MIAMIBEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT
STAFF REPORT

FROM: Thomas R. Mooney, AICP
Planning Director

DATE: February 05, 2016 Meeting

RE: BOA File No. 3802
5501 Pine Tree Drive – Single Family Residence

The applicant, Nadia Di Donato is requesting after the fact variances to exceed the maximum height for a fence within the required yards of a new two-story single family home.

STAFF RECOMMENDATION:
Denial of the variances requested.

LEGAL DESCRIPTION:
Lot 1, Block 1-A of "Beach View Subdivision", According to the Plat Thereof, as recorded in Plat Book 9 at Page 158 of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Zoning -	RS-3
Future Zoning-	RS
Lot Size -	13,181 SF*
Lot Coverage	
Existing	2,748 SF / 21%*
Unit size	
Existing	4,332 SF / 33%*
Height-	
Existing-	2 stories

EXISTING STRUCTURES:

Year Constructed:	2015
Architect:	Axioma3/Architects
Vacant Lot:	No
Demolition:	No

*As per approved construction plans (B1302389).

THE PROJECT:
The applicant has submitted documents entitled "Di-Donato Residence Fence" as prepared by MCY Engineering, Inc. dated June 9, 2015.

The applicant is requesting after-the-fact variances for the retention of a perimeter fence exceeding the maximum height permitted within all required yards.

The applicant is requesting the following variance(s):

1. A. A variance to exceed by a range from 1.2' to 2.85' the maximum height of 5'-0" for a fence located within the first two feet of front yard adjacent to the front property line in order to retain a fence ranging from 6.2' to 7.85' in height as measured from grade (6.53 NGVD).

   B. A variance to exceed by 1.0' the maximum height of 7'-0" for a fence located within the interior side yards in order to retain a fence along the north and south side yards with a height of 8.0' as measured from grade (6.53 NGVD).

   C. A variance to exceed by 0.75' the maximum height of 5'-0" for a fence located within the rear yard facing a waterway in order to retain a fence on the north and south side yards with a maximum height of 5.75' as measured from grade (6.53 NGVD).

   - Variances requested from:

Sec. 142-1132. Allowable encroachments within required yards.
(h) Fences, walls, and gates. Regulations pertaining to materials and heights for fences, walls and gates are as follows:
(1) All districts except I-1:
a. Within the required front yard, fences, walls and gates shall not exceed 5'-0". The height may be increased up to a maximum total height of 7'-0" if the fence, wall or gate is setback from the front property line. Height may be increased 1'-0" for every 2'-0" of setback.

b.Within the required rear or side yard, fences, walls and gates shall not exceed seven feet, as measured from grade, except when such yard abuts a public right-of-way, waterway or golf course, the maximum height shall not exceed five feet.

A new two-story single family home, which replaced a one-story home constructed in 1952, has been constructed on the site. The master permit for the new house did not include fencing of the property. A fence permit under B1504470 was approved to install a 6' high fence, setback 20 feet from the front property line and a 7' high fence along both side yards. Subsequently, another permit for a 5' high fence within the rear yard was approved under BREV152777. The existing fences in the front, side and rear yards do not conform to the location and maximum height permitted and approved on the building permits. The applicant is requesting variances to exceed the maximum height in all required yards.

A survey showing the height of the top of the existing walls has been submitted. Staff would note that the wall fence at the southeast corner encroaches into the adjacent property to the south. Even if the Board elects to grant the variances requested by the applicant, the portion of the fence that encroaches into the adjacent property must be removed from the plans, and shall not be approved by the Board.

Based on the submitted letter of intent and approved building permits for the property, staff finds that this is a self-imposed hardship. The variances requested do not meet the City's practical difficulties standard for the granting of the variances. Two separate permits for the fence were approved, but the fences constructed by the applicant do not correspond with

the drawings for either permit. Staff recommends that the Board deny the variances, and that the applicant reduce the fences to the maximum allowed height.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded **DO NOT** satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, staff has concluded that the plans and documents with the application **DO NOT** comply with the following hardship criteria, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

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;

Not Satisfied. Two permit plans were approved for the new fence, which was constructed higher than the maximum height permitted.

That the special conditions and circumstances do not result from the action of the applicant;

Not Satisfied. The existing fences are the result of the applicant's actions.

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;

Not Satisfied. The approval of the variances will grant a privilege to the applicant denied to other properties.

That 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;

Not Satisfied. Other properties are required to construct the fences up to the maximum height in all required yards. The new two-story single family home and fences up to maximum permitted would not deprive the applicant of rights that other properties enjoy.

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

Not Satisfied. The applicant's new two-story home, without the excessively tall fence, is a reasonable use of the land. The variance requested is not necessary to guaranteeing a reasonable use of the land.

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 or otherwise detrimental to the public welfare; and

Not Satisfied. The additional height of the fences would not be in keeping with the intent of the City's zoning ordinance.

That the granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.

Satisfied.

COMPLIANCE WITH ZONING CODE:

A preliminary review of the project indicates that the application, as proposed, appears to be inconsistent with the following sections of the City Code, in addition to the requested variance(s):

1. The existing wall fence located at the southeast corner encroaches into the adjacent property to the south and shall be removed.

The above noted comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

STAFF ANALYSIS:

The subject site is an interior lot containing a new two-story single family home constructed in 2015. The new residence complies with all requirements of the Code and did not require development review board approval. Separate bulding permits were approved to construct a perimeter fence. However, the front, side and rear fences were constructed at a height that exceeds the maximum height permitted in all required yards. The applicant is requesting variances to retain the non-conforming structures.

Staff would note that as shown on the survey submitted, portions of the fence located at the southeast corner of the site and connected to the rolling gate, encroach into the adjacent property to the south. This portion of the fence was not included in the approved building permits as the front fence was proposed with a 20 foot setback from the front property line. Should the Board find that practical difficulties exist to grant the variances requested, the applicant would need to submit revised plans to the Planning Department, removing the fence located outside the property lines.

Staff has concluded that the non-conforming conditions of the fence are self-imposed. Considering the size of the new project, the reduction of the fence in height would not constitute an undue hardship to the applicant. Based on the hardship letter submitted, the fences were constructed based on the non-conformity of previous fences removed from the site, not based on the permit plans approved. There are no practical difficulties or undue hardship to grant the variances requested. On the contrary, any approval would set a negative precedent since the increase in height of fences surrounding the properties, mainly in the front and rear yards is not supported under the hardship criteria. As such, staff recommends denial of all variances.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **denial** of the variance(s). However, should the Board find that the variance(s) requested satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property, staff recommends the following conditions:

1. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.

2. Revised site plan drawings shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:

   a. The portions of the fence outside property line at the front shall be removed from the plans.

   b. The front fence encroaching into the adjacent property to the south shall be removed before obtaining a Certificate of Occupancy.

3. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit, and shall be located immediately after the front cover page of the permit plans.

4. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.

5. The applicant shall comply with all conditions imposed by the Public Works Department.

6. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.

7. The final order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

8. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code, except to the extent of the variance(s) granted herein.

9. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.