

RESOLUTION NO. R2022-68

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, GRANTING A NON-USE VARIANCE FROM ARTICLE VIII, SECTION 24-81(A)(2) OF THE NORTH MIAMI BEACH ZONING AND LAND DEVELOPMENT CODE, TO PERMIT AN EXISTING AWNING TO ENCROACH 17 FEET INTO THE SIDE INTERIOR SETBACK, WHEREAS THE CODE ALLOWS A MAXIMUM OF 5 FEET; CONFIRMING EXPIRATION AND LIMITATION OF APPROVAL; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to the City of North Miami Beach (“City”) Code of Ordinances, Chapter 24, “Zoning and Land development Code” (the “ZLDC”), Article XV, “Other Development Review Procedures,” Section 24-176, “Variance,” Ana and Mark A. Antonio (“Applicant”) have applied to the City for approval of a non-use variance for the property located at 2811 NE 164th St Unit #1, North Miami Beach, Florida (“Property”), as legally described in Exhibit “A”; and

WHEREAS, ZLDC Section 24-176 provides that the City Commission may grant a non-use variance based on its determination that the Applicant has demonstrated that the necessary criteria identified in the ZLDC have been satisfied; and

WHEREAS, the Property is zoned RM-19, Residential Low-Rise Multifamily (Medium Density) zoning district; and

WHEREAS, the Applicant is proposing to legalize an existing awning that was built in 2009 without a permit; and

WHEREAS, the Applicant has requested a non-use variance to permit an awning on the property that encroaches seventeen (17) feet into the setback, where pursuant to section 24-81 (A)(2) of the ZLDC a maximum five (5) foot encroachment is allowed; and

WHEREAS, after a duly noticed public hearing held on April 11, 2022, the Planning and Zoning Board by a vote of 5 to 0, recommending approval of the non-use variance, subject to the conditions set forth and included below in Section 2; and

WHEREAS, the City Commission conducted a duly noticed public hearing in accordance with the law; and

WHEREAS, the Mayor and City Commission find the proposed non-use variance application consistent with the North Miami Beach Comprehensive Plan and find the approval of the application is in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are confirmed, adopted, and incorporated herein and made a part hereof.

Section 2. Decision. Pursuant to Section 24-176 of the Zoning and Land Development the following survey, attached and incorporated by reference as Exhibit “B,” to permit an awning on the property with a seventeen (17) foot encroachment into the side setback on the property legally described in Exhibit “A”, is approved, subject to the following conditions:

1. Unless otherwise provided, all the below conditions shall be completed and complied with prior to the issuance of the building permit.
2. The conditions of approval for this variance are binding on the Applicant, the property owners, operators, and all successors in interest and assigns.
3. Application/supporting documentation. Construction of the proposed project shall be in conformance with the following:
 - a. Survey prepared by Florida Building Land Surveying Corporation., including the following:
 - Survey
4. All representations and exhibits as prepared and provided to the Community Development Department as part of the Application Submittal Package, as amended.
5. Substantial modifications to the plans submitted and approved as part of the application may require the Applicant to return to the Planning and Zoning Board and Mayor and City Commission for approval. Insubstantial changes shall include proportionate reductions in residential units and parking spaces by less than 5% of the total proposed project, changes that do not alter the project more than 5% of lot coverage, setbacks, height, density, and intensity calculations so long as the proposed amendment does not cause an increase in the number of average daily trips; does not alter the location of any points of ingress, egress, access and vehicular and pedestrian patterns to the site; and does not violate any condition placed upon the site plan as originally approved. Insubstantial changes may be administratively approved by the City Manager or designee. Any de minimis amendments to the plans or site plans which cannot be resolved administratively shall be returned to the Mayor and City Commission for a formal review. However, under no circumstances, may any plans, site plans, building, structure, or project be administratively altered by more than 5% lot coverage, setbacks, height limitations, as well as density or intensity calculations set forth in a previously approved site plan.
6. All representations proffered by the Applicant’s representatives as a part of the variance application review at the Planning and Zoning Board and City Commission public hearings.

7. No later than 90 days following the final City Commission approval, the Applicant shall enter into an agreement with the City to defend, indemnify and hold harmless (using legal counsel acceptable to the City) the City, its agents, servants, and employees, from and against any loss, cost, expense, claim, demand or cause of action of whatever kind or nature arising out of or related to any act or omission related to the variances and for which the City, its agents, servants, or employees, are alleged to be liable or charged with such expense. The Applicant shall pay all costs and expenses related to any legal defense required by the City pursuant to the foregoing.
8. The Applicant shall remove all public hearing signage no later than 48 hours after the final public hearing by the City Commission for the development project.
9. Prior to the issuance of a Master Building Permit, the Applicant shall record this Resolution in the public records of Miami-Dade County.

Section 3. Findings of Fact. The Mayor and City Commission make the following FINDINGS OF FACT based upon the substantial competent evidence provided:

The requested non-use variance from ZLDC Section 24-81(A)(2), to permit an awning to extend seventeen (17) feet into the side interior setback where a maximum of five (5) feet is allowed by the City Code, maintains the basic intent and purpose of the applicable zoning, subdivision and other land use regulations. Moreover, the requested non-use variance is not contrary or detrimental to the public interest because the proposed use and design is compatible with surrounding land uses and properties in accordance with review standards for granting a variance list in the ZLDC Section 24-176 (B).

Section 4. Limitation of Approval. The issuance of this development permit does not in any way create a vested right(s) on the part of the Applicant to obtain a permit from a county, state, or federal agency, and does not create any liability on the part of the municipality for issuance of the permit if the Applicant fails to obtain requisite approvals or does not fulfill the obligations imposed by a county, state or federal agency or undertakes actions that result in a violation of county, state, or federal law.

Section 5. Conflicts. All resolutions or parts of resolutions in conflict with this Resolution are repealed to the extent of such conflict.

Section 6. Effective Date. This Resolution shall be in force and take effect immediately upon its passage and adoption.

APPROVED AND ADOPTED by the City Commission of the City of North Miami Beach, Florida at regular meeting assembled this **the day of** , **2023.**

ATTEST:

ANDRISE BERNARD
CITY CLERK

ANTHONY F. DEFILLIPO
MAYOR

(CITY SEAL)

APPROVED AS TO FORM &
LANGUAGE & FOR EXECUTION

HANS OTTINOT
CITY ATTORNEY

	YES	NO	ABSTAIN	ABSENT
Commissioners				
Mayor Anthony DeFillipo				
Vice-Mayor Michael Joseph				
Commissioner Fortuna Smuckler				
Commissioner Jay Chernoff				
Commissioner Daniela Jean				
Commissioner McKenzie Fleuimond				
Commissioner Phyllis Smith				

Exhibit "A"
LEGAL DESCRIPTION

LOTS 54 THROUGH 61, BLOCK 3, OF "EASTERN SHORES," ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 65, AT PAGE 28, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

Tax Folio: 07-2215-007-0010

A/K/A
2811 NE 164 ST. Unit 1
North Miami Beach, Florida

