

**Date:** March 22<sup>nd</sup>, 2016

**To:** The Honorable Mayor and City Council of the City of North Miami

**From:** Tanya Wilson-Séjour, AICP, Community Planning & Development Director 

**Re:** Text Amendment to Article 5, Division 6, Section 5-601 (“Boats”) & Section 5-602 (“Docks”)  
**Applicants:** Angel Martinez, Bryan Zappulla & Joel Behar

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**AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 29 OF THE NORTH MIAMI CODE OF ORDINANCES ENTITLED “LAND DEVELOPMENT REGULATIONS”, BY AMENDING ARTICLE 5, DIVISION 6, ENTITLED “BOATS, DOCKS, SEAWALLS, ETC.”, SPECIFICALLY AT SECTION 5-601 ENTITLED “BOATS” AND SECTION 5-602 ENTITLED “DOCKS” TO ESTABLISH APPROPRIATE REGULATIONS FOR THE TOWNHOME PROPERTIES IDENTIFIED AS SECTIONS 1 THROUGH 9 OF ARETA ESTATES SUBDIVISION, LOCATED ALONG THE SOUTH SIDE OF THE WATERWAY/CANAL IMMEDIATELY NORTH OF NE 123RD STREET, BY ALLOWING BOATS TO BE MOORED EITHER PARALLEL OR PERPENDICULAR TO THE PROPERTY LINE ABUTTING THE CANAL AND BY INCREASING THE PROJECTION OF MOORING PILES (DOLPHINS), FLOATING VESSEL PLATFORMS, HYDRO-HOISTS, BOATLIFTS AND WATERCRAFTS INTO THE CITY’S WATERWAYS OR CANALS FROM THE CURRENT MAXIMUM OF TWENTY PERCENT (20%) OF THE WIDTH OF THE CANAL, OR TWENTY (25) FEET, WHICHEVER IS LESS, TO A MAXIMUM OF TWENTY-FIVE (25) FEET, AS MEASURED FROM THE RECORDED PROPERTY LINE; PROVIDING FOR REPEAL; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND FOR AN EFFECTIVE DATE.**

**RECOMMENDATION**

That the Mayor and City Council pass and adopt the proposed ordinance, as revised by the Planning Commission, to amend Chapter 29 of the North Miami Code of Ordinances entitled “Land Development Regulations” by amending the texts of Article 5, Division 6 (“Boats, Docks, Seawalls, Etc.”), specifically at Section 5-601 (“Boats”) and Section 5-602 (“Docks”) to establish appropriate regulations for the townhome properties identified as Sections 1 through 9 of Areta Estates Subdivision and located along the south side of the canal immediately north of NE 123<sup>rd</sup> Street to provide for the perpendicular mooring of boats, and for a maximum projection

of mooring piles, floating vessel platforms, and similar structures of twenty (25) feet into the abutting canal.

### **PLANNING COMMISSION RECOMMENDATION**

The proposed ordinance to amend the aforementioned sections of the City's Land Development Regulations (LDRs) was heard and reviewed by Commissioners Kevin Seifried (Chair), Charles Ernst (Vice-Chair), Peggy Boule, Michael McDermid, Bob Pechon, and Emmanuel Jeanty at the regularly scheduled Planning Commission on March 1<sup>st</sup>, 2016 meeting. Following staff's presentation, the Planning Commission engaged in a very spirited discussion on the item, recalling the very reason why the City had, in the first place, adopted the regulations in question. The Commissioners also discussed and weighed the peculiar sizes of the townhouse lots of the Areta Subdivision against the strict application of these provisions, with some even expressing some concerns relating to navigational safety along the canal. Upon allowing to speak on the item, the Applicant's attorney gave a very thorough presentation, which not only highlighted the merit of the application and the necessity for the proposed text amendment, but also addressed in detail the very concerns raised by the Commissioners. After Chair Seifried opened the public hearing to give the numerous attendees an opportunity to speak on the item, scores of residents, mainly from the Areta Estates subdivision, stepped forward and spoke passionately in favor of the text amendment. Only two (2) residents spoke against the item.

Upon hearing the testimony of the attendees, the Commissioners engaged in further discussion on the item and agreed to the first portion of the text amendment, which provides that, for the townhomes of that subdivision, boats are allowed to be moored either parallel or perpendicular to the property line abutting the canal. Commissioners Ernst and Pechon objected, however, against the second part of the request, which sought to increase the projection of mooring piles, watercrafts and other similar mooring appurtenances from the current 25 feet or 20 percent of the width of the canal, whichever is less, to 30 feet or 30 percent of the width of said canal, or whichever is less. They asserted that, as proposed, this amendment was too wide in its scope as it would apply to all the canals in the City, not just the one abutting the townhome properties involved. Upon further deliberation, the Planning Commission agreed to a maximum projection of 25 feet for mooring piles and other marine structures into the canal, which would only be applicable for the Areta Estates townhomes. Commissioner Ernst then directed staff to come up with some standardized set of guidelines for the construction and encroachment of docks in the City, which take into account all environmental concerns, if any. Commissioner McDermid made a motion to recommend adoption of the ordinance, as amended by the Planning Commission, and forward it to the Mayor and City Council for final consideration. Seconded by Commissioner Boule, the motion passed 6-0 by roll call vote.

**PURPOSE & INTENT**

The proposed amendment, filed by co-applicants, Messrs. Bryan Zappulla, Angel Martinez and Joel Behar, seeks to revise Article 5, Division 6, Sections 5-601 in order to establish appropriate regulations for the perpendicular mooring of boats at the townhomes properties within the Areta Estate Subdivision, which, the Applicants, purport, are unable, due to their limited lot width, the current parallel mooring requirement of Land Development Regulations (LDRs. A companion request also seeks to amend Section 5-602 to allow mooring piles in connection with the townhouse properties within the above-mentioned subdivision to extend a maximum of twenty (25) feet into the abutting waterway. These revisions propose to impose applicable standards that will make possible the reasonable use of these waterfront townhomes, which have average lot width of nineteen (19) feet.

**BACKGROUND**

Article 5, Division 16, Section 5-601(E)(1) of the Land Development Regulations (LDRs), which regulates the use and anchoring of boats within the City's waterways, currently requires that, **in all residential districts, all boats be moored parallel to the property line abutting the canal or waterway.** The only exception to this provision is to be found in Subsection 5-601(E)(6) and involves boats that were properly permitted and allowed to be moored to mooring piles perpendicular to the property line abutting the canal or waterway prior to the adoption of the LDRs, inasmuch as said boats do not exceed the maximum waterway encroachment for that specific canal. Furthermore, Article 5, Division 6, Section 5-602(B)(1), which provides for the regulation of boat docks, piers, wharves, floating vessel platforms, hydro-hoists, boatlifts, dolphins and mooring piles or piers of any nature within the City, limits **the maximum preemption or encroachment of said marine structures into the navigable portion of any City's waterway or canal (not including Biscayne Bay) to twenty-five (25) feet or twenty (20) percent of the width of any said canal, whichever is less, as measured from the recorded property line.**

The joint Applicants, Messrs. Bryan Zappulla, Angel Martinez and Joel Behar, all own townhouses in Section 3 of Areta Estates Subdivision, with respective property addresses: 2141 NE 123<sup>rd</sup> Street, 2145 NE 123<sup>rd</sup> Street and 2171 NE 123<sup>rd</sup> Street. As per the letter of intent (attached), they have purchased their properties with the express purpose of enjoying the access to the Biscayne Bay and the Atlantic Ocean from the canal/waterway, which abuts the rear of their properties. The Areta Estates townhomes were developed between 1966 and 1968, with lot widths averaging approximately nineteen (19) feet. Many of these townhomes already have some form of docks, boatlifts and/or appurtenances for securing vessels to a dock, which are deemed legally non-conforming and are therefore allowed to remain pursuant to Section 5-601(E)(6), since they were properly permitted and approved prior to the adoption of the LDRs.

Given the standards of Article 5, Division 6, Sections 5-601 & 5-602 of the LDRs, and more particularly the minimum setback requirements listed in Section 5-601(D), the average lot width of these townhome lots physically precludes a property owner in the Areta Estates townhome subdivision, whose property does not already have a dock, from building a bona fide dock, and even less mooring a reasonably sized boat parallel to the property line. In fact, between 2012 and 2014, all three (3) Applicants have applied and secured building permits to construct mooring structures at their respective units. However, due to the narrowness of the lots, they were not able to moor their vessels parallel to the shoreline and instead were forced to moor their boats perpendicularly to their property lines, in violation of the applicable standards of the LDRs. This prompted the Code Compliance Division to initiate actions against said parties and eventually the Building Official to revoke the previously issued permits. These affected property owners contend that the provisions of Article 5, Division 6, Sections 5-601 & 5-602 of the LDRs as applied to their units and the other ninety-seven (97) units of the subdivision are overly restrictive and creates an undue hardship.

Consequently, these Applicants have retained the legal services of Mr. Frank Wolland, Esq. and have filed this two-prong request to amend the texts of the aforementioned sections of the LDRs to include specific minimum requirements for the permitting of docking and mooring facilities in connection with the Areta Estates townhomes subdivision. As stated above, the proposed text amendment was discussed at length at the March 1<sup>st</sup>, 2016 Planning Commission meeting where the Commissioners unanimously voted to recommend certain revisions to the Applicants' originally proposed text amendment. The Applicants have agreed to and incorporated the Planning Commission's recommended revisions, and have thus reformulated their text amendment request, which can now read and be summarized as follows:

1. Article 5, Division 6, Section 5-601(E)(1) is being revised to provide that, for the townhome properties of the Areta Estates Subdivision, boats may be moored either parallel or perpendicular to the property line abutting the canal or waterway; and
2. Article 5, Division 6, Section 5-602(B)(1) is being amended to provide that, for the subject townhome properties, dolphins, floating vessel platforms, hydro-hoists, boatlifts, watercrafts and other similar mooring structures may encroach a maximum of twenty (25) feet into the abutting canal, as measured from the recorded property line.

The Applicants argue that the ability to use the waterway behind their properties for boating was the primary purpose that they had in mind when they purchased their properties. They therefore believe that the text amendments they are proposing to the relevant sections of the LDRs are reasonable and will guarantee against the deprivation of these riparian rights and, ward, against any interference with their reasonable investment-backed expectations.

**ANALYSIS**

Article 3, Division 10, Section 3-1004 requires that all text amendments to the LDRs adhere to the following minimum standards:

**1. Promotes the public health, safety and welfare;**

*The proposed text amendment only seeks to establish appropriate regulations for the use and anchoring of boats along the properties within the Areta Estates townhome development, and for the projection of marine structures into the City's waterways. The canal abutting the affected properties is almost 100-foot wide and the maximum projection into the navigable portion of the canal is proposed to increase to thirty percent (30%) of the width of the canal, or thirty (30) feet, whichever is less, as measured from the recorded property line. As shown in the Proposed Waterway Encroachment Map (attached), the standards included in the amended text will neither adversely impact access or safety, nor create any navigational hazard. In fact, amending the LDRs to establish these specific minimum requirements for the permitting of docking and mooring facilities in the Areta Estates townhome subdivision is an appropriate action, which is necessary to provide equal opportunity, as well as meaningful and predictable standards in the permitting of docks for both staff and the public. The amendment does not conflict with and does not otherwise supersede the requirements of the Florida Building Code and of all applicable County and State regulatory authorities. As such, this text amendment is consistent with the purpose and intent of the LDRs, and will safeguard the public health, safety and welfare of the residents.*

**2. Does not permit uses the Comprehensive Land Use Plan prohibits in the area affected by the zoning map change or text amendment;**

*The proposed text amendment does not affect land use. It only deals with regulations pertaining to the use and anchoring of boats, as well as the preemption of mooring piles into the navigable portion of the abutting canal. It does not allow land uses, which are otherwise prohibited in the Comprehensive Land Use Plan.*

**3. Does not allow densities or intensities in excess of the densities and intensities which are permitted by the future land use categories of the affected property;**

*The proposed text amendment neither changes the residential land use map designations of the effected properties nor modifies the uses or intensities of the developments authorized in the affected FLUE designations, as it pertains to regulations for the permitting of docking and mooring facilities.*

- 4. Will not cause a decline in the level of service for public infrastructure which is the subject of a concurrency requirement to a level of service which is less than the minimum requirements of the Comprehensive Land Use Plan;**

*As stated previously, the proposed text amendment does not allow densities in excess of those permitted in the affected districts. As such, it will neither cause a decline in the level of service for public services, nor negatively impact the response time for emergency service in said districts.*

- 5. Does not directly conflict with any goal, objective or policy of the Comprehensive Land Use Plan; and**

*The proposed text amendment provides for appropriate regulations for the mooring of boats and the projection of mooring piles into the City's canals, to provide greater opportunities and enhance the quality of life for all homeowners, subject to the review of all applicable City, County and State regulatory authorities. Given its scope and purpose, the amendment will not conflict with any of the goals, policies and objectives of the City's Comprehensive Plan.*

- 6. The proposed amendment furthers the orderly development of the City of North Miami.**

*The proposed text amendment does not weaken the original intent of the relevant sections of the LDRs. It will not adversely affect property values in the adjacent area, nor will it impede navigation on the canal. It shall be noted that, in order to properly evaluate the request at hand, staff has reviewed the dock-related Code requirements of some other coastal communities and finds the suggested revisions to be generally consistent with most of the provisions therein. Additionally, the proposed amendment provides greater predictability and reduces ambiguity in the regulations governing the mooring of boats in residential districts.*

## **CONCLUSION**

In view of the foregoing analysis, staff believes that the proposed text amendment conforms to the goals, objectives and policies of the Future Land Use Element of the City's Comprehensive Plan and is also in keeping with the intent and purpose of the City's LDRs. **Staff is therefore requesting that the Mayor and City Council pass and adopt the attached ordinance, as revised by the Planning Commission, to amend Chapter 29 of the North Miami Code of Ordinances entitled "Land Development Regulations by amending the texts of Article 5, Division 6 ("Boats, Docks, Seawalls, Etc."), specifically at Section 5-601 ("Boats") and**

**Section 5-602 (“Docks”) to establish appropriate regulations for the townhome properties identified as sections 1 through 9 of Areta Estates Subdivision, located along the south side of the waterway/canal immediately north of NE 123<sup>rd</sup> Street, by allowing boats to be moored either parallel or perpendicular to the property line abutting the canal and by increasing the projection of mooring piles (dolphins), floating vessel platforms, hydro-hoists, boatlifts and watercrafts into the City’s waterways or canals from the current maximum of twenty percent (20%) of the width of the canal, or twenty (25) feet, whichever is less, to a maximum of twenty-five (25) feet, as measured from the recorded property line; providing for repeal; providing for conflicts; providing for severability; providing for codification and for an effective date.**

TWS/nl

- Attachments:
1. Proposed Ordinance
  2. Applicants’ Letter of Intent
  3. Proposed Waterway Encroachment Map
  4. Newspaper Advertisement

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 29 OF THE NORTH MIAMI CODE OF ORDINANCES ENTITLED “LAND DEVELOPMENT REGULATIONS”, BY AMENDING ARTICLE 5, DIVISION 6, ENTITLED “BOATS, DOCKS, SEAWALLS, ETC.”, SPECIFICALLY AT SECTION 5-601, ENTITLED “BOATS” AND SECTION 5-602 ENTITLED “DOCKS” TO ESTABLISH APPROPRIATE REGULATIONS FOR THE TOWNHOME PROPERTIES IDENTIFIED AS SECTIONS 1 THROUGH 9 OF ARETA ESTATES SUBDIVISION, LOCATED ALONG THE SOUTH SIDE OF THE WATERWAY/CANAL IMMEDIATELY NORTH OF NE 123<sup>RD</sup> STREET, BY ALLOWING BOATS TO BE MOORED EITHER PARALLEL OR PERPENDICULAR TO THE PROPERTY LINE ABUTTING THE CANAL AND BY REVISING THE PROJECTION OF MOORING PILES (DOLPHINS), FLOATING VESSEL PLATFORMS, HYDRO-HOISTS, BOATLIFTS AND WATERCRAFTS INTO THE CITY’S WATERWAYS OR CANALS FROM THE CURRENT MAXIMUM OF TWENTY (20) PERCENT OF THE WIDTH OF THE CANAL, OR TWENTY-FIVE (25) FEET, WHICHEVER IS LESS, TO A MAXIMUM OF TWENTY-FIVE (25) FEET, AS MEASURED FROM THE RECORDED PROPERTY LINE; PROVIDING FOR REPEAL; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND FOR AN EFFECTIVE DATE.**

**WHEREAS**, on April 28, 2009, the Mayor and City Council adopted the City of North Miami (“City”) Land Development Regulations under Chapter 29, City Code of Ordinances (“LDRs”); and

**WHEREAS**, applicable provisions of the LDRs are designed to protect and regulate residential and commercial uses, as reflected in the various residential and commercial zoning districts within the City, and are consistently used to implement the intent of the City Comprehensive Plan; and

**WHEREAS**, the LDRs also emphasize dwellings to be the principle use of residential properties, in furtherance of promoting peace and good order, safe vehicular traffic patterns, improving the aesthetic beauty of the community and hence, preserving the value of all the residential properties within the City; and

**WHEREAS**, Messrs. Bryan Zappulla, Angel Martinez and Joel Behar (“Applicants”), are owners of townhomes situated within Section 3 of Areta Estates Subdivision, specifically at 2141 NE 123<sup>rd</sup> Street, 2145 NE 123<sup>rd</sup> Street, and 2171 NE 123<sup>rd</sup> Street, respectively, and developed between 1966 and 1968 with lot widths averaging approximately nineteen (19) feet (“Subject Property”); and

**WHEREAS**, the relative narrowness of the Subject Property physically preclude Applicants from building a “reasonably” sized dock, or mooring a “reasonably” sized boat parallel to the property line; and

**WHEREAS**, the Applicants have previously applied and secured building permits to construct mooring structures at their respective units, but due to the narrowness of the lots, Applicants were forced to moor their boats perpendicularly to their property lines, in violation of the Subsection 5-601E, LDRs, prompting the Building Official to revoke said permits; and

**WHEREAS**, the Applicants have submitted an application with the Department of Community Planning and Development requesting text amendments to the LDRs, to allow Applicants with a sufficient mooring capacity and projection into the waterway, so as to allow their boats with access to Biscayne Bay and the Atlantic Ocean from the waterway abutting the rear of the Subject Property; and

**WHEREAS**, Applicants seek to amend Subsection 5-601E, so that their boats may be moored either parallel or perpendicular to the property line abutting the waterway, and Subsection 5-602B to revise the extension of dolphins, floating vessel platforms, hydro-hoists, boatlifts, watercrafts and other similar mooring structures into the waterway abutting the Subject Property to a maximum of twenty-five (25) feet, as measured from the Subject Property line; and

**WHEREAS**, the Planning Commission, after a duly noticed public hearing held on March 1, 2016, recommended approval to the Mayor and City Council, pursuant to the standards for approval under Section 3-1004, LDRs; and

**WHEREAS**, the Mayor and City Council find the proposed text amendment, as approved by the Planning Commission, is in the best interest of the City since it: 1) promotes the public health, safety and welfare; 2) does not permit uses the comprehensive land use plan prohibits in the area affected by the zoning map change or text amendment; 3) does not allow densities or intensities in excess of the densities and intensities which are permitted by the future land use categories of the affected property; 3) will not cause a decline in the level of service for public infrastructure which is the subject of a concurrency requirement to a level of service which is less than the minimum requirements of the comprehensive land use plan; 4) does not directly conflict with the goal, objective or policy of the comprehensive land use plan; and 5) the proposed amendment furthers the orderly development of the City.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:**

**Section 1. Amendments to Chapter 29, North Miami Code of Ordinances.** The Mayor and City Council of the City of North Miami, Florida, hereby amend Chapter 29 of the North Miami Code of Ordinances entitled “Land Development Regulations”, by amending Article 5, Division 6, entitled “Boats, Docks, Seawalls, etc.”, specifically at Section 5-601, entitled “Boats” and Section 5-602 entitled ”Docks” to establish appropriate regulations for the townhome properties identified as sections 1 through 9 of Areta estates subdivision, located along the south side of the canal immediately north of NE 123<sup>rd</sup> Street, by allowing boats to be moored either parallel or perpendicular to the property line abutting the canal and by increasing the projection of mooring piles (dolphins), floating vessel platforms, hydro-hoists, boatlifts and watercrafts into the City’s waterways or canals from the current maximum of twenty (20) percent of the width of the canal, or twenty-five (25) feet, whichever is less, to a maximum of twenty-five (25) feet, as measured from the recorded property line, as follows:

CITY OF NORTH MIAMI CODE OF ORDINANCES  
CHAPTER 29. LAND DEVELOPMENT REGULATIONS

\* \* \* \* \*

ARTICLE 5. DEVELOPMENT STANDARDS

\* \* \* \* \*

DIVISION 6. BOATS, DOCKS, SEAWALLS, ETC.

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**Sec. 5-601. Boats.**

- A. *Location.* Boat repair activities shall be conducted solely upon the premises of the boat repair business and shall not encroach upon any public street, public right-of-way or upon the private property of others.
- B. *[Houseboats.]* No person, firm or corporation shall use or occupy, or permit the use of or occupancy of a houseboat, floating home, or boat for living quarters, either permanently or on a temporary basis, on the waters of North Miami.
- C. *Boathouses and boat slips.* The following limitations shall apply to boathouses and boat slips accessory to residential uses in residential districts:
1. No boathouse shall be erected or altered to exceed a height of fifteen (15) feet from grade.
  2. No boathouse, permanent covering or temporary covering over a boat slip shall be permitted within or shall cover any portion of any public waterway.
  3. No boathouse or boat slip shall exceed twenty (20) feet in width or forty (40) feet in depth. Boathouses and/or boat slips shall not occupy more than thirty-five (35) percent of the waterfront yard, provided that, where such coverage would result in exceeding the permitted total lot coverage by all buildings, it shall be reduced proportionately.
- D. *Minimum setbacks of structures.* All mooring piles, docks, wharves, boat slips and/or similar structures shall maintain the same minimum setback from the adjacent owner's property line extended as established for the main structure permitted on the building site.
- E. *Mooring of boats.* The following regulations shall apply to the mooring of boats within the city:
1. In all residential districts, where boats are permitted to be moored in canals or inland waterways, all boats shall be moored parallel to the property line abutting the canal or waterway.  
However, for the townhome properties identified in Miami-Dade public records as Sections 1 through 9 of Areta Estates Subdivision, located along the south-side of the waterway immediately north of NE 123<sup>rd</sup> Street, boats may be moored either parallel or perpendicular to the property line abutting the canal or waterway.
  2. In all residential districts, where boats are permitted to be moored in canals or waterways, all boats shall be moored to mooring piles, docks, boatlifts, boat davits, hoists or similar mooring structures, and at no time shall boats or vessels be moored to another boat or vessel. No boats shall be moored to floating vessel platforms, hydro-hoists or similar structures.
  3. No boat shall be docked or anchored adjacent to residential property in such a position that causes it to extend beyond the lot line of any adjacent property, unless there is a written agreement from the adjacent property owner(s) to allow such an extension.

4. No boat slips, docks, boat davits, hoists, mooring pilings and similar mooring structures may be constructed by any owner of any single family lot unless a principal residence exists on such lot.
5. The renting of docks, dock space, or moorings, and the rental of boats or any portion thereof, for any purpose whatsoever shall be specifically prohibited in residential districts.
6. In all residential districts, where boats, which were permitted prior to the adoption of these LDRs are properly permitted and allowed to be moored to mooring piles perpendicular to the property line abutting the canal or waterway, said mooring shall be considered non-conforming uses and can continue to be moored in such manner as long as the boat does not exceed the maximum waterway encroachment for that specific canal.
7. Nothing in this division shall relieve any property owner from complying with any applicable federal, state or county regulations or requirements.
8. A property owner may request a variance from the provisions of this section upon a showing that any required approval from any federal, state or county agency requires that the provisions of this section be varied.

F. *Maintenance of watercraft.*

1. Repair and/or maintenance of boats in residential areas shall be permitted when such repair or maintenance is routine or minor in nature and does not involve major exterior alteration, rebuilding, complete refinishing, and/or removal of engines, generators or similar equipment, or the use of tools and equipment beyond hand held power tools.
2. No boat or watercraft of any kind which is found to be of unsightly appearance or in badly deteriorated condition or which is likely to cause damage to private or public property or which may be a hazard to navigation, shall be permitted to moor or tie up at any dock or in any waterway within the city, except that such boats may moor at licensed boat yards or marinas for the purpose of repair.

G. *Commercial watercraft.*

1. Except as provided in subparagraph 2. below, no person shall cause or allow any commercial watercraft to be docked or moored in any public waterway in the city within any residential zoning district.
2. A commercial watercraft shall be permitted to be docked or moored in a residential zoning district, provided that:
  - a. The commercial watercraft, as docked or moored, is not a hazard to navigation;
  - b. The commercial watercraft is in a seaworthy and operable condition and is maintained in a state of good repair; and
  - c. The commercial watercraft is actively engaged in the construction, repair or maintenance of a dock, seawall, pilings, or other structure and a valid building permit has been obtained for such work.

**Sec. 5-602. - Docks.**

- A. *Regulation.* The regulation of boat docks, piers, wharves, floating vessel platforms, hydro-hoists, boatlifts, dolphins and mooring piles or piers of any nature shall be in accordance with any applicable Florida State, City, or Miami-Dade County laws.
- B. *Projection into waterways.*
1. No dock, wharf or similar structure shall be constructed over or in any navigable canal or waterway, or on abutting land which extends more than six (6) feet outward from either the property line or the bank of such navigable canal or waterway, or the face of the seawall cap whichever is closest to the edge of water, or greater than fifteen (15) feet into Biscayne Bay from either the property line or the established bulkhead line, or the face of the seawall cap, whichever is closest to the edge of water.
  2. The extension of mooring piles (dolphins), floating vessel platforms, hydro-hoists, boatlifts and watercraft shall be limited as follows:
    - a. Waterways or canals: No more than twenty (20) percent of the width of the waterway or canal, or a maximum of twenty-five (25) feet, whichever is less, as measured from the property line.

However, for the townhome properties identified in Miami-Dade public records as Sections 1 through 9 of Areta Estates Subdivision, located along the south-side of the waterway immediately north of NE 123<sup>rd</sup> Street, no more than twenty-five (25) feet maximum, as measured from the property line.
    - b. Biscayne Bay: no more than thirty-five (35) feet from the property line.
    - c. Nighttime reflectors shall be affixed to all docks and mooring piles that extend more than five (5) feet into any waterway.
- C. *Projection above seawall.*
1. *Deck.* For residential properties adjacent to waterways, deck floors which extend past the rear lot line or seawall shall not be constructed more than twenty (20) inches above the seawall or retaining wall; the width and length of decks shall be the same as those allowed for docks in the particular district.
  2. *Dock or pier.* No dock or pier shall project more than twenty (20) inches above the uppermost edge of the seawall or retaining wall onto which it is attached or to which it is adjacent. The length of any dock or pier, measured parallel to the seawall or retaining wall, shall not encroach into the required side yard setbacks; provided, however, that a variation of up to twenty (20) percent may be administratively granted by the building and zoning department under the same standards provided by article 3, division 6.
- D. *Maintenance of docks, piers, boatlifts and other marine construction.*
1. All docks, dolphins, finger piers, boatlifts and other marine construction shall be maintained by the owner of said property in a safe and structurally sound condition as deemed by the building official. Lack of maintenance of any marine construction shall constitute a violation of this section.
  2. All docks, dolphins, finger piers, boatlifts and other marine construction which are determined by the building official to be in an unsafe condition, are hereby declared a

public nuisance, required to be abated in accordance with the provisions of chapter 12 of the City Code.

\* \* \* \* \*

**Section 2.**     **Repeal.** All ordinances or parts of ordinances in conflict herewith are repealed.

**Section 3.**     **Conflicts.** In the event that the provisions of this Ordinance are in conflict with any other ordinance, rule or regulation, the provisions of this Ordinance shall prevail.

**Section 4.**     **Severability.** The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5.**     **Codification.** It is the intention of the City Council of the City of North Miami and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word “ordinance” may be changed to “section,” “article” or any other appropriate word.

**Section 6.**     **Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

**PASSED AND ADOPTED** by a \_\_\_\_\_ vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**PASSED AND ADOPTED** by a \_\_\_\_\_ vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
DR. SMITH JOSEPH  
MAYOR

ATTEST:

\_\_\_\_\_  
MICHAEL A. ETIENNE, ESQ.  
CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
ROLAND C. GALDOS  
INTERIM CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: \_\_\_\_\_

Sponsored by: \_\_\_\_\_

**Vote:**

Mayor Dr. Smith Joseph, D.O., Pharm. D.	_____ (Yes) _____ (No)
Vice Mayor Alix Desulme	_____ (Yes) _____ (No)
Councilman Scott Galvin	_____ (Yes) _____ (No)
Councilman Carol Keys, Esq.	_____ (Yes) _____ (No)
Councilman Philippe Bien-Aime	_____ (Yes) _____ (No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.

**LAW OFFICE OF FRANK WOLLAND  
ATTORNEY AT LAW  
12865 West Dixie Highway  
North Miami, FL 33161**

**FRANK WOLLAND, ESQ.**  
Email: [fwolland@wolland.com](mailto:fwolland@wolland.com)

TEL: 305-899-8588  
FAX: 305-892-8434

January 29, 2016

**VIA HAND DELIVERY**

Mr. Nixon Lebrun  
City of North Miami Zoning Administrator  
City of North Miami Community Planning and Development Department  
12400 NE 8 Avenue  
North Miami, FL 33161  
[nlebrun@northmiamifl.gov](mailto:nlebrun@northmiamifl.gov)

**RECEIVED**  
JAN 29 2016  
COMMUNITY PLANNING  
& DEVELOPMENT

**Re: Letter of Intent for Proposed Modifications to North Miami City Code  
Sec. 29-5-602**

Dear Mr. Lebrun:

Kindly be advised that our office represents Mr. Angel Martinez, who owns the property at 2145 NE 123<sup>rd</sup> Street in North Miami, and Mr. Bryan Zappulla, who owns the property at 2141 NE 123<sup>rd</sup> Street in North Miami, and Mr. Joel Behar, who is the principal of JSB Properties, LLC, which owns the property at 2171 NE 123<sup>rd</sup> Street in North Miami. My clients are all owners of townhomes in the Areta Estates, section 3 subdivision. They are all similarly situated and have common interests, together with the other 94 property owners of Areta Estates who own and occupy the townhouses on the North side of 123<sup>rd</sup> Street, east of Biscayne Boulevard.

Our clients, in each case, purchased their property with the express purpose of using and enjoying the property's access to Biscayne Bay and the Atlantic Ocean. All of the townhouse properties in Areta Estates are 19 feet wide and almost all of them have some form of dock, boat lift, or mooring pilings in order to accommodate their use and enjoyment of their riparian rights, i.e. their right to use and enjoy the water which abuts the rear of their properties.

All of my clients have boat lifts which were constructed at the rear of their properties. The boat lifts were secured with permits issued and approved by the City of North Miami as well as all other applicable government agencies, and have been used and enjoyed by my clients for years.

Several years ago, one unhappy North Miami resident, Annie Montgomery, began making complaints to the City with regard to my client's properties. Several code enforcement matters followed.

Careful review of the City of North Miami Code, and the manner of its application to the property owners who live in the Areta townhomes subdivision indicates that the public interest and the homeowner's interest would best be served by a number of modifications to the existing City Code. These modifications would be accomplished by the attached proposed text amendment. This letter of intent is written in support of the proposed text amendment.

The first portion of the text amendment concerns section 5-602 of the City of North Miami Code of Ordinances which provides that the extension of mooring piles (Dolphins), floating vessel platforms, hydro-hoists, boat lifts and water craft shall be limited... in waterways and canals to no more than twenty (20) percent of the width of the waterway or canal, or a maximum of twenty-five (25) feet, whichever is less, as measured from the property line...

We believe that that Code section is overly restrictive as applied to the Areta Estates Townhouses. The Townhouse properties are each 19 feet wide, if boats were to be moored parallel to the sea wall, it would, as a practical matter, be impossible for owners to have a reasonably sized boat or to use and enjoy their waterfront property in a reasonable fashion.

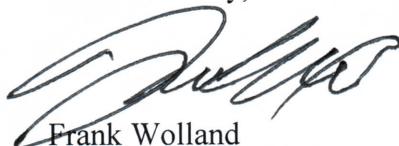
We propose that City Code be modified to provide that for the Areta Estates Townhomes properties, boats may be moored perpendicular or parallel to the sea wall and may extend to not more than 30% of the width of the water, or a maximum of 30 feet.

We believe that such a text amendment is reasonable and will assist our clients and the other property owners of Areta Estates Townhomes in realizing a reasonable investment backed expectation that they will have and be able to use the waterway behind their home for boating, as indeed that is the primary purpose that most of the Townhouse homeowners had in mind when they purchased their properties. We believe that the waterway is more than wide enough to accomplish this modification, and to permit the safe storage and use of boats.

We feel that the modification is in the best interest of the City, as it will improve property values and permit the residents of the City who are effected to live happier and more fulfilling and enjoyable lives.

We trust and hope that City Staff, City Council, and the other informed and effected parties will agree with our request and look forward to staff's recommendation as well as the deliberations of the planning commission and city council

Most Cordially,



Frank Wolland

Enclosure: Ordinance Modification Proposal

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FAX: 305-892-8434

**ORDINANCE MODIFICATION PROPOSAL**

**DATE:** March 30, 2015  
**TO:** Nixon Lebrun  
**FROM:** Frank Wolland  
**RE:** Proposed Modifications to North Miami City Code Sec. 29-5-602

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Dear Mr. Lebrun:

The following is a proposed modification of the existing North Miami City Code Section 29-5-602(B)(2), governing the regulation of boat docks, piers, wharves, etc.

**Proposed Modification**

2. The extension of mooring piles (dolphins), floating vessel platforms, hydro-hoists, boatlifts and watercraft shall be limited as follows:
  - a. Waterways or canals: No more than twenty (20) percent of the width of the waterway or canal, or a maximum of twenty-five (25) feet, whichever is less, as measured from the property line, provided however that for townhome properties in the subdivision on the south side of the canal immediately north of N.E. 123<sup>rd</sup> Street, mooring piles (dolphins), floating vessel platforms, hydro-hoists, boatlifts, and watercraft may be moored perpendicular or parallel to the seawall, and may be permitted to extend not more than thirty (30) percent of the width of the waterway or canal, or a maximum of thirty (30) feet, whichever is less, as measured from the property line.

**CHARLES KEMNITZ**  
**CHIEF WARRANT OFFICER**  
**United States Coast Guard, Retired**  
**221 Avenida Barcelona**  
**San Clemente, CA 92672**

January 6, 2016

To Whom It May Concern,

Please be advised that I have served in the United States Coast Guard for thirty-eight years. I have captained coast guard vessels, and served as commanding officer of the United States Coast Guard in Palm Beach for four years. I am familiar with small craft, as well as vessel safety requirements, and the requirements necessary for safe operation of small craft. I am licensed to captain vessels up to 100 tons. I also served as a search and rescue officer for the United States Coast Guard Station in Miami for a period of four years as an executive officer, navigation officer, and in various positions, including commander of the search and rescue center at the Coast Guard Station in Key West.

I am also familiar with the manmade canal immediately south of NE 124<sup>th</sup> Street in the City of North Miami, in the community known as Keystone Point. I have operated small vessels in that canal on not less than thirty occasions. I'm familiar with the waterway, the bridge and the mooring facilities on both sides of the waterway, as well as the waters throughout North Biscayne Bay.

The waterway in question is approximately 3,550.00 feet long and approximately 100 feet wide, and is abutted by single family homes on the north side and multiple family structures and townhouses on the south side, except at the west end of the canal.

Based upon my experience, training and expertise, it is my opinion that the minimum width necessary in order to have navigation proceed in a safe fashion on that waterway is 30 feet. My opinion is based upon the ability of two vessels of approximately 10 feet in width to pass each other, and the fact that a 35 foot boat would have the ability to turn around completely either at the turning basin, or at an area where docks do not exist on either side of the waterway. I note that the area on the western end of the canal which has no dock or docking facilities can be utilized as a turning basin, should a larger vessel be required to turn.

The above constitutes my opinion only, and I make no opinion or observation with regard to any Federal, State, County or Municipal laws or regulations, which may not be consistent with my opinion.

Very truly yours,  **CHARLES KEMNITZ**

**Legend**

-  Dimensions
-  NomiProp
-  North Miami Municipal Boundary
-  Streets
-  Water

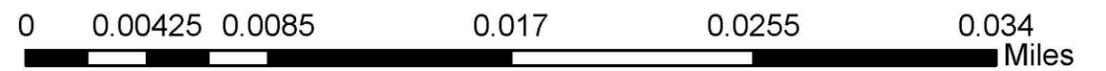




Photo provided by the de Moya Foundation

## GATHERING FOR A GOOD CAUSE

The de Moya Foundation celebrated its second annual Gathering of Hearts Benefit on Feb. 6. The de Moya Foundation is a tax-exempt nonprofit charitable trust "that creates and supports programs and raises awareness for children and young adults with unique abilities and special needs and their families. Above from left, Guillermo Acosta, Lily de Moya (foundation president/CEO & founder), Alvaro de Moya and Catherine Madura attend the gathering. Below, Happy Alter and Ovie Eilon arrive at the event.



## NOTICE OF PROPOSED ORDINANCE CITY OF NORTH MIAMI, FLORIDA

NOTICE IS HEREBY GIVEN that the City of North Miami, Florida proposes to adopt the following ordinance:

**AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 29 OF THE NORTH MIAMI CODE OF ORDINANCES ENTITLED "LAND DEVELOPMENT REGULATIONS", BY AMENDING ARTICLE 5, UNDER DIVISION 16 ENTITLED "STANDARDS FOR SPECIFIC USES", SPECIFICALLY AT SECTION 5-1608 ENTITLED "ROOM ADDITIONS TO RESIDENTIAL STRUCTURES AND CONVERSIONS OF GARAGES OR CARPORTS TO LIVING SPACE" TO REMOVE THE MAXIMUM 250-SQ. FT. FLOOR AREA LIMIT FOR HOME ADDITIONS PERMITTED WITH FLAT ROOFS, AS LONG AS SAID ADDITIONS ARE LOCATED IN THE REAR OF THE PROPERTY AND ARE NOT VISIBLE FROM ANY PUBLIC RIGHT-OF-WAY; PROVIDING FOR REPEAL; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND FOR AN EFFECTIVE DATE.**

ANDV

**AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 29 OF THE NORTH MIAMI CODE OF ORDINANCES ENTITLED "LAND DEVELOPMENT REGULATIONS", BY AMENDING ARTICLE 5, DIVISION 6 ENTITLED "BOATS, DOCKS, SEAWALLS, ETC.", SPECIFICALLY AT SECTION 5-601 ENTITLED "BOATS" AND SECTION 5-602 ENTITLED "DOCKS" TO ESTABLISH APPROPRIATE REGULATIONS FOR THE TOWNHOME PROPERTIES IDENTIFIED AS SECTIONS 1 THROUGH 9 OF ARETA ESTATES SUBDIVISION, LOCATED ALONG THE SOUTH SIDE OF THE CANAL IMMEDIATELY NORTH OF NE 123<sup>RD</sup> STREET, BY ALLOWING BOATS TO BE MOORED EITHER PARALLEL OR PERPENDICULAR TO THE PROPERTY LINE ABUTTING THE CANAL AND BY INCREASING THE PROJECTION OF MOORING PILES (DOLPHINS), FLOATING VESSEL PLATFORMS, HYDRO-HOISTS, BOATLIFTS AND WATERCRAFTS INTO THE CITY'S WATERWAYS OR CANALS FROM THE CURRENT MAXIMUM OF TWENTY PERCENT (20%) OF THE WIDTH OF THE CANAL, OR TWENTY-FIVE (25) FEET, WHICHEVER IS LESS, TO A MAXIMUM OF THIRTY PERCENT (30%) OF THE WIDTH OF THE CANAL, OR THIRTY (30) FEET, WHICHEVER IS LESS, AS MEASURED FROM THE RECORDED PROPERTY LINE; PROVIDING FOR REPEAL; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND FOR AN EFFECTIVE DATE.**

A Public Hearing on these Ordinances will be held by the Planning Commission on **Tuesday, March 1<sup>st</sup>, 2016 at 7:00 p.m.**, and the City Council for first reading on **March 22<sup>nd</sup>, 2016 at 7:00pm** in the Council Chambers of North Miami City Hall, Second Floor, 776 NE 125 Street, North Miami, Florida 33161.

Members of the public are invited to attend the Public Hearings and provide oral or written comments on the matter. A copy of the application and report containing the Community Planning and Development Department's recommendation will be available for public review from Monday to Friday between the hours of 8:15 a.m. and 5:00 p.m. in the City Clerk's Office, City Hall. Written comments may be submitted to: City of North Miami, 776 N.E. 125<sup>th</sup> Street, North Miami, Florida 33161, Attn: Community Planning and Development Department. For questions, please call (305) 893-6511, Ext. 12182.

**ANY PERSON WISHING TO APPEAL THE DECISION OF THE CITY COUNCIL WILL NEED A VERBATIM RECORD OF THE MEETING'S PROCEEDINGS, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED (SECTION 286.0105, F.S.).**

**IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, PERSONS NEEDING SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE OFFICE OF THE CITY CLERK NO LATER THAN FOUR (4) DAYS PRIOR TO THE PROCEEDING. TELEPHONE (305) 893-6511, EXT. 2147, FOR ASSISTANCE. IF HEARING IMPAIRED, TELEPHONE OUR TDD LINE AT (305) 893-7936 FOR ASSISTANCE.**