



**City of North Miami Beach, Florida**  
**Community Development Department**

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**PLANNING & ZONING BOARD  
STAFF REPORT**

**TO:** Planning & Zoning Board Members

**FROM:** Richard G. Lorber, AICP, Director of Community Planning

**DATE:** September 12, 2016

**RE:** Ordinance: Zoning Text Amendment – Driveways and Swales

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL AMENDING THE CITY OF NORTH MIAMI BEACH CODE OF ORDINANCES, BY AMENDING CHAPTER XVI ENTITLED "PROPERTY MAINTENANCE", SECTION 16-2.2 ENTITLED "MAINTENANCE OF SWALE AREAS", AND CHAPTER XVII ENTITLED "STREETS AND SIDEWALKS", SECTION 17-3.3 ENTITLED "CHANGING COMPOSITION OF SWALE; PERMIT REQUIRED", AND ARTICLE IX OF THE CITY OF NORTH MIAMI BEACH ZONING AND LAND DEVELOPMENT CODE, ENTITLED "OFF STREET PARKING AND LOADING", SECTION 24-92.1, ENTITLED "SINGLE-FAMILY RESIDENTIAL DRIVEWAY DESIGN STANDARDS" IN ORDER TO CLARIFY REGULATIONS RELATED TO SWALES, DRIVEWAYS AND PARKING; AND BY AMENDING ARTICLE VIII OF THE CITY OF NORTH MIAMI BEACH ZONING AND LAND DEVELOPMENT CODE, ENTITLED "SUPPLEMENTAL REGULATIONS", SECTION 24-92.1, ENTITLED "SETBACK ENCROACHMENTS" BY REQUIRING STORAGE STRUCTURES OR UTILITY SHEDS THAT ARE VISIBLE FROM THE ADJACENT PUBLIC STREET TO BE SCREENED BY APPROPRIATE FENCING OR LANDSCAPING; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR SEVERABILITY; CODIFICATION; AND FOR AN EFFECTIVE DATE.

***Request:***

The applicant, City of North Miami Beach, proposes a text amendment to Chapters 16, 17 and 24 of the North Miami Beach City Code, in order to clarify regulations related to swales, driveways and parking, and to require storage structures or utility sheds that are visible from the adjacent public street to be screened by appropriate fencing or landscaping.

***Background:***

The City's regulations for single-family residential driveways and swales are contained in several different sections of the City Code.

The Zoning and Land Development section, Chapter 24, contains the required setbacks and dimensions for driveways, and specifies that parking on the grass is prohibited except for parking on the swale, and that the swale area shall be sodded to the edge of the pavement. This section also addresses the driveway approaches, requiring that the material of the driveway approach

must match the material of the driveway. Chapter 24 also contains the regulations for landscape maintenance.

Chapter 10, Traffic, contains the prohibition against pyramidal parking barriers in the swale.

Chapter 16 addresses Property Maintenance, and requires owners to maintain adjacent swale areas between the property line and the street, free of holes, hidden dangers or other obstructions and the grass or weeds at a height of no more than eight (8) inches. This section also governs the maintenance of the private property, and requires owners to maintain their property in good condition, free of rubbish, trash, debris, dead trees, noxious plants or weeds, unsightly or unsanitary matter, or depressions or excavations that could cause standing water. Chapter 17, Streets and Sidewalks, requires a permit from the Building Department in order to remove, modify, or change the context, elevation or composition of any swale. This section also specifies that all street, driveway and sidewalk construction in the City shall meet the Miami-Dade County Public Works Manual requirements.

Taken in total, these provisions impose a fairly comprehensive, logical set of requirements for driveways and swales in single-family residential zones. However, some aspects of the existing requirements are either deficient or in need of additional clarification and guidance. Community Development staff believes that by amending the relevant sections of the City Code to include clarification and additional guidance, the City will be able to more effectively enforce existing code requirements, while guiding homeowners towards the full range of options available to them for their parking needs and maintenance of their properties and adjacent swale areas.

***Planning and Zoning Department Analysis:***

Staff has identified several issues that could be improved and clarified.

1. The composition of S.F. driveways - Although 2, 3, and 4 family homes are required to have solid driveways (concrete, asphalt, or pavers), no such requirement now exists for single-family homes. Many homes exist within the City that contain gravel or crushed rock driveways, which may have been permitted in the past. Rules should be clarified to require all NEW driveways to be concrete, asphalt or pavers, but permitting existing rock and gravel driveways to remain, subject to a requirement to maintain the driveway in good shape and to prevent rocks and gravel from migrating to the street through regular maintenance and sweeping. In the event improvements are made to the property, all off-street parking spaces must then come into compliance and install a paved driveway.
2. Parking on swales - The code is clear that parking on the swale is permitted. However, experience has shown that parking cars on grassy swales continually over the long term leads to deterioration of the grass and degradation of the swale area. Swales are best suited to temporary, overflow type parking on an occasional basis. Those properties that do not use a driveway to park their cars on their own property, and instead use the swale

for regular parking, risk degrading the swale. As part of a comprehensive strategy to ameliorate these issues, staff suggest that the Code be amended to clarify that TEMPORARY, short-term parking on swales is permitted. Permanent, continual parking should be located on private-property.

3. Neighbors parking on swales – This ordinance contains language that mirrors an ordinance in force in the City of Miami Springs, which governs parking on swales in front of residences. In return for maintaining and beautifying the swale in front of one’s home, the ordinance grants owners of property abutting and adjacent to swale areas limited preferential usage of such swale. The property owner may also permit others to utilize the subject swale areas for all reasonable and justifiable purposes. This enables the property owner to park there, to allow others to park there, or, they may enforce their limited preferential use of the swale areas by requesting that other parties utilizing such areas, without permission or authorization, cease and desist from the unauthorized use of such areas immediately.

Once amendments to the Code are made clarifying and correcting the above referenced issues, the City will be able to clearly lay out to homeowners the various options that are available for driveways and swales. Enforcement of the existing rules will be clarified and City staff will have guidance on enforcement priorities and assisting homeowners with options.

***Community Development Department Recommendation:***

Community Development Department staff recommends approval of the subject amending ordinance.

**ORDINANCE NO. 2016-XX**

**AN ORDINANCE OF THE MAYOR AND CITY COUNCIL AMENDING THE CITY OF NORTH MIAMI BEACH CODE OF ORDINANCES, BY AMENDING CHAPTER XVI ENTITLED "PROPERTY MAINTENANCE", SECTION 16-2.2 ENTITLED "MAINTENANCE OF SWALE AREAS", AND CHAPTER XVII ENTITLED "STREETS AND SIDEWALKS", SECTION 17-3.3 ENTITLED "CHANGING COMPOSITION OF SWALE; PERMIT REQUIRED", AND ARTICLE IX OF THE CITY OF NORTH MIAMI BEACH ZONING AND LAND DEVELOPMENT CODE, ENTITLED "OFF STREET PARKING AND LOADING", SECTION 24-92.1, ENTITLED "SINGLE-FAMILY RESIDENTIAL DRIVEWAY DESIGN STANDARDS" IN ORDER TO CLARIFY REGULATIONS RELATED TO SWALES, DRIVEWAYS AND PARKING; AND BY AMENDING ARTICLE VIII OF THE CITY OF NORTH MIAMI BEACH ZONING AND LAND DEVELOPMENT CODE, ENTITLED "SUPPLEMENTAL REGULATIONS", SECTION 24-92.1, ENTITLED "SETBACK ENCROACHMENTS" BY REQUIRING STORAGE STRUCTURES OR UTILITY SHEDS THAT ARE VISIBLE FROM THE ADJACENT PUBLIC STREET TO BE SCREENED BY APPROPRIATE FENCING OR LANDSCAPING; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR SEVERABILITY; CODIFICATION; AND FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City's regulations for single-family residential driveways and swales are contained in several different sections of the City Code; and,

**WHEREAS**, while these provisions impose complex requirements for driveways and swales in single-family residential zones, some being deficient or in need of additional clarification and guidance; and,

**WHEREAS**, the City's Community Development staff believes that by amending the relevant sections of the City Code to include clarification and additional guidance, the City will be able to more effectively enforce existing code requirements, while guiding homeowners towards all options available to them for their parking needs and maintenance of their properties and adjacent swale areas; and,

**WHEREAS**, this also applies to the regulations governing storage and utility sheds, that can be clarified and strengthened by requiring appropriate screening or fencing when visible from an adjacent public street,

**WHEREAS**, the City's Planning and Zoning Board held a duly noticed public hearing on \_\_\_\_\_, and reviewed the proposed amendment, and recommended approval by a vote of \_\_\_ to \_\_\_; and

**WHEREAS**, the City Council finds that the proposed amendments are in the best interests of the City.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of North Miami Beach, Florida:

**Section 1.** The foregoing "Whereas" clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

**Section 2.** Chapter XVI of the City of North Miami Beach Code of Ordinances, entitled "Property Maintenance", Section 16-2.2 entitled "Maintenance of Swale Areas" is amended as follows:

**16-2.2 Maintenance of Swale Areas.**

(A) The City shall retain exclusive jurisdiction over maintenance responsibility for all parkway and swale areas in the City.

(B) It shall be the duty of all owners and/or occupants of improved or unimproved property to maintain in good condition all swale areas abutting, adjacent, or contiguous to their property. This maintenance duty and obligation shall include, but not be limited to, sodding, grass cutting, proper landscape maintenance, removal of debris, garbage, or trash, and keeping the area free of holes, hidden dangers or other obstructions and the grass or weeds at a height of no more than eight (8) inches.

(C) Property owners may, however, plant and landscape all abutting, adjacent, or contiguous swale areas to their property for beautification purposes so long as the following conditions and restrictions are met:

(1) No plantings or landscaping shall be designed, installed or maintained in a manner that constitutes a public nuisance or safety hazard.

(2) No plantings or landscaping shall obstruct or restrict the City's use of the swale area for other required purposes.

(3) All proposed planting and landscaping designs or plans shall be submitted for approval to the City public works department and City code enforcement department before installation.

(4) All trees proposed for planting in City swale areas must be included on the approved City tree list and be planted in conformity with the standards established in the City tree plan.

(5) No large railroad ties or concrete pyramid buttons may be located in the City swale areas. However, nonpermanent materials, not exceeding six inches in height, such as small landscape timbers and decorative masonry brick, or natural stone, may be utilized as part of a planting or landscaping plan.

(6) The aforesaid approved nonpermanent materials may be located no closer than five feet from the edge of the roadway or pavement, and shall not be farther than two feet from any tree or other planting, and the total area utilized by these materials for beautification and protection purposes shall not exceed four feet in diameter.

(7) The approved nonpermanent materials shall be used for the purposes of enclosing specific landscape areas around trees, to protect trunks of trees from lawn maintenance equipment, and for beautification.

(8) All plantings and landscaping, except approved trees, shall be limited to ground covers, bedding, flowers, and other lower height growth items not exceeding 18 inches in height.

(9) Small, round and flat-topped concrete parking or traffic buttons may be utilized, so long as the buttons do not obstruct the access to, nor the use of, the City swale areas.

(D) In consideration for the duty and obligation imposed by this section upon property owners to maintain all swale areas abutting and adjacent to their property, and the assumed liability created by requiring the elimination of any dangerous conditions or safety hazards in such swale areas, owners of property abutting and adjacent to swale

areas are hereby granted limited preferential usage of such swale areas as hereinafter set forth.

(1) The limited preferential usage herein conferred upon such property owners shall include all reasonable and justifiable usages of the swale areas, including, but not limited to, the parking of automobiles and the beautification purposes provided in subsection (A) of this section.

(2) The property owner may also permit others to utilize the subject swale areas for all reasonable and justifiable purposes.

(3) The property owner may enforce its limited preferential usage of such swale areas by requesting that other parties utilizing such areas, without permission or authorization, cease and desist from the unauthorized use of such areas immediately. If the property owner's request to discontinue the unauthorized use is unsuccessful, the property owner may contact the City Code Compliance Division or the City Police Department for assistance in enforcing the limited preferential usage conferred by this section.

(4) The use of any such swale area by any party in contravention of the provisions of this section shall be subject to the code enforcement provisions and procedures set forth in the City Code of Ordinances and the provisions of the Miami-Dade County Code of Ordinances and state law applicable to such unauthorized use. The City may require a form approved by the city attorney agreeing to indemnify, defend, save and hold harmless the city, its officers and employees, from any and all claims, liability, lawsuits, damages and causes of action which may arise out of this program.

\* \* \*

**Section 3.** Chapter XVII of the City of North Miami Beach Code of Ordinances, entitled “Streets and Sidewalks”, Section 17-3.3 entitled “Changing Composition of Swale; Permit Required” is amended as follows:

### 17-3.3 Changing Composition of Swale; Permit Required.

The removal, modification, or changing of the context, elevation or composition of the swale of any roads or streets within the City by any person unless first obtaining a permit from the City ~~Building~~ Public Works Department and exhibiting to the Department in writing the type of change and the reason therefor, shall be unlawful. The ~~Building~~ Public Works Department of the City shall have the discretion to either affirm or deny the request for a permit.

\* \* \*

**Section 4.** Article IX of the City of North Miami Beach Zoning and Land Development Code, entitled "Off Street Parking and Loading", Section 24-92.1, entitled "Single-Family Residential Driveway Design Standards" is amended as follows:

#### **Sec. 24-92.1 - Single-Family Residential Driveway Design Standards.**

\* \* \*

(D) ~~{Parking on Grass.}~~ Parking on the grass within required front and side yards is prohibited.

#### (E) Swale Parking

Temporary, short-term parking in swales is permitted. Parking cars on grassy swales continually over the long term leads to deterioration of the grass and degradation of the swale area. Swales are best suited to temporary, overflow type parking on an occasional basis. Permanent, continual parking should be located on private property. Property owners who permit their swales to become degraded due to continuous parking will be cited for property maintenance violations.

#### (F) Driveway Composition

- (1) New driveways proposed for single-family residential dwellings shall be paved with concrete, asphalt, or pavers of brick, or similar material authorized by the Director.
- (2) Existing rock and gravel driveways may remain. Property owners with existing rock and gravel driveways are required to maintain the driveway in good condition, and to prevent rocks and gravel from migrating to the street through regular maintenance and sweeping.
  - a. This provision applies to permitted rock and gravel driveways.
  - b. Areas of yards that have been eroded into makeshift parking areas but have never obtained a City permit for the installation of a driveway are not considered existing driveways, and shall either be restored to its original condition or converted to a properly permitted driveway.
  - c. In the event improvements are made to the property, all off-street parking spaces must then come into compliance with current requirements, as specified in subsection (1) above.

\* \* \*

**Section 5.** Article VIII of the City of North Miami Beach Zoning and Land Development Code, entitled “Supplemental Regulations”, Section 24-92.1, entitled “Setback Encroachments” is amended as follows:

**Sec. 24-81 - Setback Encroachments.**

(A) Every part of every required front, side and rear yard setback shall be open and unobstructed from finished grade to the sky except as herein provided.

\* \* \*

(6) Storage structures and utility sheds are prohibited in the front yard and side yard facing a street, required to maintain a minimum distance of five (5) feet from any rear yard lot line and must meet the side yard setbacks prescribed to its zoning district. Storage structures or utility sheds visible from the adjacent public street must be screened by appropriate fencing or landscaping. One (1) storage structure or utility shed may be permitted per property, provided that such structures do not exceed one hundred (100) square feet in gross floor area and ten (10) feet in height. Storage structures are prohibited in the RS-1 Zoning District (See Section 24-41(D)(9)(i)).

**Section 6.** The Director of Community Development is hereby directed to make all necessary changes to the City of North Miami Beach Zoning and Land Development Code to implement the intent of this Ordinance.

**Section 7.** All ordinances or parts of ordinances in conflict therewith be and the same are hereby repealed.

**Section 8.** If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**Section 9.** It is the intention of the City of North Miami Beach and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances

of the City of North Miami Beach, Florida. The Sections of this Ordinance may be renumbered or relettered to accomplish this intention and the word Ordinance” may be changed to “Section”, “Article”, or other appropriate word as the Codifier may deem fit.

**Section 10.** This Ordinance shall become effective ten days after adoption on second reading.

**APPROVED BY TITLE ONLY** on first reading this \_\_\_\_ day of \_\_\_\_, 2016.

**APPROVED AND ADOPTED** on second reading this \_\_\_\_ day of \_\_\_\_, 2016.

**[SIGNATURE PAGE TO FOLLOW]**

ATTEST:

\_\_\_\_\_  
PAMELA L. LATIMORE  
CITY CLERK

(CITY SEAL)

\_\_\_\_\_  
GEORGE VALLEJO  
MAYOR

APPROVED AS TO FORM, LANGUAGE  
AND FOR EXECUTION

\_\_\_\_\_  
JOSÉ SMITH  
CITY ATTORNEY

Sponsored by: Mayor and Council

Note: Proposed additions to existing City Code text are indicated by underline.