

ORDINANCE NO. 972

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA AMENDING NORTH MIAMI CITY CODE SECTION 29-25 RELATING TO THE BOARD OF ADJUSTMENT; PROVIDING FOR AMENDMENTS TO TERMS OF OFFICERS, QUALIFICATIONS OF MEMBERS, PUBLIC NOTICE REQUIREMENTS AND ESTABLISHING AN ADMINISTRATIVE VARIANCE PROCESS; PROVIDING FOR A REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of North Miami has enacted an Ordinance providing for the Board of Adjustment; and

WHEREAS, The City Council wishes to amend this Ordinance, by providing for greater City Administration involvement in the variance process.

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

Section 2. Section 29-25 is hereby amended as follows:

Section 29-25 . Board of adjustment.

(a) *Composition and qualifications.*

- (1) There is hereby created and established the Board of Adjustment of the City of North Miami. The board of adjustment shall consist of seven (7) members and two alternates (by attrition) who shall be appointed by the city council, ~~and shall hold office at the pleasure of the city council and two (2) alternate members.~~ Three (3) affirmative positive votes of the city council shall be required to remove any board member, and no cause need be shown for removal.

(2) Each member shall be a ~~qualified elector~~ resident of the city and shall not ~~neither hold nor be a candidate for~~ any other elected public office or ~~position~~ City employment within the city during the term of such appointment. Any member who ceases to reside within the city limits during the ~~his~~ term of office shall be deemed to have resigned as of the date of ~~his removal~~ moving from the city. The city council shall appoint a qualified person to serve out the unexpired term of any member vacating an office by resignation or otherwise.

(b) *Appointment of members, terms of office, officers, removal.*

(1) The members of the board of adjustment shall be appointed by the majority of the city council and each member of the board of adjustment shall hold office, unless sooner removed by the council, for a term ending on the second Tuesday in June of each odd numbered year.

(2) The seven (7) regular members of the board of adjustment shall transact the business of the board. During the first meeting of the board in June of each year, the members shall elect one (1) of their number to act as chairperson ~~man~~; and one (1) member to serve as vice-chairperson. In the event any regular member anticipates his absence from a meeting ~~or in the event any matter will be before the board which would constitute a conflict of interest to any board member~~, the member shall notify the director of community planning and development who shall then notify one (1) of the alternate members so that there shall be sitting seven (7) members as often as is practicable. No more than seven (7) members shall sit at any meeting. No

member shall attend and hear any item before the board of adjustment that would constitute a conflict of interest as to that member, as required by state, county or city law.

(c) *Powers and duties.* The board of adjustment shall have the following powers and perform the following duties:

- (1) To hear and decide appeals where it is alleged there is error in any order; requirement, decision or determination made by the Director of Community Planning and Development ~~an administrative official~~ in the enforcement of any of the city's zoning ~~sign, and other applicable regulations~~ code. Appeals must be taken by the affected party within thirty (30) days of the order, requirement or determination.
- (2) To make recommendations regarding ~~hear and decide~~ special exceptions to the city zoning regulations.
- (3) To authorize, except as provided below, ~~upon appeal in specific cases,~~ such variances from the city zoning code or flood damage prevention ordinance; ~~sign and other applicable regulations~~ as will not be contrary to the public interests where, owing to special conditions, the literal enforcement of these regulations would result in ~~unnecessary hardship~~ provided, however, that the granting of such variances shall not in any way effect a change of zoning use.
- (4) Variance based on natural features: the board shall take into consideration a tree or other natural feature in a buildable area and not in the yard areas required in the development of a site. A variance in such circumstances shall be considered only under the following conditions:

- (i)(a) A variance based on natural features of the property shall only be granted to the provisions of this code regulating lot area, yards, parking space size and open space standards; and not those pertaining to use, floor area ratio, lot coverage, minimum floor area and height.
- (ii)(b) The applicant shall submit for the hearing a written statement setting forth the reasons for the hardship, providing evidence why the trees or other natural features cannot be relocated, and a site plan prepared by a registered land surveyor indicating the existing natural features by exact size, common and botanical name and location, and the location of all proposed improvements, including property and setback lines.
- (iii)(c) A plant list legend with a key number assigned to each tree on the plan and legend shall be provided.
- (iv)(d) Plans shall be legible and drawn to a scale no smaller than one (1) inch equals sixteen (16) feet.
- ~~(e) The circumstances which cause the hardship must be peculiar to the property in question, or to such a small number of properties that they clearly constitute marked exceptions to the property in the neighborhood. If the circumstances cited as a basis for applying for the variance are common to the property in the neighborhood the variance shall not be granted.~~
- ~~(d) After establishing the peculiar circumstances applying to the property in question, it is next necessary to show that the variance is required in order to preserve a substantial property right of the petitioner. It is of no moment~~

~~whatever that the denial of the variance might deny to the property owner some opportunity to use his property in a more profitable way or to sell it at a greater profit than is possible under the terms of this code. The owner is entitled only to a reasonable use of his property.~~

- ~~(e) Any alleged hardship is not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of this code.~~
- ~~(f) The regulations to which the variance is sought shall be modified as little as possible so that the substantial intent and purpose of the regulations shall be preserved. The granting of the variance should be made subject to such conditions as will constitute to this end.~~
- ~~(g) The variance will not result in substantial detriment to adjacent property nor the surrounding neighborhood, and will not be materially detrimental to the public welfare.~~

5. Variances, except as provided in 4 above, shall require that the applicant establish the following by substantial and competent evidence:

- (i) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;
- (ii) That the special conditions and circumstances do not result from the action of the Applicant;
- (iii) That granting the Variance requested will not confer on the Applicant any

special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district.

- (iv) That the literal interpretation of the provisions of this Ordinance would deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the Applicant;
- (v) That the Variance granted is the minimum Variance that will make possible the reasonable use of the land, building or structure;
- (vi) That the granting of the Variance will be in harmony with the general intent and purpose of this Ordinance and that such Variance will not be injurious to the area involved.

6. (4) Where work had commenced or has been completed without a permit, and a permit cannot be obtained without a variance or special exception, to ~~assess~~ recommend a fine of up to twenty (20) percent of the costs expended (including labor costs) of completed structures as determined by the building official and of the estimated building costs (including labor costs) of incompletd structures as determined by the building official against the permit applicant or, where appropriate, against the contractor. If the amount of the percentage fine is less than one hundred dollars (\$100.00), then the board of adjustment may ~~assess~~ recommend a fine of up to one hundred dollars (\$100.00). The fine allowed under this subsection shall be one (1) alternative to the option of recommending that the offending structure be torn down. Payment of the fine may be secured by a lien against the property allowing the city

to accrue interest at the lawful rate for judgments and to receive costs and attorney's fees in collection efforts. Fines and penalties proposed by this section shall be in addition to any other penalties proposed by this section (and) shall be in addition to any other penalties against the offenders afforded to the staff of the department, to the board of adjustment, or to the city council pursuant to the South Florida Building Code, county ordinance or state law.

(d) *Notice.*

- (1) The Chairman of the board of adjustment may, as a courtesy to persons having an interest in the subject matter of the hearing, require the director of Community Planning and Development to furnish reasonable notice of hearings by mail at least fifteen days prior to a hearing. In such cases where notice by mail is undertaken, the notice shall be sent to those property owners within a five-hundred foot radius of the property, ~~before the board, the notice shall contain thereon the following provision: "The law does not require the mailing of this notice and no responsibility attaches if all interested parties do not receive copies hereof by mail. The board of adjustment merely desires, by this means, to bring this matter to the attention of those who may be interested in its outcome."~~
- (2) To provide additional notice to the public, a sign or signs shall be posted on the property involved in any application before the Board, as provided by the rules of the Board or as specified by the Director of Community Planning and Development, ~~the Building and Zoning Department~~. Any sign(s) posted shall include a description of the request and the time and place of any public hearing. Failure to post the property

shall not affect any action taken, provided the Board or the City Council may, in its discretion, defer action on any application until the property has been properly posted.

- (3) The city manager shall have the authority in such instances as ~~he deemed~~ necessary to require an applicant before the board of adjustment, at any time during the proceedings, or prior to approval or reversal of the action of the board of adjustment by the city council, to submit at the applicant's expense a list and map certified by a registered surveyor or engineer, indicating the names and addresses of property owners within five hundred (500) feet of the property subject of any application.
- (e) *Authority to revise, modify or amend change orders on appeal.* In exercising the above-mentioned ~~general powers listed in (c)(1),~~ the board of adjustment may reverse or affirm in whole or in part, or may modify, the order, requirement, decision or determination appealed from and may recommend an ~~make such~~ order, requirement, decision or determination ~~as ought to be made,~~ and to that end shall have all the powers of the officer from whom the appeal is taken. Provided, however, that four (4) affirmative ~~positive~~ votes shall be necessary to reverse any order, requirement, decision or determination, ~~of any such administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under the zoning, sign and other applicable regulations or to effect any variation in such regulations.~~ Four affirmative votes shall be required to recommend approval of any variance or special exception application.
- (f) *Conditions and Safeguards ~~Time limitations on action by board of adjustment.~~*

~~Within six (6) months after the board of adjustment takes affirmative action on an application, the applicant must commence improvements to the property in accordance with such action by the board of adjustment. In the event such improvements are not commenced within such period, the action by the board of adjustment automatically expires and shall be considered void and of no effect. When taking affirmative action on an application, the board of adjustment may extend the time limitations set forth above, by specifically allowing longer periods of time subject to review by the city council. An affirmative action heretofore taken by the board of adjustment, without a specific time limitation set forth by the board shall automatically expire within six (6) months from final city council approval.~~

In granting a Variance or special exception, the Board of Adjustment may prescribe appropriate conditions and safeguards. Violation of such conditions and safeguards, when made a part of the terms under which the variance or special exception is granted, shall be grounds for the revocation of the variance or special exception.

The Board of Adjustment may prescribe a reasonable time limit within which the action is required, shall begin, or be completed, or both.

- (g) Rules of procedure; quorum.
- (1) The board of adjustment shall adopt rules of procedure not inconsistent with the ordinances of the City of North Miami and the laws of the State of Florida.
- (2) Four (4) members shall constitute a quorum for the transaction of business. ~~Official action shall be taken by the board only upon the concurring vote of a majority of the members present at an official meeting of the board of adjustment.~~

(3) The chairman of the board of adjustment, or, in his absence, the acting chairman, shall have power to administer oaths and request ~~compel~~ the attendance of ~~witnesses~~ city staff.

(h) *Appeals; Time and place for hearing; notice.*

~~(1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer or bureau of the city affected by any decision of an administrative official. Such appeal shall be taken within thirty (30) days from the date of the administrative decision by filing with the officer from whose decision the appeal is taken and with the board of adjustment a notice of appeal specifying the decision or ruling objected to and the grounds therefor. The officer from whose decision the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed from is to be based.~~

~~(1)(2) The board of adjustment shall meet on the third Wednesday evening of each month in the city hall. The meeting dates may be amended as deemed necessary by the City director of the department of community planning and development. The board of adjustment shall give at least five (5) days notice of all meetings by posting such notice on the bulletin board of the city hall. All meetings of the board of adjustment shall be open to the public.~~

~~(3) Whenever any appeal or application for a special exception or variance is filed, the chairman shall set a date and time for a hearing thereon which shall be not less than five (5) nor more than thirty-one (31) days from and after the date of filing.~~

~~(2)(4) Public notice of such hearing shall be given by publication in any newspaper of~~

general circulation in the City which qualifies under the provisions of the Florida Statutes, and by posting a copy of the notice on the bulletin board in the city shall for at least ~~five (5)~~ ten (10) days prior to the hearing. ~~Five (5) days' notice to all parties to the application or appeal shall be given by mail or personal delivery at their office or usual place of abode.~~ Any person directly or indirectly interested in any proceeding before the board may appear ~~appeal~~ in person or by agent or attorney and be heard.

~~(3)~~(5) The board shall decide matters brought before it within a reasonable time and its decision shall be by written order, recorded in the minutes of its meetings. As used in this article, all terms such as filing of decisions or entry of orders or terms of like import, shall mean ~~the announcing of the decision or vote of the board at any duly called and convened meeting.~~ the rendition of an order filed with the Clerk of the Board.

~~(4)~~(6) Decisions of the board shall not be deemed final until reviewed by the city council as set forth below, in section 29-25 of this Code.

(i) *Appeals Recommendations to the city council from the board of adjustment.*

~~(1)~~ Any person aggrieved by any decision of the board of adjustment, including the city, as a prerequisite to other appellate remedies afforded by law, shall appeal for relief to the city council. Notice of such appeal shall be filed in writing with the city clerk within ~~seven (7) days~~ after the board's decision is filed. ~~The appeal shall be considered by the council at its regular meeting next following the date of filing of~~

~~the notice of appeal, and unless the council shall reverse the board of adjustment, the decision of the board shall be considered final.~~

~~(1)(2) All recommendations Decision of the board of adjustment ~~may~~ shall be reversed reviewed by the city council, ~~of three-fifths of the council vote in favor of such reversal.~~ Action on any recommendation shall require three affirmative votes by the City Council.~~

~~(3) Notwithstanding and in addition to the procedures for appeal set forth in this section, each decision of the board of adjustment shall automatically be reviewed by the city council at its next meeting occurring at least one (1) week after the decision of the board of adjustment. If no action is taken by the city council at such meeting, the decision of the board of adjustment shall stand. At that meeting, the city council may, on its own motion, modify or reverse the decision of the board of adjustment.~~

(j) Certain variance, special exception, and appeal of administrative interpretation fees.
 The following fees are hereby established for the processing and consideration of an application to the board of adjustment. Fees provided in column (A) shall be applicable to properties which are in compliance with the Zoning Code. Fees provided in column (B) shall be applicable to properties which require such variance, special exception or appeal in order to abate a zoning code violation or remedy a non-compliance. The director of Community Planning and Development ~~building and zoning~~ shall determine the applicable fee, subject to city council review:

Type of Petition	(A) Regular Fee Level	(B) Abatement Fee Level
(1) Regular variance (residential single-family)	\$100.00	\$200.00 plus \$50.00 for each additional item of variance requested
(2) Regular variance (Commercial, multi-	200.00	\$500.00 plus \$100.00 for each additional item of

		variance requested.
family or industrial)		
(3) Special exception use (except liquor use)	200.00	\$400.00
Special exception use for liquor	400.00	\$500.00
(4) Extension of time for implementation of variance or special exception	50.00	\$200.00
(5) Appeal of administrative interpretation	50.00	\$200.00
(6) Special exception and variances for satellite dish antenna	50.00	\$200.00
(7) Special exception for fences, walls, barbed wire and other structures in residential and commercial districts	50.00	\$200.00
(8) Recordation of Orders	<u>As required by law</u>	
(9) Public Notice	<u>Actual cost of publication</u>	

(k) Administrative Variances.

(1) Notwithstanding any other provisions of this Ordinance, in connection with single-family, duplex, triplex and townhouse use, upon application being duly made, the Director may by administrative decision and pursuant to prior review and a recommendation from the Staff Review Committee, approve any non-use variance request. The Staff Review Committee, for purposes of this section, shall be comprised of the Director of C.P. &D., the Zoning Administrator, the Code Administrator, the Building Official, and the Administrative Coordinator or Planning Technician; other city staff may also be requested to attend, in an advisory non-voting capacity, if felt by the Committee that their expertise would be of value in the review of the application.

For purposes of this section a non-use variance includes a variance to: setback requirements, fence heights, minimum lot size requirements, maximum allowed lot coverage, and required off-street parking. Such requests may only be processed and approved administratively if they do not exceed the following:

- (i) Setbacks are not decreased by more than 20% of what is required in the applicable district;
 - (ii) Fence heights in the front, side and rear yard setbacks are not increased by more than one foot over what is allowed in the applicable district (excluding R-1);
 - (iii) Minimum lot size is not decreased by more than 10% of what is required in the applicable district;
 - (iv) Maximum allowed lot coverage is not increased by more than 10% of what is allowed in the applicable district;
 - (v) Required off-street parking is not reduced by more than 10% (a fraction of a space shall be rounded up to one space).
2. The granting of an administrative variance shall be based on the following:
- (i) The variance is in harmony with the character of the immediate neighborhood and is keeping with community goals as they relate to quality of life;
 - (ii) The variance will not adversely affect or be injurious to the adjacent uses, immediate neighborhood, and/or the community as a whole.
3. Requests for administrative variances shall include the following:
- (i) A letter of intent describing the nature of the request and the reasons for its issuance;
 - (ii) A letter of consent from the property owner if not the same as the applicant;
 - (iii) A current survey (updated within one year or less preceding the date of application for the administrative variance);

- (iv) A site plan and if applicable a floor plan, and elevations depicting the items which are the subject of the administrative variance request;
- (v) The signatures of adjacent neighbors on a form provided by the department acknowledging such request (at a minimum, the signature of the two neighbors on each side, to the rear and across the street or waterway shall be provided). Where a neighbor is a resident but not the property owner, then the applicant shall send a notice by certified mail, on a form provided by the Department to the property owner of record advising of the application. Proof of mailing shall be submitted at the time the application for an administrative variance is filed. Incomplete submissions shall not be accepted. Staff may waive any of the requirements of 3(i-v) above.

4. The Staff Review Committee shall make a determination on an administrative variance application within 10 working days of receipt, and the Committee's decision shall be transmitted in writing to the applicant and to the affected residents and property owners originally contacted by the applicant as part of the application process, within 5 working days of its being rendered. The affected residents and property owners shall have 10 working days from the date of the notice to file an appeal of the Committee's decision. Any appeal shall be filed at the C.P. & D. office or mailed to the office such that it is received by or before the referenced 10-day period ends. If no appeal is received then the Committee's decision shall stand, and the final date of approval shall be the date on which the 10-day period ended.

Any and all appeals filed shall be processed through the Board of Adjustment and City Council.

5. An administrative variance granted under the above enumerated procedures shall be valid for six (6) months from the final date of approval, after which it will become null and void, unless an extension is granted. Filing for an extension shall require the applicant to resubmit an application as described in (3) above.

Section 3. Repealer.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 4. Severability.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 5. Effective Date

This Ordinance shall take effect on the 1st day of October, 1997.

PASSED and ADOPTED by a 5-0 vote of the City Council on first reading this 26th day of August, 1997.

PASSED and ADOPTED by a 4-0 vote of the City Council on second reading this 9th
day of September, 1997.



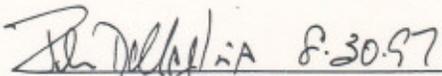
MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

8/28/97