


MIAMI BEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP
Planning Director 

DATE: October 6, 2017 Meeting

RE: File No. ZBA17-0049
5346 Pine Tree Drive – Single Family Residence

The applicants, Alvaro and Maritza Alencar are requesting a variance to exceed the maximum projection allowed within required yards for a new addition of a carport for the two-story single family home.

STAFF RECOMMENDATION:

Approval of the variance with conditions.

LEGAL DESCRIPTION:

Lot 5, Block 6, of "Beachview Subdivision", According to the Plat Thereof, as recorded in Plat Book 9 at Page 158 of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Zoning -	RS-4
Future Zoning-	RS
Lot Size -	7,500 SF
Lot Coverage	
Existing-	2,251 SF / 30%
Proposed-	2,251 SF / 30%*
Maximum-	3,000 SF / 40%
Unit size	
Existing-	3,389 SF / 45.1%
Proposed-	3,837 SF / 51%*
Maximum-	4,500 SF / 60%
Height	
Existing-	~26'-0" – two-stories
Proposed-	same

EXISTING STRUCTURE:

Year Constructed:	1928
Architect:	Vaniloff Anderson & Ellison
Vacant Lot:	None
Demolition:	Partial

* Area as provided on plans

THE PROJECT:

The applicant has submitted documents and plans entitled "Alencar Residence" as prepared by ITEC Design, signed and sealed August 24, 2017.

The applicant is requesting approval for the construction of a carport including a variance to exceed the maximum projection allowed within required yards.

The applicant is requesting the following variance:

1. A variance to exceed by 28.3% (2'-10") the maximum projection of 25% (2'-6") within the required interior side yard of 10'-0" in order to construct a one story carport at 4'-8" from the property line and 53.3% (5'-4") projection within the south side yard.

- Variance requested from:

Sec. 142-108. - Provisions for the demolition of single-family homes located outside of historic districts

(g) New construction requirements for properties containing a single-family home constructed prior to 1942.

2) Regulations for additions to architecturally significant homes which are substantially retained and preserved. In addition to the development regulations and area requirements of section 142-105, of the land development regulations of the City Code, the following shall apply in the event an architecturally significant single-family home constructed prior to 1942 is substantially retained and preserved. In the event of a conflict between the provisions of section 142-105, 142-106 and section 118-252, and the regulations below, the provisions herein shall control:

j. Projections. Habitable additions to, as well as the relocation of, architecturally significant structures, may project into a required rear or side yard for a distance not to exceed 25 percent of the required yard, up to the following maximum projections:

1. Interior side yard: Five feet.

Typically, a carport is a temporary type of construction, consisting of pipe and canvas, and attached to a home for the purpose of shading a vehicle. It is allowed with a side setback of four (4') feet and can be constructed as close as 18 inches to a front property line. The applicant is proposing a permanent carport, constructed of masonry units with a solid roof. Because of this, it is treated the same as any permanent construction for zoning purposes.

As proposed, the carport will be constructed on the existing driveway at the south side of the property. The design is consistent with the Med-Revival style of the original home, constructed in 1928. The existing driveway originally served as access to a garage located at the rear of the property. This addition does not increase the lot coverage or the unit size of the home. The carport is located in the most convenient location on the property, and does not negatively impact the character of the architecturally significant home. Based on the existing setbacks of the home, any addition at the ground level would require a variance. The setbacks of the existing structure exceed the minimum required in all yards. The front setback is 24 feet and 32 feet, where 20 feet is required. The sides setbacks are 13' and 11', where 10' is required, and the rear setback is 41.8' where 20' is required. In addition, the location of the pool, immediately adjacent to the home at the rear, restrict the area available for an addition. The existing unusually large setbacks of the home create the practical difficulties that result in the variance requested. Typically, homes of this period

were often constructed with side setbacks of five (5') feet. Staff is supportive of the requested variance as the location proposed has the least impact on the overall character of the architecturally significant home.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that 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. **In this case, the requested variance is necessary in order to satisfy the Design Review criteria and not to adversely impact the existing significant structure.**

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 applicable requirements of the City Code, with the exception of the variance(s) requests herein. This 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 subject site is an interior lot containing a two-story residence constructed in 1928. As the home is architecturally significant, the lot coverage can be increased up to 40% and the unit size up to 60%. The applicant is proposing improvements to the home including a carport and new floor area at the second floor that extends to the front façade. The carport is located on the south side yard and requires a variance to exceed the maximum projection allowed for additions to architecturally significant homes that are retained.

The variance requested is the minimum necessary to improve the property while retaining the home on site. Staff finds that practical difficulties exist based on the unusually large setbacks on the front, sides and rear that impose difficulties to add any structure at the ground level. Because the carport is proposed where a driveway currently exists, the granting of the variance should not be detrimental to the adjacent property. In summary, staff recommends the approval of the variance as proposed.

RECOMMENDATION:

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

TRM:MAB:IV

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

PROPERTY: 5346 Pine Tree Drive

FILE NO. ZBA17-0049

IN RE: The application for a variance to exceed the maximum projection allowed within required yards for a new addition of a carport for the two-story single family home.

LEGAL DESCRIPTION: Lot 5, Block 6, of "Beachview Subdivision", According to the Plat Thereof, as recorded in Plat Book 9 at Page 158 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: October 6, 2017.

ORDER

The applicants, Alvaro and Maritza Alencar, filed an application with the Planning Department for the following variance:

1. A variance to exceed by 28.3% (2'-10") the maximum projection of 25% (2'-6") within the required interior side yard of 10'-0" in order to construct a one story carport at 4'-8" from the property line and 53.3% (5'-4") projection within the south side 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 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 variances 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. A revised landscape plan, and corresponding site plan, 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 plan shall incorporate the following:
 - a. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan for all trees to be retained on site. Such plan shall be subject to the review and approval of staff, and shall include, but not be limited to a sturdy tree protection fence installed at the dripline of the trees prior to any construction.
 - b. In order to identify, protect and preserve mature trees on site, which are suitable for retention and relocation, a Tree Report prepared by a Certified Tree Arborist shall be submitted for the mature trees on site.
 - c. Any tree identified to be in good overall condition shall be retained, and protected in their current location if they are not in conflict with the proposed home, or they shall be relocated on site, if determined feasible, subject to the review and approval of staff. A tree care and watering plan also prepared by a Certified Arborist shall be submitted prior to the issuance of a Building Permit or Tree Removal/Relocation Permit. Subsequent to any approved relocation, a monthly report prepared by a Certified Arborist shall be provided to staff describing the overall tree performance and adjustments to the maintenance plan in order to ensure survivability, such report shall continue for a period of 18 months unless determined otherwise by staff.
 - d. Existing trees to be retained on site shall be protected from all types of construction disturbance. Root cutting, storage of soil or construction

materials, movement of heavy vehicles, change in drainage patterns, and wash of concrete or other materials shall be prohibited.

- e. Any existing plant material within the public right-of-way may be required to be removed, at the discretion of the Public Works Department.
 - f. Canopy shade trees as required by code should be provided in the public ROW subject to the review and approval of the Urban Forestry Division and the Planning Department
 - g. 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.
 - h. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
 - i. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow preventors and all other related devices and fixtures. The location of backflow preventors, Siamese pipes or other related devices and fixtures, if any, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans, and shall be subject to the review and approval of staff.
 - j. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms. The location of any exterior transformers and how they are screened with landscape material from the right-of-way shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.
 - k. 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. 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.
 4. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
 5. The applicant shall comply with all conditions imposed by the Public Works Department.
 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 "Alencar Residence" as prepared by ITEC Design, signed and sealed 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.

BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Michael Belush, AICP
Chief of Planning and Zoning
For the Chair

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Michael Belush, Chief of Planning and Zoning 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 _____ ()