



Department of Planning, Zoning and Code Compliance  
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## Staff Analysis and Recommendation

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**To:** Planning and Zoning Board  
**From:** Darby Delsalle, AICP  
Director of Planning  
**Re:** **HEARING NUMBER:** VARH2017-0473  
**APPLICANT:** Wilfredo and Mercedes Tome  
**FOLIO:** 32-2015-004-0070  
**LEGAL DESCRIPTION:** Lot 1, Block 10, of "1<sup>st</sup> Addition to Royal Oaks", according to the Plat thereof, as recorded in Plat Book 127, at Page 95, of the Public Records of Miami-Dade County, Florida  
**LOCATION:** 8370 NW 168<sup>th</sup> Street  
Miami Lakes, Florida 33016  
**Date:** October 24, 2017

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### A. Request

In accordance with the Town of Miami Lakes Land Development Code (the "Town's LDC"), Wilfredo and Mercedes Tome (the "Applicant") is requesting the following variance:

A variance from Section 13-1502(3) to reduce the required setback(s) of a proposed gazebo from the existing home.

### B. Background

The Applicant is requesting variances to rebuild a previously existing gazebo that was constructed on the property without permits by the prior owner. To do so, the proposed gazebo needs a setback reduction from the home on the property. The prior gazebo was legalized for zoning purposes approximately a year ago, however it was demolished because it could not pass a building code review. As such, the legal nonconforming status was lost. The proposed gazebo will be less than the maximum permitted size of 350 square feet. This request as proposed would accommodate the new gazebo of a similar in size and appearance as the previous one. The remainder of the proposed structure complies with the Land Development Code (LDC).

### C. Staff Recommendation

Staff recommends approval with following conditions:

1. The Applicant shall obtain a demolition permit for all existing improvements not either authorized by the Code or by a variance granted herein.
2. The Applicant shall remove at the minimum a total of 7.5% impervious surface in all required yards to meet the maximum 50% coverage.
3. The property owner shall make any and all required accommodations from any utility provider with valid access to the utility easements on the property, and shall be responsible for removal and/or replacement of any improvements as required for repair and maintenance by utility providers.
4. The Applicant shall obtain building permits for all requests approved herein, within one (1) year of the date of this approval. If said building permits are not obtained or an extension granted within the prescribed time limit, this approval shall become null and void.

### D. Property Information and Permit History

Zoning District of Property: RU-1 – Single-Family Residential District

Future Land Use Designation: Low Density Residential

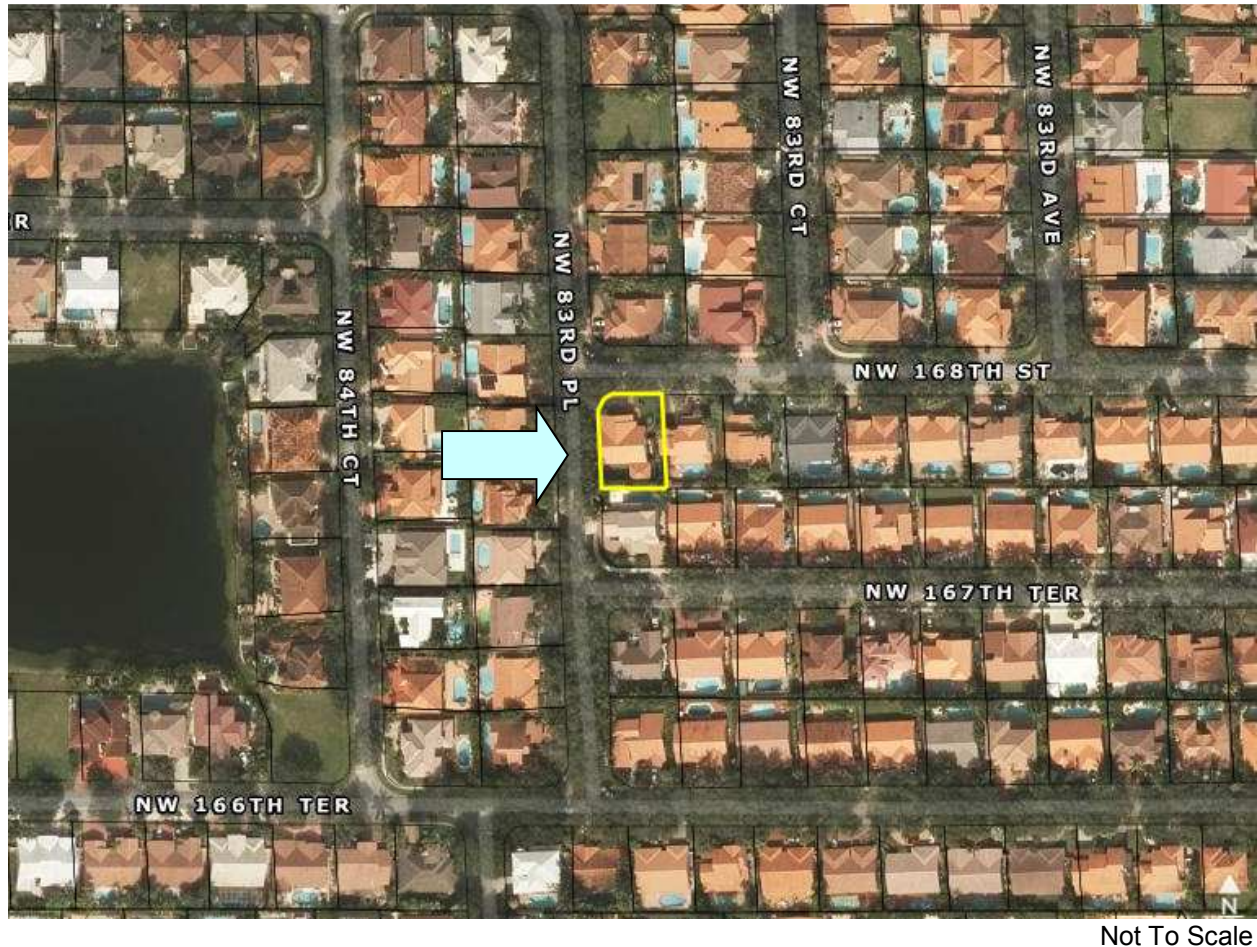
#### Subject Property:

The subject property is a single-family home in the “1<sup>st</sup> Addition to Royal Oaks” Subdivision. It is located on the corner of NW 83<sup>rd</sup> Place and NW 168<sup>th</sup> Street. According to the Miami-Dade Property Appraiser information, the one-story house was built in 1987 and consists of approximately 1,966 square feet of living area on a 7,714 square foot lot. The property is located within the Low Density Residential Future Land Use Designation and is zoned RU-1 (Single-Family Residential District).

#### Surrounding Property:

	<b>Future Land Use Category</b>	<b>Zoning District</b>
<b>North:</b>	Low Density Residential	Single-Family Residential District (RU-1)
<b>South:</b>	Low Density Residential	Single-Family Residential District (RU-1)
<b>East:</b>	Low Density Residential	Single-Family Residential District (RU-1)
<b>West:</b>	Low Density Residential	Single-Family Residential District (RU-1)

### Subject Property Location Map



The following information is provided for informational purposes only and shall not be considered by the Planning and Zoning Board in providing its determination:

#### Active Permits/Code Compliance.

There are no currently open building permits or violations associated with this property.

### **E. Analysis**

Subsection 13-305(f)1 of the Town LDC allows the Planning and Zoning Board to approve non-use variance request(s) on the basis of practical difficulty on part of the Applicant by a majority vote of the members of the Planning and Zoning Board present. In order to authorize any variance on the basis of practical difficulty, the Planning and Zoning Board members at the meeting shall balance the rights of property owners in the Town as a whole against the need of the individual property owner to deviate from the requirements of the Land Development Code based on an evaluation of the factors below. All of the factors should be considered and given their due weight; however, no single factor is dispositive.

- a. **The Town has received written support of the specifically identified variance requests from adjoining property owners.**

*Analysis:* The Town has not received any written support regarding these requests.

*Finding:* Not applicable

- b. **The Variance would be compatible with development patterns in the Town.**

*Analysis:* See Section A, Background, and Section D, Property Information and History. Although the proposed gazebo does not meet the required 10 feet separation distance from the residence, the location of the original structure was made legal nonconforming for zoning purposes by way of an administrative site plan approval. That structure was removed due to building permitting issues, and as such, legal nonconformity was lost. The current request is in keeping with the original intent the administrative site plan approval when the original structure was legalized. Therefore, the request is consistent with that previous determinations.

*Finding:* Complies.

- c. **The essential character of the neighborhood *would* be preserved.**

*Analysis:* This variance requests relate to the gazebo located within the rear yard and is consistent with a previously approved administrative site plan.

*Finding:* Complies.

- d. **The Variance can be approved without causing substantial detriment to adjoining properties.**

*Analysis:* See Section A, Background, and Section D, Property Information and History. The proposed gazebo is consistent with a previous administrative site plan approval with its impact being limited to the separation to the home on the subject property. The remainder of the proposed structure meets all remaining setback and size requirements of the LDC which are provided to minimize impact to neighboring properties.

*Finding:* Complies.

- 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;**

*Analysis:* See Section A, Background, and Section D, Property Information and History. The previous administrative site plan approval was sought and granted in good faith. However, it was not anticipated that there would be a structural issue with the original gazebo that would require its demolition. The requested variance will allow the reconstruction of the gazebo in size and location similar to the previous approval. Further, the impact of the request is limited to the homeowner as the remaining setbacks of the proposed structure comply with Code. It is worth noting

that similar variance requests have been approved at least twice in the last five years.

*Finding:* Complies.

- f. The plight of the applicant is 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**

*Analysis:* See Section A, Background, Section D, Property Information and History, and Criteria “b” and “e”. The plight of the applicant is the result of unique circumstances. The applicant purchased the property with the original gazebo already in place. There was also a previous zoning approval which legalized the structure. That original application and approval was completed in good faith not knowing there would be other building permit issues requiring its demolition. The request only impacts the property owner as all other setback and sizing criteria are met. Given the history of this project, strict adherence to Code would result in an unnecessary burden to the property owner.

*Finding:* Complies.

- g. The special conditions and circumstances which exist are the result of actions beyond the control of the applicant.**

*Analysis:* See Section A, Background, Section D, Property Information and History, and Criteria “b”, “e”, and “f”.

*Findings:* Complies.