

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

DS
MB

For TRM

SUBJECT: **ZBA23-0147**
625 W 42nd Street

An application has been filed requesting after-the-fact variances from the required rear yard setback, side yard setbacks, and from the maximum permitted lot coverage in a required rear yard, for the construction of two (2), one-story additions to an existing single-story home.

RECOMMENDATION

Approval.

Background

On February 14, 2023, a building violation was issued for the construction of a laundry room and a bathroom addition without a building permit (BVC23001044). The applicant was advised that to correct the violation they could either demolish the unpermitted construction or attempt to have it permitted. The applicant is attempting to permit the construction and is requesting several variances in order to continue the permitting process.

ZONING/SITE DATA

Folio: 02-3222-001-1680

Legal Description: Lot 1, Block 12, Orchard Subdivision No. 4, 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: 7,182 square feet

Unit size / Lot Coverage *

Previous: 1,810 SF / 25.2%

Proposed: 2,180 SF / 30.4%

Maximum: 3,591 SF / 50%

*For a single-family home constructed prior to 1965

Year Constructed: 1937

Surrounding Uses:
North: 1-story 1942 home
East: 2-story 1935 home
West: 2-story Miami-Dade County School
South: Surface City Parking Lot

THE PROJECT

The applicant has submitted plans and exhibits entitled "Code Relief Addition, 625 W 42nd Street", dated 5-9-2023. The plans include a request for after the fact variances in association with the construction of two (2) single story additions; one in the rear yard (264 SF) and one in the interior side yard (106 SF).

The applicant is requesting the following variances:

1. **Section 7.2.2.3(b)(i)** A variance from the minimum required side yard setback of 7'-6" in order to construct a laundry room addition with an interior side yard setback of 3.1 feet and a bedroom addition with an interior side yard setback of 0.7 feet.
2. **Section 7.2.2.3(b)(i)** A variance from the required rear yard setback of 20 feet, in order to construct a bedroom and bathroom addition with a rear setback of two (2') feet.
3. **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 63% of the required rear yard.

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;
- 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.
Not Satisfied; Staff is recommending that a full landscape plan be developed for the site.
- 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 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.

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.

To be Determined at time of building permit

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

Not Applicable

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

Not 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 1937 on a corner lot. The existing home is well under the maximum thresholds for lot coverage and unit size and has a non-conforming rear setback. The finished floor level, at 5.5' NGVD is also located well below the minimum required floor level for new construction (BFE 8' NGVD + 1 foot).

The applicant is requesting the following after-the-fact variances:

1. **Section 7.2.2.3(b)(xii)** A variance from the minimum required side yard setback of 7'-6" in order to retain a laundry room addition (106 SF) with an interior side yard setback of 3.1 feet and a bedroom addition (264SF) with an interior side yard setback of 0.7 feet.
2. **Section 7.2.2.3(b)(i)** A variance from the required rear yard setback of 20 feet, in order to retain a bedroom and bathroom addition(264 SF) with a rear setback of two (2') feet.

Notwithstanding the applicant's flood risk in constructing additions at the existing finished floor level of 5.5' NGVD, this lower elevation does mitigate the impact of the additions on neighboring properties. For comparison purposes, a fence or wall is allowed along an interior side yard at a

height of seven (7') feet above future adjusted grade. For this property, future adjusted grade is approximately 7.5' NGVD, and the top of any wall could be placed up to a height of 11.5' NGVD with a 3 foot picket fence on top, up to a total elevation of 14.5' NGVD. As constructed, the roofs of the additions are located at an elevation of approximately 14' NGVD, below the height that would be allowed for a fence in the rear or side yard.

Further, for zoning purposes, the height of the additions are measured from BFE plus 1 foot (+9' NGVD), resulting in a zoning height of 5 feet when measured from that datum, although 8.5' from the new finished floor elevation. For further comparison, and to stress the comparatively low scale of the construction, a new single story house could be built on the property with the required 7.5' side setback, and the level of the first floor placed at an elevation of BFE plus 5 feet (+13' NGVD). A new home built to that level would have its first floor located just one (1') foot below the roof of the subject additions, and then would be up to 24 feet in height above that (for a flat roof).

The property to the north (the abutting interior side yard), is owned by a foundation, which is run by the applicant and his family, which further reduces the immediate impact of the construction on neighboring properties. The property to the east (abutting rear yard) contains a 2-story accessory structure in the rear yard, with a setback of approximately five (5') feet.

3. **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 63% of the required rear yard.

The area of the required rear yard is ~1250 SF. 70% of that (875 SF) is required to be sodded or landscaped pervious open space. Prior to the addition in the rear yard, the open space provided was approximately 1,023 SF (81.8%) and the addition lowers that to ~794 SF (63%).

It should be noted that homes that are classified as architecturally significant can take advantage of reduced setbacks, and accordingly, a reduction in the open landscape requirements in a rear yard. This home would qualify for that designation, and would then meet the open space requirements in the rear yard. However, because of the setbacks proposed for the additions, the construction could not be approved administratively.

Considering that the property contains a pre-1942 home that would likely qualify as architecturally significant, and due to the practical difficulty involved in constructing additions on the property with the existing constraints of the site, staff is supportive of the requested variances. In order to further mitigate the requested variances, staff is recommending as a condition of approval that a full landscape plan be submitted for review and approval as part of the building permit application. Staff is also recommending that the unpermitted driveway expansion on Prairie Avenue be removed, or permitted in compliance with the required setback and open space requirements.

Finally, staff would note that if the requested variances are granted, the applicant must still satisfy all requirements of the applicable building and city codes for an after-the-fact building permit to be issued. 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, subject to the conditions in the attached draft order.

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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: 625 West 42nd Street

FOLIO: 02-3222-001-1680

FILE NO. ZBA23-0147

IN RE: An application for after-the-fact variances from the required rear yard setback, side yard setbacks, and from the maximum permitted lot coverage in a required rear yard, for the construction of two (2), one-story additions to an existing single-story home.

LEGAL DESCRIPTION: Lot 1, Block 12, Orchard Subdivision No. 4, 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, Stephen Kalos, filed an application with the Planning Department for the following variances:

1. **Section 7.2.2.3(b)(i)** A variance from the minimum required side yard setback of 7'-6" in order to construct a laundry room addition with an interior side yard setback of 3.1 feet and a bedroom addition with an interior side yard setback of 0.7 feet.
2. **Section 7.2.2.3(b)(i)** A variance from the required rear yard setback of 20 feet, in order to construct a bedroom and bathroom addition with a rear setback of two (2') feet.
3. **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 63% of the required rear yard.

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 variances and imposes the following conditions based on its authority in Section 2.8.4 of the Land Development Regulations:

- 1. Revised elevation, site plan, and floor plan drawings shall be submitted, at a minimum, such drawings shall incorporate the following:
 - a. Roof projections shall be modified, if required, to ensure that no portion of the construction extends beyond the property lines, subject to the review and approval of staff.
 - b. The driveway and parking at the front of the property shall be modified to comply with the code requirements, including the required side setback, subject to the review and approval of staff.
 - c. A right-of-way permit for the driveway expansion in the front yard shall be permitted, or removed if it cannot be permitted, subject to the review and approval of the Public Works Department.
 - d. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.

2. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding plans shall be submitted to and approved by staff. The species, type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plans shall comply with Chapter 4-Landscape Requirements of the Miami Beach Code and shall incorporate the following:
 - a. Existing landscaping/fences/walls shall be modified/removed to comply with the line-of-sight visibility triangle requirements, subject to the review and approval of staff.
 - b. Street trees shall be required within the swale at the front of the property if not in conflict with existing utilities, in a manner to be reviewed and approved by the Public Works Department. Any new street trees shall be of a consistent canopy tree species as similar to the neighboring trees along the street.
 - c. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.
 - d. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.
 - e. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
 - f. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect or the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.
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 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 _____.

