from the lot coverage and setback requirements of the RU-1 zoning district.

Under the Zoning Code the following three review criteria were considered for review of the applicant's proposal:

- Section 33-311(A)(14) Alternative Site Development Option (ASDO)
- Section 33-311(A)(4)(c) Unnecessary Hardship
- Section 33-311(A)(4)(b) Non-Use Variance

Section 33-311(A)(4)(b) Non-Use Variance Criteria is a priori the most appropriate review criteria because, by definition, "non-use variances involve matters such as setback lines, frontage requirements, subdivision regulations, height limitations, lot size restrictions, yard requirements and other variances which have no relation to change the use of the property in question." The City Council may grant a non-use variance upon a showing that:

- The non-use variance maintains the basic intent and purpose of the zoning, subdivision and other land use regulations which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community and;
- The non-use variance will be otherwise compatible with the surrounding land uses, and would not be detrimental to the community, and;
- That the non-use variance has no relation to change of use of the property in question.

The subject property was built in 1962 and originally comprised three (3) bedrooms and one (1) bathroom. As per the Applicant, her ex-husband remodeled the residence to relocate certain rooms and also expanded same to include additional living area, but never pulled a permit from the Miami-Dade County Building Department. On or about January 12, 2006, the City's Code Enforcement Department issued three (3) civil violation notices to the Applicant for her failure to pull a building permit to expand the residence, for the unauthorized rental of the rear addition, and for unkempt landscaping. (See Notices, attached). Consequently, the Applicant has filed this public hearing application to vary the development standards of the RU-1 zone in order to permit the maintenance and continued use of the existing nonconforming single-family residence, and ultimately secure the proper building permits from the City's Building Department.

As stated above, the existing addition provides a 5.6-foot setback from the interior side and encroaches on the rear setback by ten (10) feet. As a result of this addition, the existing footprint of the residence increased from 934 square feet (12.45%) to 3193.32 square feet (42.6%), and therefore does not meet the minimum lot coverage requirements of 35% specified in Section 33-49 for a single-family residence. When analyzed under the criteria of Section 33-311(A)(4)(b), the non-use variances of lot coverage and side setback appear to be minimal and maintain the basic intent and purpose of the Zoning Code given that the current Zoning Code sets the minimum side setback at five feet (5') and allows a lot coverage of 40% for developments platted on or after March 8, 2002. The requested non-use variance of rear setback requirements involves the 10-foot encroachment by the existing structure on the rear setback. Nevertheless, this variance will not represent an intrusion on the easterly property that a regular six-foot landscaped wall or fence cannot otherwise mitigate. Indeed, the proposed addition is designed and arranged on the site in a way that minimizes aural and visual impact on the adjacent residences while providing the applicant a reasonable use of the land. Based on these findings and although the Development Services Department does not condone building without the required setbacks and permits, recommendation is made to the City Council to approve the Applicant's requests as they do not impact any policies of the CDMP and maintain the basic intent and purpose of the Zoning Code. In furtherance of the City's Code and in the light of the violations issued to the Applicant, it is also recommended that the City Council prescribe the following conditions in granting these variances:

1. That, within nine (9) months of this approval, the Applicant secure all necessary building permits so as to ensure consistency with the Florida Building Code; and
2. That, upon the expiration of the appeal period, the Applicant submit a notarized affidavit attesting that the residence will be maintained solely for single-family occupancy.

This recommendation to approve the Applicant's request does not constitute a final development order. It should not further be construed as a condonation or a "carte blanche" by the Development Services Department for the erection of structures on any property without proper zoning approvals and building permits. This application was reviewed thoroughly and the recommendation provided herein was based solely on the merits of same. This application has been filed with the Department as a result of a notice of violation from the City's Code Enforcement Department. This unauthorized and nonconforming addition to the existing single-family residence is one of several similar cases that have been considered by Council. While this application provides another example of law enforcement and practices before incorporation. The unauthorized addition has become an integral part of the Applicant's single-family residence. To deny this application would require the Applicant to tear down parts or all of the improvements to the structure, which cause same to contravene the underlying zoning district regulations. Such action would inevitably alter the functionality and livability of the single-family residence as it exists today and inflict an undue burden on the Applicant.

Anticipated Facilities Impact

The subject application pertains to an existing single-family residence and, as such, will not create any additional impact upon the existing urban services and facilities.

Public Notification/Comments

In accordance with the zoning code, notification of the applicant's requests was mailed to property owners within a 500 foot radius of the subject site to provide them an opportunity to comment on the application. No comments were received from property owners within that radius. (See Mailed Notice Radius Map, attached).

Attachments: Public Hearing Checklist
Letter of Intent
Hearing Map Zoning
Hearing Map Aerial
Mailed Notice Affidavit
Mailed Notice Radius Map
Violation Notices
Submitted Plans
Miami Gardens Proposed Resolution

Rosaida Cuellar

PH-2007-000006 Non-Use Variances of Lot Coverage, Interior Side & Rear Setback Requirements

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PUBLIC HEARING CHECKLIST



The City Of Miami Gardens

Development Services

Public Hearing Departmental Checklist

APPLICATION INFORMATION

Applicant Name: Rosaida Cuellar

Project Name: _____

Project Location: 20600 NW 33rd Avenue

Process Number: ZPH-2007-000006 Public Hearing Scheduled Date: March 7, 2007

Public Hearing Representative: _____

Registered Lobbyist : NO YES If not, explain: _____

APPLICANT'S REQUEST

District Boundary Change Use Variance Non-Use Variance Unusual Use Special Exception

Small-Scale Amendment Modification of Resolution Modification of Declaration or Covenant

DEPARTMENT REVIEW

Departmental procedures prior to public hearing

Mandatory

Completed Application

Letter of Intent

Legal Description (electronic)

Fees Collected

2 Sets of Original Plans

1 set of 8½ x 11 of Plans

Digital copies of plans

Survey

Site Plan Review

1. Electronic Plans

2. Site Plan

3. Floor Plan

4. Elevation Plan

5. Landscape Plan

6. Survey

7. Architectural Renderings

If applicable

School Covenant

School Board Report

Traffic Study

Economic Impact Analysis

Environmental Impact Statement

Neighborhood Outreach

Proffered Community Amenities

Liquor Survey

ADMINISTRATIVE ACTIONS

- DIC Meeting (if applicable)
- Preliminary Notice
- Posting Signs (Public Works)
- Radius Map
- Final Notice
- Staff Recommendation
- Zoning Map
- Layman's Notice
- Notify Applicant
- Aerial Map
- Full Legal Advertisement
- Proposed Resolution or Ordinance

Site Visit Date: 2/23/07

By: Nixon Lebrun

RECOMMENDATION OUTLINE

1. Summary

2. City Council Action -- (2nd reading)

3. Recommendation

4. Review and Analysis

- Neighborhood Land Use Characteristics
- Land Use Analysis (consistency with CDMP)
- Zoning Analysis (compliance with zoning code)
- Concurrency Analysis (water & sewer, traffic, schools and/or drainage/irrigation)
- Code Enforcement Violation Notice
 - Yes (attached)
 - No

5. Attachments

- Letter of Intent
- Zoning Map
- Aerial Map
- Radius Map
- Plans
- School Board Report (if any)
- Traffic Study (if any)
- Economic Analysis (if any)
- Environmental Impact Statement (if any)
- Historical Information - (if any)
 - Declaration of Restriction
 - Unity of Title
 - Resolution
- Proposed Resolution or Ordinance
- Proffered Declaration of Restrictions

ZONING AGENDA DECISION

Date:

Action: Introduction Deferred Rescheduled Resolution 1st Reading 2nd Reading

Result: Approved Approved with Conditions Denied

Date:

Action: Introduction Deferred Rescheduled Resolution 1st Reading 2nd Reading

Result: Approved Approved with Conditions Denied

Date:

Action: Introduction Deferred Rescheduled Resolution 1st Reading 2nd Reading

Result: Approved Approved with Conditions Denied

Date:

Action: Introduction Deferred Rescheduled Resolution 1st Reading 2nd Reading

Result: Approved Approved with Conditions Denied

Rosaida Cuellar

PH-2007-000006 Non-Use Variances of Lot Coverage, Interior Side & Rear Setback Requirements

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LETTER OF INTENT

December 12th, 2006

City of Miami Gardens
Development Services
Zoning Application Directions
1515 NW 167th Street, Building 4, Suite 170
Miami Gardens, FL 33169

RE: Public Hearing Application
Legalization of Addition for Mrs. Rosaida Cuellar
20600 NW 33rd Avenue, Miami Gardens, FL 33056

To whom it may concern:

In order to legalize the addition in my property, I found it necessary to depart from the norms dictated by City of Miami Gardens, because of the fact that the family has increased.

The existing addition sets back 13.8' from the rear (west) and 5.6' from the interior side (south). This addition will most assuredly enhance the value of my properties as well as that of the adjacent properties and the community at large.

I appreciate the opportunity to present this public hearing petition.

Sincerely yours,

A handwritten signature in cursive script that reads "Rosaida Cuellar".

Mrs. Rosaida Cuellar