

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

**MEETING DATE:** September 8, 2023

**PROPERTY:** 625 West 42<sup>nd</sup> 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;

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- 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. At the applicant's discretion, the bathroom addition may be expanded and extended southward for up to three (3') additional feet, with a minimum rear setback of two (2') feet, in a manner to be reviewed and approved by staff.
  - b. Variance #3 may be modified, to the extent necessary, in order to accommodate the bathroom expansion noted in B.1.a., subject to the review and approval of staff.
  - c. 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.
  - d. 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.
  - e. 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.

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- f. 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.

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Meeting Date: September 8, 2023

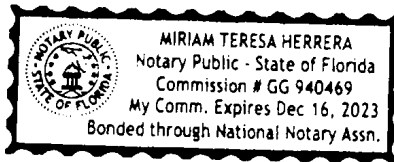
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Dated 9/20/2023 | 1:04 PM EDTBOARD OF ADJUSTMENT  
CITY OF MIAMI BEACH, FLORIDA

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BY: DEC3ECF2EB68404...Michael Belush, AICP  
Planning & Design Officer  
For the ChairSTATE OF FLORIDA       )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 21 day of September, 2023, 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: Miriam Herrera

Notary Public, State of Florida

My Commission Expires: 12-16-23Commission Number: 66940469Approved As To Form:  
City Attorney's Office

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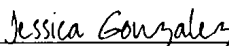


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Board of Adjustment on

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