

MIAMI BEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP
Planning Director



DATE: January 4, 2019 Meeting

RE: File No. ZBA18-0081
1760 Cleveland Road – Dock/Boat Lift

The applicants, Fred & Bonnie Shapiro, are requesting variances for the installation of a dock and boat lift. Specifically, the applicant is requesting an Interior side yard setback variance and a variance to exceed the maximum projection of a marine structure into a canal.

STAFF RECOMMENDATION:

Approval of variance #1 with conditions.

Denial of variance #2.

LEGAL DESCRIPTION:

Lot 14, Block 5, Biscayne Point according to the plat thereof, as recorded in Plat Book 14, Page 35 of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Folio Number –	02-3203-001-0780
Zoning –	RS-4 (Single-Family Residential)
Future Land Use Designation –	RS (Single-Family Residential)
Lot Size –	9,000 S.F.*
Existing Use –	Single-Family Residence
Proposed Use –	Single-Family Residence

**As per survey submitted by applicant.*

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.

THE PROJECT:

The applicant has submitted the following plans:

- Boundary Survey, by Bello & Bello, dated October 9, 2018.
- 1760 Cleveland Rd Boatlift Project, by Dynamic Engineering Solutions, Inc., signed by John Omslaer, dated October 2, 2018.

The applicant is proposing to install a new boat lift, in connection with an existing wood dock, which has a nonconforming interior side yard setback.

The applicant is requesting the following variances:

1. **A variance to exceed by 3'-8" the maximum allowed 6'-0" projection into the waterway of 60'-0" in width in order to permit the installation of a boatlift with a total projection of 9'-8".**

- Variance requested from:

Sec. 66-113. Limitation on projection of structures; public hearing.

Boat slips, docks, wharves, dolphin poles, mooring piles or structures of any kind shall not be constructed or erected that extend into any canal or waterway in the city more than ten percent of the width of such canal or waterway at a specific location measured from the seawall or property as shown by recorded plat line if no seawall exists; but if a canal or waterway is more than 100 feet in width, the structure may extend into such canal or waterway a distance not greater than 15 percent of the width of such canal or waterway at that specific location, but not to exceed a distance greater than 40 feet.

The maximum projection for structures into the waterway is based upon the width of the canal adjacent to the property. The waterway abutting the site has a width of 60'-0" at the location of the proposed structures, which allows a maximum projection of 6'-0" into the waterway for any marine structure including the dockage of a boat. The new boatlift will require approval by the Miami-Dade County Regulatory and Economic Resources ("RER") Department. RER requires boat slips created by the construction or placement of fixed or floating docks, piers, piles and other structures located in tidal waters to have a minimum water depth of four feet pursuant to the N.O.A.A. mean low water datum. Granting the requested variance will insure that the proposed boatlift will comply with this regulation. Based upon the existing width of the canal and the water depth requirement that places the structure further away from the seawall, staff has concluded that these conditions create practical difficulties that meet the criteria for the granting of the variance as requested.

2. **A variance to reduce by 4'-0" minimum required side yard setback of 7'-6" for the retention of an existing dock at 3'-6" from the east side property line.**

- Variance requested from:

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

(l) Marine structures. In all districts, seaward side yard setbacks for boat slips, decks, wharves, dolphin poles, mooring piles, davits, or structures of any kind shall not be less than seven and one-half feet.

Marine structures are required to have a minimum setback of 7'-6" from the side property line(s). The applicant proposes the retention of an existing dock that has a 3'-6" setback from the east property line. According to the applicant's letter of intent, the dock with its current configuration was constructed prior to their purchase of the property; however, there is no evidence of a permit for this structure, and staff could not find any type of previous authorization. As such, based on review of the City's practical difficulty and hardship criteria, staff is not supportive of this variance.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

Based on the plans and documents submitted with the application, staff has concluded that the requested variances **partially** 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 **partially** indicate the following, as they relate to the hardship criteria 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;

***Satisfied for variance #1;
Not satisfied for variance #2.***

2. That the special conditions and circumstances do not result from the action of the applicant;

***Satisfied for variance #1;
Not satisfied for variance #2.***

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;

***Satisfied for variance #1;
Not satisfied for variance #2.***

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;

***Satisfied for variance #1;
Not satisfied for variance #2.***

5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

***Satisfied for variance #1;
Not satisfied for variance #2.***

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

Satisfied for variance #1;

Not satisfied for variance #2.

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.

Satisfied.

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

STAFF ANALYSIS:

The applicant is proposing to install a new boatlift and to legalize an existing dock with a nonconforming side yard setback. The new boatlift exceeds the maximum projection allowed into the waterway and a variance is being requested.

The Code restricts the projection of marine structures into the waterway with a width less than 100' to a maximum of 10% of the width of the canal. It has been determined that the proposed location and configuration is the most appropriate to allow the boatlift to meet the County's required 4' minimum water depth. There are other docks and boat lifts installed along the canal; however, staff was unable to find permits or approval for these similar marine structures exceeding the maximum projection within the surrounding properties. As the requested variance is triggered by the existing conditions of the waterway, and the minimum water depth requirements of RER, staff has concluded that the hardship and practical difficulty criteria have been satisfied and recommends approval of variance #1.

Staff is not supportive of variance #2, as there are no specific site constraints that make the existing encroachment necessary. The fact that the existing dock existed prior to the applicants purchase of the property does not constitute a Practical Difficulty and Hardship.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **denial** of variance request #2, and **approval** of variance request #1, subject to the conditions enumerated in the attached Draft Order.

ZONING/SITE MAP



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

PROPERTY: 1760 Cleveland Road

FILE NO. ZBA18-0081

IN RE: An application for variances for the installation of a dock and boat lift. Specifically, the applicants are requesting an Interior side yard setback variance and a variance to exceed the maximum projection of a marine structure into a canal.

LEGAL DESCRIPTION: Lot 14, Block 5, Biscayne Point according to the plat thereof, as recorded in Plat Book 14, Page 35 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: January 4, 2019

ORDER

The applicants, Fred & Bonnie Shapiro, filed an application with the Planning Department for the following variance(s):

1. A variance to exceed by 3'-8" the maximum allowed 6'-0" projection into the waterway of 60'-0" in width in order to permit the installation of a boatlift with a total projection of 9'-8"
– **Approved by the Board**
2. A variance to reduce by 4'-0" minimum required side yard setback of 7'-6" for the retention of an existing dock at 3'-6" from the east side property line.
– **Denied by the Board**

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 pertains to Variance No. 1**. 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 Variance No. 1** and **Denies Variance No. 2** 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 "1760 Cleveland Rd Boatlift Project", by Dynamic Engineering Solutions, Inc., signed by John Omslaer, dated October 2, 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. The existing dock must be modified, with the appropriate permits, to increase the east side setback to a minimum of 7'-6".
3. 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.
4. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
5. 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.
6. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
7. 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.

8. 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.
9. 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: _____

For the Chair

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Rogelio Madan, Chief of Community Planning and Sustainability of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL]

Notary:

Print Name:

Notary Public, State of Florida

My Commission Expires:

Commission Number:

Approved As To Form:

City Attorney's Office ()

Filed with the Clerk of the Board of Adjustment on _____ ()