RESOLUTION No. 2010-82-1264-Z-94

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, APPROVING THE APPLICATION SUBMITTED BY JORGE ABURTO FOR PROPERTY LOCATED AT 1990 N.W. 154 STREET, MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO, FOR A NON-USE VARIANCE OF SECTION 33-50 TO ALLOW AN EXISTING ADDITION TO AN EXISTING SINGLE FAMILY RESIDENCE WITH A SIDE STREET SETBACK OF 9.66' WHERE A MINIMUM 15.0 SETBACK IS REQUIRED; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Jorge Aburto ("Applicant"), has applied for variances of Section 33-50 of the Zoning Code for a non-use variance of section 33-50 to allow an existing addition to an existing single family residence with a side street setback of 9.66' where a minimum 15.0 setback is required, and

WHEREAS, City Council held a public hearing on the Application on May 5, 2010, and

WHEREAS, Planning and Zoning staff recommends approval of the Application, and

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

WHEREAS, City Council also considered the testimony of the City's Planning and Zoning staff and the Staff Report is 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 Jorge Aburto for a non-use variance of section 33-50 to allow an existing addition to an existing single-family residence with a side street setback of 9.66' where a minimum 15.0 setback is required.

Section 3. 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 MAY 5, 2010.

SHIRLEY GIBSON, MAYOR

ATTEST:

RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ., CITY ATTORNEY

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Councilman Gilbert
SECOND BY: Vice Mayor Campbell

VOTE: 6-0

Mayor Shirley Gibson	_X_(Yes)	___(No)
Vice Mayor Aaron Campbell	_X_(Yes)	___(No)
Councilman Melvin L. Bratton	_X_(Yes)	___(No)
Councilman Oliver Gilbert, III	_X_(Yes)	___(No)
Councilwoman Barbara Watson	_X_(Yes)	___(No)
Councilwoman Sharon Pritchett	_____(Yes)	___(No) (not present)
Councilman André Williams	_X_(Yes)	___(No)

1515 N.W. 167TH STREET, BUILDING 5 SUITE 200
MIAMI GARDENS, FLORIDA 33169

City of Miami Gardens
Agenda Cover Memo

Council Meeting Date:	May 5, 2010		Item Type:	Resolution	Ordinance	Other
				X		
Fiscal Impact:	Yes	No	Ordinance Reading:	1st Reading		2nd Reading
		X	Public Hearing:	Yes	No	Yes / No
Funding Source:			Advertising Requirement:	Yes		No
				X		
Contract/P.O. Required:	Yes	No	RFP/RFQ/Bid #:			
Sponsor Name	City Manager		Department:	Planning and Zoning		

Short Title:

RESOLUTION No. 2010-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, APPROVING THE APPLICATION SUBMITTED BY JORGE ABURTO FOR PROPERTY LOCATED AT 1990 N.W. 154 STREET, MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO, FOR A NON-USE VARIANCE OF SECTION 33-50 TO ALLOW AN EXISTING ADDITION TO AN EXISTING SINGLE FAMILY RESIDENCE WITH A SIDE STREET SETBACK OF 9.66' WHERE A MINIMUM 15.0 SETBACK IS REQUIRED; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Staff Summary:

At the March 3, 2010 meeting, at the request of staff, the Council deferred this application to allow time to evaluate previous administrative variance approval granted on the property by the County. Additionally, the submission of this application predates the adoption of the City's new Land Development Regulations by the Council on April 7, 2010. As such, the application was reviewed

under the criteria set forth in the Miami-Dade County's Zoning Code, which the City had previously adopted.

The applicant, Jorge Aburto, is the co-owner of a single-family residence located at 1990 N.W. 15th Street. On August 21st, 2009, the Code Enforcement Department issued a Civil Violation Notice (CVN 11843, attached) to Mr. Aburto for violating Section 104-8-1 of the Florida Building Code for installing a roof, performing electrical work and adding a master bedroom to his existing home without first obtaining a permit from the City's Building Department. On October 7, 2009, Mr. Aburto then applied with the Building Department for the necessary permit. However, the permit was eventually denied by Zoning because the illegal addition sets back 9'-8" from the street, instead of the minimum 15 foot required by Section 33-50 of the Zoning Code. Several non-use variances were considered and acted upon by Miami-Dade County in 2002. Mr. Aburto is seeking approval for a non-use variance of setback requirements to resume the building permitting process and eventually comply with the requirements of the other trades involved.

Proposed Action:

Given approvals granted in a similar non-use variance request considered by Miami-Dade County in 2002, as well as the existing character of the immediately impacted neighborhood, staff recommends approval of the Resolution based on findings contained in Exhibit "B" Staff Recommendation.

Attachment:

RESOLUTION
EXHIBIT "A" LEGAL DESCRIPTION
EXHIBIT "B" STAFF RECOMMENDATION

EXHIBIT "A"
LEGAL DESCRIPTION

Lot 12, Block 4 of Subdivision "First Addition Magnolia Subdivision," according to the Plat thereof as recorded in Plat Book 44 at Page 16 of the Public Records of Miami-Dade County, Florida.

STAFF RECOMMENDATION
PH-2009-000047 Jorge Aburto

APPLICATION INFORMATION

Applicant: Jorge Aburto
Property Location: 1990 N.W. 154 Street
Property Size: 5,000 square feet
Future Land Use: Neighborhood
Existing Zoning: RU-1, Single-Family Residential District
Requested Action(s):

1. Non-use variance of section 33-50 to allow an existing addition to an existing single family residence with a side street setback of 9'-8" where a minimum setback of 15' is required.

RECOMMENDATION:

Recommend approval of the Resolution with the following condition:

✓ That the applicant secure and obtain a building permit for the master bedroom addition within 180 days of the adoption of this Resolution, unless a time extension is granted by the Development Services Director.

REVIEW AND ANALYSIS

Neighborhood Land Use Characteristics

Property	Future Land Use Designation	Zoning Classification	Existing Use
Site	Neighborhood	RU-1, Single-Family Residential Zone	Single-Family Dwelling
North	Neighborhood	RU-1, Single-Family Residential Zone	Single-Family Dwelling
South	Neighborhood	RU-1, Single-Family Residential Zone	Single-Family Dwelling
East	Neighborhood	RU-1, Single-Family Residential Zone	Single-Family Dwelling
West	Neighborhood	RU-1, Single-Family Residential Zone	Single-Family Dwelling

The subject property is located at the southeast corner of N.W. 154th Street and N.W. 20th Avenue and. The properties surrounding the site are all developed with single-family homes.

Project Summary/Background

The subject property is a 5,000-square foot corner lot developed with a single-family residence. Built in 1954, this one-story residence covers almost 1,500 square feet and features three bedrooms and two baths. The applicant, Mr. Aburto, is seeking to complete an ongoing 200-square foot master bedroom addition to his home, which sets back 9'-8" from the property line abutting N.W.

20th Avenue. On August 21st, 2009, Mr. Aburto was issued a Civil Violation Notice (CVN 11843) for failing to obtain the necessary permit from the City's Building Department for the construction of said addition. Upon applying for the permit with the Building Department, the submitted plans were denied by the Zoning reviewer for non-compliance with the side street setback requirements. This public hearing application was subsequently submitted to secure the zoning approval, without which the building review process to ensure that the structure meets the Florida Building Code requirements cannot occur and the granting of the permit, approved.

Zoning History

On January 7, 2002, the Miami Dade County Department of Planning and Zoning approved administrative adjustment application V2001000164 (See Approval Letter, attached) granting the following:

- A non-use variance of setback requirements to permit an existing single-family residence to set back 23' from the front (north) property line where a minimum of 25' is required;
- A non-use variance of setback requirements to permit an existing covered entry to an existing single-family residence to have a setback ranging from 13.25' to 18' from the front (north) property line where a minimum of 25' is required; and
- A non-use variance of setback requirements to permit an existing master bedroom and bathroom addition to an existing single-family residence to a setback ranging from 18.2' to 22.25'from the rear (south) property line where minimum of 25' is required.

Additionally, on May 15, 1992, the Metropolitan Dade County Zoning Appeals Board passed and adopted Resolution 4-ZAB-164-92 (attached), which, among other approvals, granted a non-use variance of setback requirements to permit the house on one of the through-lots directly across N.W. 154th Street (Block 3, Lot 9) to have a front setback of 12.25', slightly fifty percent less than the minimum setback requirement of 25 feet.

Consistency with City of Miami Gardens Comprehensive Development Master Plan

The subject property 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.

Conclusion: The requested variance does not change the use of the property as a single-family home. Therefore, the request does not impact policies of the CDMP and is consistent with same.

Zoning Review and Analysis

Section 33-311(A)(4)(b) Non-use variances from other than airport regulations, states in relevant terms that:

> *Upon appeal or direct application in specific cases to hear and grant applications for non-use variances from the terms of the zoning and subdivision regulations, the Board (following a public hearing) may grant a non-use variance upon a showing by the applicant 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*

provided that the non-use variance will be otherwise compatible with the surrounding land uses and would not be detrimental to the community. No showing of unnecessary hardship to the land is required. For the purpose of this subsection, the term "non-use variances" involves 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 of use of the property in question.

The requested side street non-use variance will allow the applicant to complete the bedroom addition to his existing single-family residence, which, as noted above, was approved by the County's Department of Planning and Zoning in January 2002. Notwithstanding the fact that the building plans that the applicant submitted for permit match those which were approved by the County, review of these plans reveals however, that County staff omitted to include and review the side street setback non-use variance sought through this application. While the accompanying plans clearly depicted a side street setback of 9'-8" instead of the minimum 15-foot side street setback, no mention of this variance was made in the administrative adjustment application submitted to the County and the subsequent approval letter issued to the applicant. A conversation with Mr. Fred Endara, Zoning Development Specialist with the County's Department of Planning and Zoning on March 29, 2010, confirmed that the failure to include said variance was an oversight and that there was not any language in the Zoning Code then, which could have otherwise warranted said omission.

In the light of these findings, this request is not, in essence, a new one and will not contribute to or create materially greater adverse privacy impacts on the adjacent residences. Furthermore, it will neither alter the architectural design, scale, mass, and building materials of the existing residence nor result in additional reduction of the setback lines or increase in the footprint of the residence beyond what the County had already approved. The purpose of this application is basically to allow the City Council to correct this previous approval, which was granted inaccurately. While it needed to be rectified, the omission of the side setback variance request in the County's prior approval did not mislead anyone in a way that would cause them to be prejudiced as the immediate neighbors were given the opportunity to sign both the consent form attached to the Administrative Variance application, as well as the accompanying plans, which showed then the same building footprint and side street setback as in the plans submitted with this public hearing application. It should also be noted that, as per Section 33-36.1(g), the County's decision was published in the Daily Business Review on January 7, 2002 and did not become final until January 22, 2002 so as to allow any aggrieved property owner to appeal said decision and no objection was filed.

Conclusion: Given the inaccuracy of the original variance request considered by Miami-Dade County, as well as the existing character of the immediately impacted neighborhood at this time, the requested non-use variance of side street setback requirements will not disrupt the general appearance and character of the neighborhood and is in keeping with the purpose and intent of the Zoning Code.

Anticipated Facilities Impact

The subject application pertains to an existing accessory structure in connection with an existing single-family residence and, as such, will not create additional impact upon the existing public 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
- Submitted Plans and Survey
- Civil Violation Notice CVN 11843
- Administrative Variance (V2001000164) Approval Letter, Consent Form and Approved Plans
- Resolution 4-ZAB-164-92
- Transmittal Notice