


MIAMI BEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP 
Planning Director

DATE: January 5, 2018 Meeting

RE: File No. ZBA17-0043
2700 North Bay Road – Single Family Residence

The applicant, Louis J. Puig, is requesting variances from the required rear and sum of the side yards setbacks, to reduce the required open space within the rear yard and to reduce the required setback for a pool deck, as part of the construction of a two-story addition to the existing two-story single family home.

STAFF RECOMMENDATION:

Approval of the variances with modifications.

LEGAL DESCRIPTION:

See attached Exhibit "A".

SITE DATA:

Zoning -	RS-2
Future Zoning-	RS
Lot Size -	29,192.3 SF
Lot Coverage	
Existing-	5,780 SF / 19.7 %*
Proposed	6,237 SF / 21.3 %
Maximum-	8,757 SF / 30 %
Unit size	
Existing-	10,405 SF / 35.6 %
Proposed-	11,319 SF / 38.7 %
Maximum-	14,596 SF / 50 %
Height-	
Existing-	24'-0" two-story– sloped roof
Proposed-	same
Maximum-	31'-0"

EXISTING STRUCTURE:

Year Constructed: 1925
Architect: Woods & Tracy
Vacant Lot: No
Demolition: Partial

* As representing by the applicant.

THE PROJECT:

The applicant has submitted plans entitled "PUIG RESIDENCE", as prepared by CDS Castellanos Design Studio, signed and sealed November 16, 2017.

The applicant is proposing the minor partial demolition of the existing home and the construction of a new two-story addition that connects the existing main house with an existing accessory building, including variances to reduce the required rear and sum-of-the-side yard setbacks, to reduce the required open space within the rear yard and to reduce the required interior side setback for a pool deck.

The applicant is requesting the following variance(s):

1. A variance to reduce by 7'-9" the minimum required sum of the side setbacks of 44'-2" for the construction of a two-story addition attached to the main residence and to an existing accessory building and provide a sum of the side setbacks of 36'-5".
2. A variance to reduce by 3'-7" the minimum required rear setback of 30'-4" for the construction of a two-story addition attached to the main residence and to an existing accessory building and provide a rear setback of 26'-9" from the rear property line.
3. A variance to reduce by 15.7% (528 s.f.) the minimum required 70% (2,361 s.f.) landscaped pervious open space required within the rear yard, in order to provide an open space of 54.3% (1,833 s.f.).

- 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:

(2) Side yards:

a. The sum of the required side yards shall be at least 25 percent of the lot width.

(3) Rear: The rear setback requirement shall be 15 percent of the lot depth, 20 feet minimum, 50 feet maximum. At least 70 percent of the required rear yard shall be sodded or landscaped pervious open space; the water portion of a swimming pool may count toward this requirement.

A new two-story addition is proposed between the existing main house and an existing accessory building located at the rear of the property. Although this location minimizes the alteration of the main home and its roof structure, it also requires two variances as the accessory building will become part of the primary home and no longer an accessory structure, which results in a reduction of the rear and sum of the side setbacks from the minimum required.

The existing unit size of the home is 35.6% and the new addition will increase the unit size up to 38.7% were 50% is allowed. Staff would note that the main house, constructed in 1925 may qualify as an architecturally significant home, although it has not been reviewed under this process yet, as it appears that its footprint has not been substantially altered throughout the years. The front setback of the original home retained on site is approximately 73'-0" and the new floor area would have a minimum impact on the abutting property to the side, as the addition follows the existing side setback of 27'-0". Staff has concluded that the existing site conditions, the retention of the 1925 structure and physical location of the existing buildings create the practical difficulties that justify variances #1 and #2.

Variance #3 from the open space requirements within the rear yard is triggered due to non-conforming conditions of the pool deck located at zero setback. Staff would note that the non-conforming conditions of the rear yard were previously reflected on the building permit for the two-story addition at the front (B1205339). A variance from the open space is now required as the pool deck has been extended further into the rear yard. Staff is supportive of this variance conditioned to the increase of the pool deck setback to 5'-0" along the north property line, as noted on variance #4 below.

4. A variance to reduce all required interior side setback of 7'-6" for pool deck in order to retain the pool deck up to the north property line.

- Variance requested from:

Sec. 142-1133. Swimming pools.

This section applies to swimming pools in all districts, except where specified. Accessory swimming pools, open and enclosed, or covered by a screen enclosure, or screen enclosure not covering a swimming pool, may only occupy a required rear or side yard, provided:

(2) Side yard setback: A 7 ½ foot minimum required setback from the side property line to a swimming pool deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosures associated or not associated with a swimming pool.

The pool and pool deck were constructed under building permit 88054 with a pool deck setback of 5'-0" on the north side. In 2012, a building permit was approved for the construction of a two-story addition at the front of the property. The approved plans (under building permit B1205339) show the pool deck with a setback of approximately 5'-0". However, the existing pool deck has been extended up to the north property line without an approved building permit. The applicant is now requesting a variance to retain the non-conforming conditions of the pool deck. As staff is unable to identify practical difficulties for the retention of the setback of the pool deck, we recommend that the variance be approved with the modification that reflects the pool deck setback at 5'-0", as previously approved on the building permit, which would also compensate for the lack of open space in the rear yard, which is part of variance #3.

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 inconsistent with the following sections of the City Code, aside from the requested variances.

1. Section 142-1132(g). The existing driveway at the north side does not comply with the 4'-0" setback required.

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.

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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.
Satisfied

- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.

Satisfied

- (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.

Satisfied

- (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; no new driveways are proposed.

- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.

Satisfied

- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.

Not Applicable; it is not feasible to elevate the entire home as part of the minor addition proposed.

- (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 waterfront lot containing a two-story residence and detached structures constructed in 1925 and 2015. The original home was placed with a front setback of approximately 73'-0" and larger than required rear, side and sum of the side setbacks. Building permit records shows that the site has been improved with the addition of a pool and deck, a two-story garage and living area at the front and an accessory building at the rear. As the site presently has a lot coverage of 19.7% and a unit size of 35.6%, the applicant is proposing a two-story addition that will unify the existing main residence and the accessory building as a one structure for which four(4) variances are required.

Staff is supportive of the setback variances #1 and #2; as the main 1925 structure will be retained with minimal alteration, and the existing location of the structures on site create practical difficulties to allow the expansion of the home while maintaining its architectural significance. Staff also recommends approval of variances #3 and #4 conditioned to

modifications to variance #4 to increase the pool deck setback to 5'-0". As this condition has been previously approved in a building permit, staff has no objection to the approval of both variances with the modification noted.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **approval** of the variance(s) 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.

Exhibit "A"

Legal Description

That part of Lot 9 of Block 12 of "AMENDED PLAT OF SUNSET LAKE SUBDIVISION" according to the Plat thereof as recorded in Plat Book 8 at Page 52 of the Public Records of Miami-Dade County, Florida, described as follows:

Begin at a point 40.00 feet North of the Southeast corner of said Lot 9; thence along the East boundary of said Lot, 182.75 feet, more or less to the Northeast corner of said Lot; thence Westerly to the Northwest Corner of said Lot; thence South to the Southwest corner of said Lot; thence Northeasterly to the Point of Beginning, being all in said Lot 9.

Containing 29,192.3 Square Feet or .67 acres, more or less, by calculations.

TRM:MAB:IV

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

PROPERTY: 2700 North Bay Road

FILE NO. ZBA17-0043

IN RE: The application for variances from the required rear and sum of the side yards setbacks, to reduce the required open space within the rear yard and to reduce the required setback for a pool deck, as part of the construction of a two-story addition to the existing two-story single family home.

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

MEETING DATE: January 5, 2018.

ORDER

The applicant, Louis J. Puig, filed an application with the Planning Department for the following variance(s) which were either approved by the Board with modifications, or denied:

1. A variance to reduce by 7'-9" the minimum required sum of the side setbacks of 44'-2" for the construction of a two-story addition attached to the main residence and to an existing accessory building and provide a sum of the side setbacks of 36'-5".
2. A variance to reduce by 3'-7" the minimum required rear setback of 30'-4" for the construction of a two-story addition attached to the main residence and to an existing accessory building and provide a rear setback of 26'-9" from the rear property line.
3. A variance to reduce by 15.7% (528 s.f.) the minimum required 70% (2,361 s.f.) landscaped pervious open space required within the rear yard, in order to provide an open space of 54.3% (1,833 s.f.).
4. A variance to reduce by 2'-6" all the required interior side setback of 7'-6" for pool deck in order to retain the pool deck at 5'-0" ~~up to~~ from the north property line. **(Modified variance)**

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. 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
 - f. 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.
 - g. The utilization of root barriers and Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
 - h. 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.
 - i. 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.
 - j. 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 "PUIG RESIDENCE", as prepared by CDS Castellanos Design Studio, signed and sealed November 16, 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 _____, 2018.

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

That part of Lot 9 of Block 12 of "AMENDED PLAT OF SUNSET LAKE SUBDIVISION" according to the Plat thereof as recorded in Plat Book 8 at Page 52 of the Public Records of Miami-Dade County, Florida, described as follows:

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Containing 29,192.3 Square Feet or .67 acres, more or less, by calculations.