

MIAMI BEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP 
Planning Director

DATE: May 3, 2019 Meeting

RE: File No. ZBA18-0075
1375 Marseille Drive – Single-Family Home (Covered Terrace)

The applicant, Reinaldo Aquit, is requesting an after-the-fact rear yard setback variance and an after-the-fact interior side yard variance for the retention of a covered terrace in the rear yard of a single-family home.

STAFF RECOMMENDATION:

Approval of the requested variance with conditions.

LEGAL DESCRIPTION:

Lot 16, Block 19, Ocean Side Section of the Isle of Normandy, according to the plat thereof, as recorded in plat book 25, Page 60, of the public records of Miami-Dade County, Florida.

SITE DATA:

Folio Number –	02-3210-013-3310
Zoning –	RS-4 (Single-Family Residential)
Future Land Use Designation –	RS (Single-Family Residential)
Lot Size –	6,370 S.F./ ~0.15 Acres *
Existing Use –	Single-family Residence
Proposed Use –	Single-family Residence
Year Constructed –	1950

**As per Miami-Dade Property Appraiser.*

THE PROJECT:

The applicant has submitted the following plans:

- Boundary Survey, by Ireland & Associates Surveying, Inc., dated May 31, 2018.
- New Terrace Addition, signed by Francisco Benitez, Architect, dated February 12, 2019.

The applicant is requesting variances for the retention of a covered terrace at the rear of the property. The existing roof structure was constructed without a permit. The Building Department issued a violation for the work, BVC18000031, on May 10, 2018, which requires the applicant to remove the structure or obtain a permit.

The applicant is requesting the following variance(s):

1. **A variance to reduce by 7'-10" the minimum required rear setback of 20'-0" for the retention of a covered terrace addition located at 12'-2" from the rear property line.**

- Variance requested from:

Sec. 142-106. Setback requirements for a single-family detached dwelling.

The setback requirements for a single-family detached dwelling in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

- (3) Rear yards: The rear setback requirement shall be 15 percent of the lot depth, 20 feet minimum, 50 feet maximum. At least 70 percent of the required rear yard shall be sodded or landscaped pervious open space; when located at or below adjusted grade, the water portion of a swimming pool may count toward this requirement, when located above adjusted grade, the water portion of a swimming pool may count towards 50% of this requirement, provided adequate infrastructure is incorporated into the design of the pool to fully accommodate on-site stormwater retention.*

The existing one-story single family home has larger than required rear setback of 39'-0", where a 20'-0" setback is required. The covered terrace, which is attached to the home, is opened on all sides with a solid roof. The covered terrace extends from the rear of the home a distance of about 28'-8", encroaching into the required rear yard by 7'-10". The City's Land Development Regulations permit rear yard setback encroachments, such as cabanas, however, these encroachments must be detached from the main structure (house) and separated by a minimum distance of 5'-0". Therefore, if the existing covered terrace was separated from the main structure by 5'-0" the requested variance would not be needed.

2. **A variance to exceed by 0'-11" the maximum projection of 1'-3" for a roof overhang into a required interior side yard for the retention of a covered terrace addition with a roof overhang which projects into the required interior side yard by 2'-2".**

- Variance requested from:

Sec. 142-1132. Allowable encroachments within required yards.

- (o) Projections. In all districts, every part of a required yard shall be open to the sky, except as authorized by these land development regulations. The following may project into a required yard for a distance not to exceed 25 percent of the required yard up to a maximum projection of six feet, unless otherwise noted.*

- (7) Roof overhangs.*

The existing one-story single family home has a non-conforming interior side yard setback of 5'-0" and a non-conforming roof overhang projection of 2'-2". The covered terrace was constructed to match the homes non-conformities. The City's Land Development

Regulations permit the maintenance of this nonconforming interior side yard setback up to 5'-0" from the interior side yard property line. However, the City code is silent on nonconforming projections, therefore the requested variance is to retain the structure as currently constructed. Alternatively the structure could be modified to reduce the projection of the overhang by 0'-11".

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

Based on the plans and documents submitted with the application, staff has concluded that the requested variance satisfies Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

Additionally, staff has concluded that the plans and documents with the application indicate the following, as they relate to the hardship criteria requirements of Section 118-353(d), Miami Beach City Code:

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

Satisfied

2. That the special conditions and circumstances do not result from the action of the applicant;

Satisfied

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

Satisfied

4. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

Satisfied

5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

Satisfied

6. That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

Satisfied

7. That the granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.

Satisfied

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.
Not Applicable
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.
Satisfied
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Satisfied
- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.
Not Applicable
- (5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.
Satisfied
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.
Satisfied
- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.
Satisfied
- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.

Satisfied

- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.

Not Applicable

- (10) Where feasible and appropriate, water retention systems shall be provided.

Satisfied

COMPLIANCE WITH ZONING CODE:

The application, as submitted, appears to be consistent with the applicable requirements of the City Code, with the exception of the variance(s) requests herein. This shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

STAFF ANALYSIS:

The subject site is an interior waterfront lot, and contains a one-story residence constructed in 1950. The original home was constructed with 5'-0" setbacks on the sides (currently non-conforming). The construction of the existing covered terrace without an approved building permit resulted in a building violation. In order to cure the opened violation, a permit must be obtained to demolish the structure or legalize it. In order to retain the current structures, two variances, as outlined above, are being requested.

The requested variance for the rear yard setback has a minimal impact, since the covered terrace would be permitted if it was separated from the main structure by 5'-0". The roof overhang of the covered terrace as proposed encroaches further than permitted in to the interior side yard. However, this encroachment follows the established nonconformity of the main structure. Staff has no objection to the requested variances, as they are minor in nature and recognizes the practical difficulty of modifying the existing structure to comply with the current Land Development Regulation

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **approval** of the requested variance, subject to the conditions enumerated in the attached Draft Order.

TRM:RAM:SMW

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ZONING/SITE MAP



**BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA**

PROPERTY: 1375 Marseille Drive

FILE NO. ZBA18-0075

IN RE: An application requesting an after-the-fact rear yard setback variance and an after-the-fact interior side yard variance for the retention of a covered terrace in the rear yard of a single-family home.

LEGAL DESCRIPTION: Lot 16, Block 19, Ocean Side Section of the Isle of Normandy, according to the plat thereof, as recorded in plat book 25, Page 60, of the public records of Miami-Dade County, Florida.

FOLIO NO. 02-3210-013-3310

MEETING DATE: May 3, 2019

ORDER

The applicant, Reinaldo Aquit, filed an application with the Planning Department for the following variance(s):

1. A variance to reduce by 7'-10" the minimum required rear setback of 20'-0" for the retention of a covered terrace addition located at 12'-2" from the rear property line.
– **Approved by the Board**
2. A variance to exceed by 0'-11" the maximum projection of 1'-3" for a roof overhang into a required interior side yard for the retention of a covered terrace addition with a roof overhang which projects into the required interior side yard by 2'-2".
– **Approved by the Board**

The City of Miami Beach Board of Adjustment makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

- A. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the Planning Department Staff Report, the project as submitted satisfies the requirements of Section 118-353(d) of the Miami Beach Code. Accordingly, the Board of Adjustment has determined the following:

That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

That the special conditions and circumstances do not result from the action of the applicant;

That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That the granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.

B. The Board hereby **Approves** the requested variance and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:

1. The final building plans shall be consistent with plans submitted to the Board of Adjustment, New Terrace Addition, signed by Francisco Benitez, Architect, dated February 12, 2019.
2. Substantial modifications to the plans, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.
3. The sides of the covered terrace shall remain opened and shall not be enclosed..
4. A revised landscape plan shall be submitted to and approved by staff. The species, type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plans shall comply with Chapter 26-Landscape Requirements of the Miami Beach Code and shall incorporate the weather resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants).
5. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit, and shall be located immediately after the front cover page of the permit plans.
6. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.

7. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Occupancy or Certificate of Completion. A Temporary Certificate of Occupancy, Partial Certificate of Occupancy, or Temporary Certificate of Completion, as applicable, may also be conditionally granted Planning Departmental approval.
8. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
9. The final order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
10. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code, except to the extent of the variance(s) granted herein.
11. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.

The decision of the Board regarding variances shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including staff recommendations, as modified by the Board of Adjustment, that the application for Variance(s) Approval is GRANTED for the above-referenced project, subject to those certain conditions specified in Paragraph B hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans submitted to the Board of Adjustment with modifications in accordance with the conditions set forth in this Order, as applicable, with staff review and approval.

No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance as set forth in this Order have been met. The issuance of this Order does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original Variance Approval was granted, the subject Approval will expire and become null and void, unless the applicant makes application to the Board for an extension of

Dated this _____ day of _____, 2019.

BY: _____
Rogelio Madan, AICP
Chief of Community Planning & Sustainability
For the Chair

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Rogelio Madan, Chief of Community Planning and Sustainability of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

Notary:
Print Name:
Notary Public, State of Florida
My Commission Expires:
Commission Number:

Filed with the Clerk of the Board of Adjustment on _____ ()