

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Members
Planning Board

DATE: July 10, 2020

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **ZBA20-0111**
71 La Gorce Circle – Addition

An application has been filed requesting variances to retain a nonconforming street facing side yard setback, to reduce the required rear yard setback and to reduce the required minimum rear yard open space to allow for a one-story addition to an existing single-story home.

RECOMMENDATION

Approval of variance No. 1.

Approval of variances 2 and 3 with conditions.

ZONING/SITE DATA

Address: 71 La Gorce Circle

Folio: 02-3210-016-0130

Legal Description: Lot 14, Block 8, of "La Gorce Island Subdivision", according to the plat thereof, as recorded in Plat Book 40, at Page 6, of the Public Records of Miami-Dade County, Florida.

Zoning: RS-3, Single-Family Residential

Future Land Use Designation: RS, Single-Family Residential

Lot Size: 14,416 SF

Lot Coverage:

Existing	4,095 SF / 28.4%
Proposed	5,930 SF / 41.1%
Maximum	7,208 SF / 50.0%

Unit Size:

Existing	3,575 SF / 24.7%
Proposed	4,554 SF / 31.5%
Maximum	7,208 SF / 50%

Building Use: Single-Family Residence

Year Constructed: 1951

Surrounding Uses: North: Single-Family Residence
West: Single-Family Residence
South: Single-Family Residence
East: Single-Family Residence
(See Zoning/Site map at the end of the report)

THE PROJECT

The applicant, Gonzalo Muñoz, has submitted the following plans and documents:

- Letter of intent, dated May 11, 2020
- Survey, dated January 21, 2020, by Exacta Land Surveyors, LLC.
- Plans, entitled Addition & Int. Renovation for: Nichols Residence, by Six Sides Architecture, LLC., dated May 18, 2020

The applicant is requesting variances associated with a one-story addition in the rear of an existing single-story single-family home.

The applicant is requesting the following variances:

- 1. A variance to reduce by 4'-9" the minimum side yard facing a street setback of 15'-0", to allow for the retention of an existing non-conforming side yard facing a street setback of 10'-3".**

- Variance requested from:

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

(a) 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:

a. The sum of the required side yards shall be at least 25 percent of the lot width.

b. Side, facing a street.

1. Each required side yard facing a street shall be no less than ten percent of the lot width or 15 feet, whichever is greater.

The existing single-story home has a legal non-conforming street facing side yard setback of 10'-3", which will not be affected by the proposed addition. However, based on the value of the proposed addition and the other renovations planned for the property, the applicant anticipates the project to be a substantial renovation, exceeding the 50% rule. In accordance with Section 118-395 of the City's Land Development Regulations, nonconforming buildings which are repaired or rehabilitated by more than 50% of the value of the building must comply with the current development regulations in the zoning district in which the property is located. As such, a variance is being requested to retain the non-conforming (4'-9") portion of the existing structure along the side facing the street. Staff has no objection to this variance, as the removal of this portion of the home, which is close to five feet in depth, would create practical difficulties.

- 2. A variance to reduce by 14'-6" the minimum rear yard setback of 20'-0", to allow**

the construction of a one-story addition to an existing single-story home with a rear yard setback of 5'-6".

- Variance requested from:

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

(a) 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; 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 percent of this requirement, provided adequate infrastructure is incorporated into the design of the pool to fully accommodate on-site stormwater retention.*

- 3. A variance to reduce by 1,091 square feet, the minimum rear yard pervious open space 1,701 square feet (70%), to allow the construction of a one-story addition to an existing single-story home with a rear yard pervious open space of 610 square feet (25.1%).**

- Variance requested from:

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

(a) 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; 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 percent of this requirement, provided adequate infrastructure is incorporated into the design of the pool to fully accommodate on-site stormwater retention*

The existing single-story home has a nonconforming rear yard setback of 5'-6". Additionally, the rear yard is nonconforming as to minimum landscape open space area, as the majority of the site's rear yard is occupied by the existing home. The subject addition and covered terrace are proposed to be located within the rear yard of the property, as a continuation of the existing interior side yard setback. Although both the addition and covered terrace are completely concealed from view from the right of way, they do not meet the minimum rear setback requirements and will further reduce the rear yard landscaped open space area.

It appears that when the home was originally constructed in 1951 the north property line (La Gorce Circle) was considered the front. However, under the current LDR's, this is a street facing side yard. As such, the location of the proposed addition is technically located in the required rear yard. It is important to note that if the north side of the property were considered the front of the property for zoning purposes, the area of the proposed addition would fall within an interior side

yard. If this were the case, the proposed one-story ground level addition would be permitted to follow the existing interior building lines, provided a minimum side setback of five feet is met, and could be approved at the administrative level. As previously indicated, the proposed addition would meet this requirement with a setback of 5'-6".

The applicant has represented that the proposed location of the rear addition is the only feasible option, given the larger, existing setbacks along the front and street sides of the home. However, the hardship criteria has not been adequately addressed, nor have specific practical difficulties been identified. As such, staff recommends that the applicant provide additional information to substantiate the applicable hardship criteria and/or practical difficulties.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

Based on the plans and documents submitted with the application, staff has concluded that variance 1 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 submitted with the application indicate that variances 2 and 3 would meet the hardship criteria requirements of Section 118-353(d), Miami Beach City Code, provided additional documentation is submitted to substantiate the hardship:

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.
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 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.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development Regulations establishes the following criteria for sea level rise and resiliency that must be considered as part of the review process for development 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.**

Partially Satisfied. A plan shall be provided at time of building permit.

- (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.**

Satisfied.

- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-way 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 additional feet in height.**

Satisfied.

- (7) As applicable to all new construction, all critical mechanical and electrical systems shall be located above base flood elevation. All redevelopment projects shall,**

whenever practicable and economically reasonable, include the relocation of all critical mechanical and electrical systems to a location above base flood elevation.

Satisfied.

- (8) Existing buildings shall, wherever reasonably feasible and economically appropriate, be elevated up to base flood elevation, plus City of Miami Beach Freeboard.**

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 54 of the city Code.**

Satisfied.

- (10) As applicable to all new construction, stormwater retention systems shall be provided.**

Satisfied.

- (11) Cool pavement materials or porous pavement materials shall be utilized.**

Not applicable.

- (12) The design of each project shall minimize the potential for heat island effects on-site.**

Satisfied.

ANALYSIS

The subject site is a corner, non-waterfront lot, and contains a one-story residence constructed in 1951. The lot is also somewhat irregular, and the home has a 25'-7" unobstructed front yard setback, facing Roxbury Lane. The home's existing garage, driveway and entrance are within the street facing side yard, which fronts La Gorce Circle; the existing garage is located within the required street facing side yard and is nonconforming. The home was also built with a 5'-6" rear yard setback, which is nonconforming.

The existing home has a legal-nonconforming street facing side yard setback of 10'-3", where a minimum 15'-0" setback is required. The City's Land Development Regulations require that properties with nonconformities, which are substantially renovated (exceeding the 50% rule), must comply with current zoning regulations. The first requested variance would allow for the construction of the proposed rear addition and renovations without having to demolish a portion of the existing garage. Staff is supportive of this variance, as no alterations are proposed for this portion of the home, and the modification of the setback would present significant practical difficulties.

With regard to variances 2 and 3, the proposed rear addition to the home is within the allowable unit size and lot coverage requirements for a single-story home. However, the proposed addition encroaches into the required rear yard by 14'-6", where a 20' setback is required, and consumes some of the required permeable open space within the required rear yard. In this regard, a minimum of 1,701 SF (70%) of landscape open space is required within the rear yard, yet only

964 SF (39%) is existing. The proposed addition would reduce the open space further, to only 610 SF (25.1%).

The location of the proposed addition is in line with the interior side of the existing home, and the encroachment into the rear yard is not visible from the public right of way, so there will be no impact when viewed from the street. The existing home is sited close to the southwest corner of an irregular lot and was originally constructed with a very small rear yard. The majority of the home's permeable open space is located in the front yard, which is treated as a street side yard. Staff would note that if the nonforming yard was considered an interior lot line, the City's Land Development Regulations would allow a one-story ground level additions to be constructed and to follow the existing interior building lines, provided a minimum side setback of five feet is met. As previously indicated, the proposed addition would meet this requirement with a setback of 5'-6".

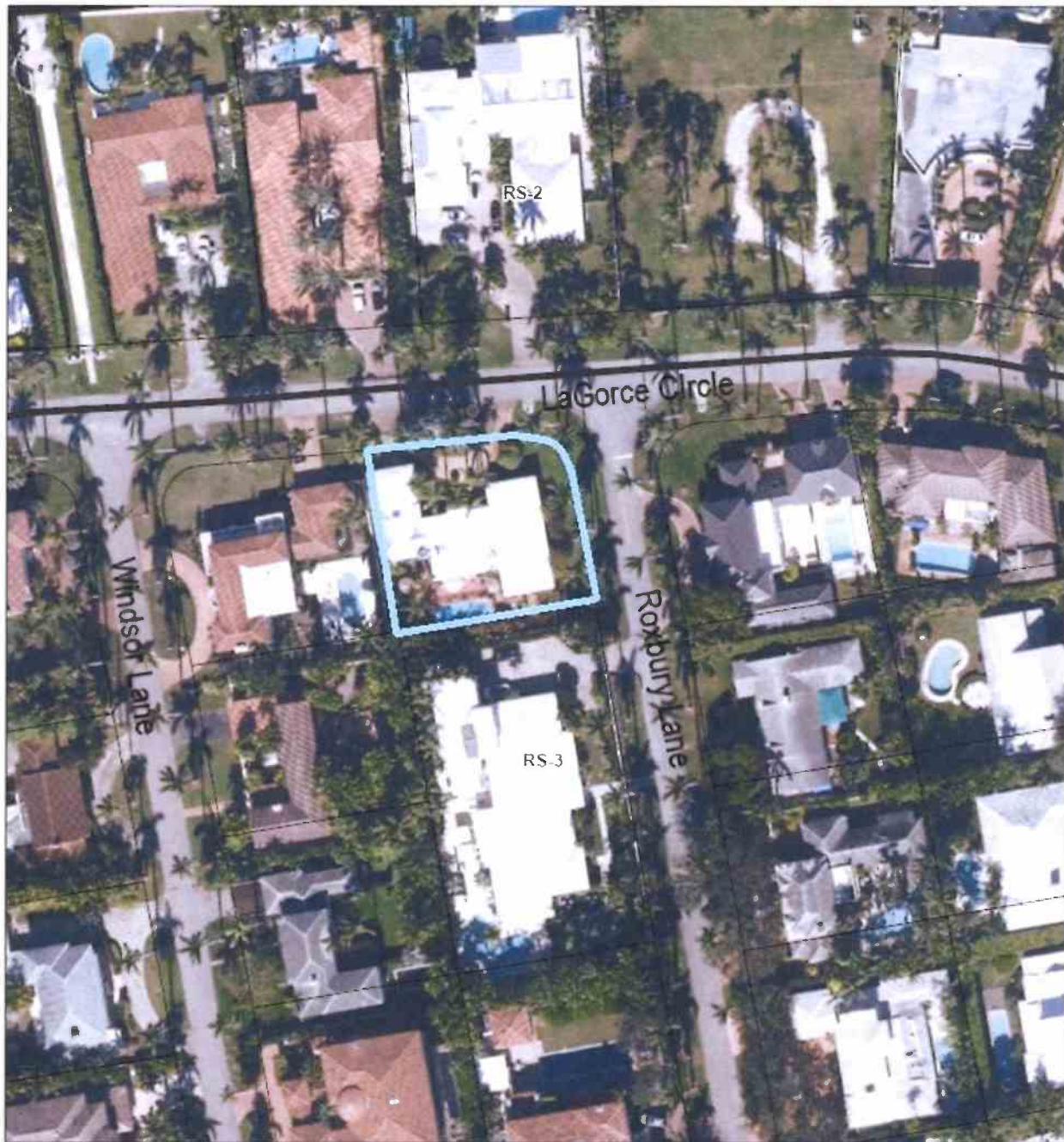
The applicant has represented that there are no other feasible areas on the site to accommodate an addition, and that trying to locate the addition in another location would significantly alter the floor plan, internal elements and architecture of the home. As a result, there does appear to be unique and special conditions and circumstances peculiar to the land and building that justify the hardship criteria and practical difficulty standards.

Notwithstanding the foregoing, based on the submitted hardship letter and exhibits provided, staff believes that additional information is needed to further substantiate the practical difficulties and hardship associated with variances 2 and 3. In this regard, staff recommends that the applicant update the hardship letter with additional information regarding the reasons for the interior location of the proposed addition, in order to justify the practical difficulty standards and hardship criteria.

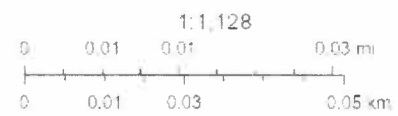
RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Board of Adjustment **approve** requested variances subject to the conditions enumerated in the attached draft modified order.

ZONING/SITE MAP



6/22/2020



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

MEETING DATE: July 10, 2020

PROPERTY: 71 La Gorce Circle

FOLIO: 02-3210-016-0130

FILE NO. ZBA20-0111

IN RE: An application requesting variances to retain a nonconforming street facing side yard setback, to reduce the required rear yard setback and to reduce the required minimum rear yard open space to allow for a one-story addition to an existing single-story home.

LEGAL DESCRIPTION: Lot 14, Block 8, of "La Gorce Island Subdivision", according to the plat thereof, as recorded in Plat Book 40, at Page 6, of the Public Records of Miami-Dade County, Florida.

FINAL ORDER

The applicant, Gonzalo Muñoz, filled an application with the Planning Department for the following variances:

1. A variance to reduce by 4'-9", the minimum side yard facing a street setback of 15'-0", to allow for the retention of an existing non-conforming side yard facing a street setback of 10'-3".
- **Approved by the Board**
2. A variance to reduce by 14'-6", the minimum rear yard setback of 20'-0", to allow the construction of a one-story addition to an existing single-story home with a rear yard setback of 5'-6".
- **Approved by the Board**
3. A variance to reduce by 1,091 square feet, the minimum rear yard pervious open space 1,701 square feet (70%), to allow the construction of a one-story addition to an existing single-story home with a rear yard pervious open space of 610 square feet (25.1%).
- **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 variances 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, "Addition & Int. Renovation for: Nichols Residence", by Six Sides Architecture, LLC., dated May 18, 2020.
2. 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.
3. The building permit application shall contain a landscape plan that shall be subject to the review and approval 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 from the adjacent properties to the north and south.
 - a. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect or the project architect shall verify, in writing, that the project is consistent with

the site and landscape plans approved by the Planning Department for Building Permit.

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; a Temporary Certificate of Occupancy or Partial Certificate of Occupancy 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.

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