


# MIAMI BEACH

## PLANNING DEPARTMENT

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### BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP   
Planning Director

DATE: October 5, 2018 Meeting

RE: File No. ZBA18-0070  
**2300 Bay Avenue**  
**Appeal of a decision of the Planning Director**

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**2300 Bay Avenue, George L. Lindemann, Trustee of George L. Lindemann Jr., Declaration of Trust 2004** – The applicant is appealing a decision of the planning director related to correspondence dated February 21, 2018, modified August 9, 2018 regarding violations related to the construction of a single-family home located at 2300 Bay Avenue.

**STAFF RECOMMENDATION:**

Denial of the appeal.

**LEGAL DESCRIPTION:**

(PER WARRANTY DEED ORB 28012-PG 1100)

THE PART OF LOT 72, BLOCK 3-H OF ISLAND NO. 3, OF SUNSET ISLANDS, IN ACCORDANCE WITH THE THIRD REVISED PLAT OF SUNSET ISLANDS, RECORDED IN PLAT BOOK 40, PAGE 8, PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON BAY AVENUE WHERE THE NORTHERLY LINE OF LOT 11, BLOCK 3-H, OF ISLAND NO. 3 OF SUNSET ISLANDS INTERSECTS SAID AVENUE; THENCE RUN SOUTHWESTERLY ALONG THE NORTHERLY LINE OF LOT 11 TO THE WATERS OF BISCAYNE BAY, A DISTANCE OF 182.25 FEET; THENCE NORTHWESTERLY ALONG A CURVE, THE RADIUS OF WHICH IS 210 FEET THE CENTRAL ANGLE OF WHICH IS 17 DEGREES 24 MINUTES 16.54 SECONDS AND CHORD DISTANCE IS 63.55 FEET; THENCE CONTINUE NORTHWESTERLY ON A TANGENT FOR A DISTANCE OF 48.95 FEET; THENCE RUN NORTHEASTERLY FOR A DISTANCE OF 175.45 FEET TO THE WESTERLY LINE OF BAY AVENUE; THENCE SOUTHEASTERLY ALONG THE WESTERLY LINE OF BAY AVENUE FOR A DISTANCE OF 30.54 FEET TO THE BEGINNING OF A CURVE, THE RADIUS OF WHICH IS 75 FEET; THENCE ALONG SAID CURVE A CHORD DISTANCE OF 32.45 FEET TO A POINT OF BEGINNING.

BEING OTHERWISE DESCRIBED AS ALL OF SAID LOT 12, BLOCK 3-H ISLAND NO. 3 AS PER PLAT AFORESAID, EXCEPT A TRIANGULAR PART THEREOF, DESCRIBED AS FOLLOWS:

BEGIN AT POINT OF INTERSECTION OF THE LINE DIVIDING LOTS 12 AND 13, BLOCK 3-H AFORESAID AND THE LINE WHICH SEPARATES SAID LOTS FROM THE STREET

ADJOINING THEM; FROM SAID POINT RUN ALONG SAID LINE DIVIDING SAID LOTS TO THE INTERSECTION OF SAID LINE WITH THE WATERS OF BISCAYNE BAY; THENCE RUN 12.5 FEET ALONG THE COMMON BOUNDARY OF SAID LOT 12 AND THE WATERS OF BISCAYNE BAY; THENCE NORTHEASTERLY IN A STRAIGHT LINE TO POINT OF BEGINNING. LESS A PORTION THEREOF. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGIN AT THE NORTHEASTERLY CORNER OF LOT 12 IN BLOCK 3-H OF THE AFORESAID SUBDIVISION; THENCE RUN SOUTHEASTERLY ALONG THE WESTERLY LINE OF BAY AVENUE A DISTANCE OF 5.00 FEET TO A POINT; THENCE RUN WESTERLY IN A STRAIGHT LINE TO A POINT LOCATED ON THE SHORE LINE OF BISCAYNE BAY, SAID POINT BEING 12 1/2 FEET SOUTHWESTERLY FROM THE NORTHWESTERLY CORNER OF SAID LOT 12 IN BLOCK 3-H OF THE AFORESAID SUBDIVISION; THENCE RUN NORTHEASTERLY IN A STRAIGHT LINE TO THE POINT OF BEGINNING.

#### **ZONING / SITE DATA**

(See Zoning/Site Map at the end of this report.)

Folio:	02-3228-001-1760
Future Land Use Designation:	Single Family Residential Category (RS)
Zoning:	RS-3, Single Family Residential District-3
Lot Size:	Approximately 14,838 SF (0.341 Acres)

#### **BACKGROUND:**

On *September 4, 2012*, the Design Review Board (DRB) approved an application for the construction of a new two-story single family home (DRB File No. 22911).

On *January 30, 2013*, a building permit for the construction of a two-story single-family home was applied for on the subject property.

On *July 24, 2013*, the aforementioned building permit was issued, and construction commenced thereafter.

On *September 2, 2014*, the DRB approved an application for revisions to the previously issued approval for the construction of a new two-story single family home. This order contained the following relevant condition:

*This Order, and the prior Order adopted September 4, 2012 for DRB file number 22911, and any construction authorized by or permits issued pursuant to either order, are subject to the adjudication of the boundary dispute between the applicant and its neighbor by courts of competent jurisdiction or other resolution of such dispute.*

On *July 2, 2015*, the building permit was revised for consistency with the modified DRB order.

On *January 6, 2016*, a Temporary Certificate of Occupancy (TCO) was issued for the subject property. The property owner provided the City with a hold harmless agreement in order to obtain the TCO, as the boundary dispute between the neighbors was on going. Pursuant to the aforementioned condition in the September 2, 2014 DRB order, the completion and occupancy of the home was subject to the boundary dispute and the City could not issue a TCO without the hold harmless agreement.

On *February 7, 2018*, the Third District Court of Appeals, under case number 3D17-169, affirmed the Circuit Court decision pertaining to the boundary dispute, which found in favor of the immediate neighbor at 2324 Bay Avenue. This resulted in the interior property line, between the neighbors, shifting to the south from the plans originally approved.

On *February 21, 2018*, the Planning Director sent a letter to the appellant advising that as a result of the relocation of the interior property line, the subject home now contained illegal non-conforming attributes, including the maximum unit size and minimum setback requirements of the Land Development Regulations (LDRs). The appellant was advised that all non-conforming attributes needed to be remedied by March 30, 2018 or the City would commence enforcement proceedings.

On *March 23, 2018*, the appellant submitted an appeal of the February 21, 2018 administrative decision.

On *May 8, 2018*, the appellant submitted a formal application and supporting documents pertaining to the appeal of the decision of the Planning Director.

On *June 12, 2018*, the appellant submitted revised plans and documentation to address the non-conforming attributes and narrow the scope of the appeal.

On *July 2, 2018*, Planning Staff made a field visit to the site with the project architect.

On *July 18, 2018* and *August 1, 2018*, the appellant submitted supplemental information in order to allow Planning staff to further evaluate the issues of the appeal.

On *August 9, 2018*, the Planning Director submitted a response to the appellant indicating that the pending issues for appeal relate to a raised walkway, retaining wall and stair, and an entrance portico, and that the appeal would be scheduled for the October 5, 2018 Board of Adjustment meeting. The raised walkway, retaining wall, stair and entrance portico violate the underlying setback requirements of for the RS-3 District.

#### **STAFF ANALYSIS:**

The subject property is currently zoned **RS-3, Single Family Residential District**. The main permitted use in the RS-3 district is single-family detached dwellings. A two-story single-family home was constructed on the site and a temporary certificate of occupancy was subsequently obtained.

The subject property has been part of a boundary dispute with the immediate neighbor at 2324 Bay Avenue, which was concluded by the Third District Court of Appeals on February 7, 2018. As a result of the decision of the court, the northern property line of the subject home was required to be located further south than what was indicated in the original survey. Since the subject home has been permitted and built in accordance with a survey showing that the interior property boundary was further north, several components of the home are now non-compliant with the requirements of the LDRs, as a result of the court order modifying the property boundary.

Planning Staff has reviewed all of the submitted documents, including those provided in the amended appeal petition and supplemental information. Additionally, Staff made a field visit to the site with the project architect on July 2, 2018. Based upon the documents submitted, and the conclusions reached pursuant to the July 2, 2018 field visit, the following is an evaluation of the attributes of the residence which violate the Code of the City of Miami Beach ("City Code"):

1. Raised Walkway, Retaining Wall and Stair

The ground floor elements on the north side of the property (the stair, retaining wall and elevated walkway) exceed the maximum allowable encroachments within a required interior side yard. The appellant contends that these items do not violate the City Code and are a subject of the appeal.

In accordance with Section 142-1132(o) of the City's LDRs, porches, platforms and terraces may project into a required yard for a distance not to exceed 25% of the required yard, provided the projection is not higher than 30 inches above the maximum elevation of the lot. As indicated in the August 9, 2018 City response to the appellant, the revised survey and site plan do not substantiate compliance with this requirement. In this regard, the revised survey does not provide all required information to accurately calculate the height of the stair, elevated walkway and retaining wall, relative the elevation of the property.

These inconsistencies with the City Code may be remedied by:

- a. Providing a revised survey and plans that show compliance.
- b. Demolishing those portions of the raised walkway and stairs that are not an allowable encroachment into the required setback; this would require a revision to the Building Permit plans.
- c. Requesting a variance from the Design Review Board. If a variance is sought, the condition of the Design Review Board Order prohibiting variances must first be modified.

2. Entrance Portico

The wall structure supporting the entry portico falls within the required interior side yard on the north side of the property. At the time of permitting, based upon the previous survey, such wall met the minimum interior setback requirement and was approved and constructed as a structural wall. This wall is clearly a structural element and is not an allowable setback encroachment. The appellant contends that this wall structure does not violate the City Code and is a subject of the appeal.

The wall structure in question contains deep structural footers, structural concrete and fully supports a large roof. It does not meet any of the allowable encroachments listed in Section 142-1132 of the City's LDRs. The appellant seeks to characterize the structural wall as an 'ornamental feature'. However, there is nothing in the Code that supports this assertion as ornamental features are non-structural, do not require significant footers and are not used to support a roof. They are applied elements for decorative, not structural, purposes. As such, the wall of the entry portico must comply with the minimum setback requirements of the City Code.

This inconsistency with the City Code may be remedied by:

- a. Demolishing those portions of the wall that are located within the required interior side yard setback; this would require a revision to the Building Permit plans.
- b. Constructing a new vertical supporting wall that meets the minimum required interior side setback, and demolishing the existing wall that is in violation. The roof overhang that would result from the demolition of the existing wall would be considered an allowable setback encroachment, per section 142-1132(o) of the City's LDRs. This would require a revision to the Building Permit plans.
- c. Requesting a variance from the Design Review Board (contingent upon a modification of the DRB condition prohibiting variances).

It should be noted that in order to show compliance with applicable unit size and lot coverage requirements, the appellant has been advised that a revision to the building permit plans will be required, prior to the issuance of a Certificate of Occupancy.

Should the board deny this appeal, the appellant will be required to submit revised building permit plans indicating the revised Lot Coverage and Unit Size calculations, as well as modifications to the Raised Walkway, Stair and Entrance Portico, as more specifically noted above, in order to bring the structure into compliance with the requirements of the LDRs of the City Code. Alternatively, the appellant could seek variances. However, prior to seeking any variances, the condition of the DRB prohibiting variances would need to be modified.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends that the subject appeal be DENIED.

TRM/RAM/SMW

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Zoning/Site Map

