

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: June 02, 2020

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **DRB20-0520**
42 Star Island Drive

DRB20-0520 42 Star Island Drive. An application has been filed requesting Design Review Approval for the construction of a new one-story accessory structure in the rear yard of an existing two-story single family home including one or more variances to reduce the required open space in required yards and to exceed the maximum unit size allowed for accessory buildings.

RECOMMENDATION:

Approved with conditions

Denial of the variances #1 and #2.

LEGAL DESCRIPTION:

Lot 42, Star Island, according to the Plat thereof, as recorded in Plat Book 5, Page 52, of the Public Records of Miami-Dade County, Florida, a/k/a Lot 42, Corrected Plat of Star Island, according to the Plat thereof, as recorded in Plat Book 31, Page 60, of the Public Records of Miami-Dade County, Florida.

BACKGROUND:

On March 05, 2013, the Design Review Board reviewed and approved a new two-story home, pursuant to DRB file No. 22936.

SITE DATA:

Zoning:	RS-1
Future Land Use:	RS
Lot Size:	51,050 SF
Lot Coverage:	
Existing:	10,499 SF / 20.5%
Proposed:	11,570 SF / 22.6%
Maximum:	15,315 SF / 30%
Unit size:	
Existing:	20,190 SF / 39.5%
Proposed:	21,790 SF / 42.7%
Maximum:	25,525 SF / 50%
Height:	
Existing:	29'-0" flat roof
Proposed:	No change
Maximum:	28'-0" flat roof

Grade:	+5.30' NGVD
Base Flood Elevation:	+10.0' NGVD
First Floor Elevation:	+10.10' NGVD

EXISTING STRUCTURE:

Year:	2016
Architect:	Kobi Karp

SURROUNDING PROPERTIES:

East:	Biscayne Bay
North:	Three-story 1925 residence
South:	Two-story 1923 residence
West:	Star Island Park

THE PROJECT:

The applicant has submitted plans entitled "42 Star Pavilion", as prepared by **DOMO Architecture + Design**, dated April 06, 2020.

The applicant is proposing to construct a new one story accessory building within the rear yard of a site currently improved with an existing two-story home, pool and two-story accessory structure.

The applicant is requesting the following variance(s):

1. A variance to reduce by 15.62% (1,587.88 sf) the required 70% (7,119 sf) open space within the rear yard in order to construct an accessory building and provide 54.38% (5,531.12 sf) of open space in the rear yard.

- 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: 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.

The property contains a two-story home and two-story accessory structure. The applicant is proposing a new one-story accessory building partially located within the required rear yard; a variance is being requested to reduce the required open space. The rear yard of the property is already improved with a two-story accessory structure, pool, and spa that already does not comply with the required 70% open space. The footprint of the new accessory building would reduce the open space from 61.04% to 54.38%. As the property already has a residence and a two-story accessory building with a nonconforming rear yard, the request to reduce the open space does not satisfy the practical difficulties or meet the hardship criteria necessary for approval. As such, staff recommends denial of the variance.

2. A variance to exceed by 15.2% (2,647.8 SF) the maximum unit size allowed of 10% (1,740.2 SF) for accessory buildings in relation to the unit size of the main house in order to construct a new accessory building and provide two accessory buildings with a unit size of 25.2% (4,388 SF) of the size of the main home (17,402 SF).

- Variance requested from:

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

(a) Accessory buildings.

(2) In single-family districts the following regulations shall apply to accessory buildings within a required rear yard:

b. Size. The area of accessory buildings shall be included in the overall unit size calculation for the site. In no instance shall the total size of all accessory building(s) exceed ten percent of the size of the main home on the subject site, or 1,500 square feet, whichever is less.

The property contains an existing two-story residence, two-story garage structure and a two-story accessory building. The total unit size of the existing and proposed accessory buildings do not comply with the maximum unit size allowed in relation to the unit size of the main home. Although the total unit size of the principal structure is well below the maximum 50% permitted, the combined unit size of the two accessory buildings (4,388 SF) exceed the maximum unit size allowed of 2,552.5 SF if the home were developed at its maximum. Staff finds that the residence and accessory building constructed in 2016 are already considered a "reasonable use" of the property and the request is a self-imposed variance. There is no practical difficulties related to this variance and therefore, it does not satisfy the criteria for approval. As such, staff recommends denial of the variance #2.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that DO NOT satisfy 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.

The applicant has submitted plans and documents with the application that also DO NOT indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

- 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.

- The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.

COMPLIANCE WITH ZONING CODE:

A preliminary review of the project indicates that the application, as proposed, appears to be inconsistent with the following sections of the City Code:

- Revise open space calculations for rear yard to comply with Section 142-106.
- Revise Variance 02 diagram, per A-6.1, to include the garage structure, and modify the unit size calculations of accessory structure to main home.
- Clarify sheet A-2.4 Rear Yard Open Space Diagram. Confirm square footage of rear yard. Clarify area of pool that is below adjusted grade.

The above noted comments 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.

COMPLIANCE WITH DESIGN REVIEW CRITERIA:

Design Review encompasses the examination of architectural drawings for consistency with the criteria stated below with regard to the aesthetics, appearances, safety, and function of the structure or proposed structures in relation to the site, adjacent structures and surrounding community. Staff recommends that the following criteria are found to be satisfied, not satisfied or not applicable, as hereto indicated:

1. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.
Not Satisfied; the applicant is requesting two (2) variances from the Board.
2. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.
Not Satisfied; the applicant is requesting two (2) variances from the Board.
3. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.
Not Satisfied; the applicant is requesting two (2) variances from the Board.
4. The color, design, selection of landscape materials and architectural elements of Exterior Building surfaces and primary public interior areas for Developments requiring a Building Permit in areas of the City identified in section 118-252.
Not Satisfied; the applicant is requesting two (2) variances from the Board.

5. The proposed site plan, and the location, appearance and design of new and existing Buildings and Structures are in conformity with the standards of this Ordinance and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Boards, and all pertinent master plans.
Not Satisfied; the applicant is requesting two (2) variances from the Board.
6. The proposed Structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent Structures, and enhances the appearance of the surrounding properties.
Not Satisfied; the applicant is requesting two (2) variances from the Board.
7. The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent Buildings and lands, pedestrian sight lines and view corridors.
Satisfied
8. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that all parking spaces are usable and are safely and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the Site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the Site.
Satisfied
9. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties. Lighting shall be reviewed to assure that it enhances the appearance of structures at night.
Not Satisfied; a lighting plan has not been submitted.
10. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall Site Plan design.
Satisfied
11. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.
Satisfied
12. The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).
Not Satisfied; the applicant is requesting two (2) variances from the Board

13. The building has, where feasible, space in that part of the ground floor fronting a street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project.

Satisfied

14. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

Satisfied

15. An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).

Not Applicable

16. All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.

Satisfied

17. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.

Not Applicable

18. In addition to the foregoing criteria, subsection 118-104(6)(t) of the City Code shall apply to the design review board's review of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public rights-of-way.

Not Applicable

19. The structure and site complies with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.

Not Satisfied; see below

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 Satisfied

A recycling plan shall be provided as part of the submittal for a demolition/building permit to the building department.

- (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) Resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) shall be provided, in accordance with Chapter 126 of the City Code.
Satisfied
- (5) The project applicant shall consider the 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. The applicant shall also specifically study the land elevation of the subject property and the elevation of surrounding properties.
Not 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 and shall provide sufficient height and space to ensure that the entry ways and exits can be modified to accommodate a higher street height of up to three (3) additional feet in height.
Satisfied
- (7) In all new projects, all critical mechanical and electrical systems shall be located above base flood elevation. Due to flooding concerns, all redevelopment projects shall, whenever practicable, and economically reasonable, move all critical mechanical and electrical systems to a location above base flood elevation.
Satisfied
- (8) Existing buildings shall be, where reasonably feasible and economically appropriate, elevated up to base flood elevation, plus City of Miami Beach Freeboard.
Not Applicable
- (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) In all new projects, water retention systems shall be provided.
Not Satisfied
- (11) Cool pavement materials or porous pavement materials shall be utilized.
Not Applicable
- (12) The project design shall minimize the potential for a project causing a heat island effect on site.
Not Satisfied

ANALYSIS:

DESIGN REVIEW

The applicant is proposing to construct a new one-story accessory structure in the rear yard of an existing two-story residence on a waterfront parcel on the eastern side of Star Island. Located on a wedge-shaped lot, the two-story residence was built in 2016 and features a two-story accessory building within the rear yard. The existing rear yard is nonconforming in its open space.

The proposed new one-story accessory building is proposed to be located in the rear yard along the northern interior property line, sited opposite the existing accessory building that as an ensemble flank the existing pool overlooking Biscayne Bay. The proposed 1,861 SF pavilion is programmed with an indoor lounge that fully opens to the outdoors with sliding glass doors, an enclosed bar and service bath, and a covered terrace with an outdoor kitchen. A perforated metal mesh drapes the rectilinear walls of wood-like aluminum panels and glass doors in an amorphic shape.

The design of the pavilion is contemporary in style and visually interesting with swooping curves that embrace the envelope of the structure as well as create covered outdoor spaces. All three of the existing structures (main house, garage and guest quarters) have been designed in a uniform neoclassical architectural style and the introduction of a "bean-like" pavilion will be a departure to this assemblage. Staff is supportive of the design of the structure but does not support the variances being requested to accommodate the proposed location within the required rear yard, as it further impacts the already non-conforming open space requirement. As such, staff recommends the new accessory structure be relocated outside of the rear yard.

VARIANCE REVIEW

As identified under the 'Project' description of the analysis, staff is not supportive of the two variances requested. The property is already non-conforming with the required open space in the rear yard, which can be modified by removing portions of the existing pool deck to comply with the current minimum open space requirements. As proposed, the new accessory building furthers the degree of non-conformity at the property.

The granting of these two variances would confer a benefit to the applicant that is denied to other similar adjacent properties. Staff finds that the application for these variances does not meet the practical difficulties and recommends **denial** of the variances #1 and #2.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends the application be **approved** with conditions, and the **denial** of variance requests #1 and #2 subject to the conditions enumerated in the attached Draft Order, which address the inconsistencies with the aforementioned Design Review and Sea Level Rise criteria.

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: June 02, 2020

PROPERTY/FOLIO: **42 Star Island Drive** 02-4204-001-0350

FILE NO: DRB20-0520

IN RE: An application has been filed requesting Design Review Approval for the construction of a new one-story accessory structure in the rear yard of an existing two-story single family home including one or more variances to reduce the required open space in required yards and to exceed the maximum unit size allowed for accessory buildings.

LEGAL: Lot 42, Star Island, according to the Plat thereof, as recorded in Plat Book 5, Page 52, of the Public Records of Miami-Dade County, Florida, a/k/a Lot 42, Corrected Plat of Star Island, according to the Plat thereof, as recorded in Plat Book 31, Page 60, of the Public Records of Miami-Dade County, Florida.

ORDER

The City of Miami Beach Design Review Board 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:

I. Design Review

- A. The Board has jurisdiction pursuant to Section 118-252(a) of the Miami Beach Code. The property is not located within a designated local historic district and is not an individually designated historic site.
- B. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is inconsistent with Design Review Criteria 1, 2, 3, 4, 5, 6, 9, 12, and 19 in Section 118-251 of the Miami Beach Code.
- C. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is inconsistent with Sea Level Rise Criteria 1, 5, 10, and 12 in Section 133-50(a) of the Miami Beach Code.
- D. The project would be consistent with the criteria and requirements of Section 118-251 and/ or Section 133-50(a) if the following conditions are met:
 - 1. Revised elevation, site plan, and floor plan drawings for the proposed new accessory building at 42 Star Island shall be submitted, at a minimum, such drawings shall incorporate the following:

- a. Open space calculations for rear yard shall be revised to comply with Section 142-106.
- b. The final design details of the exterior materials and finishes shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- c. The final design details and color selection of the aluminum perforate metal mesh shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- d. The final design details and color selection of the "aluminum panel cladding – wood finish" shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- e. 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.
- f. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.

In accordance with Section 118-262, the applicant, or the city manager on behalf of the City Administration, or an affected person, Miami Design Preservation League or Dade Heritage Trust may seek review of any order of the Design Review Board by the City Commission, except that orders granting or denying a request for rehearing shall not be reviewed by the Commission.

II. Variance(s)

- A. The applicant filed an application with the Planning Department for the following variance(s) which were either approved by the Board with modifications, or denied:

The following variance were denied by the Board:

1. A variance to reduce by 15.62% (1,587.88 sf) the required 70% (7,119 sf) open space within the rear yard in order to construct an accessory building and provide 54.38% (5,531.12 sf) of open space in the rear yard.
 2. A variance to exceed by 15.2% (2,647.8 SF) the maximum unit size allowed of 10% (1,740.2 SF) for accessory buildings in relation to the unit size of the main house in order to construct a new accessory building and provide two accessory buildings with a unit size of 25.2% (4,388 SF) of the size of the main home (17,402 SF).
- B. The applicants have submitted plans and documents with the application that DO NOT satisfy 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.

The applicants have submitted plans and documents with the application that DO NOT indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

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.

The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.

C. The Board hereby **Denies** variance request(s) and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:

1. Substantial modifications to the plans submitted and approved as part of the application, 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.

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.

III. General Terms and Conditions applying to both 'I. Design Review Approval and 'II. Variances' noted above.

- A. 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.
- B. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- C. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Occupancy; a Temporary Certificate of Occupancy or Partial Certificate of Occupancy may also be conditionally granted Planning Departmental approval.
- D. 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.
- E. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- F. 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.

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 the staff recommendations, which were amended and adopted by the Board, that the **application** is GRANTED for the above-referenced project subject to those certain conditions specified in Paragraph I, II, III of the Finding of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans, entitled "42 Star Pavilion", as prepared by **DOMO Architecture + Design**, dated April 06, 2020, and as approved by the Design Review Board, as determined by staff.

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 of approval that must be satisfied prior to permit issuance, as set forth in this Order, have been met.

The issuance of the approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board approved plans, this approval does not mean that such handicapped access is not required. When requesting 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 approval was granted, the application will expire and become null and void, unless the applicant makes an 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

