

Frigo, Victoria (COE)

From: Centorino, Joseph (COE)
Sent: Thursday, September 26, 2013 11:15 AM
To: 'ChasCitrin@aol.com'
Cc: Frigo, Victoria (COE); Diaz-Greco, Gilma M. (COE)
Subject: INQ - Mayor Yioiset De La Cruz, Hialeah Gardens (administrative variance)

Mr. Citrin:

You have inquired on behalf of the Mayor of Hialeah Gardens, Yioiset De La Cruz, regarding whether the Mayor may utilize a city procedure described as an "administrative variance" in connection with his desire to install a fence in front of his home for security purposes. The reason for the variance is that the fence in question would have a 32 foot setback rather than the 35 foot setback required by city ordinance. The 32 foot measurement was provided to me by Chief Zoning Official for the City of Hialeah Gardens, Mirta Gonzalez. The administrative variance procedure would permit the Mayor to apply through Ms. Gonzalez for permission to construct the fence. The procedure is allowable under city ordinance because the amount of the deviation from the city code that is involved is less than 20% of the required setback. Use of the administrative variance procedure permits an applicant to by-pass the longer, more formal procedure for a variance that involves plan preparation, approvals by the Technical Review Committee and the City Council, and expenses in connection with same that would be in excess of \$2500.

The Mayor of Hialeah Gardens is a "strong mayor" under the Mayor/Council form of government. As such, he is the chief executive officer of the city, and has general supervisory authority over department heads and city personnel, including the Chief Zoning Official who is charged with the responsibility for making the decision on administrative variances. Based upon my conversation with the Chief Zoning Official, I am informed that such administrative variances are routinely approved by her, and that the Mayor plays no part in such approvals. The Zoning Official indicated that any citizen making an application for the zoning variance in question would be entitled to utilize the administrative variance procedure in the circumstances of this issue.

The Mayor, as a citizen of Hialeah Gardens, is bound by the same code requirements and is entitled to the same administrative procedures as are all other citizens, provided that he does not exploit the power of his office in his dealings with the city. Section 2-11.1(g) specifically prohibits the exploitation of official position by a public official or employee to gain special privileges or exemptions. It is my opinion that Mayor Yioiset De La Cruz may utilize the administrative variance procedure that is available to all other city residents similarly situated. It would be my recommendation, however, that the Mayor avoid direct contact with the Zoning Official or any other city personnel in connection with this request. If he is in a position to have a family member or other representative make the application on his behalf, that would help avoid any perception of an appearance of impropriety concerning his position as Mayor.

Sincerely,
Joseph M. Centorino
Executive Director and General Counsel
Miami-Dade Commission on Ethics and Public Trust
305-579-2594

From: ChasCitrin@aol.com [mailto:ChasCitrin@aol.com]
Sent: Thursday, September 19, 2013 4:23 PM
To: Centorino, Joseph (COE)
Subject: Re: ***ADMINISTRATIVE VARIANCE

The chief zoning officer is Mirtha Gonzalez. Her phone number is 305-558-4114. Her cell phone number is 305 308 8813. Thank you. Charles Citrin

In a message dated 9/19/2013 4:08:34 P.M. Eastern Daylight Time, CENTORI@miamidade.gov writes:

Charles,

Thanks for providing this detail. Kindly send us the name and contact information for the chief zoning officials so that we can confer with him prior to issuing an opinion. Thanks.

Joe Centorino

From: ChasCitrin@aol.com [mailto:ChasCitrin@aol.com]
Sent: Wednesday, September 18, 2013 7:09 PM
To: Centorino, Joseph (COE)
Subject: ***ADMINISTRATIVE VARIANCE

Dear Mr. Centorino:

Thank you for the time on the phone today. The question I have as City Attorney for the City of Hialeah Gardens is as follows:

May the Mayor and his wife avail themselves of an administrative variance for a setback variance as is permitted to all other residential homeowners in the City?

FACTS: The Mayor desires for security reasons to install a fence in front of his home. The setback would be 33 feet where 35 feet is required. Section 78-74(c) of the Code of Ordinances (attached) describes and defines the parameters and procedures for administrative variances and states in relevant part at (c)(3) a administrative variance may be granted if the application for it is complete and “. . . the setback proposed is reduced not more than 20% of that required”. The setback in question is less than 10% lower than the amount

required. This administrative variance is determined by the chief zoning official, has been given in the past, and does not require the approval of the Mayor. The chief zoning official is under the supervision of the Mayor, however and therein lies the issue. The Mayor has explicitly agreed to absent himself from this decision. In addition, the facts of the case will be reviewed by me so that I may opine that the City's rules and procedures are met. Please give me your thoughts so that I may advise the Mayor.

As always, I appreciate your efforts.

Sincerely,

Charles A. Citrin

City Attorney for the City of Hialeah Gardens

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