

MIAMI BEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP
Planning Director



DATE: October 6, 2017 Meeting

RE: File No. ZBA17-0047
42 La Gorce Circle – Single Family Residence

The applicant, Mash Miami Inc. is requesting an after-the-fact variance to exceed the maximum height allowed for gates within the front yard facing La Gorce Circle for the two-story single family property.

STAFF RECOMMENDATION:

Approval of the variance with conditions.

HISTORY:

On September 11, 2015 the Board of Adjustment reviewed and approved a setback variance for the installation of light poles with approximately 20' in height associated to a tennis court on the property, pursuant to BOA File 3792.

On December 7, 2016 the Board of Adjustment reviewed and approved a setback variance for the installation of an electrical transformer in the front yard of the single family home, pursuant to file no. ZBA16-0030.

LEGAL DESCRIPTION:

See attached "Exhibit A".

SITE DATA:

Zoning -	RS-1
Future Zoning-	RS
Lot Size -	69,326 SF
Lot Coverage-	16,012 SF / 23%
Unit Size-	28,703 SF / 41%

EXISTING STRUCTURES:

Year Constructed:	1998
Architect:	Unknown
Vacant Lot:	No
Demolition:	No

THE PROJECT:

The applicant has submitted plans entitled "42 La Gorce Addition and Renovation-Gate Variance", as prepared by Kobi Karp, P. A., dated August 24, 2017.

The applicant is requesting approval for an after-the fact variance to exceed the maximum height allowed for gates within the front yard of the single family property.

The applicant is requesting the following variance:

1. An after-the-fact variance to exceed by 2'-11" the maximum height of 7'-0" for gates located within the front yard in order to retain two vehicular gates up to 9'-11" in height as measured from grade elevation of 4.85' NGVD facing La Gorce Circle.

- Variance requested from:

Sec. 142-1132. Allowable encroachments within required yards.

(h) Fences, walls, and gates. Regulations pertaining to materials and heights for fences, walls and gates are as follows:

(1) All districts except I-1:

a. Within the required front yard, fences, walls and gates shall not exceed five feet, as measured from grade. The height may be increased up to a maximum total height of seven feet if the fence, wall or gate is setback from the front property line. Height may be increased one foot for every two feet of setback.

Two new gates were installed as part of the perimeter wall along the front of the property. The gates are setback into the property approximately 7'-0" and 9'-0" from the front property line, but exceed the maximum height of 7'-0", as measured from grade. It should be noted that the existing perimeter wall was probably constructed with the original home on the site many decades ago, and its retention was required as a condition of approval for the granting of a prior variance. It is a substantial wall, which exceeds the height allowed under today's code.

Staff has no objections to the granting of the variance for the additional height increase, as the gates are well setback inside the property, are consistent in size to the original gate and the height increase is only for the recessed vehicular entries and not for the entire front of the property. Gates that comply with the maximum height of 7'-0" would not match the more substantial character of the existing wall and would appear out of place.

However, staff would recommend that the gates be modified with a more open design that is more contextually appropriate to the site, as the existing wall along the front is composed of a continuous solid wall and landscape and does not provide sufficient transparency as required by the Design Review Criteria established in the City Code, Section 118-251(a)16 as noted below:

Sec. 118-251. - Design review criteria.

(a) Design review encompasses the examination of architectural drawings for consistency with the criteria stated below, with regard to the aesthetics, appearances, safety, and function of any new or existing structure and physical attributes of the project in relation to the site, adjacent structures and surrounding community. The board and the planning department shall review plans based upon the below stated criteria, criteria listed in neighborhood plans, if applicable, and design guidelines adopted and amended periodically by the design review board and/or historic preservation board. Recommendations of the planning department may include, but not be limited to, comments from the building department and the public works department. If the board determines that an application is not consistent

with the criteria, it shall set forth in writing the reasons substantiating its finding. The criteria referenced above are as follows:

(16) All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest

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, allowing the granting of a variance if the Board of Adjustment finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that also indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

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;

That the special conditions and circumstances do not result from the action of the applicant;

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;

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;

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

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; and

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.

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 variance.

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.

STAFF ANALYSIS:

The project site, which contains multiple lots, has been under construction for several years. Multiple detached structures exist on the site for which numerous building permits and variances have been granted. As part of the construction work, two new vehicular gates have been constructed at the front of the property on the north and south sides facing La Gorce Circle. The applicant indicates that the gates were approved as part of building permit revision BREV161164; however, it is clear that the plans show that the maximum height of the proposed gates as 7'-0", even though they were graphically shown as larger. A temporary certificate of occupancy also has been approved for the house. Based on the zoning inspector note on the approved TCO below, the gates were not a part of the temporary zoning approval.

Under TCO1700131 the following comment was entered by the zoning inspector:

"Inspected and approved for TCO. Applicant has completed most of the work site and on the exterior of the residence in accordance with approved plans. However landscaping and front gates need to be finalized prior to the issuance of Final CO. In addition, contractor has submitted as-built and elevation certificate. Letter from architect and landscape architect prior to final CO."

Staff is not opposed to the requested variance conditioned to the modification of the gate design with a more open configuration to be reviewed and approved by staff in a manner consistently with the character of single family districts and the transparency requirements of the Design Review criteria.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **approval** of the variance subject to the conditions enumerated in the attached Draft Order which address the inconsistencies with the aforementioned Practical Difficulty and Hardship criteria, as applicable.

EXHIBIT 'A'

Parcel 1:

Lot 21, Block 1, of LA GORCE ISLAND, according to the Plat thereof, as recorded in Plat Book 34, at Page 83, of the Public Records of Miami-Dade County, Florida.

Parcel 2:

Lots 22, 23 and the Southwesterly half of Lot 24, Block 1, of LA GORCE ISLAND, according to the Plat thereof, as recorded in Plat Book 34, at Page 83, of the Public Records of Miami-Dade County, Florida. The said Southwesterly half of aforesaid Lot 24 being particularly described as follows:

For line beginning commence on the point on waterfront boundary line of said Block 1 where the boundary line between said Lots 23 and 24 intersects said water front boundary line of said Block 1; thence run in a Northeasterly direction along the water front boundary line of said Lot 24 for a distance of 50 feet, more or less, to a point, said point being half way between the said Point of Beginning and the point on the said water front boundary line of said Block 1 where the boundary line between Lots 24 and 25 of said Block 1 intersects said water front boundary line; thence run in a Southeasterly direction along a straight line to a point on the boundary line between said Lot 24 and La Gorce Circle, said point being 42.5 feet Northeasterly from the point where the boundary line between said Lots 23 and 24 intersects the boundary line between said Block 1 and said La Gorce Circle and being half way between the last described point and the point where the boundary line between said Lots 24 and 25 intersects said boundary line between said Block 1 and said La Gorce Circle; thence run in a Southwesterly direction along said boundary line between said Lot 24 and La Gorce Circle to the point where the boundary line between said Lots 23 and 24 intersects the boundary line between said Block 1 and said La Gorce Circle; thence in a Northwesterly direction along the boundary line between said Lots 23 and 24 for a distance of 200.7 feet, more or less, to the Point of Beginning.

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

PROPERTY: 42 La Gorce Circle

FILE NO. ZBA17-0047

IN RE: The application for an after-the-fact variance to exceed the maximum height allowed for gates within the front yard facing La Gorce Circle for the two-story single family property

**LEGAL
DESCRIPTION:** See attached 'Exhibit "A".'

MEETING DATE: October 6, 2017.

ORDER

The applicant, Mash Miami Inc, filed an application with the Planning Department for the following variance:

1. An after-the-fact variance to exceed by 2'-11" the maximum height of 7'-0" for gates located within the front yard in order to retain two vehicular gates up to 9'-11" in height as measured from grade elevation of 4.85' NGVD facing La Gorce Circle.

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 118-353(d) of the Miami Beach Code. Accordingly, the Board of Adjustment has determined the following:

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;

That the special conditions and circumstances do not result from the action of the applicant;

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;

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;

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

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; and

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.

- B. The Board hereby **Approves** the requested variance and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:
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. Revised elevation drawings of the gates with a 50% transparency shall be submitted to and approved by staff.
 3. A revised building permit shall be submitted to the Building Department to reflect updated elevation drawings.
 4. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building 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.

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(s) Approval is GRANTED for the above-referenced project, subject to those certain conditions specified in Paragraph B (Condition Nos. 1-10, inclusive) hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans approved by the Board of Adjustment, as determined by staff, entitled "42 La Gorce Addition and Renovation-Gate Variance", as prepared by Kobi Karp, P. A., dated August 24, 2017, modified in accordance with the conditions set forth in this Order and staff review and approval.

No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance as set forth in this Order have been met. 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 adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

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 Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. At the hearing on any such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. If the Full Building Permit should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), and not reinstated by the Building Official or designee, the Variance Approval will expire and become null and void.

Dated this _____ day of _____, 2017.

CITY OF MIAMI BEACH, FLORIDA

For the Chair

COUNTY OF MIAMI-DADE)

personally known to me.

[NOTARIAL SEAL]

Commission Number:

City Attorney's Office ()

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

EXHIBIT 'A'

Parcel 1:

Page 83, of the Public Records of Miami-Dade County, Florida.

Parcel 2:

That the said Southwesterly half of aforesaid Lot 24 being particularly described as follows:

1; thence run in a Northeasterly direction along the water front boundary line of said Lot 24 for a

distance of 50 feet, more or less, to a point, said point being half way between the said Point of Beginning and the point on the said water front boundary line of said Block 1 where the boundary line between Lots 24 and 25 of said Block 1 intersects said water front boundary line; thence run in a Southeasterly direction along a straight line to a point on the boundary line between said Lot 24 and La Gorce Circle, said point being 42.5 feet Northeasterly from the point where the boundary line between said Lots 23 and 24 intersects the boundary line between said Block 1 and said La Gorce Circle and being half way between the last described point and the point where the boundary line between said Lots 24 and 25 intersects said boundary line between said Block 1 and said La Gorce Circle; thence run in a Southwesterly direction along said boundary line between said Lot 24 and La Gorce Circle to the point where the boundary line between said Lots 23 and 24 intersects the boundary line between said Block 1 and said La Gorce Circle; thence in a Northwesterly direction along the boundary line between said Lots 23 and 24 for a distance of 200.7 feet, more or less, to the Point of Beginning.