

**RESOLUTION NO. R2017-32**

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, GRANTING A VARIANCE FROM CHAPTER XXIV, ARTICLE VIII, SECTION 24-80, ENTITLED “FENCES, WALLS, AND HEDGES”, SPECIFICALLY GRANTING A VARIANCE FROM SECTION 24-80(C)(3)(a) TO PERMIT A FENCE HEIGHT OF SIX (6) FEET IN THE FRONT YARD SETBACK, WHERE ONLY FOUR (4) FEET IS ALLOWED, ON THE PROPERTY LOCATED AT 19300 NE 22 AVENUE, NORTH MIAMI BEACH, FLORIDA.**

**(P&Z Item No. 17-1, February 13, 2017)**

**WHEREAS**, the property described herein is zoned RS-2 Residential Single-Family District; and

**WHEREAS**, the Applicant requests approval of variances from Section 24-80(C)(3)(a) to construct a six (6) foot fence in the front yard setback, where only a four (4) foot fence is permitted; and

**WHEREAS**, on February 13, 2017, the Planning and Zoning Board (“Board”), by a vote of 5 to 0, recommend approval of the variance, subject to the conditions set forth and included herein below in Section 1, and the Board recommended an additional condition which provided that upon a change in ownership of the property will require removal of the portion of fence in excess of four (4) feet is not included in the below conditions; and

**WHEREAS**, the Community Development Department recommends approval of the fence height variance without the additional condition as recommended by the Board; and

**WHEREAS**, pursuant to Section 3.5.3 *Variances*, of the City of North Miami Beach’s Charter, approval of the fence variance with those conditions contained in Section 1 and without the additional condition recommend by the Board, shall require an affirmative vote of two-thirds (2/3) of the quorum of the City Commission; and

**WHEREAS**, the Mayor and City Commission find it to be in the best interests of the public health, welfare, and safety of the residents to approve the fence height variance subject to the conditions included herein and provided below in Section 1.

**NOW, THEREFORE, BE IT RESOLVED** by the City Commission of the City of North Miami Beach, Florida:

**Section 1.** Variance approval to construct a six (6) foot fence in the front yard setback of the property, where only a four (4) foot fence is permitted, on property legally described as:

LOT 7 IN BLOCK 9 OF "SKY LAKE", ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 60, PAGE 8, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA. CONTAINING 14,000 SQ.FT. OR 0.3214 ACRES, MORE OR LESS;

A/K/A 19300 N.E. 22<sup>ND</sup> AVENUE  
NORTH MIAMI BEACH, FLORIDA.  
Tax Folio: 07-2204-014-1690

is HEREBY **GRANTED** SUBJECT TO THE FOLLOWING CONDITIONS:

1. Unless otherwise provided, all of the below conditions shall be completed/complied with prior to the issuance of the building permit.
2. The conditions of approval for this variance approval, 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:
  - i. Land Title Survey prepared by Cousins Surveyors & Associates, Inc.
  - ii. Plans prepared by SDH Studio Architecture and Design, dated January 9, 2015, including the following:
    1. Site Plan, Sheet A-100
4. All representations and exhibits as prepared and provided to the Community Development Department as part of the Application Submittal Package, as amended.
5. All representations proffered by the Applicant's representatives as a part of the review of the application at public hearings.
6. 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.
7. All gates must open inward onto the property and not in the city right of way.

**Section 2.** The City Commission makes the following FINDINGS OF FACT based upon the substantial competent evidence provided:

- The requested variance is due to a hardship not created by the Applicant and cannot be eliminated and, without the requested variances the health and safety of the family (Applicant) are not served within the existing permitted fence height. A non-use variance allowing for a fence height greater than permitted by this Code is not contrary to the public interest nor contrary to the requirements of this Code. The Applicant has demonstrated that the non-use variance maintains the basic intent and purpose of the zoning, does not impact the general welfare of the public, and maintains the appearance of the community and surrounding land. Appropriate conditions and safeguards, in conformity with the Code, have been prescribed as a condition of the granting of the variance, and violation of such conditions shall be deemed a violation of this code. The existing uses on the property are not nonconforming uses of the adjacent lands, structures, or buildings.

**Section 3.** Pursuant to Section 24-172(I) of the Code of Ordinances of the City of North Miami Beach, the applicant must apply for a master building permit from the City within one (1) year of the date of this Resolution or the variance approval granted shall be deemed null and void and the applicant shall be required to reinstate the variance process unless the term is extended administratively or by the City Commission prior to its expiration.

**APPROVED AND ADOPTED** by the City Commission of the City of North Miami Beach, Florida at regular meeting assembled this **21<sup>st</sup>** day of **March, 2017**.

ATTEST:

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PAMELA L. LATIMORE  
CITY CLERK

\_\_\_\_\_  
GEORGE VALLEJO  
MAYOR

(CITY SEAL)

APPROVED AS TO FORM & LANGUAGE  
AND FOR EXECUTION

\_\_\_\_\_  
JOSE SMITH  
CITY ATTORNEY

SPONSORED BY: Mayor and City Commission

<b>COMMISSIONER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
Mayor George Vallejo				
Commissioner Anthony DeFillipo				
Commissioner Barbara Kramer				
Commissioner Marlen Martell				
Commissioner Frantz Pierre				
Commissioner Phyllis Smith				
Commissioner Beth Spiegel				