

**RESOLUTION NO. 2024-R-30**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, ACTING AS THE ZONING APPEALS BOARD PURSUANT TO ARTICLE 2, DIVISION 5, SECTION 2-501 OF THE LAND DEVELOPMENT REGULATIONS (LDRS), CONSIDERING AN APPEAL OF AN APPROVED APPLICATION FOR A VARIANCE PURSUANT TO ARTICLE 4, DIVISION 2, SECTION 4-203 OF CHAPTER 29 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES, LDRS TO ALLOW A HEIGHT VARIANCE TO EXCEED THE BZ DISTRICT MAXIMUM PERMITTED HEIGHT OF 115'-0" TO 203'-10" AT THE REAL PROPERTY LOCATED AT 11950 NORTH BAYSHORE DRIVE; SAID VARIANCE TO BE REVIEWED UNDER THE CRITERIA SET FORTH IN ARTICLE 3, DIVISION 6, SECTION 3-606 OF THE LDRS; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.**

**WHEREAS**, in March 2023, Pedro Gassant, Esq. filed an application for a Variance Permit on behalf of Alta Bayshore, LLC ("Applicant") requesting an increase of the BZ district maximum height of 115'-0" to 203'-10" for the real property located at 11950 North Bayshore Drive; and

**WHEREAS**, staff reviewed the variance request under Article 3, Division 6, Section 3-606 of the City's LDRs, which mandates that a variance request must demonstrate compliance with a minimum of four (4) of the six (6) variance criteria to qualify for a recommendation for approval; and

**WHEREAS**, staff analysis determined the height variance met none of the six (6) review criteria and recommended denial; and

**WHEREAS**, City staff advised the applicant that the application did not meet the requisite variance criteria and therefore, the appropriate mechanism to modify zoning district development standards is through a text amendment to the Comprehensive Plan and Land Development Regulation (LDRs) since a text amendment institutes requirements that govern the zoning district that establishes development standards that produces continuity of development in the district; and

**WHEREAS**, the applicant advised staff that it desired to proceed to a hearing before the Board of Adjustment with the staff's recommendation of denial; and

**WHEREAS**, on October 18, 2023, the Board of Adjustment ("BOA") held a duly noticed public hearing to consider the Variance request; and

**WHEREAS**, evidence, both written and oral, including the staff report and supporting documents, were presented at the said hearing; and

**WHEREAS**, the BOA approved the height variance by a four (4) to two (2) vote to increase the BZ district maximum permitted height of 115'-0" to 203'-10" for the real property located at 11950 North Bayshore Drive under Board Order V-11-23; and

**WHEREAS**, on November 13, 2023, the appellant, Hernando Barreto timely filed an application to appeal BOA Board Order V-11-23 approving the height variance within thirty (30) days from the date of the Board decision with the clerk of the Board; and

**WHEREAS**, on November 15, 2023, the appellant, the City of North Miami joined the appeal to reverse BOA Board Order V-11-23; and

**WHEREAS**, appellee filed a response to the City's appeal indicating that the appeals had not been filed in a timely manner; and

**WHEREAS**, upon further review, it was determined that the Order had not been rendered because it did include the date of filing with the Clerk of the BOA; and

**WHEREAS**, to ensure compliance with the Land Development Regulations and the Florida Rules of Appellate Procedure, the Order was re-issued with a rendition date of January 31, 2024; and

**WHEREAS**, on February 2, 2024, the co-appellants re-filed their appeal applications for the re-issued Order; and

**WHEREAS**, the appellants collectively believe no unusual hardship exists that prevents the property usability or means to yield a reasonable return under the City's applicable zoning regulations; and

**WHEREAS**, a variance serves to relieve or alleviate an unusual hardship to a particular property that impedes and/or prevents the development of the site by adhering to the required development standards of the zoning district; and

**WHEREAS**, the variance process is not a mechanism to circumvent development standards to accommodate desired construction designs establishing legal nonconforming developments; and

**WHEREAS**, the requested height variance met none of the six (6) variance review criteria; and

**WHEREAS**, the variance request represents a misuse of the variance process; and

**WHEREAS**, notice of the public hearing before the City Council to consider the appeal of the BOA decision was provided in accordance with 3-302 of the City's Land Development Regulations; and


**WHEREAS**, the Mayor and City Council held a public hearing on February 27, 2024, to consider the appeal of the Board of Adjustment decision, where it received evidence both written and oral, staff reports, and other supporting documents.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF CITY OF NORTH MIAMI, FLORIDA, AS FOLLOWS:**

**Section 1.    Overturns Board of Adjustment Decision.** The Mayor and City Council of the City of North Miami, Florida, hereby overturns the BOA approved height variance under Board Order V-11-23 increasing the BZ district permitted maximum height of 115'-0" to 203'-10" for the real property located at 11950 North Bayshore Drive.

**Section 2.    Effective Date.** This Resolution shall become effective immediately upon adoption.

**PASSED AND ADOPTED** by a 5 - 0 vote of the City Council of the City of North Miami, Florida, this 27th day of February, 2024.

  
ALIX DESULME, ED.D.  
MAYOR

ATTEST :

  
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VANESSA JOSEPH, ESQ.  
CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
JEFF P. H. CAZEAU, ESQ.  
CITY ATTORNEY



SPONSORED BY: CITY ADMINISTRATION

Moved by: Desulme

Seconded by: Charles

**Vote:**

Mayor Alix Desulme, Ed.D.	<u>X</u>	(Yes)	<u>        </u>	(No)
Vice-Mayor Mary Estimé-Irvin	<u>X</u>	(Yes)	<u>        </u>	(No)
Councilman Scott Galvin	<u>X</u>	(Yes)	<u>        </u>	(No)
Councilwoman Kassandra Timothe, MPA	<u>X</u>	(Yes)	<u>        </u>	(No)
Councilman Pierre Frantz Charles, M.Ed.	<u>X</u>	(Yes)	<u>        </u>	(No)

THIS RESOLUTION WAS TRANSMITTED TO THE CLERK OF THE CITY OF NORTH  
MIAMI CITY COUNCIL ON THIS 9<sup>th</sup> DAY OF April, 2024.