



# **City of North Miami Beach, Florida**

## **Community Development Department**

### **CITY COMMISSION STAFF REPORT**

**TO:** Mayor and City Commission  
**THROUGH:** Esmond K. Scott, City Manager  
**VIA:** Edward Ng, AICP, Planning and Zoning Manager  
**FROM:** Mario Duron, AICP, Associate Planner  
**DATE:** February 16, 2021  
**RE:** Pool Equipment Setback

**P&Z ITEM # 20-14** ----- **Variance for Pool Equipment Setback** ◆  
**OWNER(S)/DEVELOPERS OF PROPERTY** Jorge Tabares & Jennifer Tabares

**ADDRESS OF PROPERTY** 1960 NE 180<sup>th</sup> Street

**FOLIO NUMBER(S)** 07-2209-007-500

**EXISTING ZONING** RS-4, Residential Single-Family

**EXISTING LAND USE** Residential Single-Family

**FUTURE LAND USE DESIGNATION** Residential Medium Density

◆-----◆  
**REQUEST:**

The Property Owners, Jorge and Jennifer Tabares are requesting one (1) non-use variance from Section 24-81(A)(5), to permit the Pool Equipment on the Property to remain at the installed location, with a rear setback of one (1) foot, and one side yard with a continuous unobstructed width of three (3) feet, where the Code requires a minimum rear setback of eleven (11) feet and one (1) side yard with a continuous unobstructed width of five (5) feet.

**THE SITE:**

The Property is located in the Sunray East community of North Miami Beach. The single-family home was originally built 1958. The property was purchased by Jorge & Jennifer Tabares in 2016.

**BACKGROUND:**

The Property Owners submitted a building permit, under POM20-19 for a new pool and pool equipment. The permit was approved by the reviewers for: Building, Electrical, Planning and Zoning, Plumbing, Structural, and Miami Dade County Health Department, and was issued on September 18, 2020. On November 18, 2020 the Planning and Zoning Division completed a final inspection for the work done under permit POM20-19. The inspection was denied by Planning and Zoning because the work deviated from the

approved plans. The pool equipment was installed at a different location from the approved plans and no revisions of the change was submitted to the Building Department. The Property Owners have submitted a variance request for the setbacks required for mechanical equipment in order to keep the installed equipment at the nonconforming location.

#### **ZONING:**

The Property is zoned RS-4 Residential Single-Family District, and is located in the Sunray East community of North Miami Beach.

#### **CODE COMPLIANCE CHECKLIST:**

Staff has reviewed the application for consideration by the Planning and Zoning Board; in this report, Staff presents the applicable Zoning and Land Development Code regulations with recommendations.

#### **SURROUNDING ZONING & LAND USES:**

<b>Location</b>	<b>Zoning Designations</b>	<b>Existing Land Uses</b>	<b>Future Land Use Designations</b>
North	RS-4 - Residential Single Family	Residential Single-Family	Residential Medium Density
East and West	RS-4 - Residential Single Family	Residential Single-Family	Residential Medium Density
South	RS-4 - Residential Single Family	Residential Single-Family	Residential Medium Density

#### ***Sec. 24-44(B) – Residential Single-Family District, Uses Permitted***

<b>Use Permitted</b>	<b>Proposed</b>	<b>Recommendation/Comments</b>
Single-family residential dwellings	Single-family Residence	Existing/Complies

#### ***Sec. 24-44(D) – Residential Single-Family District, Site Development Standards***

<b>Required</b>	<b>Proposed</b>	<b>Recommendation/Comments</b>
Lot Area: Min: 5,000 square feet	5,736 SF.	Complies
Lot width: Min: 50 feet	50 FT.	Complies
Minimum Building Setbacks: <ul style="list-style-type: none"> <li>▪ Front 25 FT.</li> <li>▪ Rear 15 FT.</li> <li>▪ Side (Interior) 5 FT.</li> </ul>	Existing Building Setbacks <ul style="list-style-type: none"> <li>▪ Front: 25.83 FT.</li> <li>▪ Rear: 28.67 FT.</li> <li>▪ Side (Interior): 5 FT.</li> </ul>	Complies
Maximum building height: 2 stories/30 feet	One-story	Complies

Minimum floor area: 1,100 SF.	1,632 SF. (Existing)	Complies
Maximum lot coverage: 40%	30% = 1,742 SF.	Complies
Minimum pervious area: <ul style="list-style-type: none"> <li>• 35% of the lot</li> <li>• 25% of required front yard</li> </ul>	<ul style="list-style-type: none"> <li>• 70% = 3,994 SF.</li> <li>• 94% = 1,175 SF.</li> </ul>	Complies

**Article VIII - Supplemental Regulations**  
**Sec. 24-81(5) - Setback Encroachments.**

Required	Proposed	Recommendation/Comments
<p>Mechanical equipment may project up to four (4) feet into any required side yard or rear yard, provided that at least one (1) side yard maintains a minimum continuous unobstructed width of five (5) feet:</p> <ul style="list-style-type: none"> <li>• Minimum Side Setback with Projection: One (1) FT.</li> <li>• Minimum Rear Setback with Projection: Eleven (11) FT.</li> <li>• One (1) side yard with a minimum continuous unobstructed width of five (5) FT.</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum Side Setback with Projection: 4 FT. *</li> <li>• Minimum Rear Setback with Projection: One (1) FT.**</li> <li>• One (1) side yard with a minimum continuous unobstructed width of three (3) FT.**</li> </ul>	<p>*Complies</p> <p><b>**Variance Requested</b></p>

**Sec. 24-85 – Swimming Pools.**

Required	Proposed	Comments
<p>Minimum Pool Setbacks:</p> <ul style="list-style-type: none"> <li>• Side lot line: 7.5 FT.</li> <li>• Rear lot line: 7.5 FT.</li> <li>• Structure: 5 FT.</li> </ul>	<ul style="list-style-type: none"> <li>• Side lot line: 12.25 FT. (East) 7.83 FT. (West)</li> <li>• Rear lot line: 7.5 FT</li> <li>• Structure: 8 FT.</li> </ul>	Complies

## **PLANNING AND ZONING DIVISION ANALYSIS:**

Staff originally reviewed and approved the pool permit under POM20-19 in September 2020. The work under permit POM20-19 included the installation of a pool, pavers, and the associated pool equipment (shown on the west side yard of the Property in POM20-19).

The variance is being requested because the pool equipment is not in compliance with the approved plans nor the code requirements for mechanical equipment. Per the Zoning Code *Definitions* in Sec. 24-22, mechanical equipment includes all equipment for the use of functioning mechanical or electrical systems including but not limited to: heat pumps, air-conditioning units, pool pumps, solar collector panels, and permanently installed generators.

Per the supplemental regulations for setback encroachments found in Sec. 24-81(A) every part of every required front, side and rear yard setback shall be open and unobstructed from finished grade to the sky except as herein provided. Section 24-81(A)(5) adds that Mechanical equipment may project up to four (4) feet into any required side yard or rear yard, provided that at least one (1) side yard maintains a minimum continuous unobstructed width of five (5) feet. Mechanical equipment must be located at the minimum finished floor elevation for the structure to which they are associated, and must be visually screened from ground view of surrounding and adjacent properties.

The pool equipment complies with the minimum finished floor evaluation (Zone X), screening and the side yard setback requirements. However, the location of the equipment does not comply with rear setback requirement, nor the requirement for an unobstructed side yard with a width of five (5) feet. The Property Owners are requesting a variance to waive the setback requirements for mechanical equipment and keep the pool equipment in the currently installed location.

The following is staff's review of the non-use variance request.

### **Variance: A non-use variance from Sec. 24-81(A)(5) Setback Projections for Mechanical Equipment.**

In reviewing a variance, city staff utilizes the variance criteria and procedure in Section 24-176.

- 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 granted by the City Council in compliance with the requirements of the City Charter in this Code, upon a showing by the applicant that the nonuse 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.

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.

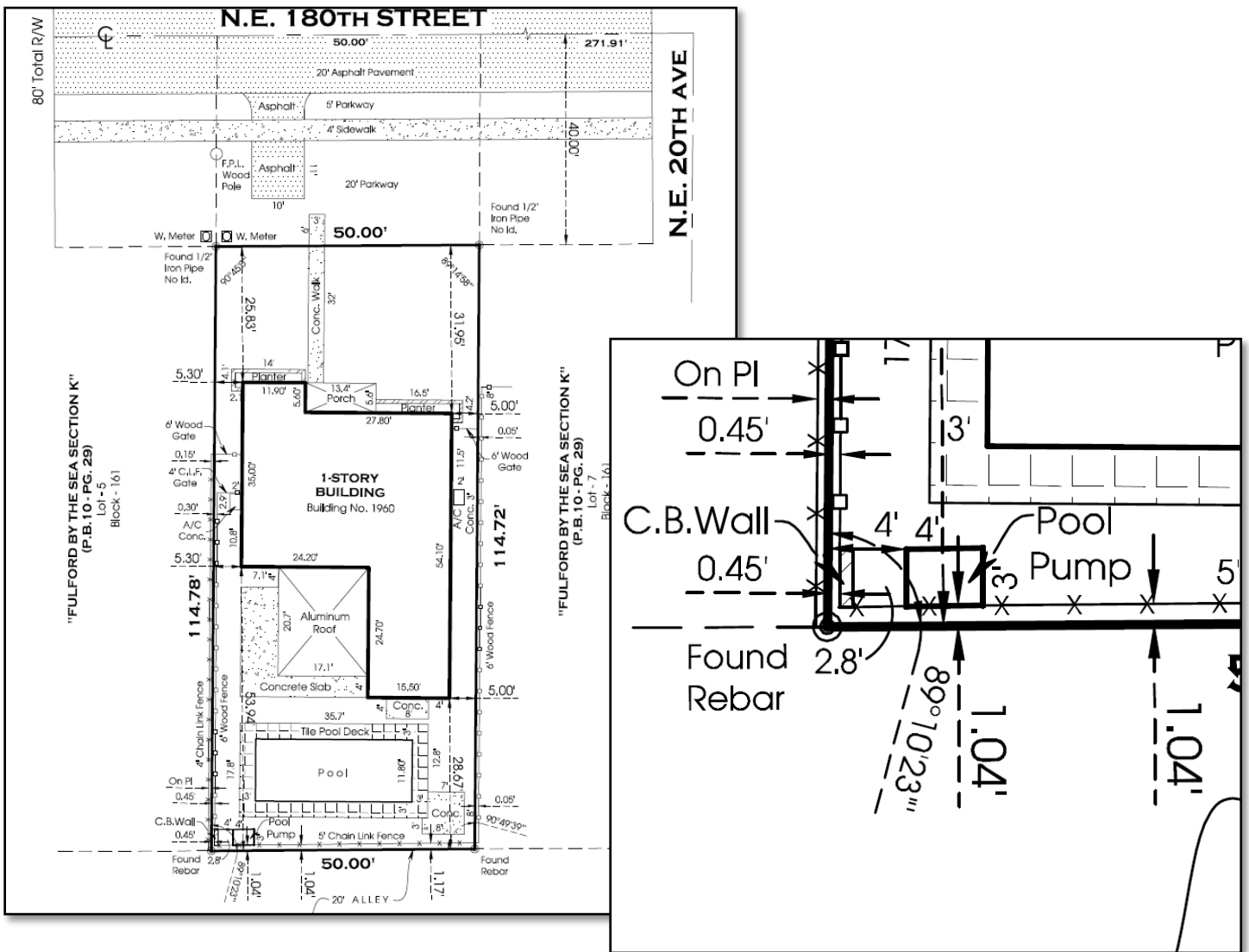


Figure 1 Survey of the Property showing the nonconforming location of the installed pool equipment under permit POM20-19.

The Applicant requests a variance from Sec. 24-81(A)(5), so the installed pool equipment can be approved and permitted with rear setback of one (1) foot and one (1) side yard with continuous unobstructed width of three (3) feet.

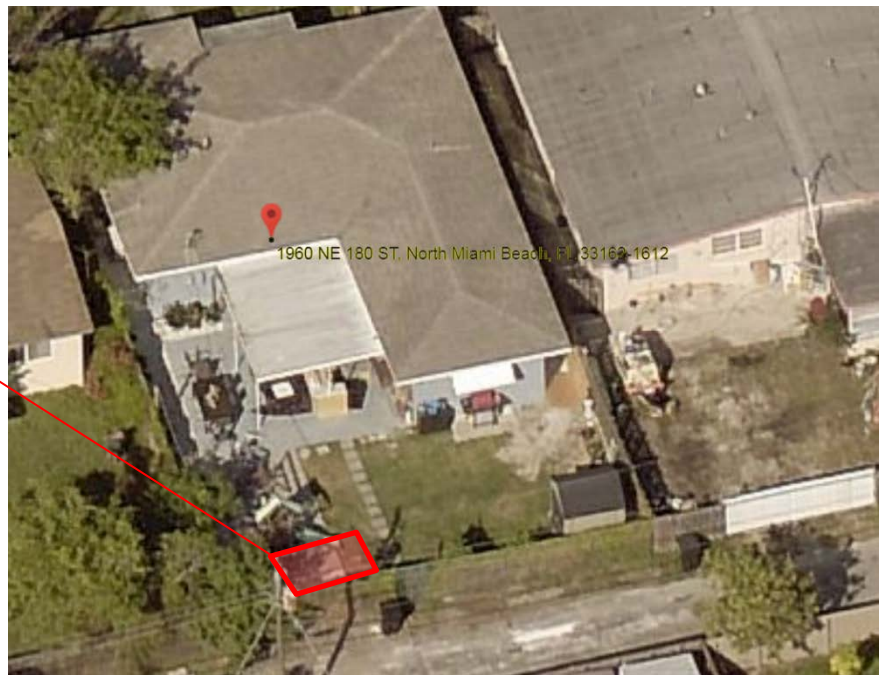


The applicant has identified the following **justifications** for the variance request:

- Existing equipment on both side yards is already encroaching three (3) feet into the side setbacks
- Septic tank/drain field in rear of property will require the relocation of the drain field to the front of the house in order to have the setbacks needed for the pool equipment
- Costs and time to relocate to remove and relocate the pool equipment

Staff has reviewed the variance request and determined that the Applicant has provided justifications which support approval of the non-use variance request in order to permit the pool equipment to remain at the installed location.

Staff recognizes the alternative to relocate the pool equipment will require additional time and costs for demolition and reinstallation. Staff recognized that the current nonconforming location of the pool equipment will not impact the neighbors or their quality of life. Staff finds the request maintains the basic intent of the zoning requirements, as the pool equipment complies with the side setback of four (4) feet from the neighboring property. While the pool equipment is located one (1) foot from rear property line, a fence and landscaping shield the pool equipment from view of neighbors.



*Figure 2 Photo showing mechanical equipment in backyard screened from view of neighboring properties.*

This request is not detrimental to the community and does not impact the appearance of the community at-large, as the pool equipment is also installed in the rear/backyard area of the property where it abuts an alley. The pool and associated equipment complies with all Building Code regulations. It has been installed in a manner that is architecturally and structurally harmonious to Property and to the surrounding area.

**PLANNING AND ZONING BOARD RECOMMENDATION:**

The Planning and Zoning Board recommended APPROVAL of one (1) non-use variance. Board Member Joseph Litowich made the motion to approve, Board Member Larry Shimbaum seconded the motion, and item was recommended for approval by a vote of 5-0.

**COMMUNITY DEVELOPMENT DEPARTMENT RECOMMENDATION:**

The Community Development Department recommends **APPROVAL** of one (1) non-use variance subject to the conditions contained in the attached draft Resolution.

**SUBMITTAL HISTORY:**

**BUILDING DEPARTMENT (March 31<sup>st</sup>, 2020)**

**PLANNING & ZONING BOARD (January 11<sup>th</sup>, 2021)**

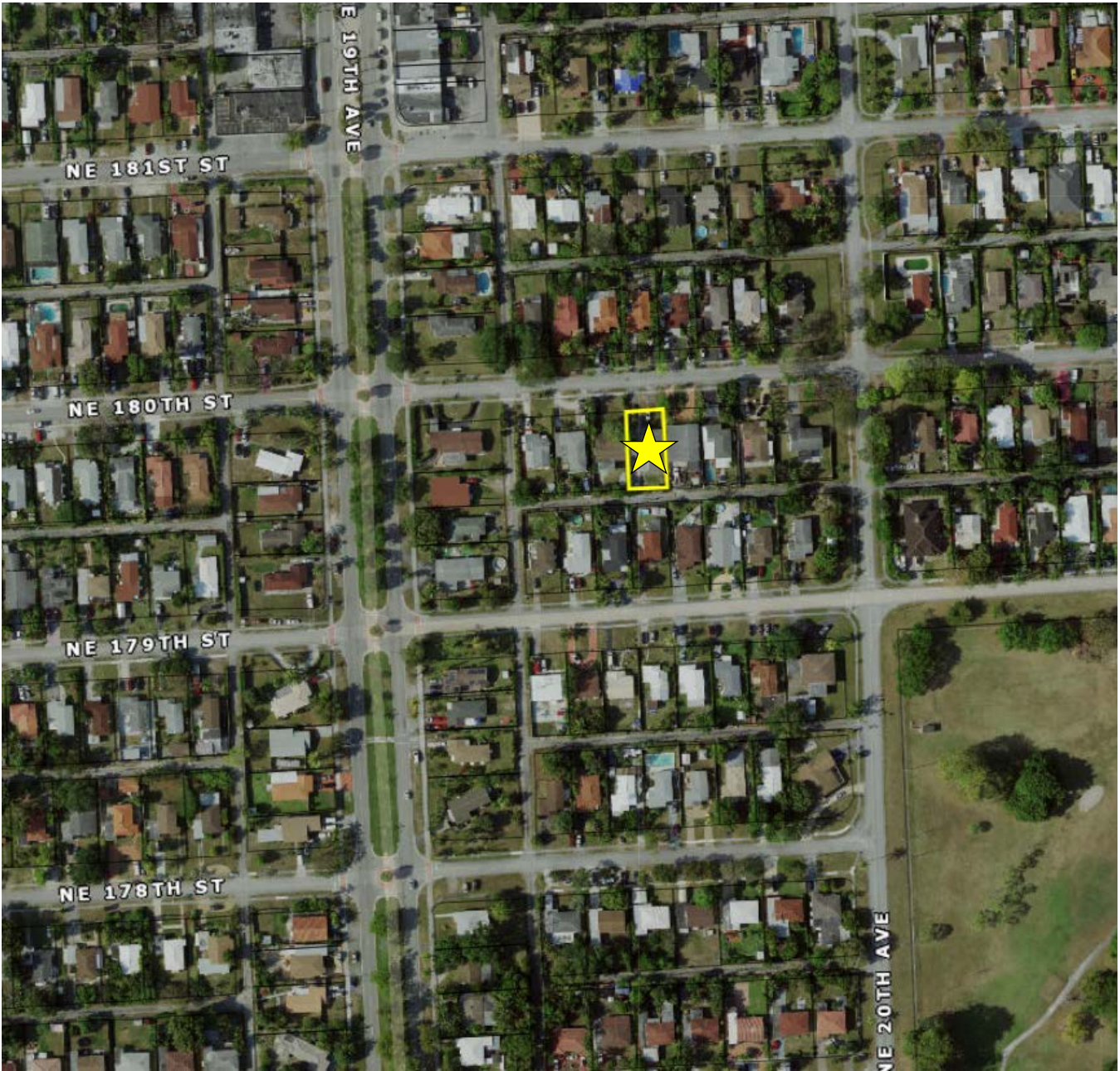
**CITY COMMISSION (February 16<sup>th</sup>, 2021)**

Attachment(s):

- Draft Resolution
- PZ Application Package
- Letter of Intent
- Survey/Site Plan
- Drawings for POM20-19
- Building Permit Documents for POM20-19

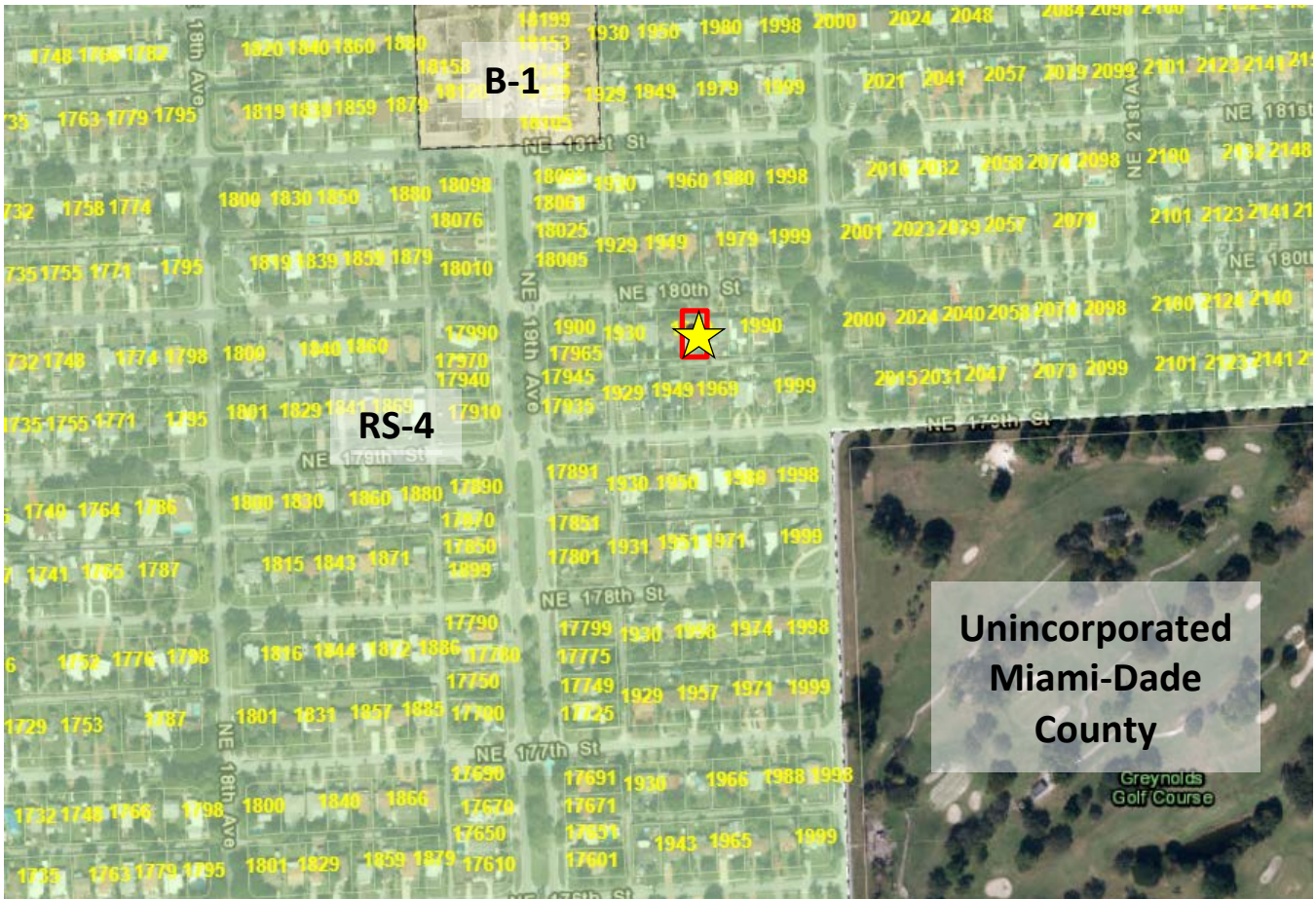


## LOCATION AND AERIAL MAP





## ZONING MAP



**ADVERTISEMENT**  
**(Published in Daily Business Review on 2/5/2021)**



**CITY OF NORTH MIAMI BEACH  
PUBLIC HEARING NOTICE**

The City of North Miami Beach will hold a City Commission meeting on:  
Tuesday, February 16<sup>th</sup>, 2021 at 6:00 P.M.

The meeting agenda and a copy of the staff report is available online at:  
[WWW.CITYNMB.COM](http://WWW.CITYNMB.COM)

Members of the public may speak, watch, attend, or listen either in person or virtually to the public hearing by following these instructions:

**Ways to Watch and Speak during the Public Meeting:**

**Attend and Speak In Person:**

**SOCIAL DISTANCING WILL BE OBSERVED, MASKS ARE REQUIRED, IN PERSON  
MAXIMUM OCCUPANCY SET AT FIFTY (50) PERSONS**

Marjorie and William McDonald Center  
17051 NE 19<sup>th</sup> AVE  
North Miami Beach, FL 33162

&

Julian Littman Performing Arts Theatre  
17011 NE 19<sup>th</sup> Ave  
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**Watch Live:**

Comcast Channel 77

Watch Live stream on [WWW.CITYNMB.COM](http://WWW.CITYNMB.COM)

**Participate and Speak via Zoom Meeting:**

[WWW.ZOOM.US](http://WWW.ZOOM.US)

By Phone, Press \*9 to Raise Your Hand to Speak: (646) 876-9923, (US Toll)  
(301) 715-8592, (US Toll) Enter the Meeting ID/Password  
Zoom Meeting ID: 872 3465 9709  
Password: 174 371

Any person requiring special accommodations to access this hearing is asked to advise the City at least  
5 days before the hearing by contacting the City Clerk at 305-787-6001

**WRITTEN PUBLIC COMMENTS**

Written Public comments may be accepted by the following means:

Via e-mail to:

[NMBCOMDEV@CITYNMB.COM](mailto:NMBCOMDEV@CITYNMB.COM)

*Public comments will be accepted until 12:00 p.m. on the day of the meeting.*

**Public Hearing(s):**

**The City of North Miami Beach City Commission shall consider the following item(s):**

**Non-Use Variance - "Pool Equipment Setback" - 1960 NE 180th Street requested by Jennifer E. Tabares Fuentes:**

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, GRANTING A VARIANCE FROM CHAPTER 24, ARTICLE VIII, SECTION 24-81(A)(5) OF THE CITY CODE OF ORDINANCES FOR THE PROPERTY LOCATED AT 1960 NE 180TH STREET, NORTH MIAMI BEACH, FLORIDA; PROVIDING FOR FINDINGS OF FACT; CONFIRMING EXPIRATION AND LIMITATION OF APPROVAL; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

*The items are on file and available for an examination at the Community Development Department, 17050 N.E. 19 Avenue, North Miami Beach, Florida 33162-3194, Monday through Friday 8:00 AM - 5:00 PM.*

**PUBLIC RECORDS**

The hearing will be recorded for later viewing and is a public record. The virtual chat, if any, will be saved and is a public record. Minutes of the hearing will be taken and will be made available.

**NOTICE PURSUANT TO §286.0105, FLORIDA STATUTES**

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD, AGENCY, OR COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE, HE OR SHE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

**AMERICANS WITH DISABILITIES ACT**

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this meeting is asked to advise the City at least 5 days before the hearing by contacting the City Clerk at 305-787-6001.

**LOBBYING ACTIVITIES**

In accordance with Section 2-161 of the City Code, adopting Section 2-11.1(s) of the Miami-Dade County Code, any person engaging in lobbying activities, as defined therein, must register at the City Clerk's Office before addressing the City Council on the agenda items or engaging in lobbying activities.

Have questions or need additional information signing into the Zoom meeting?

Email: [NMBCOMDEV@CITYNMB.COM](mailto:NMBCOMDEV@CITYNMB.COM)

Call: 305-948-2966

Written or physical evidence will be accepted no later than Tuesday, February 16, 2021 by 12:00 P.M.

To submit written or physical evidence intended to be offered into evidence during the  
Communication Media Technology proceedings:

Email: [NMBCOMDEV@CITYNMB.COM](mailto:NMBCOMDEV@CITYNMB.COM)

Call: 305-948-2966

## PROPERTY NOTIFICATION SIGN (Sign Updated 2/6/21)



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