

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Members
Planning Board

DATE: October 2, 2020

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **ZBA20-0117**
1070 South Shore Drive – Perimeter Wall

An application has been filed requesting variance(s), to reduce required setbacks for the construction of a fence along the front property line of an existing single-family home.

RECOMMENDATION

Approval of variances 1 and 2 as requested.

ZONING/SITE DATA

Address:	1070 South Shore Drive
Folio:	02-3203-007-0010
Legal Description:	Lot 1 and the West 20 Feet of Lot 2, Block 46, Normandy Golf Course Subdivision, according to the plat thereof, as recorded in Plat Book 44, Page 62, of the Public Records of Miami-Dade County, Florida.
Zoning:	RS-4, Single-Family Residential
Future Land Use Designation:	RS, Single-Family Residential
Lot Size:	19,950 SF
Building Use:	Single-Family Residence
Year Constructed:	2018
Surrounding Uses:	North: South Shore Drive/Single-Family Residence West: Biscayne Bay South: Normandy Waterway East: Single Family Residence (See Zoning/Site map at the end of the report)

THE PROJECT

The applicant, J. Randall Waterfield, has submitted the following plans and documents:

- Letter of intent, dated August 10, 2020
- Plans, entitled "1070 South Beach Drive, Miami Beach, Florida 33141," by Youssef Hachem Consulting Engineering, Inc., dated July 14, 2020.

The applicants are requesting variances associated with the construction of a seven (7) foot tall fence along the front yard of an existing single-family home.

The applicant is requesting the following variances:

1. **A variance to increase by 2'-0", the maximum height of a wall located within the front yard from 5'-0", in order to allow the construction of a 7'-0" tall wall along the front property line.**

- Variance requested from:

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

(b) Allowable encroachments within required yards.

(7) Fences, walls, and gates. Regulations pertaining to materials and heights for fences, walls and gates are as follows:

- a. Within the required front yard, fences, walls and gates shall not exceed five feet, as measured from grade. The height may be increased up to a maximum total height of seven feet if the fence, wall or gate is set back from the front property line. Height may be increased one foot for every two feet of setback.

The existing single-family home has a 4'-0" wall along the front property line. The code provides that walls located in the required front yard may not exceed 5'-0" in height, as measured from grade, unless they are set back a minimum of 2' from the property line. The front yard is adjacent to a street that ends at Biscayne Bay, which provides open space with views to the Bay that is used by the public. As a result, the applicant has concerns regarding safety, security and privacy on their property. In order to address this issue, the applicant is requesting a variance to increase the height of the wall adjacent to South Shore Drive to 7'-0".

2. **A variance to increase by 2'-0", the maximum height of a wall located within the side yard, where such side yard abuts a public right of way, from 5'-0", in order to allow the construction of a 7' tall wall along the side property line abutting a right-of-way and waterway.**

- Variance requested from:

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

(b) Allowable encroachments within required yards.

(7) Fences, walls, and gates. Regulations pertaining to materials and heights for fences, walls and gates are as follows:

- b. Within the required rear or side yard, fences, walls and gates shall not exceed seven feet, as measured from grade, except when such yard abuts a public right-of-way, waterway, or golf course, the maximum height shall not exceed five feet. In the event that a property has approval to be improved at adjusted grade, the overall height of fences, walls and gates may be measured from adjusted grade, provided that the portion of such fences, walls or gates above four feet in height consists of open pickets with a minimum spacing of three

inches, unless otherwise approved by the design review board or historic preservation board, as applicable.

The subject parcel fronts Biscayne Bay, and as such, the code requires that any walls within the required rear yard not exceed 5'-0" feet in height. The configuration of the lot causes the front yard and the rear yard to converge. As a result, the requirements for walls in the rear yard abutting a waterway also apply to the lot's front yard. Similar, to variance No. 1, the applicant is requesting a variance to increase the height of the wall within the rear of the property to 7'-0".

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

Based on the plans and documents submitted with the application, and the reasons set forth in the analysis, 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.
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 variances requested 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.
Not Applicable.
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Not Applicable.
- (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.
Not Applicable.
- (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 applicable.
- (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.
Not applicable.
- (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.
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 54 of the city Code.

Not applicable.

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

Not applicable.

(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.

Not applicable.

ANALYSIS

The subject site is an irregularly shaped waterfront lot in the Normandy Isle neighborhood. The site has an existing single-family home on the site that was constructed in 2018. The lot fronts Biscayne Bay to the east, the Normandy Waterway to the south, and South Shore Drive to the north. As a result, the lot only directly abuts one neighbor to the east. The South Shore Drive street end abuts Biscayne Bay with an open space that is adjacent to the subject lot and is used by the public. The lot has an existing 4'-0" wall along the front property line adjacent to South Shore Drive.

The applicant has indicated that the open space at the street end of South Shore Drive is used frequently by the public and that the height limits for the wall reduces their ability to privately enjoy their backyard, as it is visible to the public. The applicant has also provided images of safety and security issues that have occurred at the street end. As such, the applicant has requested variances to raise the wall height to 7'-0". This would allow the applicant improved privacy from the adjacent street end.

The lot's irregular and unique layout creates a situation where the front yard and rear yard converge. The lot's front yard runs parallel to South Shore Drive and the lot's rear yard runs parallel to Biscayne Bay. As a result, the northwest portion of the lot is subject to the regulations for both front and rear yards. This is a situation that is quite uncommon in the City.

Regarding the first variance request, the code provides that walls in the required front yard not exceed 5'-0", unless set back from the property line. The applicant could setback the wall by four feet in order to allow the wall to reach 7'-0" for those portions that do not fall within the required rear yard. However, due to the irregular shape of the lot such a setback would reduce the size of the front yard, as well as reduce the usable space in the rear yard. Additionally, the issues of safety, security and privacy would still not be addressed, as the portions of the wall closest to the street end also fall within the rear yard.

Regarding the second variance request, the code requires that any walls within the required rear yard on a waterfront lot not exceed 5'-0". This code requirement is intended to allow adjacent waterfront neighbors some limited side views to the water. In this case, the subject parcel does not have an adjacent waterfront neighbor on the side of the property fronting Biscayne Bay, as it is adjacent to the South Shore Drive street end. Rather than allowing limited side views for neighbors, this code requirement allows the public direct views into the applicant's backyard, resulting in safety, security and privacy concerns.

Typically, staff would have concerns regarding the visual impact of a 7'-0" tall wall up against a public right-of-way; however, this is mitigated by the fact that it is not a through street and is therefore likely not going to be viewed by a significant number of passersby. As the home was

recently constructed, it complies with all of the current street tree requirements in the swale area which will soften the view towards the wall. As such, staff is recommending that board approve both variances as requested.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Board of Adjustment **approve Variance No.1 and Variance No. 2 as requested**, subject to the conditions enumerated in the attached draft order.

ZONING/SITE MAP

