

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Members
Planning Board

DATE: December 9, 2022

FROM: Thomas R. Mooney, AICP
Planning Director

MB For TRM

SUBJECT: **ZBA22-0141**
400 W 44th Street

An application has been filed requesting a variance from the accessory structure separation requirements, in order to construct a new 2-story addition connecting an existing 2-story home with an existing 2-story accessory structure.

RECOMMENDATION

Approval

ZONING/SITE DATA

Folio: 02-3222-001-0820

Legal Description: E 80 FT Lots 7 & 8, Block 6, Orchard Subdivision, according to the Plat thereof, as recorded in Plat Book 25, Page 30, of the Public Records of Miami-Dade County, Florida.

Zoning: RS-4, Single-Family Residential Zoning District

Future Land Use Designation: RS, Single-Family Residential

Lot Size: <8,000 square feet*

Lot Coverage:

Existing: 1,650 SF / >20.6%

Proposed: 2,055 SF / >25.6%

Maximum: <3,200 SF / 40% (for 2-story, architecturally significant homes)

Unit size:

Existing: 3,050 SF / >38.1%

Proposed: 3,986 SF / >48.6%

Maximum: <4,800 SF / 60% (for architecturally significant homes)

Height: ~17 feet (sloped roof, existing and proposed, from BFE+1')

Year Constructed: 1937

Surrounding Uses: North: 2-story 1939 home

East: 1-story 1946 home

West: 2-story home

South: 2-story 1926 home

*Due to the corner lot radius, the total lot area is less than the 8,000 SF indicated on the plans. Updated calculations will be required for the Building Permit.

THE PROJECT

The applicant has submitted plans entitled "Mitrani / Buchman Residence" as prepared by **Six Sides Architecture, Inc.**, dated 10-10-2022. The applicant is proposing to construct a new 2-story addition, connecting the existing main 2-story home with a 2-story guesthouse.

The applicant is requesting the following variance:

1. A variance to reduce by 5'-0" the minimum required building separation between the main home and the accessory building, in order to provide a direct connection between the two structures.

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 variances do 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.
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 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.

No Applicable

- (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.

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 reasonably feasible

- (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.

Satisfied

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

Satisfied

ANALYSIS

The existing house, originally constructed in 1937, has been formally classified as architecturally significant (DRB22-0869). Such classification allows a homeowner to take advantage of certain zoning incentives, including increased lot coverage and unit size, and reduced interior side setbacks. The applicant is proposing to construct a new 2-story addition between the existing main home, and the 2-story guest house located within the rear yard. The City Code requires a five (5') foot separation between the main home and an accessory building within a required rear yard.

The applicant is requesting the following variance:

1. A variance to reduce by 5'-0" the minimum required building separation between the main home and the accessory building, in order to provide a direct connection between the two structures.

- Variance requested from:

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

- (b) *Allowable encroachments within required yards.*

- (1) *Accessory buildings.* In all single-family districts, the following regulations shall apply to accessory buildings within a required rear yard:

- c. *Building separation.* **Accessory buildings shall be separated from the main home by a minimum of five feet**, open to the sky with no overhead connections.

As proposed, the new 2-story construction is located in an area that will have a minimal impact on the character of the existing architecturally significant home, and due to the practical

difficulties involved with constraints of existing home, staff is supportive of the variance request.

RECOMMENDATION

In view of the foregoing analysis, staff recommends the application be **approved, including the requested variance**, subject to the conditions enumerated in the attached Draft Order, which address any inconsistencies with the aforementioned Practical Difficulty and Hardship Criteria and Sea Level Rise criteria.

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

MEETING DATE: December 9, 2022

PROPERTY: 400 W 44th Street

FOLIO: 02-3222-001-0820

FILE NO. ZBA22-0141

IN RE: An application for a variance from the accessory structure separation requirements, in order to construct a new 2-story addition connecting an existing 2-story home with an existing 2-story accessory structure.

LEGAL

DESCRIPTION: E 80 FT Lots 7 & 8, Block 6, Orchard Subdivision, according to the Plat thereof, as recorded in Plat Book 25, Page 30, of the Public Records of Miami-Dade County, Florida.

FINAL ORDER

The applicant, Ron Bernstein, filed an application with the Planning Department for the following variances:

1. A variance to reduce by 5'-0" the minimum required building separation between the main home and the accessory building, in order to provide a direct connection between the two structures.

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 variance 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. 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. 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.
4. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
5. 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.
6. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
7. 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.
8. 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.
9. 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 reason, and not reinstated by the Planning Director or designee, the Variance Approval will expire and become null and void.

Dated _____.

BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Michael Belush, AICP
Planning & Design Officer
For the Chair

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