



**MEMORANDUM DATE:** September 14, 2022

**AGENDA DATE:** September 21, 2022

**TO:** Chair and Members of the Historic Resources Preservation Board

**RE:** **301 8<sup>th</sup> Avenue North**

**FROM:** Department of Community Sustainability

**TITLE: HRPB Project Number 22-01500002:** A request for a variance to allow a 6-foot high fence in the required setback for the property located at **301 8<sup>th</sup> Avenue North**; PCN #38-43-44-21-15-224-0090. The subject property is a non-contributing resource within the Northeast Lucerne Historic District and is located within the Single-Family Residential (SF-R) zoning district. The future land use designation is Single Family Residential (SF-R).

**OWNER:** Giovanna Dominguez Timor  
301 8<sup>th</sup> Avenue North  
Lake Worth Beach, FL 33460

**PROPERTY DEVELOPMENT HISTORY:**

The single-family structure located at 301 8<sup>th</sup> Avenue North was designed in a Masonry Vernacular architectural style by the architect James Robinson. The 1966 architectural drawings are included in **Attachment A**. The drawings illustrate a single-story residence of masonry construction with a smooth stucco exterior finish, tar and gravel roof, awning windows, and jalousie doors. Character-defining features include an integral front porch, raised planter beds, simulated brick detailing, and simulated shutters. City permit records indicate the building has had alterations over time, including permits for the installation of exterior doors, electrical and mechanical upgrades, and fencing. However, the structure retains its original roof, windows, and exterior detailing, and as such, the property retains a high degree of historic integrity of location, setting, materials, and design. Photos of the existing property are included in **Attachment B**.

**PROJECT DESCRIPTION:**

The property owner, Giovanna Dominguez Timor, is requesting a variance to allow a 6-foot high fence along the side property line fronting 8<sup>th</sup> Avenue North without the required 30" setback and landscape screen. The subject property is located on the southwest corner of 8<sup>th</sup> Avenue North and North Ocean Breeze in Lake Worth Beach. The parcel is located within the Single-Family Residential (SF-R) Zoning District and has a Future Land Use (FLU) designation of Single-Family Residential (SF-R). The property owner's application and survey are included in **Attachment C**.

The application will require the following approval: **Variance** to allow 29 linear feet of 6-foot high fencing along 8<sup>th</sup> Avenue North without the required setback or landscape screen

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**BACKGROUND:**

- On January 8, 2019, building permit #19-49 was submitted to install new fencing at 301 8<sup>th</sup> Avenue North.
- On January 18, 2019, Staff failed the permit because the height of the fence was not indicated and the required 30" setback for a landscape screen was not provided along 8<sup>th</sup> Avenue North.
- On February 6, 2019, Staff approved the permit resubmittal, which was also issued on the same day.
  - The Development Review Official DRO at the time, Mark Stivers, interpreted the lot as having a dual frontage. Therefore, fencing along 8th Avenue was allowed to be installed along the property line with a maximum height of 4 feet (without the required 30" setback for a landscape screen) as is permitted for front yards.
- On August 2, 2019, a building permit extension request was submitted for Building Permit #19-49 to provide additional time to complete the work.
- On February 13, 2020, a revision to building permit #19-49 was submitted.
- On February 24, 2020, Staff approved the permit revision.
  - The 30" setback for a landscape screen was added as a condition of approval, as a portion of fencing along 8<sup>th</sup> Avenue North was proposed with a height of 6 feet.
- On June 28, 2020, the property owner emailed the City Manager, Michael Bornstein, to discuss the fence permit.
- On June 30, 2020, Staff emailed the property owner to schedule a conference call to discuss the fence permit.
- On July 1, 2020, Abraham Fogel (Preservation Planner) and Erin Sita (Assistant Director, Community Sustainability Director) called the property owner to discuss the fence permit.
  - Call Summary: The lot was interpreted as having a double frontage, fencing along 8<sup>th</sup> Avenue can have a maximum height of 4 feet (without a 30" setback for a landscape screen) or a maximum height of 6 feet (with the 30" setback for required planting). Any further relief from these requirements would require a variance reviewed by the Historic Resources Preservation Board (HRPB).
    - The property owner agreed that all fencing along 8<sup>th</sup> Avenue North would have a maximum height of 4'. Staff assisted with a building permit revision and making corrections to the plans.
    - The call is summarized in a July 2, 2020, email to the property owner.
- On July 23, 2020, the permit revision was approved by Staff.
- On September 30, 2020, the City Attorney, Pamala Ryan, emailed the property owner in response to the request that a 6-foot high fence along 301 8<sup>th</sup> Avenue North without the required setback and landscape screen be approved by Staff. As previously indicated, a variance reviewed by the HRPB would be required for this type of relief.
- On October 9, 2020, a permit revision was submitted to install a 6-foot high fence along 8<sup>th</sup> Avenue North without the required setback and landscape screen.
- On October 16, 2020, Staff failed the permit as the proposal conflicted with the City's Land Development Regulations.
- On January 5, 2021, Staff met with the property owner on-site to inspect the fence.

- On January 6, 2021, Staff approved a fence revision to install a 4-foot high fence along 8<sup>th</sup> Avenue North, in accordance with the interpretation given by the DRO.
- On April 26, 2021, a building inspector issued a courtesy notice of violation (#12059) because a 6-foot high section of fence was installed without the required setback in violation of the approved permit. The property owner was given 30 days to correct the violation.
- On May 3, 2021, Staff sent the property owner a completeness review in response to a Universal Development Application that was submitted requesting a variance to install a 6-foot high fence fronting 8th Avenue North without the required 30” setback and landscape screen. Staff received a complete application by May 6 and the item was scheduled for the June 9<sup>th</sup> HRPB meeting.
- On June 9, 2021, the variance request was denied by the HRPB as the proposed variance did not demonstrate compliance with the variance finding, including that there were “special circumstances peculiar to the land or building for which the variance is sought and do not apply generally to nearby lands and buildings and that this is not the result of an action of the applicant. “
- On June 23, 2021, Staff sent the property owner a formal result letter documenting the HRPB's denial of the variance request.
- On June 23, 2022, the property owner submitted a new Universal Development Application requesting a variance to install a 6-foot high fence fronting 8th Avenue North without the required 30” setback and landscape screen, citing [LDR Section 23.2-26\(d\)](#) (“Any variance denied under this section may not be brought back for consideration for at least twelve (12) months following the date of the result letter of the appropriate review body's decision.”) Staff received a complete application by August 1, 2022, and the item was scheduled for the September 21<sup>st</sup> HRPB meeting.

**STAFF RECOMMENDATION:**

The proposed variance request is not consistent with LDR Section 23.4-4(d)(1)(D). The applicant has not established by competent and substantial evidence that the strict application of the LDRs would deprive reasonable use of the land. Therefore, Staff is recommending denial of the proposed variance.

**PROPERTY DESCRIPTION:**

Owner	Giovanna Dominguez Timor
General Location	Southwest corner of 8 <sup>th</sup> Avenue North and North Ocean Breeze
PCN	38-43-44-27-01-005-0090
Zoning	Single-Family Residential (SF-R)
Existing Land Use	Single Family Residence
Future Land Use Designation	Single Family Residential (SFR)

**LOCATION MAP:**



**ANALYSIS**

**Consistency with the Comprehensive Plan and Strategic Plan**

The subject site has a Future Land Use (FLU) designation of Single Family Residential (SFR). Per Policy 1.1.1.2, the SFR future land use area is intended primarily to permit the development of single-family structures at a maximum of 7 dwelling units per acre. Single-family structures are designed for occupancy by one family or household. The variance being sought does not change the use of the property as it is a fence height variance. As such, a formal consistency review of the strategic plan and comprehensive plan is not applicable to an improvement of this scale. However, it is important to note that the proposed improvement would visually impact the district, including the specific intersection as corner properties with 6-foot-high fencing at the intersection of 8<sup>th</sup> Avenue North and North Ocean Breeze have all met the setback and landscaping requirement when 6ft high fencing was utilized. Two of the four properties at the intersection have 6ft high fencing with a landscape screen.

**Consistency with Land Development Regulations**

Zoning

The proposed 29 linear feet of 6-foot high fencing along 8<sup>th</sup> Avenue North conflicts with the development requirements in the City's Zoning Code, specifically height limitations for fencing in single-family and two-family uses. The property is located in the Single-Family Residential (SFR) Zoning District. Based on the [LDR Section 23.4-4\(d\)\(1\)\(D\)](#):

<b><u>Required by Code</u></b>	<b><u>Proposed</u></b>
Along side and rear property lines adjacent to roadways (except alleys) a fence shall have a maximum height of six (6) feet and must be set back a minimum of thirty (30) inches from the property line providing a landscape screen maintained at a minimum height of twenty-four (24) inches (see definitions). *	29 linear feet of 6-foot high fencing along a side property line adjacent to a roadway (8 <sup>th</sup> Avenue North) <u>without</u> a minimum of thirty (30) inches from the property line and <u>without</u> providing a landscape screen maintained at a minimum height of twenty-four (24) inches.

*\* Landscape screen (or "landscape hedge"): A line, row, or group of plant material installed and maintained at a minimum height of twenty-four (24) inches so as to form a continuous buffer acting as a visual screen that may include shrub hedging or decorative landscaping.*

Variance Request

According to the City of Lake Worth Beach, Land Development Regulations, [Section 23.2-26 Variances](#), the power to grant any such variance shall be limited by and be contingent upon documentation that all required findings are made by the appropriate Board. As a property located in the Northeast Lucerne Local Historic District, the HRPB is tasked with making the required findings to grant a variance. The following addresses each of the required findings for the requested variance. In addition, the applicant's justification statement is included as **Attachment D**.

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**Variance criteria per LDR Section 23.2-26(b):**

- A. Special circumstances or conditions exist which are peculiar to the land or building for which the variance is sought and do not apply generally to nearby lands and buildings and that this is not the result of an action of the applicant;

**Staff Analysis:** Homes located on corners are a common condition throughout city blocks and within the Northeast Lucerne Local Historic District. The DRO's interpretation was that the lot had a double frontage, and allowed fencing along 8<sup>th</sup> Avenue to have a maximum height of 4 feet (without a 30" setback for a landscape screen) or a maximum height of 6 feet (with the 30" setback for required planting). As the circumstances of the corner lot are common and relief was offered through the DRO's interpretation to address concerns related to privacy, the proposed variance does not meet the intent of this criterion. **Does not meet the criterion.**

- B. The strict application of the provision of these LDRs would deprive the applicant of any reasonable use of the land or building for which the variance is sought;

**Staff Analysis:** The property was constructed in the 1960s as a single-family structure. Strict application of the LDRs that would require fencing along 8<sup>th</sup> Avenue to have a maximum height of 4 feet (without a 30" setback for a landscape screen) or a maximum height of 6 feet (with the 30" setback for required planting) according to the DROs interpretation. Either of the fence configurations would not deprive the applicant of reasonable use of the land as a single-family structure. **Does not meet the criterion.**

- C. That the variance proposed is the minimum variance which makes possible the reasonable use of the land or building;

**Staff Analysis:** The variance is not required for reasonable use of the land. A landscape screen on either side of the fence can provide additional privacy which is a concern expressed in the applicant's justification statement. **Does not meet the criterion.**

- D. That the granting of the variance will be in accordance with the spirit and purpose of this chapter, and will not be unduly injurious to contiguous property or the surrounding neighborhood nor otherwise detrimental to the public welfare. In deciding appeals from decisions of the development review official or in granting variances, the decision-making board is authorized and required to impose any reasonable conditions and safeguards it deems to be necessary or desirable, and violation of such conditions or safeguards when made a part of the terms under which a variance is granted, shall be deemed to be a violation of these LDRs.

**Staff Analysis:** The granting of the variance may have a negative visual impact on the surrounding neighborhood. The 30" setback and landscape screen is required to create a visual buffer between 6'-0" high fencing and the sidewalk. Fencing directly abutting sidewalks can create a less-than-desirable appearance over time. Further, directly north of the subject property, 801 North Ocean Breeze, was issued a building permit in 2017 to install a 6-foot high fence along 8<sup>th</sup> Avenue North which provides the required setback and landscape. **Does not meet the criterion.**

**Historic Preservation Analysis**

Pursuant to Ordinance 2017-27, fences were removed from the historic preservation ordinance. As a result, fences within the historic districts are only reviewed for compliance with zoning requirements.

**PUBLIC COMMENT:**

At the time of publication, Staff received ten (10) public comments in favor of the variance request. The public comments are included in **Attachment E**.

**CONCLUSION:**

The proposed variance request is not consistent with [LDR Section 23.4-4\(d\)\(1\)\(D\)](#). Staff has not made positive findings for the criteria set forth in [LDR Section 23.2-26\(b\)](#) to grant a variance. The applicant has not established by competent and substantial evidence that the strict application of the LDRs would deprive reasonable use of the land. Therefore, Staff is recommending denial of the proposed variance.

**POTENTIAL MOTION:**

I MOVE TO **DENY** HRPB Project Number 22-01500002, a variance to allow 29 linear feet of 6-foot high fencing along 8<sup>th</sup> Avenue North without the required setback or landscape screen for the property located at **301 8<sup>th</sup> Avenue North**, because the applicant has not established by competent substantial evidence that the application is compliant with the City of Lake Worth Beach Land Development Regulations.

I MOVE TO **APPROVE** HRPB Project Number 22-01500002, a variance to allow 29 linear feet of 6-foot high fencing along 8<sup>th</sup> Avenue North without the required setback or landscape screen for the property located at **301 8<sup>th</sup> Avenue North**, as the [Board member to states reasons variance meets variance criteria].

**ATTACHMENTS:**

- A. Property File Documentation
- B. Photos
- C. Universal Development Application and Survey
- D. Applicant Justification Statement
- E. Public Comments