


# MIAMI BEACH

## PLANNING DEPARTMENT

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### BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP   
Planning Director

DATE: December 01, 2017 Meeting

RE: File No. ZBA17-046  
**2555 Regatta Avenue – Single Family Residence**

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The applicants, Bram and Lara Hechtkopf, are requesting variances to reduce the required landscape open space within the front and rear yards as part of the renovations to the two-story single family home.

#### **STAFF RECOMMENDATION:**

**Approval** of the variances with conditions.

#### **HISTORY:**

On December 6, 2013, the Board approved two variances from the minimum required front and street side setbacks for the construction of a two-story addition to the home, pursuant to ZBA File No. 3676.

#### **LEGAL DESCRIPTION:**

Lot 4, Block 2C, 3<sup>rd</sup> Revised Plat of Sunset Islands, According to the Plat Thereof, as Recorded in Plat Book 40, at Page 8 of the Public Records of Miami-Dade County, Florida.

#### **SITE DATA:**

Zoning -	RS-3
Future Zoning-	RS
Lot Size -	12,500 SF
Lot Coverage	~3,735.52 SF / 29.8 %
Unit size-	~5,414.38 SF / 43.3 %
Height-	two-stories

#### **EXISTING STRUCTURE:**

Year Constructed: 1950
Architect: Unknown
Vacant Lot: No
Demolition: None

#### **THE PROJECT:**

The applicant has submitted plans and survey dated May 9, 2017.

The applicant is proposing the installation of artificial turf within the front and rear yard of the property including variances from the minimum required landscape open space required.

The applicant is requesting the following variance(s):

1. A variance to reduce by 20.4% (392 sf) the minimum required landscaped pervious open space required of 50% (957 sf) in the front yard in order to provide an open space of 29.6% (565 sf) within the front yard facing Regatta Avenue.
  2. A variance to reduce by 14.2% (284 sf) the minimum required landscaped pervious open space required of 70% (1,400 sf) in the rear yard in order to provide an open space of 55.8% (1,116 sf) within the rear yard.
- Variances requested from:

**Sec. 142-106. Setback requirements for a single-family detached dwelling.**

*The setback requirements for a single-family detached dwelling in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:*

*(1) Front yards: The minimum front yard setback requirement for these districts shall be 20 feet.*

*d. At least 50 percent of the required front yard area shall be sodded or landscaped pervious open space. With the exception of driveways and paths leading to the building, paving may not extend any closer than five feet to the front of the building.*

The applicant is requesting a variance for artificial grass within portions of the front and rear yard. As proposed, the areas would not conform with the minimum open space required, as synthetic grass is not natural landscaping. As noted in the letter of intent, the applicant was not aware of this requirement and seeks to reduce the possible contact of their children with applied pesticides. Staff would note that, with the exception of the replacement of natural sod with artificial grass in limited areas, the overall landscape plan for the site has not been altered or reduced as part of the proposal for artificial grass; therefore staff is not opposed to the granting of the two variances. In order to mitigate the existing conditions, additional natural landscape is also proposed to fully screen the area from view at the front of the property. The variances requested would not have a significant negative impact on the adjacent properties.

**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 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 with the application comply 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 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.

**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.  
**Satisfied**
- (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 a corner lot containing a two-story residence constructed in 1950. Recent renovations to the house included interior and exterior modifications inclusive of a new second floor, a one story addition in the rear and the expansion of the garage in the front for which variances were obtained in December 2013 (ZBA File 3676). A building permit has been approved for the house renovations. However, because the amount of natural landscape on site does not conform to the minimum open space required, two variances are requested.

Staff has closely reviewed the landscape plans approved, as part of the building permit and final order for the previous variances. The species and quantity of landscape material, with the exception of the partial sod replacement with artificial turf, have not been altered in order to install the artificial grass. In addition, the applicant is proposing to add more landscape material in the front yard, to fully cover the areas with artificial grass from street view.

Staff finds that the variances requested will not have an adverse impact on the surrounding neighborhood and therefore, recommends the approval of variances #1 and #2.

**RECOMMENDATION:**

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

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

**PROPERTY:** 2555 Regatta Avenue

**FILE NO.** ZBA17-0046

**IN RE:** The application for variances to reduce the required landscape open space within the front and rear yards as part of the renovations to the two-story single family home.

**LEGAL DESCRIPTION:** Lot 4, Block 2C, 3<sup>rd</sup> Revised Plat of Sunset Islands, According to the Plat Thereof, as Recorded in Plat Book 40, at Page 8 of the Public Records of Miami-Dade County, Florida.

**MEETING DATE:** December 1, 2017.

**ORDER**

The applicants, Bram and Lara Hechtkopf, filed an application with the Planning Department for the following variances:

1. A variance to reduce by 20.4% (392 sf) the minimum required landscaped pervious open space required of 50% (957 sf) in the front yard in order to provide an open space of 29.6% (565 sf.) within the front yard facing Regatta Avenue.
2. A variance to reduce by 14.2% (284 sf) the minimum required landscaped pervious open space required of 70% (1,400 sf) in the rear yard in order to provide an open space of 55.8% (1,116 sf) within the 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 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, showing the existing conditions, 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, including survey dated May 9, 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 \_\_\_\_\_ ( )