


# MIAMI BEACH

## PLANNING DEPARTMENT

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### BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP   
Planning Director

DATE: September 7, 2018 Meeting

RE: File No. ZBA18-0069  
**1405 North Bay Drive – Single-Family Home / Shed**

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The applicant, Ezra Kassin, is requesting a variance from the required rear yard setback for a single-story accessory structure.

#### **STAFF RECOMMENDATION:**

Approval of the requested variance with conditions.

#### **LEGAL DESCRIPTION:**

Lot 26, Block 15, of "Ocean Side Section of the Isles of Normandy", according to the plat thereof, as recorded in Plat Book 25, at Page 60, of the Public Records of Miami-Dade County, Florida.

#### **HISTORY:**

At the July 6, 2018 Board of Adjustment (BOA) meeting, the application was continued to the September 7, 2018 BOA meeting.

#### **SITE DATA:**

Zoning -	RS-4 (Single-Family Residential)
Future Land Use Designation-	RS (Single-Family Residential)
Lot Size -	9,870.82 S.F.
Existing Lot Coverage/Unit Size-	~2,348 S.F.* / 35%
Existing Use -	Single-Family Residential
Proposed Use -	Same
Year of Construction -	1949

*\*As per Miami-Dade Property Appraiser.*

#### **THE PROJECT:**

The applicant has submitted the following plans:

- Boundary Survey, sheet 1 of 1, by Gary B. Castel Professional Land Surveyor, dated April 30, 2018
- New Residence, by Ganem Consulting Engineering
  - Sheet S-1, dated June 20, 2017, revised January 18, 2018
  - Sheet S-2, dated June 20, 2017, revised January 18, 2018
  - Sheet S-3, dated June 20, 2017
  - Sheet S-4, dated June 20, 2017

A permit was issued for the installation of a one (1) story detached storage shed on December 22, 2017, permit number BR1701872. After the shed was installed, the Zoning Inspection revealed that the shed encroached into the property's required rear yard setback. The applicant is requesting a variance in order to maintain the shed, as installed.

The applicant is requesting the following variance:

1. A variance to reduce 0'-8" of the minimum required 7'-6" rear yard setback requirement for a single story accessory building, in order to maintain a single story accessory building with a rear yard setback as close as 6'-10".

- Variance requested from:

**Section 142-1132 Allowable Encroachments within required yards**

**(e) Setbacks.**

*1. Single story. A single story accessory building shall not be located closer than seven and one-half feet to an interior rear or interior side lot line, and 15 feet when facing a street. When facing a waterway, the minimum rear setback shall not be less than one-half of the required rear setback.*

**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:

1. 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;
2. That the special conditions and circumstances do not result from the action of the applicant;
3. 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;
4. 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;
5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

6. 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
7. 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 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**

**COMPLIANCE WITH ZONING CODE:**

The application, as submitted, appears to be consistent with the applicable requirements of the City Code, with the exception of the variance(s) requests herein. This 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:**

This minor variance of eight (8) inches is the result of a construction error made during the installation of the piles required to support the sheds foundation. Staff has concluded that the granting of the requested variance would not be detrimental to the surrounding neighborhood. Additionally, the applicant has submitted a letter of support from the adjacent neighbor, most directly affected by the requested variance.

**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.

## ZONING/SITE MAP



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

**PROPERTY:** 1405 North Bay Drive

**FILE NO.** ZBA18-0069

**IN RE:** The application for a variance from the required rear yard setback for a single-story accessory structure.

**LEGAL DESCRIPTION:** Lot 26, Block 15, of "Ocean Side Section of the Isles of Normandy", according to the plat thereof, as recorded in Plat Book 25, at Page 60, of the Public Records of Miami-Dade County, Florida.

**MEETING DATE:** September 7, 2018

**ORDER**

The applicant, Ezra Kassin, filed an application with the Planning Department for the following variance(s):

1. A variance to reduce 0'-8" of the minimum required 7'-6" rear yard setback requirement for a single story accessory building, in order to maintain a single story accessory building with a rear yard setback as close as 6'-10".

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 variance(s) and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:

1. The final building plans shall be consistent with plans submitted to the Board of Adjustment titled "New Residence", by Ganem Consulting Engineering, dated June 20, 2017, revised January 18, 2018. Substantial modifications to the plans, 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 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.
3. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
4. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Occupancy; a Temporary Certificate of Occupancy, Partial Certificate of Occupancy, or Certificate of Completion, as applicable, may also be conditionally granted Planning Departmental approval.
5. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
6. 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.
7. 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.
8. 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 hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans submitted to the Board of Adjustment with modifications in accordance with the conditions set forth in this Order, as applicable, with 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: \_\_\_\_\_  
Rogelio Madan, AICP  
Chief of Community Planning & Sustainability  
For the Chair



