


MIAMI BEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP 
Planning Director

DATE: December 1, 2017 Meeting

RE: File No. ZBA17-0036
3040 Prairie Avenue – Single Family Residence

The applicants, Matan Ben Aviv & Michelle Ben Aviv are requesting variances to exceed the maximum lot coverage and unit size allowed for a two-story single family home in order to construct a one-story addition to the existing two-story single family home.

STAFF RECOMMENDATION:

Denial of the variances.

HISTORY:

On October 6, 2017, the Board continued the application to a date certain of November 3, 2017.

On November 3, 2017, the Board continued the application to a date certain of December 1, 2017.

LEGAL DESCRIPTION:

See attached Exhibit "A".

SITE DATA:

Zoning -	RS-4
Future Zoning-	RS
Lot Size -	10,205 SF
Lot Coverage	
Existing-	3,323 SF / 32.5%
Proposed-	3,579 SF / 35.0%*
Maximum-	3,061.5 SF / 30%
Unit size	
Existing-	5,674 SF / 55.6 %
Proposed-	5,930 SF / 58.1%*
Maximum-	5,102.5 SF / 50%
Height	
Existing-	2 stories - sloped roof
Proposed-	same

EXISTING STRUCTURE:

Year Constructed:	2004
Architect:	Corwill Architects
Vacant Lot:	None
Demolition:	Partial

* Variances Requested

THE PROJECT:

The applicant has submitted documents and plans entitled "Proposed Courtyard Conversion to Babysitting Room" as prepared by Pablo A. Gonzalez, P.E., signed and sealed June 5, 2017.

The applicants are requesting variances to exceed the maximum lot coverage and unit size allowed for a two-story single family home in order to construct a one-story addition to the existing two-story single family home.

The applicants are requesting the following variance(s):

1. A variance to exceed by 5% the maximum allowed lot coverage of 30% for a two story home in order to increase the lot coverage to 35% for the construction of a one story addition to the existing two-story home.

- Variance requested from:

Sec. 142-105. - Development regulations and area requirements.

(b)The development regulations for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

(1) Lot area, lot width, lot coverage, unit size, and building height requirements. The lot area, lot width, lot coverage, and building height requirements for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

Zoning District: RS-4, Maximum Lot Coverage for a 2-story Home (% of lot area): 30%.

2. A variance to exceed by 8.1% the maximum allowed unit size of 50% for a two story home in order to increase the lot coverage to 58.1% for the construction of a one story addition to the existing two-story home.

- Variance requested from:

Sec. 142-105. - Development regulations and area requirements.

(b)The development regulations for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

(1) Lot area, lot width, lot coverage, unit size, and building height requirements. The lot area, lot width, lot coverage, and building height requirements for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

Zoning District: RS-4, Maximum Unit Size (% of lot area): 50%.

The existing single family home, constructed in 2004 is a legal non-conforming structure, as it exceeds both lot coverage and unit size from the current maximum allowed. An additional area of approximately 596 sf is proposed with the enclosure of a courtyard on the North side. The proposed addition results in an increase in non-conformity of the structure with regard to lot coverage and unit size to which staff is strongly opposed, as the requested variances would not meet the hardship standard.

The current configuration of the house, with a unit size of 5,674 square feet, is a reasonable use of the property. Based on the letter of intent and hardship provided, staff has concluded

that the addition of the new area is a self-imposed condition that does not meet the practical difficulties criteria for the granting of the two (2) variances.

The property obtained a variance on June 6, 2008 (ZBA File No. 3364) to exceed the maximum open space required at the rear that included the substantial pavement of the rear yard. This condition is still existing on the property and provides an additional benefit to the applicant that would not be allowed to other single family homes unless a variance is granted. In summary, staff recommends that the variances to increase the lot coverage and unit size on the property be denied.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicants have submitted plans and documents with the application that staff has concluded **DO NOT** satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

Additionally, staff has concluded that the plans and documents submitted with the application **DO NOT** satisfy compliance with the following hardship criteria, 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 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 133-50(a) of the Land Development 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) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.
Not Applicable.
- (5) Whether 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, including a study of land elevation and elevation of surrounding properties were considered.
Not Applicable.
- (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.
Not Applicable.
- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.
Not Applicable.
- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.
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.
Not Applicable.
- (10) Where feasible and appropriate, water retention systems shall be provided.
Not Applicable.

STAFF ANALYSIS:

The subject site is an interior lot facing Prairie Avenue and abutting the Miami Beach Golf Course at the rear. The existing two story single family home was constructed in 2004. The main structure is considered legal non-conforming regarding lot coverage and unit size as it exceeds the maximum area allowed under today's Code. The applicant is proposing a one story addition on the north side of the property and is requesting to increase further the lot coverage and unit size of the single family home.

The neighborhood context within 30th and 31st Street along Prairie Ave is composed of houses from 1926 to 1982. The subject property is the most recent home constructed in the area. The immediately adjacent properties are a one story 1955 home on the North side, where the addition is proposed, and a two-story 1982 home on the South side. The majority of the other surrounding homes on this block are one-story structures with a small number of two-story structures. The subject property is the largest lot, and also has the largest living area compared to the living area of the other properties, as noted in the Dade County properties information. Staff finds that the variances requested are self-imposed and do not satisfy the criteria for approval. Further, the granting of the requested variances would contradict the direction of the City in the last several years, which has been to reduce the size and massing of two-story single family homes in order to be more compatible with existing neighborhood context. The City has also reduced the lot coverage and unit size for resiliency purposes.

Staff recommends that the variances requested be denied due to a lack of hardship or practical difficulties.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **denial** of the variances requested.

Exhibit "A".

LEGAL DESCRIPTION:

Lot 9, Block 4, FIRST ADDITION TO MID GOLF SUBDIVISION, according to the plat thereof, as recorded in Plat Book 7, at Page 161, of the Public Records of Miami-Dade County, Florida, and a portion of Lot 10, Block 4, as the aforescribed subdivision, more particularly described as follows:

From a Point of Beginning at the Northeast corner of Lot 9, run Northerly along the East Line of Lot 10, for a distance of 6 feet to a point, thence run Westerly for a distance of 150.95 feet to the Southwest corner of Lot 10, thence run Easterly along the dividing line between Lot 9 and Lot 10 for a distance of 151.70 feet to the Point of Beginning.

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

PROPERTY: 3040 Prairie Avenue

FILE NO. ZBA17-0036

IN RE: The application for variances to exceed the maximum lot coverage and unit size allowed for a two-story single family home in order to construct a one-story addition to the existing two-story single family home.

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

MEETING DATE: December 1, 2017.

ORDER

The applicants, Matan Ben Aviv & Michelle Ben Aviv, filed an application with the Planning Department for the following variances:

1. ~~A variance to exceed by 5% the maximum allowed lot coverage of 30% for a two story home in order to increase the lot coverage to 35% for the construction of a one story addition to the existing two-story home. (Variance denied).~~
2. ~~A variance to exceed by 8.1% the maximum allowed unit size of 50% for a two story home in order to increase the lot coverage to 58.1% for the construction of a one story addition to the existing two-story home. (Variance denied).~~

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 **DO NOT** satisfy 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.

IT IS HEREBY ORDERED, based upon the foregoing finding 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 the staff recommendation, that the Application is **DENIED WITHOUT PREJUDICE** for the above-referenced project.

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 _____ ()

Exhibit "A"

LEGAL DESCRIPTION:

Lot 9, Block 4, FIRST ADDITION TO MID GOLF SUBDIVISION, according to the plat thereof, as recorded in Plat Book 7, at Page 161, of the Public Records of Miami-Dade County, Florida, and a portion of Lot 10, Block 4, as the aforescribed subdivision, more particularly described as follows:

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

PROPERTY: 3040 Prairie Avenue

FILE NO. ZBA17-0036

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

MEETING DATE: December 1, 2017.

ORDER

The applicants, Matan Ben Aviv & Michelle Ben Aviv, filed an application with the Planning Department for the following variances:

1. A variance to exceed by 5% the maximum allowed lot coverage of 30% for a two story home in order to increase the lot coverage to 35% for the construction of a one story addition to the existing two-story home.
2. A variance to exceed by 8.1% the maximum allowed unit size of 50% for a two story home in order to increase the lot coverage to 58.1% for the construction of a one story addition to the existing two-story home.

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 satisfy 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.
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 "Proposed Courtyard Conversion to Babysitting Room" as prepared by Pablo A. Gonzalez, P.E., signed and sealed June 5, 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 _____ (_____)

Exhibit "A"

LEGAL DESCRIPTION:

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