



City of North Miami Beach, Florida

Community Development Department

17050 NE 19TH AVENUE
1ST FLOOR
NORTH MIAMI BEACH, FLORIDA 33162
PLANNING & ZONING DIVISION: (305) 354-4456

CITY COMMISSION

Meeting: 02/21/2023 | **File No:** 22-06 | **Application Name:** Awning Variance Request - 2811 NE 164th Street Residence

General Data:

Applicant: Mark and Ana Antonio
Location: 2811 NE 164th St. Unit 1
PCN: 07-2215-007-0010
Property Size: 1,550 sq ft
FLUM: Residential Low-Rise Multifamily (RM-19)
Zoning: Residential Low-Rise Multifamily (RM-19)

Adjacent Zoning:

- **North:** CON, Conservation
- **East:** Residential Mid-Rise Multifamily (High Density) District, RM-23
- **South:** General Business District, B-2
- **West:** N/A

Land Use: Residential

Location Map



Item before the Board:

The applicants are seeking a variance to code Sec. 24-81(A)(2) for a reduction in the required side setback from a maximum allowed 5' encroachment to a 17' encroachment for an awning built without a permit in 2009. The applicant is in the process of legalizing the awning by applying for permits and this variance.

Optional Board Motions for Action Items:

1. **Move to continue with direction.**
2. **Move approval** of the variance request (File #22-06) from ZLDC Section 24-81 (A)(2), allow a maximum 17' encroachment of an awning into the side interior setback whereas a maximum 5' is allowed, by finding that the request is consistent with the review criteria for granting a variance set forth in ZLDC Section 24-176 (B).
3. **Move denial** of the variance request (File #22-06) from ZLDC Section 24-81 (A)(2), allow a maximum 17' encroachment of an awning into the side interior setback whereas a maximum 5' is allowed, by finding that the request is consistent with the review criteria for granting a variance set forth in ZLDC Section 24-176 (B).

Background:

The site is located at 2811 NE 164th Street in the (RM-19) Residential Low-Rise Multi-family (Medium Density) zoning district. The property contains a single-family condo unit (unit #1) located in the Leeward Point Condominium built in 1974. The unit is situated at the far east corner of the condominium. According to the letter of intent, the applicant built the subject awning on the east side of their property without a permit in 2009.

Analysis:

Pursuant to ZLDC Section 24-47, **Minimum yard setbacks**, *side interior setback for buildings with 2 or 3 stories are required to be a minimum 20' feet.*

- The Leeward Point Condominium was built in 1974 and contains a legally non-conforming 5' side interior setback on the east side of the property whereas a minimum 20' is currently required.

Project Planner:

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Planning Technician
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Review Dates:

Planning & Zoning Board:
April 11, 2022

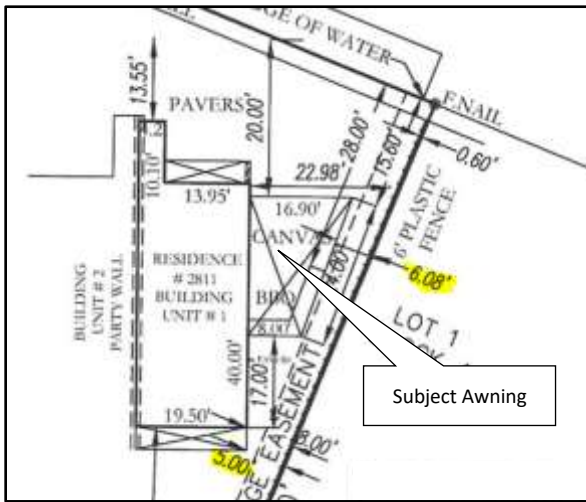
City Commission:
February 21, 2023

Attachments

1. Letter of Intent
2. Survey
3. Plans
4. Courtesy Notice

Pursuant to ZLDC Section 24-81 (A)(2), **Awnings and canopies**, which are attached to a principal building and well-maintained, may extend into any required yard setback area, provided that any such extension shall not exceed five (5) feet or one-third ($\frac{1}{3}$) the width of the required setback, whichever is less.

- The trapezoidal-shaped awning measures 16.9' wide x 24' long x 8' wide and is approximately 300 square feet. The awning was installed 6.08' from the property line which is in a minimum non-conforming 5' setback.



Location of the awning at 2811 NE 164th St. Unit 1.

Pursuant to ZLDC Section 24-81 (A)(2), **Summer kitchens**, Summer kitchens may be permitted in all residential zoning districts, provided that such structure shall maintain a minimum setback of five (5) feet from any rear lot line, shall not exceed one hundred forty-four (144) square feet in gross floor area. Summer kitchens may be open-aired or roofed. The design of the summer kitchen must be aesthetically pleasing and harmonious with the structure to which they are associated.

- Per ZLDC Section 24-22, Summer kitchen: An outdoor cooking facility not intended or used as the primary cooking facility or kitchen that may consist of, but is not limited to, an under counter refrigerator, grill, burner(s), rotisserie, smoker or sink. The subject awning contains a summer kitchen that is approximately 36.25 square feet and a patio area.



Photo of the awning at 2811 NE 164th St. Unit 1.

Variance Review Analysis

Pursuant to ZLDC Section 24-176 (B), the granting of a variance shall demonstrate compliance with the following criteria:

- 1) A non-use variance to the terms of this Code that will not be contrary to the public interest may be recommended by the Planning and Zoning Board, and except as provided in Section 24-176.1, granted by the City Commission in compliance with the requirements of the City Charter in this Code, upon a showing by the applicant that the non-use variance maintains
 - The 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.
- 2) Appropriate conditions and safeguards, in conformity with the Code, may be prescribed as a condition of the granting of the variance, and violation of such conditions shall be deemed a violation of this Code.
 - 3) The nonconforming use of adjacent lands, structures, or buildings shall not be considered grounds for the authorization of a variance.
 - Awnings designed in accordance with **ZLDC Section 24-81** are permitted in RM zoning districts pursuant to **ZLDC Section 24-47 (E)**. The subject site is located adjacent RM-23 Residential Mid-Rise Multifamily to the east, B-2 Commercial to the south, RM-19 Low Rise to the west, and Maule Lake to the north. The condominium development has a non-conforming 5' side interior setback from the east property line. The unit is also located on an irregularly shaped lot which presents a unique challenge as it relates to the setback lines. The awning despite exceeding the maximum 5' encroachment into the setback, maintains a consistent 6' setback from the property line.

The applicant requests relief from the 5' maximum setback encroachment listed in **ZLDC Section 24-81 (A)(2)**, to bring the existing awning into compliance by allowing an existing 17' setback. The applicant has received a code enforcement violation and is trying to rectify the violation by applying for a variance and building permit. The building permit application will require a structural review which would the engineering of the structure is safe and meets applicable wind loads and Florida Building Codes.

This request demonstrates compliance with code **section 24-176 (B)** as the awning in question does not appear to deviate from or obstruct any existing or surrounding land uses since its existence in 2009. The area is zoned residential low rise multifamily and the awning serves as sun protection for a summer kitchen and patio area, both allowed uses in this zoning district. The substantial awning size does not appear to detract from the overall aesthetic appearance in the area since awnings are allowed on multi-family buildings.

Public Notices:

- ✓ Public Notice was posted at the property by February 10, 2023 at least 10 days prior to the meeting.
- ✓ Courtesy notices were mailed to property owners within a 500-foot radius by February 10, 2023, at least 10 days before the meeting date.