

MIAMI BEACH

PLANNING DEPARTMENT
Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Members
Planning Board

DATE: May 5, 2023

FROM: Thomas R. Mooney, AICP
Planning Director

DS


For TRM

SUBJECT: **ZBA23-0145**
4454 North Meridian Avenue

An application has been filed requesting an after-the-fact variance from the side setback requirements for the construction of a pergola structure in the front yard of the existing home.

RECOMMENDATION

Approval.

Background

On December 7, 2021, the applicant applied for a building permit for the construction of the subject pergola, to be located on the south side of the property. This permit application, as is the case with all building permits for such construction, are submitted through the Building Department, which then assigns the plans for review by the various departments. For some reason, the Planning Department was not assigned to review the plans, and on February 7, 2022, the permit was issued without having been reviewed by the Planning Department.

Although not assigned to review the building permit, the Planning Department was assigned to the Final Inspection. On November 14, 2022, a Planning Department inspector inspected the construction, and it was then discovered that the plans did not comply with the required setbacks. As the Planning Department reviews the required setbacks as part of the building permit review process, and the permit was never assigned for review by Planning, the owner and the contractor were not aware of this issue of non-compliance prior to the final inspection by the Planning Department.

ZONING/SITE DATA

Folio: 02-3222-010-0670

Legal Description: Lot 19, Block 30, Nautilus 5th Ext., according to the Plat thereof, as recorded in Plat Book 44, Page 13 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: 9,545 square feet

Unit size: (No Change)

Existing: ~4,500 SF* / 47.1% (*according to County records)

Maximum: 4,772 SF / 50%

Board of Adjustment
ZBA23-0145. 4454 N. Meridian Ave
May 5, 2023

Page 2 of 5

Year Constructed: 1949
Surrounding Uses: North: 1-story 1946 home
East: 2-story 1990 home
2-story 1938 home
West: 1-story 1949 home
South: 1-story 1950 home

THE PROJECT

The applicant has submitted plans entitled "Samek Residence" as prepared by **Eastern Engineering Group**, dated 10-21-2021, in association with Building Permit # BR2106185. The plans include a new trellis structure, with overall length of 28 feet, and width of 7 feet, not including the structural supports.

The applicant is requesting the following variance:

1. A variance to reduce by 5'-0" the minimum required side yard setback of 10'-0" in order to construct a single story covered pergola, with a side setback of 5'-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 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.

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-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.

N/A

- (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.

N/A

- (8) Existing buildings shall, wherever reasonably feasible and economically appropriate, be 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 54 of the city Code.

N/A

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

N/A

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

N/A

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

Satisfied

ANALYSIS

As noted in the background section of this report, through no fault of the property owner, the Planning Department was not assigned to review the building permit for the pergola structure, where compliance with the setback requirements would have been reviewed. In order to correct this oversight, the applicant is requesting a variance from the required side setbacks.

Originally constructed in 1949, the existing one and two story home fits in well with the established character of the neighborhood. The majority of the home is well setback from Meridian Ave, with the two-story portion setback 25 feet, and the single story portion setback 50 feet. Due to this greater setback along the south side of the site, this southeastern quadrant of the property was the best location for the placement of a pool and pool deck, which was recently permitted and constructed. The pergola structure was constructed along the south side of the pool deck.

The applicant is requesting the following variance:

1. A variance to reduce by 5'-0" the minimum required side yard setback of 10'-0" in order to construct a pergola structure with a setback of 5'-0".
 - 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.*

c. Interior sides.

*1. For lots greater than 65 feet in width each interior side yard shall have a minimum of ten percent of the lot width or **ten feet**, whichever is greater*

The overall dimensions of the pergola are 28 feet in length x 7 feet in width (not including the structure), x 8'4" in height above the finished pool deck. It is supported by six (6) structural columns and is open on all sides. Because the lot width (~84 feet) is greater than 65 feet, the minimum required setback for any structure is 10'-0". The footprint and location of the existing home creates practical difficulties as it pertains to meeting the minimum setback requirements for the pergola structure. Additionally, the pergola structure is open on all sides and is associated with the retention of a home that embodies the low-scale character of the surrounding neighborhood. Staff is supportive of the requested variance.

Older homes were often built with side setbacks of 5'-0" feet, and the subject pergola structure is consistent with the same setback. As such, it is not out of scale or character with the neighborhood. Because it is open on all sides, it has a much lesser impact compared to an enclosed building that actually meets the minimum setback requirements.

Due to the reasons identified herein, staff believes the hardship and practical difficulty criteria for the granting of the requested variance has been satisfied. Accordingly, staff recommends approval of the 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 Practical Difficulty and Hardship Criteria and Sea Level Rise criteria.