

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: December 14, 2020

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB20-0406. Modifications to fence heights for single family zoning districts.**

An ordinance of the Mayor and City Commission of the City of Miami Beach, Florida, amending the code of the City of Miami Beach, Subpart B, entitled "Land Development Regulations," by amending Chapter 142, entitled "Zoning Districts and Regulations," Article II, entitled "District Regulations," Division 2, entitled "RS-1, RS-2, RS-3, RS-4 Single-Family Residential Districts," Section 142-106, entitled "Setback Requirements for a Single-family Detached Dwelling," to modify the fence requirements; and providing for Repealer, Codification, Severability, and an Effective Date.

RECOMMENDATION

Transmit the proposed ordinance to the City Commission with a favorable recommendation.

HISTORY

On October 14, 2020, at the request of Commissioner Micky Steinberg, the City Commission referred the proposed draft ordinance to the Land Use and Sustainability Committee (LUSC) and the Planning Board by (item C4I). On November 24, 2020, the LUSC recommended that the City Commission approve the ordinance.

REVIEW CRITERIA

Pursuant to Section 118-163 of the City Code, in reviewing a request for an amendment to these land development regulations, the board shall consider the following when applicable:

1. **Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

Consistent – The proposed ordinance is consistent with the goals, objectives, and policies of the Comprehensive Plan.

2. **Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

Consistent – The proposed amendment does not change the boundaries of existing districts.

3. **Whether the change suggested is out of scale with the needs of the neighborhood or the city.**

Consistent - The proposed change is not out of scale with the needs of the city's neighborhoods.

4. **Whether the proposed change would tax the existing load on public facilities and infrastructure.**

Consistent – The proposed ordinance will not affect the load on public facilities and infrastructure.

5. **Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.**

Not applicable – The proposed amendment does not modify district boundaries.

6. **Whether changed or changing conditions make the passage of the proposed change necessary.**

Consistent – The purpose of this modification is to address privacy concerns related to unique circumstances where there is an elevated side and rear yard on the lot of an architecturally significant single-family home constructed prior to 1942. In these instances, it may not be feasible to modify the existing yard and raise it to adjusted grade in order to create a buffer area adjacent to the property line and provide the ability to construct a higher fence along the property line.

7. **Whether the proposed change will adversely influence living conditions in the neighborhood.**

Consistent – The proposed ordinance amendment will not adversely affect living conditions in the city's neighborhoods.

8. **Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.**

Consistent – The proposed change will not create or increase traffic congestion from what is currently permitted.

9. **Whether the proposed change will seriously reduce light and air to adjacent areas.**

Consistent – The proposed change will have no impact on light and air.

10. **Whether the proposed change will adversely affect property values in the adjacent area.**

Consistent – The proposed change should not adversely affect property values in the adjacent areas.

11. **Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.**

Consistent – The proposed change should not be a deterrent to the improvement or

development of properties in the City.

12. **Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.**

Not Applicable

13. **Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.**

Not applicable.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(b) of the Land Development Regulations establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

- (1) **Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.**

Consistent – The proposal does affect areas that are vulnerable to the impacts of sea level rise in the long term.

- (2) **Whether the proposal will increase the resiliency of the City with respect to sea level rise.**

Consistent – The proposal should not have an impact on the resiliency of the City.

- (3) **Whether the proposal is compatible with the City’s sea level rise mitigation and resiliency efforts.**

Consistent – The proposal should not impact the City’s sea level rise mitigation and resiliency efforts.

ANALYSIS

Recently, the City code was amended to allow properties where the required yard is elevated to adjusted grade, to measure the height of fences, walls and gates from adjusted grade along a side or rear yard. The code also requires that the portion of fences or walls located above 4 feet in height from adjusted grade consist of open pickets. In all other instances, walls and gates are measured from grade, which is typically the sidewalk elevation at the front of the property.

There have been instances where a pre-1942 architecturally significant home has a very low sidewalk (grade) elevation, and a rear yard that has been elevated above grade, for example as part of a pool deck construction. The proposed amendment would apply only to existing pre-1942 architecturally significant homes, where a substantial portion of the existing rear yard and/or side yard is located at least 12 inches above grade. Specifically, pre-1942 homes with this condition would be able to measure the overall height of fences, walls and gates from the yard elevation along a side or rear yard, including a side yard facing a street.

The proposed modification is intended to address privacy concerns related to unique circumstances where there is an elevated side and rear yard on the lot of an architecturally significant single-family home constructed prior to 1942. In these instances, it may not be feasible

to modify the existing yard and raise it to adjusted grade, in order to create a buffer area adjacent to the property line and provide the ability to construct a higher fence along the property line.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

Single-Family Fence Height Modifications

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," BY AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 2, ENTITLED "RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS," SECTION 142-106, ENTITLED "SETBACK REQUIREMENTS FOR A SINGLE-FAMILY DETACHED DWELLING," TO MODIFY FENCE REQUIREMENTS; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach has the authority to enact laws which promote the public health, safety, and general welfare of its citizens; and

WHEREAS, the amendments set forth below are necessary to accomplish the above objectives.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA.

SECTION 1. Chapter 142, entitled "Zoning Districts and Regulations," Article II, entitled "District Regulations," Division 2, entitled "RS-1, RS-2, RS-3, RS-4 Single-Family Residential Districts," is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

ARTICLE II. – DISTRICT REGULATIONS

* * *

Sec. 142-106. - Setback requirements for a single-family detached dwelling.

* * *

(b) Allowable encroachments within required yards.

* * *

(7) *Fences, walls, and gates.* Regulations pertaining to materials and heights for fences, walls and gates are as follows:

- a. *Front Yard.* Within the required front yard, fences, walls and gates shall not exceed five feet, as measured from grade. The height may be increased up to a maximum total height of seven feet if the fence, wall or gate is set back from the front property line. Height may be increased one foot for every two feet of setback.

- b. Rear and side yards. 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.

In the event that a property has approval to be improved at adjusted grade, the overall height of fences, walls and gates may be measured from adjusted grade, provided that the portion of such fences, walls or gates above four feet in height consists of open pickets with a minimum spacing of three inches, unless otherwise approved by the design review board or historic preservation board, as applicable.

Pre-1942 exemption. Notwithstanding the provisions of this subsection (b)(7)(b), for properties containing a pre-1942 architecturally significant home, where a substantial portion of the existing rear yard and/or side yard is located at least 12 inches above grade, the overall height of fences, walls and gates may be measured from the elevation of the existing yard, provided that the portion of such fences, walls or gates above four feet in height consists of open pickets with a minimum spacing of three inches, unless otherwise approved by the design review board or historic preservation board, as applicable.

- c. Materials. All surfaces of masonry walls and wood fences shall be finished in the same manner with the same materials on both sides to have an equal or better-quality appearance when seen from adjoining properties. The structural supports for wood fences, walls or gates shall face inward toward the property.
- d. Chain Link prohibition. Chain link fences are prohibited in the required front yard, and any required yard facing a public right-of-way or waterway (except side yards facing on the terminus of a dead-end street in single-family districts) except as provided in this section and in section 142-1134.
- e. Barbed wire or materials of similar character shall be prohibited.

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SECTION 2 Repealer.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

SECTION 3. Codification.

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

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 ten days following adoption.

PASSED AND ADOPTED this _____ day of _____,

Dan Gelber, Mayor

ATTEST:

Rafael E. Granada, City Clerk

APPROVED AS TO FORM
AND LANGUAGE
AND FOR EXECUTION

City Attorney

Date

First Reading:
Second Reading:

Verified By: _____
Thomas R. Mooney, AICP
Planning Director