

RESOLUTION No. 2006-140-486-Z-62

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, APPROVING THE APPLICATION SUBMITTED BY RADWA ATTIA, FOR A NON-USE VARIANCE OF HEIGHT REQUIREMENTS AS APPLIED TO WALLS AND FENCES TO PERMIT THE MAINTENANCE AND CONTINUED USE OF AN EXISTING PERIMETER WALL ALONG THE EAST AND SOUTH PROPERTY LINES OF AN EXISTING SINGLE-FAMILY RESIDENCE TO HAVE A HEIGHT OF 7'2" (MAXIMUM 6' PERMITTED); PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Radwa Attia, ("Applicant") owns property located at 3450 N.W. 213<sup>th</sup> Street, Miami Gardens, Florida ("Property"), more particularly described in Exhibit "A," attached hereto, and

WHEREAS, the Applicant seeks a non-use variance of height requirements as applied to walls and fences to permit the maintenance and continued use of an existing perimeter wall along the east and south property lines of an existing single-family residence to have a height of 7'2" (maximum 6' permitted), and

WHEREAS, the City Council of the City of Miami Gardens held a public hearing on the application on December 6, 2006, and

WHEREAS, the City's Development Services Staff have made a determination that the application is consistent with the Comprehensive Development Master Plan and is not detrimental to the surrounding single-family residences, and

WHEREAS, the City's Development Services Staff recommends approval of the application, and

WHEREAS, the City Council considered the testimony of the Applicant, if any, and

WHEREAS, the City Council also considered the testimony of the City's Development Services Staff, and the Staff report attached hereto as Exhibit "A," incorporated herein by reference,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. APPROVAL: The City Council of the City of Miami Gardens, hereby approves the application submitted by the applicant as follows:

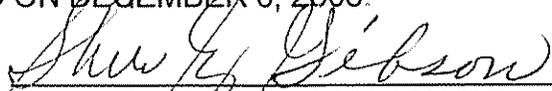
- a. A non-use variance request to permit the maintenance and continued use of the perimeter wall along the east and west property lines of an existing single-family residence to have a height of 7'2" (maximum 6' permitted).

Section 3. CONDITIONS: The Applicant's request is approved subject to the following conditions:

- a. The Applicant must secure all necessary building, plumbing and electrical permits within nine (9) months of approval, unless an extension is applied for and granted by the Development Services Director.

Section 3. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON DECEMBER 6, 2006.

  
SHIRLEY GIBSON, MAYOR

ATTEST:

  
RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA KNIGHTON DICKENS, ESQ.  
City Attorney

SPONSORED BY: Dr. Danny O. Crew, City Manager

MOVED BY: Councilman Campbell  
SECONDED BY: Councilman Bratton

**VOTE: 5-0**

Mayor Shirley Gibson	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)	
Vice Mayor Oscar Braynon, II	<input type="checkbox"/> (Yes)	<input type="checkbox"/> (No)	Not present
Councilman Melvin L. Bratton	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)	
Councilman Aaron Campbell	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)	
Councilman Andre Williams	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)	
Councilwoman Sharon Pritchett	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)	
Councilwoman Barbara Watson	<input type="checkbox"/> (Yes)	<input type="checkbox"/> (No)	Out of town



# City of Miami Gardens

1515 NW 167<sup>th</sup> Street, Bldg 5, Suite 200  
Miami Gardens, Florida 33169

Mayor Shirley Gibson  
Vice Mayor Oscar Braynon II  
Councilman Melvin L. Bratton  
Councilman Aaron Campbell  
Councilman André Williams  
Councilwoman Sharon Pritchett  
Councilwoman Barbara Watson

## MEMORANDUM

**To:** The Honorable Mayor and City Council Members  
**From:** Jay Marder, AICP, Development Services Director  
**Thru:** Dr. Danny O. Crew, City Manager  
**Date:** December 6, 2006  
**Re:** ZPH-2006-30: Public Hearing for Radwa Attia regarding a Non-Use Variance of Height Requirements as applied to Walls and Fences

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### Summary

Applicant/Agent: Radwa Attia  
Location: 3450 N.W. 213<sup>th</sup> Street, Miami Gardens, Florida 33056  
Land Area: 7,950 Square Feet or ± 0.18 Acre  
Future Land Use: Low Density Residential  
Existing Zoning: RU-1, Single-Family Residential District  
Requested Action(s):

1. A NON-USE VARIANCE OF HEIGHT REQUIREMENTS AS APPLIED TO WALLS AND FENCES to permit the maintenance and continued use of an existing perimeter wall along the east and south property lines of an existing single-family residence to have a height of 8 feet (maximum 6 feet permitted).

### Recommendation

Approve a resolution granting the requested non-use variance of height requirements based on findings contained herein and generally summarized as follows:

- The Applicant's non-use variance request to permit the maintenance and continued use of the existing perimeter wall does not change the use of the property. Said request does not impact policies of the CDMP and is consistent with same;
- The Applicant's non-use variance request to permit the maintenance and continued use of the existing perimeter wall maintains the basic intent and purpose of the Zoning Code and is not detrimental to the surrounding single-family residences.

The recommendation to approve this application is subject to the condition that the Applicant secure all necessary building, plumbing and electrical permits within nine (9) months of approval, unless an extension is applied for and granted by the Development Services Director.

**9-B) RESOLUTION  
PUBLIC HEARING  
RADWA ATTIA  
NON-USE VARIANCE**

## REVIEW AND ANALYSIS

### Neighborhood Land Use Characteristics

Property	Zoning	Existing Use	Future Land Use
Site	RU-1, Single Family District	Single-Family Dwelling	Low Density Residential
North	RU-1, Single Family District	Single-Family Dwelling	Low Density Residential
South	RU-1, Single Family District	Single-Family Dwelling	Low Density Residential
East	RU-1, Single Family District	Single-Family Dwelling	Low Density Residential
West	RU-1, Single Family District	Single-Family Dwelling	Low Density Residential

The site is located on the south side of N.W. 179<sup>th</sup> Terrace between N.W. 24<sup>th</sup> Avenue and N.W. 25<sup>th</sup> Court. The surrounding properties have all been developed with single-family homes (See Aerial, attached).

### Consistency with Comprehensive Development Master Plan

The site is designated Low Density Residential on the Future Land Use Plan Map 2005-2015 of the Future Land Use Element of the Comprehensive Development Master Plan (CDMP). The requested variances do not change the use of the property as a single-family home. Therefore, the proposal (a) does not impact policies of the CDMP and (b) is consistent with the CDMP.

### Additional Analysis and Criteria

The Applicant, Ms. Radwa Attia, is seeking approval for a non-use variance of height requirements as applied to walls or fences in the RU-1 zone to permit the maintenance and continued use of a nonconforming concrete wall that surrounds her single-family residence. As stated in the letter of intent, the Applicant applied at the City's Building Department for a permit to erect a six-foot high wall along the south and east property lines, but instead built an eight-foot wall so as to allow for the desired privacy between her next-door neighbor's two-story house and her residence. The Building Department subsequently failed the final inspection of the wall for exceeding the height limit of six (6) feet, as permitted for a wall in the RU-1 zone. Hence the Applicant's request for a departure from the wall height requirements of the RU-1 zoning district.

Under the Zoning Code the following three review criteria were considered for review of the applicant's proposal:

- Section 33-311(A)(14) Alternative Site Development Option (ASDO)
- Section 33-311(A)(4)(c) Unnecessary Hardship
- Section 33-311(A)(4)(b) Non-Use Variance

Section 33-311(A)(14) Alternative Site Development Option (ASDO) authorizes the City Council to approve a zoning application for alternative site development option, after public hearing, for single family and duplex dwellings, when such uses are permitted by the underlying district regulations, are consistent with the CDMP, do not contravene the public interest served

by the underlying district regulations and CDMP will be served, and promote the objectives of the creative urban design, urban infill development and redevelopment, or the preservation and enhancement of property values. The Applicant's request involves a perimeter wall and cannot be reviewed under the provisions of Section 33-311(A)(14), as the development standards are not met.

Section 33-311(A)(4)(c) Unnecessary Hardship authorizes the City Council to hear and grant applications for non-use variances from the terms of the zoning and subdivision regulations, upon a showing by the applicant that the variance will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions thereof will result in unnecessary hardship, and so the spirit of the regulations shall be observed and substantial justice done; provided, that the non-use variance will be in harmony with the general purpose and intent of the regulation, and that the same is the minimum non-use variance that will permit the reasonable use of the premises.

The Applicant has not shown that the granting of the requested non-use variance of height requirements will not be contrary to the public interest and that, giving the particularities of the site, the literal enforcement of the Code will result in unnecessary hardship. Review of the applicant's proposal is therefore impossible under the provisions of Section 33-311(A)(4)(c).

Section 33-311(A)(4)(b) Non-Use Variance Criteria is a priori the most appropriate review criteria because, by definition, "non-use variances involve matters such as setback lines, frontage requirements, subdivision regulations, height limitations, lot size restrictions, yard requirements and other variances which have no relation to change the use of the property in question." The City Council may grant a non-use variance upon a showing that:

- The non-use variance maintains the basic intent and purpose of the zoning, subdivision and other land use regulations which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community and;
- The non-use variance will be otherwise compatible with the surrounding land uses, and would not be detrimental to the community, and;
- That the non-use variance has no relation to change of use of the property in question.

The non-use variance of height requirements will allow for the continued use and maintenance of an existing eight-foot perimeter wall along the east and south property lines of the Applicant's existing single-family residence. The subject property and the one to the back were previously owned by two (2) brothers and have been developed with two (2) two-story residences, very similar in design and character. Due to the consanguinity between the owners, a wall was never erected between these properties. Upon purchasing the property in December 2004, the Applicant secured a permit to erect a wall along the back of the property and subsequently along the northerly side property line so as to protect her privacy and to allow for greater enjoyment of the swimming pool on the property. As stated above, the permit was issued for a six-foot wall. Before installing the tie beams, the Applicant realized that additional height was needed to better screen the pool from the two-story residence to the back and decided to raise the wall by one block level, resulting in a finished CBS wall of about eight (8) feet in height.

The Applicant's single-family residence consists of a two-story structure that stands above 30 feet. The properties that are adjacent to and are impacted by the subject wall include the vacant lot immediately north and the two-story residence immediately east, to the back. When considering the reasonableness of the wall in relationship with the site and its surroundings, the height increment appears to be minimal at best and to blend in with the milieu. As such, the related non-use variance request does not disrupt the integrity of this single-family residential neighborhood and is otherwise compatible with same.

Based on these findings and pursuant to Section 33-311(A)(4)(b), recommendation is made to the City Council to approve the Applicant's request as it does not impact any policies of the CDMP and maintains the basic intent and purpose of the Zoning Code.

#### **Anticipated Facilities Impact**

The subject application pertains to an existing single-family residence and, as such, will not create any additional impact upon the existing urban services and facilities.

#### **Public Notification/Comments**

In accordance with the zoning code, notification of the applicant's requests was mailed to property owners within a 500 foot radius of the subject site to provide them an opportunity to comment on the application. The Applicant met with her neighbors, gathered and submitted along with her application several letters from them in support of her requests. These letters are also attached to this memorandum.

This recommendation to approve, on a modified basis, this application does not constitute a final development order; one or more concurrency determinations will subsequently be required.

Attachments:  
Public Hearing Checklist  
Letter of Intent  
Hearing Map-Zoning  
Hearing Map-Aerial  
Mailed Notice Affidavit  
Mailed Notice Radius Map  
Submitted Plans  
Miami Gardens Proposed Resolution