


# MIAMI BEACH

## PLANNING DEPARTMENT

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### BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP   
Planning Director

DATE: November 1, 2019 Meeting

RE: File No. ZBA19-0096  
**2840 Prairie Avenue – Single-Family Home (Setback)**

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The applicant, Arturo G. Griego, on behalf of the property owner, Douglas F. Eaton, is requesting setback variance(s) for the construction of a new second floor addition to an existing 1-story single-family home.

#### **STAFF RECOMMENDATION:**

**Approval** of the requested variance with conditions.

#### **LEGAL DESCRIPTION:**

Lot 8, Block 3, of First Addition to Mid Golf Subdivision, according to the plat thereof, as recorded in plat book 7, Page 161, of the public records of Miami-Dade County, Florida.

#### **SITE DATA:**

Folio Number –	02-3227-016-0090
Zoning –	RS-4 (Single-Family Residential)
Future Land Use Designation –	Single-Family Residential (RS)
Lot Size –	9,750 S.F./ ~0.22 Acres *
Existing Use –	Single-family Residence
Proposed Use –	Single-family Residence
Year Constructed –	1948

*\*As per Miami-Dade Property Appraiser.*

#### **THE PROJECT:**

The applicant has submitted the following plans:

- Boundary Survey, by Nova Surveyors, Inc., dated July 31, 2019.
- Private Residence, signed by Arturo G. Griego, AIA, Registered Architect, dated September 5, 2019.

The applicant is requesting variances for the construction of a new second floor addition to an existing 1-story single-family home. The existing home was constructed in 1948. The home is located towards the rear of the lot and has several setbacks which are legally non-conforming with the current code requirements. The front of the home is setback approximately 85 feet from the front property line, where only 30 feet are currently required for a 2-story home. The rear setback is only approximately 15 feet from the rear property line, where 22.5' feet are currently required. The side yards have an approximately five (5)

foot setback on the north and five (5) foot, nine (9) inches on the south; where ten (10) feet are currently required.

In order to construct the second floor addition, the applicant is requesting the following variances:

1. **A variance to reduce by 7'-7" the minimum required rear setback of 22'-6" for the construction of a second-floor addition at 14'-11" from the rear property line to follow the existing line of the structure of the existing home.**

- 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 front setback of 85.45', where only a 30' setback is required. As a result, the existing home is located towards the rear of the lot. Subsequently, the rear setback is only 14.92', when 22.5' are currently required. The applicant is seeking a variance to construct a second floor additon, following the existing lines of the building. The rear yard abuts the Miami Beach Golf Club.

2. **A variance to reduce by 5'-0" the minimum required interior side yard setback of 10'-0" for the construction of a second-floor addition at 5' from the northern interior side property line to follow the existing line of the structure of the existing home.**

- 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:*

\* \* \*

*(2) Side yards:*

*c. Interior sides.*

1. For lots greater than 60 feet in width each interior side yard shall have a minimum of ten percent of the lot width or ten feet, whichever is greater.

The existing one-story single family home has a non-conforming northern interior side yard setback of 5'-0". The proposal is to allow for the construction of a second floor addition that follows the existing setbacks of the building. Additionally, an accessory covered patio will be constructed in front of the home facing an existing pool, which is located in the front yard. The City's Land Development Regulations (LDRs) permit the maintenance of this nonconforming interior side yard setback up to 5'-0" from the interior side yard property line. However, any second floor addition is required to comply with the minimum required setbacks. Therefore, only the second floor addition requires a variance. The applicant is seeking a variance in order to construct the second floor additon using the existing line of the building.

- 3. A variance to reduce by 5'-0" the minimum required interior side yard setback of 10'-0" for the construction of a second-floor addition at 5'-0" from the southern interior side property line to follow the existing line of the structure of the existing home.**

- 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:*

(2) Side yards:

\*

\*

\*

c. Interior sides.

1. For lots greater than 60 feet in width each interior side yard shall have a minimum of ten percent of the lot width or ten feet, whichever is greater.

The existing one-story single family home has a non-conforming southern interior side yard setback of 5'-9". The proposal is to allow for the construction of a second floor addition that follows the existing setbacks of the building. The City's LDRs permit the maintenance of this nonconforming interior side yard setback up to 5'-0" from the interior side yard property line. However, the second floor additon is required to comply with the minimum required yards. The applicant is seeking a variance in order to construct the second floor additon using the existing line lines of the building.

**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 Regulations (LDRs) 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.

***Satisfied***

- (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.

***Satisfied***

- (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.

***Partially 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.

***Satisfied***

(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 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 lot fronting the Miami Beach Golf Club, and contains a one-story residence constructed in 1948. The home is located towards the rear of the lot, containing an 84.45-foot front setback, where only 30 feet are required, and a non-conforming 14.92-foot rear setback, where 22.5 feet are currently required. Because of the small rear setback, the home's swimming pool is located in the front yard. The adjacent homes were built with more conventional front and rear setbacks. Additionally, the home was constructed with a 5'-0" setback on the north side and a 5'-9" setback on the south side, both of which are non-conforming with the LDR's current requirement of ten (10) feet.

The applicant is requesting variances for the construction of a new second floor addition to the existing 1-story single-family home. The applicant seeks to use the existing lines of the home which consist of non-conforming side and rear setbacks. The inability to use the existing lines of the home as a result of new standards in the LDRs for the second story addition creates a hardship and practical difficulty, as it would require new structural components to be placed in order to support the walls of the 2<sup>nd</sup> floor addition with a setback that is greater than the setback of the existing structure on the ground floor.

Since the home fronts the Miami Beach Golf Club, no negative impacts are anticipated from the rear yard variance. Since the home is located towards the rear of the lot, the second-floor addition may create privacy and visual impacts in the backyards of adjacent properties. In order to minimize such impacts, staff is recommending a condition that requires a substantial landscape buffer to be provided in the side yards, subject to the review and approval of staff.

The applicant is also proposing to construct an accessory outdoor patio that follows the lines of the existing building, however, the code allows ground level additions to follow those lines, provided there is a minimum setback of five (5) feet; therefore, this addition does not require a variance.

**RECOMMENDATION:**

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



## ZONING/SITE MAP



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

**PROPERTY:** 2840 Prairie Avenue

**FILE NO.** ZBA19-0096

**IN RE:** An application requesting setback variance(s) for the construction of a new second floor addition to an existing 1-story single-family home.

**LEGAL DESCRIPTION:** Lot 8, Block 3, of First Addition to Mid Golf Subdivision, according to the plat thereof, as recorded in plat book 7, Page 161, of the public records of Miami-Dade County, Florida.

**FOLIO NO.** 02-3227-016-0090

**MEETING DATE:** November 1, 2019

**ORDER**

The applicant, Arturo G. Griego, filed an application with the Planning Department for the following variance(s):

1. A variance to reduce by 7'-7" the minimum required rear setback of 22'-6" for the construction of a second-floor addition at 14'-11" from the rear property line to follow the existing line of the structure of the existing home.  
– **Approved by the Board**
2. A variance to reduce by 5'-0" the minimum required interior side yard setback of 10'-0" for the construction of a second-floor addition at 5' from the northern interior side property line to follow the existing line of the structure of the existing home.  
– **Approved by the Board**
3. A variance to reduce by 5'-0" the minimum required interior side yard setback of 10'-0" for the construction of a second-floor addition at 5'-0" from the southern interior side property line to follow the existing line of the structure of the existing home.  
– **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 Arturo G. Griego, AIA, Architect, dated September 5, 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 building permit application shall contain a landscape plan that shall be subject to the review and approved of staff. The species, type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated. At a minimum, such plans shall comply with Chapter 126, entitled Landscape Requirements, of the Miami Beach Code, and shall incorporate weather resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants). Additionally, the plan shall contain significant landscape buffers along the side yards that minimize the visual impact of the home on the rear yards of adjacent properties to the north and south.

4. 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.
5. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
6. 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.
7. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
8. 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.
9. 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.
10. 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.

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 time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. At the hearing on any such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. If the Full Building Permit should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), and not reinstated by the Building Official or designee, the Variance Approval will expire and become null and void.

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 \_\_\_\_\_ ( )