

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Members
Planning Board

DATE: February 5, 2021

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **ZBA20-0121**
2440 North Shore Terrace – Addition (Chickee Hut)

An application has been filed requesting setback variance(s) for the retention of a detached addition, located in the rear yard of an existing single-family home.

RECOMMENDATION

Approval of the requested variance.

ZONING/SITE DATA

Address:	2440 North Shore Terrace
Folio:	02-3209-007-0170
Legal Description:	The North 61 feet of lot 17, of "Subdivision of Tract 46-A Normandy Golf Course Subdivision" according to the plat thereof as recorded in Plat Book 55 at Page 95 of the Public Records of Miami-Dade County, Florida.
Zoning:	RS-4, Residential Single-Family
Future Land Use Designation:	RS, Residential Single-Family
Lot Size:	8,764.50 SF
Building Use:	Single-Family Home
Year Constructed:	1954
Surrounding Uses:	North: Residential West: Biscayne Bay South: Residential East: Residential

THE PROJECT

The applicant, Damarys Corso, has submitted the following plans and documents:

- Letter of intent, dated December 8, 2020
- Boundary Survey, by Martinez & Martinez Enterprises, Inc., dated December 7, 2020

The applicant is requesting a variance associated with the retention of a chickee hut constructed in the rear of an existing one-story single-family home. Specifically, the applicant is requesting the following variance:

1. **A variance to reduce by 6'-9", the minimum rear yard setback of 21'-6", to allow the retention of a chickee hut with a rear yard setback of 14'-9".**

- 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.*

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 does 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.

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.

Not 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.

Not Applicable

- (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.

Not Applicable

- (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.

Satisfied.

ANALYSIS

Florida State Statute section 553.73 states in part, an open-sided wooden hut, constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida, that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features are exempt from the Florida Building Code.

Although State Statue exempts these structures from needing to obtain a permit under the Florida Building Code, they are still subject to local zoning regulations.

The applicant hired a member of the Seminole Tribe of Florida to construct the existing chickee hut located in the rear yard of the home. A permit was not obtained, based on the State Statue exemption for these types of structures.

On July 8, 2020, the Building Department issued a violation to the property for the construction of a wood structure, built without permit. At the time of the Building Department inspection, the chickee hut contained electrical wiring, which powered a ceiling fan and lights. The incorporation of electrical components presented a conflict with the State exemption; subsequently, all electrical wiring has been removed from the chickee hut.

After the reinspection, the violation was revised to require Planning approval for the structure. Based on the submitted survey, it was determined that the location of the chickee hut encroaches into the required rear yard setback. A variance is now being requested for the retention of the chickee hut.

It appears that the applicant was unaware that the State exemption for chickee huts constructed by Native American Tribes did not apply to electrical components or local zoning review. Additionally, the construction of the chickee hut is intended to be in place and it is not possible to relocate the structure. As such, staff believes that in this instance, there is a special condition peculiar to the subject property and structure, which is not applicable to other properties or buildings in the same zoning district.

Additionally, the requested variance is the minimum variance that will make possible the reasonable use of the existing structure. Finally, as the chickee hut structure cannot be easily lifted and relocated and would have to be demolished and re-built to meet the required setback, a practical difficulty exists.

Based on the forgoing analysis, staff is supportive of the requested variance and recommends approval.

RECOMMENDATION

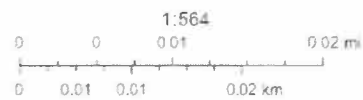
In review of the forgoing analysis, staff recommends that the Board of Adjustment **approve the requested variance**, subject to the conditions enumerated in the attached draft order.

ZONING/SITE MAP

2440 North Shore Terrace



1/27/2021



SPWMD GIS Services, State of Florida, GeoEye, Navteq, Microsoft, Esri,
HESS, Garmin, AIG

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

MEETING DATE: February 5, 2021

PROPERTY: 2440 North Shore Terrace

FOLIO: 02-3209-007-0170

FILE NO. ZBA20-0121

IN RE: An application has been filed requesting setback variance(s) for the retention of a detached addition, located in the rear yard of an existing single-family home.

LEGAL

DESCRIPTION: The North 61 feet of lot 17, of "Subdivision of Tract 46-A Normandy Golf Course Subdivision" according to the plat thereof as recorded in Plat Book 55 at Page 95 of the Public Records of Miami-Dade County, Florida.

FINAL ORDER

The applicant, Damarys Corso, has filed an application with the Planning Department for the following variance:

1. A variance to reduce by 6'-9", the minimum rear yard setback of 21'-6", to allow the retention of a chickee hut with a rear yard setback of 14'-9".
- **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 the literal interpretation of the provisions of this Ordinance would cause 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 plans shall be consistent with plans/survey submitted to the Board of Adjustment.
2. A hedge must be maintained along the southern property line to limit the visual impact of the chickee hut to the adjacent property. If the existing hedge is replaced, Resilient landscaping (salt tolerant, highly water-absorbent, native, or Florida-friendly plants) shall be utilized.
3. 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.
4. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for planning 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, Certificate of Use or Miami Beach Business Tax Receipt.

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 planning permit, the plans submitted to the Planning 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 Planning 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 Planning Permit should expire for any, and not reinstated by the Planning Director or designee, the Variance Approval will expire and become null and void.

Dated this _____ day of _____, 2020.

BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Steven Williams
Chief of Planning Services
For the Chair

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