

MIAMI BEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP
Planning Director



DATE: May 9, 2016 Meeting

RE: BOA File No. 3807
920 West 43rd Court – Single Family Residence

The applicant, Stephen Brough, is requesting variances to reduce the minimum required rear and interior side setbacks for the construction of a pool within the rear yard of the existing single family home.

STAFF RECOMMENDATION:

Approval of the variances with conditions.

LEGAL DESCRIPTION:

Lot 2, Block 24, of "Nautilus Extension Fourth", According to the Plat Thereof, as recorded in Plat Book 40 at Page 68 of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Zoning -	RS-4
Future Zoning-	RS
Lot Size -	6,300 SF
Lot Coverage	
Existing-	2,153 SF / 34.1%*
Maximum-	3,150 SF / 50%
Unit size	
Existing-	2,153 SF / 34.1%*
Maximum-	3,150 SF / 50%
Height-	
Existing-	one story - sloped roof

EXISTING STRUCTURE:

Year Constructed:	1947
Architect:	M. M. Ungaro
Vacant Lot:	No
Demolition:	No
Grade:	+3.84' NGVD
Flood:	+7.00' NGVD
Flood/Grade Difference:	3.16'
Adjusted Grade:	+5.42' NGVD
Finish Floor Elevation:	+5.58' NGVD

* As Dade County property records.

THE PROJECT:

The applicant has submitted plans and survey dated October 19, 2015.

The applicant is requesting variances to reduce the minimum required rear and interior side setbacks for the construction of a pool within the rear yard of the existing single family home.

The applicant is requesting the following variance(s):

1. A variance to reduce by 4'-0" the minimum required interior side setback of 9'-0" from the pool water's edge to the side property line, in order to construct the pool water's edge at 5'-0" from the west side 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 seven and one-half-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. Nine-foot minimum required setback from side property line to the water's edge of the swimming pool or to the waterline of the catch basin of an infinity edge pool.

A new pool is proposed within the rear yard of the property. Because the City Code requires that the water's edge of a pool be setback 9'-0" from the interior side property line, a variance is necessary to have the pool water's edge at 5'-0" from the west property line. The existing house has non-conforming side setbacks of 5 feet and the pool is following the building side setback. The location of the pool would have far less of a negative impact to the abutting neighboring property than the existing home constructed in 1947 with 5 feet setback that has existed for many years. Staff is supportive of this variance request as the most affected neighbor on the west side at 4365 N Michigan Avenue, has submitted a letter of support of the application. The property complies with the landscaped open space requirements in the rear yard. Staff finds that the limited size of the rear yard of the property and the established non-conforming side setbacks are conditions that create practical difficulties for the applicant to construct a new pool in the rear yard. In summary, staff recommends approval of the variance as requested.

2. A variance to reduce by 2'-6" the minimum required setback of 7'-6" from the pool water's edge to the rear property line, in order to construct the pool water's edge at 5'-0" from the rear property line facing Polo Park.

- 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:

(1) Rear yard setback. A six-foot minimum setback from rear property line to swimming pool deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosure associated or not associated with a swimming pool, provided, however, that swimming pool decks may extend to the property line and be connected to a dock and its related decking when abutting upon any bay or canal. There shall be a minimum seven and one-half-foot setback from the rear property line to the water's edge of the swimming pool or to the waterline of the catch basin of an infinity edge pool

The pool water's edge is proposed at 5'-0" from the rear property line where 7'-6" is required. This side abuts a large green area that buffers the tennis courts of the city's Polo Park from the rear of the single family homes fronting West 43rd Street. As such, this location of the pool is not expected to have a negative impact on the City's property. The adjacent property to the west also has a non-conforming rear setback. The 5 feet setback is a common side setback for most of the properties abutting the park, constructed from 1940 to 1950. The proposed 5 foot setback is consistent with the setbacks for structures within the area. Staff supports the variance requested and finds again that the established side setbacks of the property and the limited size of the rear yard create practical difficulties that justify the variance requested.

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 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.

STAFF ANALYSIS:

The subject property is an interior lot containing a one-story single family home constructed in 1947. The applicant has recently improved the property with a new building addition, impact windows, tiled roof, and fence in order to preserve the existing home. A new pool is currently proposed at the rear of the property and variances for its construction are requested.

The pool has a standard size of 14'x19' located at 5 feet from the west and rear property lines. No other structure or pool deck is proposed to maximize the green area in the rear yard and comply with the landscaped open space required. The pool coping is proposed below adjusted grade of 5.42' NGVD, which allows the pool area to count toward the required open space within the rear yard.

As noted in the variance description part of this report, the proposed 5 foot setback is consistent with the setback of the existing building on site and consistent with the side setbacks of other surrounding properties. Staff has concluded that the established setbacks of the home constructed in 1947 and the limited size of the rear yard justify the need for these variances. In summary, staff recommends approval of the variances number 1 and number 2 as proposed.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **approval** of the variance(s) as requested, subject to the following conditions:

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 applicant shall submit a Hold Harmless Covenant Running with the Land to the City Attorney's Office in a form acceptable to the City Attorney indemnifying and holding harmless the city against any claim or loss in the event of an accident involving a motor vehicle or other instrumentality due to the proximity of the pool to the Park.

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. 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.
 - b. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
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. 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.
8. 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.
9. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
10. 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.
11. 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.
12. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.