

RESOLUTION NO. R2020-XX

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, GRANTING A VARIANCE FROM CHAPTER 24, ARTICLE VIII, SECTION 24-81(A)(5) OF THE CITY CODE OF ORDINANCES FOR THE PROPERTY LOCATED AT 1960 NE 180TH STREET, NORTH MIAMI BEACH, FLORIDA; PROVIDING FOR FINDINGS OF FACT; CONFIRMING EXPIRATION AND LIMITATION OF APPROVAL; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

(P&Z Item No. 20-26, January 11, 2021)

WHEREAS, pursuant to City of North Miami Beach (“City”) Code of Ordinances, Chapter 24, “Zoning and Land Development Code” (the “ZLDC”), Article XV, “Other Development Review Procedures,” Section 24-176, “Variance,” Jennifer E. Tabares Fuentes (“Applicant”) has applied to the City for approval of a non-use variance for the property located at 1960 NE 180th Street, North Miami Beach, Florida (“Property”), as legally described in Exhibit “A;” and

WHEREAS, ZLDC Section 24-176 provides that the City Commission may grant a non-use variance based on its determination that the Applicant has demonstrated that the necessary criteria identified in the ZLDC have been satisfied; and

WHEREAS, the Property is zoned RS-4, Residential Single Family zoning district, where the rear setback required is fifteen (15) feet, and where the side (interior) setback required is seven and a half (7.5) feet; and

WHEREAS, the Applicant has requested a non-use variance to permit the pool mechanical equipment on the Property to be installed with a one-(1) foot rear setback and a side yard with a minimum continuous unobstructed width of three (3) feet, where Section 24-81(A)(5) of the ZLDC permits mechanical equipment to encroach up to four (4) feet into any required side yard or rear

yard, provided that at least one (1) side yard maintains a minimum continuous unobstructed width of five (5) feet; and

WHEREAS, after a duly noticed public hearing held on January 11, 2021, the Planning and Zoning Board by vote of ___ to ___, recommended _____ of the non-use variance, subject to the conditions set forth and included below in Section 2; and

WHEREAS, the City Commission conducted a duly noticed public hearing in accordance with the law; and

WHEREAS, the Mayor and City Commission find the proposed non-use variance application consistent with the North Miami Beach Comprehensive Plan and find approval of the application is in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are confirmed, adopted, and incorporated herein and made a part hereof.

Section 2. Decision. Pursuant to Section 24-176 of the Zoning and Land Development the following site plan, attached and incorporated by reference as Exhibit “B,” to permit the pool mechanical equipment on the Property with a setback of one (1) foot from the rear Property line and a side yard with a minimum continuous unobstructed width of three (3) feet, on the Property legally described in Exhibit “A,” is approved, subject to the following conditions:

1. Unless otherwise provided, all the below conditions shall be completed and complied with prior to the issuance of the building permit.
2. The conditions of approval for this variance are binding on the Applicant, the property owners, operators, and all successors in interest and assigns.
3. Application/supporting documentation. Construction of the proposed project shall be in conformance with the following:
 - a. Survey prepared by Mario Prats Jr. & Associates Inc., including the following:
 - Site Plan

4. All representations and exhibits as prepared and provided to the Community Development Department as part of the Application Submittal Package, as amended.
5. Substantial modifications to the plans submitted and approved as part of the application may require the Applicant to return to the Planning and Zoning Board and Mayor and City Commission for approval. Insubstantial changes shall include proportionate reductions in residential units and parking spaces by less than 5% of the total proposed project, changes that do not alter the project more than 5% of lot coverage, setbacks, height, density and intensity calculations so long as the proposed amendment does not cause an increase in the number of average daily trips; does not alter the location of any points of ingress, egress, access and vehicular and pedestrian patterns to the site; and does not violate any condition placed upon the site plan as originally approved. Insubstantial changes may be administratively approved by the City Manager or designee. Any de minimis amendments to the plans or site plans which cannot be resolved administratively shall be returned to the Mayor and City Commission for a formal review. However, under no circumstances, may any plans, site plans, building, structure, or project be administratively altered by more than 5% lot coverage, setbacks, height limitations, as well as density or intensity calculations set forth in a previously approved site plan.
6. All representations proffered by the Applicant's representatives as a part of the variance application review at the Planning and Zoning Board and City Commission public hearings.
7. No later than 90 days following the final City Commission approval, the Applicant shall enter into an agreement with the City to defend, indemnify and hold harmless (using legal counsel acceptable to the City) the City, its agents, servants and employees, from and against any loss, cost, expense, claim, demand or cause of action of whatever kind or nature arising out of or related to any act or omission related to the variances and for which the City, its agents, servants, or employees, are alleged to be liable or charged with such expense. The Applicant shall pay all costs and expenses related to any legal defense required by the City pursuant to the foregoing.
8. Applicant shall remove all public hearing signage no later than 48 hours after the final public hearing by the City Commission for the development project.
9. Prior to the issuance of a Master Building Permit, the applicant shall record this Resolution in the public records of Miami-Dade County.

Section 3. **Findings of Fact.** The Mayor and City Commission make the following

FINDINGS OF FACT based upon the substantial competent evidence provided:

The requested non-use variance from section 24-81(A)(5) of the Zoning and Land Development Code, to permit the pool mechanical equipment on the property with a setback of one (1) foot from the rear Property line and a side yard with a minimum continuous unobstructed width of three (3) feet, where eleven (11) feet is the minimum rear setback required and at least one side yard with a minimum continuous unobstructed width of five (5) feet is the minimum required by the City Code, maintains the basic intent and purpose of the applicable zoning, subdivision and other land use regulations. Moreover, the requested non-use variance is not contrary or

detrimental to the public interest because the proposed use and design is compatible with the surrounding land uses and is in keeping with the surrounding properties.

Section 4. Time for Building Permit. Pursuant to Section 24-172(I) of the Code of Ordinances of the City of North Miami Beach, the Applicant must apply for a master building permit from the City within one (1) year of the date of this Resolution or the granted site plan approval shall be deemed null and void, and the Applicant shall be required to reinstate the site plan review process unless the term is extended administratively or by the City Commission prior to its expiration.

Section 5. Limitation of Approval. The issuance of this development permit does not in any way create a vested right(s) on the part of the Applicant to obtain a permit from a county, state or federal agency, and does not create any liability on the part of the municipality for issuance of the permit if the Applicant fails to obtain requisite approvals or does not fulfill the obligations imposed by a county, state or federal agency or undertakes actions that result in a violation of county, state, or federal law.

Section 6. Conflicts. All resolutions or parts of resolutions in conflict with this Resolution are repealed to the extent of such conflict.

Section 7. Effective Date. This Resolution shall be in force and take effect immediately upon its passage and adoption.

APPROVED AND ADOPTED by the City Commission of the City of North Miami Beach, Florida at regular meeting assembled this **the day of** , **2021.**

ATTEST:

ANDRISE BERNARD
CITY CLERK

ANTHONY F. DEFILLIPO
MAYOR

(CITY SEAL)

APPROVED AS TO FORM &
LANGUAGE & FOR EXECUTION

WEISS SEROTA HELFMAN COLE & BIERMAN
CITY ATTORNEY

SPONSORED BY: Mayor and City Commission

	YES	NO	ABSTAIN	ABSENT
Commissioners				
Mayor Anthony DeFillipo				
Vice-Mayor Michael Joseph				
Commissioner McKenzie Fleurimond				
Commissioner Daniela Jean				
Commissioner Barbara Kramer				
Commissioner Fortuna Smukler				
Commissioner Paule Villard				

Exhibit "A"

LEGAL DESCRIPTION

FULFORD BY THE SEA SEC K, PB 10-29, LOT 6 BLK 161, LOT SIZE 50.000 X 113, OR
18644-4036 05 1999 4

Tax Folio: 07-2209-007-0500

A/K/A

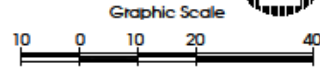
1960 NE 180 ST

North Miami Beach, Florida

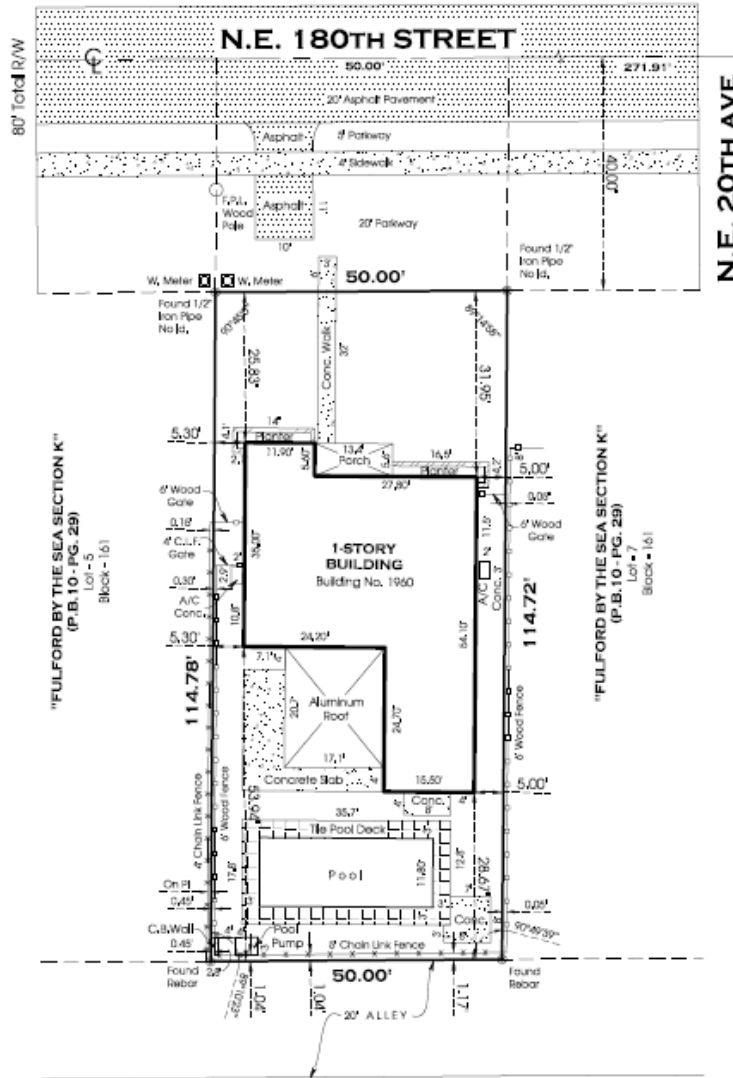
Exhibit "B"
SITE PLAN

MARIO PRATS JR. & ASSOCIATES, INC.
 SURVEYORS - MAPPERS - PLANNERS
PLAN OF SURVEY

Scale: 1" = 20'



Scale in feet



Courtesy Notes:
 -NO VISIBLE ENCROACHMENTS OR EASEMENTS VIOLATION OBSERVED

X _____
 Buyer's Acceptance



C.A.D. File:	H:\Surveys\32135
Original Date:	12/21/2020
Field Date:	12/15/2020
Project File Name:	Sheet 2 of 2
Original J.N.:	32135