

## PLANNING DEPARTMENT

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### BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP  
Planning Director

DATE: July 08, 2016 Meeting

RE: File No. ZBA0516-0010  
**901 West 43<sup>rd</sup> Court – Single Family Residence**

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The applicant, Ricardo A. Nevarez is requesting modifications to conditions of approval for a previously granted variance associated with the construction of a pool and a new variance from the minimum required front yard setback, in order to install air conditioning units and a generator within the front yard of the single family home, facing North Jefferson Avenue.

#### **STAFF RECOMMENDATION:**

Approval of the modification and variance with conditions.

#### **HISTORY:**

The applicant obtained setback variances to construct a swimming pool within the front yard of the single family property in February 8, 1993 under BOA File number 2287. The applicant is seeking to modify Condition 2 of the order which requires that the pool deck and pool be screened by a six foot (6') high CBS wall in order to change the material and location of the fence.

#### **LEGAL DESCRIPTION:**

Lot 5, Block 25, 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 -	10,632 SF*
Unit size	
Existing-	4,761 SF / 44.7%*
Maximum-	5,316 SF / 50%
Height-	
Proposed-	25'-8" – sloped roof
Maximum-	31'-0" – sloped roof

#### **EXISTING STRUCTURE:**

Year Constructed:	1983
Architect:	Raul A. Alvarez
Vacant Lot:	No
Demolition:	No

\* As per Dade County records

**THE PROJECT:**

The applicant has submitted documents and plans entitled “Nevarez Residence Equipment Relocation/ Site Improvements” as prepared by Reines & Straz, signed and sealed June 6, 2016.

The applicant is requesting modifications to conditions of approval for a previously granted variance associated with the construction of a pool and a new variance from the minimum required front yard setback, in order to install air conditioning units and a generator within the front yard of the single family home, facing North Jefferson Avenue.

**REQUEST FOR MODIFICATION**

The applicant is requesting a modification to conditions of approval for variances which permitted the construction of a pool within the front yard of the single family home. Specifically, the applicant requests to modify the type of material and location of the fence, pursuant to Condition 2, of the original BOA Final Order No. 2287 as follows:

- ~~2. The pool deck and pool shall be screened from view from N. Jefferson Avenue by a six foot (6') high CBS wall located eight (8') feet to the west of the property line. Said wall shall be stuccoed to match the finish on the house and shall be extended to the west so that it meets the northeast corner of the house. Any gate within said wall shall be of a metal picket variety.~~
2. The pool deck and pool shall be screened parallel to North Jefferson Avenue by construction of a new fence as permitted by the City of Miami Beach Land Development Regulations.

The applicant is also requesting the following variance:

3. A variance to reduce by 10'-0" the minimum required setback of 20'-0" for mechanical equipment located within the front yard, in order to locate an emergency generator and four (4) air conditioning units at a minimum setback of 10'-0" from the front property line facing North Jefferson Avenue.
  - Variance requested from:

**Sec. 142-1132. Allowable encroachments within required yards.**

*(f) Central air conditioners, emergency generators and other mechanical equipment. Accessory central air conditioners, generators and any other mechanical equipment, including attached screening elements, may occupy a required side or rear yard, in single-family, townhome, or in the RM-1 residential multifamily low intensity districts, provided that:*

*(1) They are not closer than five feet to a rear or interior side lot line or ten feet to a side lot line facing a street.*

*(2) The maximum height of the equipment including attached screening elements, shall not exceed five feet above current flood elevation, with a maximum height not to exceed ten feet above grade, as defined in subsection 114-1, of the lot at which they are located.*

*(3) If visible from the right-of-way, physical and/or landscape screening shall be required.*

*(4) Any required sound buffering equipment is located outside the minimum five-foot yard area specified in subsection (f)(1) of this section.*

*(5) If the central air conditioning and other mechanical equipment do not conform to subsections (1), (2), (3), and (4) above, then such equipment shall follow the setbacks of the main structure.*

The applicant proposes the installation of a new emergency generator and air conditioning units at the front of the property with a minimum setback of 10 feet. The City Code allows mechanical equipment within the required side and rear yards only. The property located in a corner has the front facing North Jefferson Avenue for zoning purposes, however, the residence was designed with the main entrance on West 43<sup>rd</sup> Court. Mechanical equipment is permitted on the side facing a street at 10 feet from the property line. The applicant is requesting the same setback requirement be applied to the front of the property. As indicated in the hardship letter submitted, the mechanical equipment cannot be located in any other yard on the property due to distance separation from windows and conflict with the existing driveway and main entrance. The equipment will be fully screened from view from the street with the addition of landscape which would mitigate any adverse impact on the surrounding neighborhood. Staff would also recommend that the fence has a solid background to increase the screening of the equipment. Based on the existing conditions of the property and the fact that the functional front of the property is facing West 43<sup>rd</sup> Court and that the location of the equipment on this side would cause an undue hardship upon the applicant, staff finds that the variance request satisfies the practical difficulties criteria that would warrant the granting of the variance.

#### **PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board of Adjustment finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that also indicate the following, 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, in addition to the requested variance(s):

1. Section 142-1132 (o). Concrete slab at the rear of the property cannot exceed 25% of the required rear yard of 20'-0".

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 site is a corner lot containing a two-story single family home constructed in 1983. A variance to construct a pool within the front yard of the property was approved by the Board of Adjustment in 1983 (BOA File No. 2287). As part of the conditions of approval, a concrete block wall was required to be constructed at 8 feet from the front property line to screen views of the pool from the street. The applicant is requesting a modification to this condition in order to construct a new fence at the property line that corresponds with the current zoning requirements. The maximum height of the fence permitted at the property line is 5 feet measured from grade elevation. Staff has no objection to this request and recommends approval of the modification.

In addition, a new variance to place a generator and relocate existing air conditioning units within the front yard is requested. The house was designed with the main entrance fronting on the side street, not facing the technical front of the property on North Jefferson Avenue. The location of the equipment on the side yard in accordance with the code requirements, would adversely conflict with the existing driveway, access stair and fenestration. Considering the existing site conditions and orientation of the residence, staff recommends that the variance be approved as proposed.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends **approval** of the modification and variance 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.