



Legislation Text

File #: LN-547, Version: 2

Zoning Board of Appeals  
Meeting Date: December 14, 2023

**VARIANCE - KIMBERLY VILLELA PEREZ**

**Request:** Variance  
**P&Z#** 23-11000019  
**Owner:** Kimberly Villela Perez  
**Project Location:** 313 SW 1 Ct #L-4  
**Folio Number:** 494202BC0120  
**Land Use Designation:** MH- MEDIUM-HIGH 16-25 DU/AC  
**Zoning District:** Multiple-Family Residence 30 (RM-30)  
**Agent:** Jose Lopez & Kimberly Villela Perez  
**Project Planner:** Scott Reale

**Summary:**

The Applicant Landowner is requesting a Variance from Section §155.5302(D)(2)(a) [Fences in Residential Districts], of the Pompano Beach Zoning Code, in order to allow a portion of a 6 ft high privacy fence for a townhouse unit to encroach 8 ft into the required front yard rather than limiting the fence height to 4 ft in the required front yard as required by code.

The property is located on the north side of SW 1<sup>st</sup> Court, between SW 3<sup>rd</sup> Avenue and SW 4<sup>th</sup> Avenue in the Avondale neighborhood of the Northwest CRA.

**ZONING REGULATIONS**

**§155.5302. FENCES AND WALLS**

...  
**D. Height Requirements for Fences and Walls**

...  
**2. Fences and Walls in Residential Districts**

Except as otherwise provided in 155.5302.D.5, Fences and Walls Adjacent to Waterways, the following height limits shall apply to fences and walls within Residential zoning districts:

- a. No fence or wall within a front yard shall exceed a height of four feet.
- b. Fence posts, including decorative finials, may extend up to six inches above the maximum fence height.
- c. No fence or wall within an interior side yard, street side yard or a rear yard shall exceed a height of six

feet.

d. On a through lot, where the front yard setback applies to both street-fronting lot lines, a fence or wall may not exceed a height of four feet within the yard considered the primary entrance, as determined by the Development Services Director based upon consistency with development patterns in the immediate vicinity.

### **PROPERTY INFORMATION AND STAFF ANALYSIS**

1. Building “L” of Parkway Gardens obtained a Certificate of Occupancy on 11/29/1979 via Building Permit #79-1514 for a 2 story, 8-unit apartment building. Although the individual dwelling units are oriented toward an interior courtyard, required setbacks are dictated by the site as a whole, meaning the required front yard is measured from the SW 1<sup>st</sup> Court lot line. The building is setback 29 feet from the front lot line, and the applicant is proposing a 6 ft privacy fence around their patio area, which would encroach 8 ft into the required 25 ft front yard setback.
2. The proposed 6 ft high fence would be permitted by right if it were setback 25 ft from the front lot line; however, that would only allow for a 4 ft wide enclosed patio area. Alternatively, the fence could be located within the required front yard at a height of 4 ft, although that would not provide sufficient privacy for the applicant’s patio area.
3. Research suggests other fence permits within this multifamily residential complex have been erroneously approved within the required front yard at a height of 6 ft, so installation of a 6 ft high stockade wood fence located 17 ft from the front lot line would not appear out of character for this development. Moreover, in addition to the front façade of the building setback an additional 4 ft beyond code requirements, a swale area with an approximate depth of 19 ft separates the front lot line from the SW 1<sup>st</sup> Court pavement.
4. The Parkway Gardens Condominium Association approved the fence installation request (refer to 9/8/2023 letter in backup), subject to building permit approval.

### **LAND USE PATTERNS**

Subject property (Zoning District | Existing Use):

- RM-30 | multi-family dwelling (Parkway Gardens Condominiums)

Surrounding Properties (Zoning District | Existing Use):

- North: RM-30 | multi-family dwelling
- South: RM-30 | single-family dwelling and multi-family dwelling
- West: RM-30 | two-family dwelling (duplex)
- East: RM-30 | single-family dwelling

**VARIANCE REVIEW STANDARDS**

A Variance application shall be approved only on a finding that there is competent substantial evidence in the record that all of the following standards are met:

- a) There are extraordinary and exceptional conditions (such as topographic conditions, narrowness, shallowness, or the shape of the parcel of land) pertaining to the particular land or structure for which the Variance is sought, that do not generally apply to other lands or structures in the vicinity;
- b) The extraordinary and exceptional conditions referred to in paragraph a., above, are not the result of the actions of the landowner;
- c) Because of the extraordinary and exceptional conditions referred to in paragraph a., above, the application of this Code to the land or structure for which the Variance is sought would effectively prohibit or unreasonably restrict the utilization of the land or structure and result in unnecessary and undue hardship;
- d) The Variance would not confer any special privilege on the landowner that is denied to other lands or structures that are similarly situated.
- e) The extent of the Variance is the minimum necessary to allow a reasonable use of the land or structure;
- f) The Variance is in harmony with the general purpose and intent of this Code and preserves its spirit;
- g) The Variance would not adversely affect the health or safety of persons residing or working in the neighborhood, be injurious to property or improvements in the neighborhood, or otherwise be detrimental to the public welfare; and
- h) The Variance is consistent with the comprehensive plan.

**Staff Conditions:**

Should the Board determine that the applicant has provided competent substantial evidence to satisfy the eight Variance review standards, staff recommends the Board include the following conditions as a part of the Order:

1. Obtain all necessary governmental permits and approvals for the fence, including building and zoning compliance permits, and tree permit for tree protection for existing canopy tree in the front yard.