

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### Board of Adjustment

TO: Chairperson and Members  
Planning Board

DATE: September 8, 2023

FROM: Thomas R. Mooney, AICP  
Planning Director

DS  
MB for TRM

SUBJECT: **ZBA23-0137**  
**5500 La Gorce Dr.**

An application has been filed requesting variances from the minimum required street side setback and maximum lot coverage, in order to construct a partial second floor addition to an existing single-story single-family home.

### **RECOMMENDATION**

Approval.

### **ZONING/SITE DATA**

Folio: 02-3214-003-1520

Legal Description: Lot 1, Block 13, Beach View, 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

Lot Size: 7,406 SF

#### Lot Coverage

Existing:	3,023 SF / 40.8%
Proposed:	3,104 SF / 41.9%
Maximum:	2,221 SF / 30%

#### Unit Size:

Existing:	2,641SF / 35.7%
Proposed:	3,702 SF / 50%
Maximum:	3,703 SF / 50%

#### Height

Existing:	9.24'*
Proposed:	21.89'*

\* as measured from BFE + 1'

Year Constructed: 1962

Surrounding Properties:

North:	2-story 1939 home
East:	1-story 1949 home
West:	La Gorce golf course
South:	2-story 2021 undestory home

### **THE PROJECT**

The applicant has submitted plans and exhibits entitled "5500 La Gorce Dr. Gelpi Residence", as prepared by Nicholas Gelpi, dated 7-10-2023. The applicant is proposing to construct a small single story in-fill addition within an existing covered breezeway on the north side of the existing single-story home, and a larger second floor addition along the south side of the site.

The applicant is requesting the following variances:

1. **Section 7.2.2.3(b)(i)** A variance from the minimum required street side yard setback of 15'-0" order to construct a second floor addition following the existing setback ranging from 5.7' to 6.8'.
2. **Section 7.2.2.3(b)(i)** A variance from the maximum lot coverage of 30% for a 2-story home, in order to construct a ground floor addition and a second-floor addition onto the existing home, and provide a lot coverage of 41.9%

### **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.  
**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 4 of the Land Development Regulations.  
**Not Applicable**
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.  
**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.

**Satisfied**

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.

**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 originally constructed in 1962 on a corner lot, with the rear yard abutting the La Gorce golf course. The existing home has non-conforming side setbacks; 5 feet (vs. 7.5') on the north and 5.7 feet (vs. 15 feet) on the south. The finished floor level of the existing home, at 7.36' NGVD, is also located below the minimum required floor level for new construction (BFE 8' NGVD + 1 foot).

The applicant is requesting the following variances:

1. **Section 7.2.2.3(b)(i)** A variance from the minimum required street side yard setback of 15'-0" order to construct a second floor addition following the existing setback ranging from 5.7' to 6.8'.

BUILDING SETBACKS	RS-1	RS-2	RS-3	RS-4
Front Setback Ⓐ	20 feet -1 Story Structure (5) - provided that any future addition of a two-story attached structure shall be setback a minimum of 40 feet 30 feet - 2 Story Structures - (5)			
Side, facing a street Setback Ⓑ	<b>10% of the lot width or 15 feet, whichever is greater</b> (5) and the sum of the required side yards shall be at least 25% of the lot width			

Side, Interior Setback © Lots 65 feet in width or less	7.5 feet and the sum of the required side yards shall be at least 25% of the lot width
Side, Interior Setback © Lots greater than 65 feet in width	10% of the lot width or 10 feet, whichever is greater and the sum of the required side yards shall be at least 25% of the lot width
Rear Setback ①	15 % of the lot depth (6) 20 feet minimum 50 feet maximum

As indicated by the applicant/architect for the project, he has lived in the existing single-story home with his family since 2015. A prior renovation of the home slightly increased the square footage, and with a growing family there is a desire to now increase the size of the home from 3 bedrooms to 5 bedrooms, with the two additional bedrooms and two bathrooms proposed on a new second floor.

Staff believes that practical difficulties exist for the construction of a second floor addition to the subject property. Shifting the addition to the north to comply with the required street side setback would cover the deeply recessed front courtyard, which would also drastically increase the lot coverage for the site, far beyond the minimal lot coverage increase requested with Variance #2 below. It would also present structural challenges with second floor walls not aligning with the first floor walls.

The south side of the property is also separated from the neighboring property to the south by a 60 foot wide street-end right-of-way. The existing 2-story house to the south was constructed in 2021 and includes an understory level that is approximately 6 feet taller than the height of the proposed new addition. The second floor is also setback approximately 47 feet from the front property line, mitigating any impact on the neighborhood.

2. **Section 7.2.2.3(b)(i)** A variance from the maximum lot coverage of 30% for a 2-story home, in order to construct a ground floor addition and a second-floor addition onto the existing home, and provide a lot coverage of 41.9%

DEVELOPMENT REGULATIONS TABLE (RS)				
	RS-1	RS-2	RS-3	RS-4
Maximum FAR	N/A			
Maximum Density (Dwelling Units per Acre)	7 DUA			
Minimum Unit Size (Square Feet)	1,800 SF			
Maximum Unit Size (% of Lot Area)	50%			
LOT OCCUPATION	RS-1	RS-2	RS-3	RS-4
Minimum Lot Area (square feet)	30,000 SF	18,000 SF	10,000 SF	6,000 SF

#### DEVELOPMENT REGULATIONS TABLE (RS)

Minimum Lot Width (feet)	100 feet (1)	75 feet (1)	50 feet - Oceanfront lots (1) 60 feet - All others (1)	50 feet (1)
<b>Maximum Lot Coverage for a single-story Home (% of lot area)</b>	<b>40% (2)</b>			
Maximum Lot Coverage for a 2story Home (% of lot area)	30%			

*Notwithstanding the foregoing, for existing one-story structures constructed prior to 1965, the maximum lot coverage shall not exceed 50 percent (50%).*

The maximum lot coverage for the existing pre-1965 single story home is 50%. The addition of the proposed second floor does not increase the current lot coverage of 40.8%, but a small in-fill addition within an existing covered breezeway on the north side of the site (connecting the garage to the home) increases the lot coverage to 41.9%.

Even without the small addition on the north side, a second-floor addition would not be permitted under the current regulations, as the maximum lot coverage for a 2-story home is limited to 30%. As noted above, the location and design of the existing house results in practical difficulties for the construction of additions on the site. The proposed increase in lot coverage includes an area that is already covered, but partially exempted from counting as lot coverage, and does not remove any landscaping or pervious area.

In summary, due to the practical difficulties noted above, staff is supportive of the requested variances and recommends approval of the application.

#### **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:** September 8, 2023

**PROPERTY:** 5500 La Gorce Dr.

**FOLIO:** 02-3214-003-1520

**FILE NO.** ZBA23-0137

**IN RE:** An application has been filed requesting variances from the minimum required street side setback and maximum lot coverage, in order to construct a partial second floor addition to an existing single-story single-family home.

**LEGAL**

**DESCRIPTION:** Lot 1, Block 13, Beach View, 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 applicant, Nicholas Gelpi, 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 street side yard setback of 15'-0" order to construct a second floor addition following the existing setback ranging from 5.7' to 6.8'.
2. **Section 7.2.2.3(b)(i)** A variance from the maximum lot coverage of 30% for a 2-story home, in order to construct a ground floor addition and a second-floor addition onto the existing home, and provide a lot coverage of 41.9%

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. 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. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.
    - b. 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.



- c. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
  - d. 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 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 \_\_\_\_\_.

BOARD OF ADJUSTMENT  
CITY OF MIAMI BEACH, FLORIDA

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

STATE OF FLORIDA        )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by Michael Belush, Planning & Design Officer of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary:  
Print Name:  
Notary Public, State of Florida  
My Commission Expires:  
Commission Number:

Approved As To Form:  
City Attorney's Office \_\_\_\_\_ ( )  
  
Filed with the Clerk of the  
Board of Adjustment on \_\_\_\_\_ ( )