

MIAMI BEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP 
Planning Director

DATE: March 4, 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.

HISTORY:

This application was continued by the Board to a date certain of March 4, 2016.

STAFF RECOMMENDATION:

Denial of the variance 1A and **approval** of variances 1B and 1C.

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 STRUCTURE:

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.

Since the last meeting, a new updated survey showing the fence within the property lines has been submitted. Also, photographs of fences of other properties in the neighborhood were provided, however the location of the front property line for these other properties cannot be determined from the photos. Higher fences are permitted by the City Code, provided they are setback 4 feet from from the front property line for a 7 foot tall fence. Letters of no objections from the adjacent neighbors on both sides of the property also have been provided. Based on this new information, staff is supportive of the variances for the fence located on the sides of the property, as the most affected neighbors do not object to it,

the fences are not fully visible from the street and more privacy between properties is desired.

However, staff remains concerned with the height of the fence along the front property line. The front fence is not compatible with the height of the fence of most properties in the area. Many properties along Pine Tree Drive do not have a fence, and the granting of this variance would set a negative precedent for single family neighborhoods, where other properties comply with the maximum height of fence required. Staff finds that there are no special conditions, practical difficulties or hardship for the variance request 1A for the front fence. Therefore, staff recommends that this variance be **denied**.

Should the Board deny the variance request for the fence along the front of the property, the applicant has the option of reducing the height to five (5') feet, or setback the fence four (4') feet in order to comply with the City Code requirements.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded only **partially** satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, staff has concluded that the plans and documents with the application **partially** 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;

Satisfied for variances number 1B and 1C.

Not Satisfied for variance 1A. 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;

Satisfied for variances number 1B and 1C.

Not Satisfied for variance 1A. The existing fence is 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;

Satisfied for variances number 1B and 1C.

Not Satisfied for variance 1A. The approval of this variance 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;

Satisfied for variances number 1B and 1C.

Not Satisfied for variance 1A. 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 front fence 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;

Satisfied for variances number 1B and 1C.

Not Satisfied for variance 1A. 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 guarantee 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

Satisfied for variances number 1B and 1C.

Not Satisfied for variance 1A. The additional height of the fence 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:

The application, as submitted, appears to be consistent with the applicable requirements of the City Code, with the exception of the variance(s) requests herein. This 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 Design Review Board approval. Separate building 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.

The application was reviewed at the February 5, 2016 meeting and due to inconsistencies with the survey provided, the application was continued to the March 4, 2016 meeting in order to provide an updated survey and additional information. Based on the updated survey and additional information provided, staff recommends approval of the variances 1B and 1C and denial of variance 1A, as noted in the project description part of this report.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **approval** of variances 1B and 1C and **denial** of the variance 1A. 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. The applicant shall revise the previously approved building permits for the fence to update the existing conditions of the fence and property lines, 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.