

ORDINANCE NO. 1393

**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 3, DIVISION 6, ENTITLED "VARIANCES HEARD BY BOARD OF ADJUSTMENT," SPECIFICALLY AT SECTION 3-604 ENTITLED "ADMINISTRATIVE VARIANCES", AND AMENDING DIVISION 7, ENTITLED "APPEALS", SPECIFICALLY AT SECTION 3-702 ENTITLED "ADMINISTRATIVE APPEALS" TO EXTEND THE TIME REQUIRED FOR AN AGGRIEVED PARTY TO FILE A NOTICE OF APPEAL TO THE BOARD OF ADJUSTMENT FROM THE CURRENT TEN (10) DAYS TO THIRTY (30) DAYS, AND TO SHIFT THE COST OF SUCH AN APPEAL TO THE OWNER OF THE PROPERTY SEEKING THE BENEFITS DERIVED BY THE ISSUANCE OF AN ADMINISTRATIVE VARIANCE; 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 calculated 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 ("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 the all residential properties within the City; and

**WHEREAS**, City administration may grant an administrative variance for reasonable deviations from the literal terms of the LDRs, due to practical difficulties or unnecessary and undue hardships, so that the spirit of City regulations are observed, public safety and welfare secured, and substantial justice is done; and

**WHEREAS**, a number of complaints have reached the City administration relating to the administrative variance process, specifically as it relates to the insufficient time allowed for an aggrieved person to file an appeal with the City Board of Adjustment and the cost charged by the City for such an appeal; and

**WHEREAS**, a just and equitable solution lies in ensuring adjacent property owners with sufficient notice of a request for an Administrative Variance and extending the time allowed to file an appeal from the current ten (10) days to thirty (30) days; and

**WHEREAS**, City administration is desirous of amending Section 3-604 and Section 3-702, LDRs, to allow a reasonable time period in which to file an appeal; and

**WHEREAS**, the Planning Commission, after a duly noticed public hearing held on October 6, 2015, recommended approval to the Mayor and City Council with the condition that the cost of the applicable appeals fee, remains payable by the aggrieved party and not the applicant as originally proposed, so as to prevent the potential for: frivolous claims from being filed, abuse by adjacent property owners filing multiple claims, increasing the cost and risk of property owners seeking minor administrative relief in accordance with the LDRs; and

**WHEREAS**, the Planning Commission find that, with the exception of shifting the cost of an appeal to the owner of the property seeking the benefits derived by the issuance of an administrative variance, the proposed amendment: 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 text amendment, 3) will 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, 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, 4) does not directly conflict with an goal, objective or policy of the comprehensive land use plan, and 5) further the orderly development of the City; and

**WHEREAS**, the Mayor and City Council find the proposed amendment, as proposed by the Planning Commission, strike an equitable balance between the rights of a property owner requesting an Administrative Variances with the rights of adjacent property owners who may be affected, while offering reasonable time period in which to file an appeal.

**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 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 3, Division 6, entitled "Variances Heard by Board of Adjustment," specifically at Section 3-604 entitled "Administrative Variances", and amending Division 7, entitled "Appeals", specifically at Section 3-702 entitled "Administrative Appeals" to modify the requirements for obtaining an Administrative Variance and extend the time required for an aggrieved party to file a notice of appeal to the Board of Adjustment from the current ten (10) days to thirty (30) days.

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

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**ARTICLE 3. DEVELOPMENT REVIEW**

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**DIVISION 6. VARIANCES HEARD BY BOARD OF ADJUSTMENT**

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**Sec. 3-604. Administrative variances.**

A. Nonuse administrative variances may be granted by the ~~building and zoning~~ Community Planning & Development ~~Department~~ for applications under the following circumstances:

1. For single-family, duplex, triplex or townhouse project a variance to setback requirements where the setback is not decreased by more than twenty (20) percent of what is required in the applicable zoning district.
2. A variance for setbacks for docks not to exceed ten (10) percent of the required setback.
3. A parking variance for the first restaurant in a shopping center which existed on the date of adoption of these LDRs. If a parking variance is required for the second restaurant in an existing center, the board of adjustment shall consider the variance in accordance with the provisions of section 3-605.
4. For single-family, duplex, triplex, or townhouse lot, a variance to allow a driveway to maintain a side yard setback between two and one-half (2.5) feet and five (5) feet, provided that the driveway is composed of ~~previous~~ pervious or permeable materials.

5. A variance for the parking or storage of recreational vehicles pursuant to section 5-1405.
6. A variance for any carport structure within the required front and side setbacks pursuant to section 5-103.

B. The granting of an administrative variance shall be based on the following:

1. The variance is in harmony with the character of the immediate neighborhood and is in keeping with community goals as they relate to quality of life; and
2. The variance will not adversely affect or be injurious to the adjacent uses, immediate neighborhood and the community as a whole.

C. ~~The decision shall be transmitted by regular mail in writing to the adjacent property owners within five (5) working days of the decision being rendered.~~ Applications, and signed consent of neighboring property owners; mailed notices.

1. The applicant must file a request to the Community Planning and Development Department, in a form approved by staff, containing all the information necessary for staff to make an administrative decision, which shall include, but is not limited to, identification of the specific provisions of this chapter from which a administrative variance is sought; the nature and extent of the variance; and the grounds relied upon to justify the approval of the variance, pursuant to subsection B.

2. Such application shall be accompanied by the required submittal documents and fee as determined by staff, which shall include the following:

*a. Signed consent of neighboring property owners.*

- 1) The signed consent of all contiguous property owners, including those located across the street from the subject site, shall be submitted by the applicant on a form prescribed by the administrative official, and on the site plan submitted for consideration.
- 2) Said consent shall not be required from an abutting property when a separating public right-of-way measures 70 feet or greater, nor shall consent be required when a body of water completely separates the subject parcel from another parcel.
- 3) If the applicant for an administrative variance is unable to obtain either the signed consent or objection of a neighboring property owner, the signature of that owner shall not be required if the applicant demonstrates a good faith effort to comply with the requirements stated herein.

3. Mailed notices. Once an administrative decision has been rendered, the City shall provide written mailed notice to the abutting property owners. Such notice shall be deemed

sufficient if it accurately describes the administrative variance granted and informs the abutting property owners of the 30 day appeal process as outlined in Division 7 below.

D. A property owner receiving approval of an administrative variance shall not commence any of the improvements allowed by the administrative variance until after the expiration of time allowed for an appeal, in accordance with the provision of section 3-702.

D E. An administrative variance granted under these procedures shall be valid for six (6) months from the final date of approval, after which it shall become null and void unless a building permit is issued or a recreational vehicle (in the front yard) permit is granted or an extension is granted. The building and zoning department is authorized to grant one (1) six-month extension. Any further extension shall require the application to be resubmitted as an entirely new application.

E F. Appeals of decisions on an application for an administrative variance may be taken to the board of adjustment by an aggrieved party in accordance with the provisions of section 3-702.

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## DIVISION 7. - APPEALS

### **Sec. 3-701. - Purpose and applicability.**

The purpose of this division is to set forth procedures for appealing the decisions of city staff and the board of adjustment where it is alleged that there is an error in any order, requirement, decision or interpretation made in the enforcement or interpretation of these LDRs.

### **Sec. 3-702. - Administrative appeals.**

A. Zoning Appeals - An appeal from any zoning decision by the ~~director of building and zoning~~ Community Planning and Development Department or the development review committee where it is alleged that there is an error in any order, requirement, decision or interpretation made in the enforcement or interpretation of these LDRs, shall be taken by an aggrieved party to the board of adjustment. An aggrieved party may file a notice of appeal to the board of adjustment with the ~~building and zoning director~~ Community Planning and Development Department within ten (10) days of the administrative decision ~~being appealed~~. The notice of appeal should be accompanied by any relevant documents related to the appeal and applicable fees; as such said fees may be amended from time to time by Resolution of the city council.

B. Administrative Variances – An appeal to an administrative variance granted under section 3-604 shall be submitted to the Community Planning and Development Department by an aggrieved party. Said party may file a notice of appeal for consideration before the board of adjustment within thirty (30) days of the administrative decision. More than one appeal arising from the same property, shall be consolidated into one hearing before the board of adjustment. In addition to the regular application fee, the applicant property owner seeking the issuance of an administrative variance shall bear the cost of the applicable one time appeal fee.

C. Appeals to the board of adjustment shall require prior notice of the hearing in accordance with the provisions of article 3, division 3 of these LDRs.

**Sec. 3-703. - Appeals from decisions of the board of adjustment.**

Any person aggrieved by any decision or action taken under these LDRs by the board of adjustment may file a petition for writ of certiorari with the circuit court in accordance with the Florida Rules of Appellate Procedure within thirty (30) days of rendering of the decision.

Challenges to development orders based on consistency or inconsistency of the development order with the city comprehensive plan shall be governed by the provisions of F.S. § 163.3215.

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

**Section 3.** **Conflicts.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**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, 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.** The provisions of this Ordinance may become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article" or any other appropriate word.

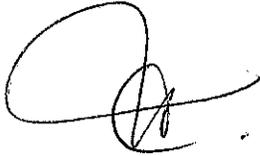
**Section 6.** **Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

**PASSED AND ADOPTED** by 5 - 0 vote of the Mayor and City Council on first reading this 24th day of November, 2015.

**PASSED AND ADOPTED** by 5 - 0 vote of the Mayor and City Council on second reading this 8th day of December, 2015.

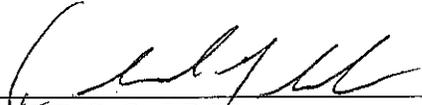
  
\_\_\_\_\_  
DR. SMITH JOSEPH  
MAYOR

ATTEST:



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

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:



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

SPONSORED BY: COUNCILMAN SCOTT GALVIN

Moved by: Galvin

Seconded by: Keys

**Vote:**

Mayor Dr. Smith Joseph, D.O., Pharm. D.  
Vice Mayor Carol Keys, Esq.  
Councilman Scott Galvin  
Councilman Philippe Bien-Aime  
Councilman Alix Desulme

X (Yes) \_\_\_\_\_ (No)  
X (Yes) \_\_\_\_\_ (No)  
X (Yes) \_\_\_\_\_ (No)  
x (Yes) \_\_\_\_\_ (No)  
X (Yes) \_\_\_\_\_ (No)

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