

MIAMI BEACH

PLANNING DEPARTMENT
Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Board Members

DATE: April 14, 2023

FROM: Thomas R. Mooney, AICP
Planning Director



for TRM

SUBJECT: **ZBA23-0144**
800 Lakeview Dr.
Folio: 02-3222-022-1360

An application has been filed requesting a variance from the minimum seawall height requirements in order to construct a new seawall along the property, which contains an existing 2-story home, to be retained.

RECOMMENDATION:

Approval with conditions.

LEGAL DESCRIPTION:

Lot 8, Block 30, of Lake View Subdivision, according to the Plat Thereof, as Recorded in Plat Book 14, Page 42, of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Zoning: RS-3
Future Land Use: RS
Lot Size: ~18,264 SF

Year: 1941
Architect: Roy France

SURROUNDING PROPERTIES:

East: Two-story 2020 Home
North: Two-story 1949 Home
South: Ritz Carlton Residences
(across canal)
West: Two-story 2021 Home

THE PROJECT:

The applicant has submitted plans entitled "800 Lakeview Dr. Waterfront Improvements Project", as prepared by **Adolfo Gonzalez**, dated signed and sealed 9/2/2022.

The applicant is proposing to construct a new seawall along the waterfront property line.

The applicant is requesting the following variance:

1. A variance from the minimum seawall height requirement of 7.26' NGVD (5.7' NAVD), in order to construct a new seawall to a height of 5.56' NGVD (4.0' NAVD).
 - Variance requested from:

Sec. 54-62. Minimum elevations and materials for new or substantially rehabilitated coastal infrastructure within tidally-influence areas.

- (a) All new seawalls or existing seawalls that require substantial repairs; shall have a minimum elevation of 5.7 feet NAVD88. All existing seawalls that require repairs, but the repairs are considered less than substantial and existing seawalls that fall below an elevation that incurs flooding to adjacent property and/or public right-of-way shall have a minimum elevation of 4.0 feet NAVD88 if designed and constructed to accommodate a minimum elevation of 5.7 feet NAVD88.*
- (b) To the extent practicable, seawalls shall be designed and constructed to adjoin immediately proximate seawalls to close gaps and prevent trespass of tidal surface water.*
- (c) Property owners are encouraged to consider approaches and materials that enhance the biological value of traditional (flat surface) seawalls with the incorporation of living shoreline features, the use of materials that encourage biodiversity, and the use of biological forms, where practicable.*
- (d) This section shall not be construed to require the installation of a seawall where other flood protection measures and living shorelines serve as an equally effective tidal flood barrier.*

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that 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 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 consistent with the City Code, with the exception of the requested variance.

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 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.
N/A
2. Windows that are proposed to be replaced shall be hurricane proof impact windows.
N/A
3. Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
N/A
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.
N/A
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-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.

N/a

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.

N/A

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

N/A

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.

N/A

10. In all new projects, water retention systems shall be provided.

N/A

11. Cool pavement materials or porous pavement materials shall be utilized.

N/A

12. The project design shall minimize the potential for a project causing a heat island effect on site.

N/A

ANALYSIS:

The subject property includes a 2-story residence constructed in 1941 and designed by noted Miami Beach architect Roy France. The home was constructed with the first finished floor level located at 6.46' NGVD, and the rear pool deck along the water is located at an elevation of 5.46' NGVD. The yard slopes down to the seawall, which is at an elevation of 3.56' NGVD. The applicant is proposing to construct a new seawall at an elevation of 5.56' NGVD, however the City Code requires a minimum elevation of 7.26' NGVD.

The applicant is requesting the following variance:

1. A variance from the minimum seawall height requirement of 7.26' NGVD (5.7' NAVD), in order to construct a new seawall to a height of 5.56' NGVD (4.0' NAVD).
 - Variance requested from:

Sec. 54-62. Minimum elevations and materials for new or substantially rehabilitated coastal infrastructure within tidally-influence areas.

(a) All new seawalls or existing seawalls that require substantial repairs; shall have a minimum elevation of 5.7 feet NAVD88 (7.26'NGVD). All existing seawalls that require repairs, but the repairs are considered less than substantial and existing seawalls that fall below an elevation that incurs flooding to adjacent property and/or public right-of-way shall have a minimum elevation of 4.0 feet NAVD88 if designed and constructed to accommodate a minimum elevation of 5.7 feet NAVD88.

For the repair of an existing seawall that is considered non-substantial, the minimum elevation required is 5.56' NGVD with the structure designed to accommodate a future raising to a minimum elevation of 7.26' NGVD. However, due to the cost of the new seawall, the applicant's proposal does not meet this exemption.

When constructing a new home, the minimum finished floor elevation is 9.0' NGVD, which is well above the minimum 7.26' NGVD height required for the construction of a new seawall. Because the applicant will be retaining the existing home and yard, raising the seawall to 7.26' NGVD would result in a visual barrier along the waterfront that is 1.7' higher than the existing pool deck elevation and 0.8' higher than the first floor level of the existing home. While the City Code has provisions for the repair of a seawall on a property with a home constructed at a low elevation, it does not address the issue of the disparity caused when a new seawall is proposed on a site with an older home with a low finished floor elevation.

The city has a strong record of encouraging the preservation of older homes, and especially those that would be considered architecturally significant, such as the current home. Staff finds that the noted elevation disparity creates a practical difficulty that would diminish the livability and value of the current home. Because of this, as well as the fact that the seawall has been designed to structurally accommodate an elevation to 7.26' NGVD in the future, staff is supportive of the requested variance.

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: April 14, 2023

PROPERTY: 800 Lakeview Dr.

FOLIO: 02-3222-022-1360

FILE NO. ZBA23-0144

IN RE: An application for a variance from the minimum seawall height requirements in order to construct a new seawall along the property, which contains an existing 2-story home, to be retained.

LEGAL

DESCRIPTION: Lot 8, Block 30, of Lake View Subdivision, according to the Plat Thereof, as Recorded in Plat Book 14, Page 42, of the Public Records of Miami-Dade County, Florida.

FINAL ORDER

The applicants, Ariel Furst and Lilliam Furst, filed an application with the Planning Department for the following variance:

1. A variance from the minimum seawall height requirement of 7.26' NGVD (5.7' NAVD), in order to construct a new seawall to a height of 5.56' NGVD (4.0' NAVD).

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. 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.
 2. 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.
 3. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
 4. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
 5. 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.
 6. 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.
 7. 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

