

MIAMI BEACH

PLANNING DEPARTMENT


Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Members
Planning Board

DATE: July 7, 2023

FROM: Thomas R. Mooney, AICP
Planning Director

 For TRM

SUBJECT: **ZBA23-0149**
5413 LaGorce Drive

An application has been filed requesting after-the-fact variances from the required side yard setback, for the construction of a pergola structure and deck within the rear yard, and a variance for the installation of artificial turf within the yard of a single-family property.

RECOMMENDATION

Approval.

Background

On June 7, 2022 a citation was issued for the construction of the outdoor pergola, and associated cabinetry without a building permit (BVB22001884). In order to correct the violation, on September 1, 2022, the applicant applied for a building permit for the construction of the pergola and outdoor counter and grill, to be located in the rear yard. The permit also included the installation of artificial turf in large portions of the side and rear yards. 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 October 28, 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 February 2, 2023, a Planning Department inspector inspected the construction, and it was then discovered that the plans did not comply with the required side setback. 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: 02-3214-003-0981

Legal Description: Lot 13, Block 5, Beach View Subdivision, according to the Plat thereof, as recorded in Plat Book 9, Page 158 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

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Lot Size: 7,700 square feet
Unit size: (No Change)
Existing: ~2,206 SF* / 28.6% (*according to County records)
Maximum: 3,850 SF / 50%

Year Constructed: 1972
Surrounding Uses: North: 2-story 1936 home
East: 2-story 1930 home
West: 1-story 1947 home
South: 2-story 1969 home

THE PROJECT

The applicant has submitted permit plans for 5413 La Gorce Drive, in association with Building Permit # BR2207223. The plans include a new 15' x 15' pergola structure, with an overall height of 8'-3" measured from the top of the slab in which it is placed (7.1' NGVD). The applicant has also submitted a plan entitled "Property Survey with Artificial Grass, dated 5-16-2023.

The applicant is requesting the following variances:

1. **Section 7.2.2.3(b)(xii)** A variance to reduce by 1'-6" the minimum required side yard setback of 7'-6" in order to construct a single story pergola, deck and associated outdoor kitchen, with a side setback of 6'-0".
2. **Section 7.2.2.3(b)(i)(6)** A variance from the requirement that at least 70% of the required rear yard shall be sodded or landscaped pervious open space in order to provide a pervious open space of 60% of the required rear yard.
3. **Section 7.2.2.3(b)(i)(6)** A variance from the maximum permitted 44" width for walkways (constructed with artificial turf) for walkways with the required side yards.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, staff has concluded that the plans and documents submitted with the application comply with the following hardship criteria, as they relate to the requirements of Section 2.8.3 of the Land Development Regulations:

- i. 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;
- ii. The special conditions and circumstances do not result from the action of the applicant;
- iii. Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;

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- iv. Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;
- v. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
- vi. The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare;
- vii. 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; and
- viii. 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 7, article I, 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 variances. 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 7.1.2.4(a)(i) of the Land Development Regulations 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.
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 4 of the Land Development Regulations..
Satisfied, existing landscaping around the perimeter of the rear and side yards will be retained.
- 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-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.

Not Applicable

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.

Not Applicable

8. Existing buildings shall be, where reasonably feasible and economically appropriate, 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 of 54 of the City Code.

Not Applicable

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

Not Applicable

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

Satisfied

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

Satisfied

ANALYSIS

The subject site includes an existing single-story building, constructed in 1972, with an accessory pool and pool deck with the rear yard. The existing home is well under the maximum thresholds for lot coverage and unit size.

As noted in the background section of this report, the work that is the subject of the variance request was done on the property without a permit. Had the Planning Department been included in the review sequence for the after-the-fact building permit, the code inconsistencies would have been identified earlier. To retain the work done on site, the applicant is requesting the following variances:

1. **Section 7.2.2.3(b)(xii)** A variance to reduce by 1'-6" the minimum required side yard

setback of 7'-6" in order to construct a single story pergola, deck and associated outdoor kitchen, with a side setback of 6'-0".

Variance requested from:

ACCESSORY BUILDING STANDARDS TABLE (RS)	
Maximum Lot Coverage (%)	25% of the area of the required rear yard (1)
Size Calculations	The area of enclosed accessory buildings shall be included in the overall unit size calculation for the site.
ACCESSORY BUILDING SETBACKS	
Front and Side facing a street Setback (A) (B)	
1 Story Structures	15 feet
2 Story Structures	15 feet
Side interior Setback (C)	
1 Story Structures	7.5 feet
2 Story Structures	10 feet or the required side yard setback, whichever is greater
Rear Setback (D)	
1 Story Structures	7.5 feet One-half (1/2) of the required rear setback - When facing a waterway
2 Story Structures	15 feet One-half (1/2) of the required rear setback or 15 feet, whichever is greater - When facing a waterway

2. **Section 7.2.2.3(b)(i)(6)** A variance from the requirement that at least 70% of the required rear yard shall be sodded or landscaped pervious open space in order to provide a pervious open space of 60% of the required rear yard.

The area of the required rear yard is ~1248 SF

70% of that (874 SF) is required to be sodded or landscaped pervious open space

Of the 874 SF, a maximum of 50% may be sod or artificial turf (437 SF)

~340 SF is artificial turf

~270 SF is landscaping

~156 SF is water portion of pool

~766 SF total pervious open space (61%)

Variance requested from:

Section 7.2.2.3(b)(i)(6) At least 70 percent (70%) of the required rear yard shall be sodded or landscaped pervious open space; 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.

Variances 1 & 2 are for the construction of a deck and pergola structure within the rear yard. The city code requires a side setback of 7'-6" for such structures and they were constructed with a setback of 6'-0". The structures do comply with the required rear yard setback of 7'-6" and older accessory structures in the rear yard within the neighborhood were often constructed with side and rear setbacks as little as five (5') feet. It appears that a number of the homes on the block have accessory buildings located within the required rear yard, and the proposed structure would not be inconsistent with the character of the neighborhood. Due to the practical difficulties associated with dimensions of the property and the site constraints, staff is supportive of variances 1 & 2.

3. **Section 7.2.2.3(b)(i)(6)** A variance from the maximum permitted 44" width for walkways (constructed with artificial turf) for walkways with the required side yards.

Variance requested from:

Section 7.2.2.3(b)(xii)(13)(XI) Walkways: Maximum 44 inches. May be increased to a maximum of 5 feet for those portions of walkways necessary to provide Americans with Disabilities Act (ADA)-required turn-around areas and spaces associated with doors and gates.

The city code has provisions for the installation of artificial turf within a required rear, which may not be used to satisfy more than 50% of the landscaped open space requirement. However, artificial turf is not permitted to satisfy minimum landscape requirements within a required side or front yard. Because of this, artificial turf can be treated as an allowable hardscape surface finish within the required front and side yards (e.g., allowable walkway). While natural landscape is located along the majority of the side and rear property lines, the portion of the north side yard includes artificial turf between the home and the wood fence along the property line. Due to the practical difficulty and expense associated with maintaining a natural landscaped edge, staff does not object to the requested variance.

Due to the reasons identified herein, staff believes the hardship and practical difficulty criteria for the granting of the requested variances have been satisfied and recommends approval as requested.

RECOMMENDATION

In view of the foregoing analysis, staff recommends the application be **approved**, including the requested variances, 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.

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

MEETING DATE: July 7, 2023

PROPERTY: 5413 LaGorce Drive

FOLIO: 02-3214-003-0981

FILE NO. ZBA23-0149

IN RE: An application for after-the-fact variances from the required side yard setback, for the construction of a pergola structure and deck within the rear yard, and a variance for the installation of artificial turf within the yard of a single-family property.

LEGAL

DESCRIPTION: Lot 13, Block 5, Beach View Subdivision, according to the Plat thereof, as recorded in Plat Book 9, Page 158 of the Public Records of Miami-Dade County, Florida.

FINAL ORDER

The applicants, Joseph Ziolkowski and Terra Ziolkowski, filed an application with the Planning Department for the following variances:

1. **Section 7.2.2.3(b)(xii)** A variance to reduce by 1'-6" the minimum required side yard setback of 7'-6" in order to construct a single story pergola, deck and associated outdoor kitchen, with a side setback of 6'-0".
2. **Section 7.2.2.3(b)(i)(6)** A variance from the requirement that at least 70% of the required rear yard shall be sodded or landscaped pervious open space in order to provide a pervious open space of 60% of the required rear yard.
3. **Section 7.2.2.3(b)(i)(6)** A variance from the maximum permitted 44" width for walkways (constructed with artificial turf) for walkways with the required side yards.

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 2.8.3 of the Land Development Regulations. Accordingly, the Board of Adjustment has determined the following:
 - i. 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;
 - ii. The special conditions and circumstances do not result from the action of the applicant;

- iii. Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;
 - iv. Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;
 - v. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
 - vi. The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare;
 - vii. 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; and
 - viii. 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 7, article I, as applicable.
- B. The Board hereby **Approves** the requested variance and imposes the following conditions based on its authority in Section 2.8.4 of the Land Development Regulations:
- 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 uploaded to the Building Permit file.
 - 3. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
 - 4. 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.
 - 5. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
 - 6. 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.

7. 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.
8. The Final Order shall be recorded in the Public Records of Miami-Dade County.

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 after-the-fact variance 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 in accordance with the conditions set forth in this Order, as applicable, with staff review and approval.

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.

If the Full Building 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 Section 2.2.4.6 of the Land Development Regulations; the granting of any such extension of time shall be at the discretion of the Board. If the Full Building Permit for the project shall expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the application will expire and become null and void.

In accordance with Chapter 2 of the Land Development Regulations, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this **Order** shall subject the application to Chapter 2 of the Land Development Regulations, for revocation or modification of the application.

Dated _____.

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