CFN: 20170725229 BOOK 30807 PAGE 793
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HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

PROPERTY: **1831 West 23rd Street**

FILE NO. ZBA17-0051

IN RE: The application for variances to exceed the maximum height of gates and walls within required yards, to reduce the required rear, interior side and street side setbacks for a structure, to reduce the required interior side and rear setbacks for a pool and pool deck, as part of the renovations to the two-story single family home.

LEGAL DESCRIPTION: Lot 1, Block 3F, of "3rd Revised Plat of Sunset Island", 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 applicant, David B Haber trustee, filed an application with the Planning Department for the following variances which were either approved by the Board, or denied:

The following variances were approved by the Board:

2. A variance to exceed by 2'-9" the maximum height of 7'-0" (12.26' NGVD) for walls located on the rear yard in order to construct walls up to 9'-9" (15'-0" NGVD) in height as measured from grade elevation of 5.26' NGVD within the rear yard of the property.

3. A variance to reduce by 6'-0" the minimum setback of 10'-0" for a wall constructed up to 10'-6" (15.75' NGVD) in height and located at 4'-0" from the north side property line.

4. A variance to reduce by 1'-0" the minimum required 6'-0" setback from the rear property line to the pool deck in order to allow a setback of 5'-0" from the rear property line to the pool deck.

5. A variance to reduce by 1'-1" the minimum required 7'-6" setback from the rear property line to the water's edge of the pool in order to allow a setback of 6'-5" from the rear property line to the water's edge of the pool.

6. A variance to reduce by 2'-6" the minimum required 7'-6" setback from the interior side property line to the pool deck in order to allow a setback of 5'-0" from the north side property line to the pool deck.

7. A variance to reduce by 1'-0" the minimum required 9'-0" setback from the interior side property line to the water's edge of the pool in order to allow a setback of 8'-0" from the north property line to the water's edge of the pool.

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The following variances were denied by the Board:

1. A variance to exceed by 1'-3" the maximum height of 5'-0" (10.26' NGVD) for columns and gates located at the property line in order to construct columns, a pedestrian gate and two vehicular gates up to 6'-3" (11.51' NGVD) in height as measured from grade elevation of 5.26' NGVD facing Bay Avenue and West 23rd Street.

8. A variance to reduce by 10'-3" the minimum required street side setback of 15'-0" in order to construct an open structure at 4'-9" from the street side property line facing West 23rd Street.

9. A variance to reduce by 16'-5" the minimum required rear setback of 21'-6" in order to construct an open structure at 5'-1" from the rear property line.

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, only as it relates to variance(s) #2, #3, #4, #5, #6, and #7, as noted. Accordingly, the Board of Adjustment has determined the following as to variances #2, #3, #4, #5, #6, and #7:

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 #2, #3, #4, #5, #6, and #7, as noted and **Denies** the requested variances #1, #8, and #9, as noted 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. The existing chain link fence and hedges located in the public right-of way shall be removed.

3. 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. Hedge material with a minimum height of 8 feet at the time of installation along the new mechanical equipment and extending toward the north and south side at least 5 feet beyond the units shall be provided, in a manner to be reviewed and approved by staff. The height of the plant material at the time of planting may be modified at the discretion of staff depending upon the type of plant material.

   c. 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.

   d. 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.

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e. 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.

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 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.

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. The applicant shall comply with all conditions imposed by the Public Works Department.

7. 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.

8. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.

9. 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.

10. 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.

11. 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. 1-11, 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 "Haber Residence", as prepared by ENEA Garden Design, signed and sealed October 19, 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 20th day of December, 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 20th day of December, 2017, 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.

_____
Notary:
Print Name: GABRIELA C FREITAS
Notary Public, State of Florida
My Commission Expires: 8-3-21
Commission Number: GG131281

[NOTARIAL SEAL]

GABRIELA C. FREITAS
MY COMMISSION #GG131281
EXPIRES: AUG 03, 2021
Bonded through 1st State Insurance

Approved As To Form:
City Attorney's Office (12/7/2017

Filed with the Clerk of the Board of Adjustment on (12/29/17)