

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

**PROPERTY:** 901 West 43<sup>rd</sup> Court.

**FILE NO.** 2287

**IN RE:** The application for modifications to conditions of approval for a previously granted variance associated with the construction of a pool for the existing single family home.

**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.

**MEETING DATE:** July 8, 2016.

**MODIFIED ORDER**

The applicant, Ricardo A. Nevarez, filed an application with the Planning Department for modifications to conditions of approval for a previously granted variance associated with the construction of a pool for the existing single family home:

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 modifications, and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code. ~~Strike-through~~ denotes deletion of previous language and underlining denotes new language:

1. All of the original conditions of approval by this Board shall remain in full force and effect under the Final Order dated February 8, 1993, for BOA File No. 2287 except as modified herein:
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 from street view with the construction of a fence, in a manner to be reviewed and approved by staff.
3. A copy of all pages of the recorded Modified 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 modified 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 Modified Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.

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 "Nevarez Residence Equipment Relocation/ Site Improvements" as prepared by Reines & Straz, signed and sealed June 6, 2016, 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 \_\_\_\_\_, 2016.

