

## PLANNING DEPARTMENT

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### BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP  
Planning Director

DATE: September 9, 2016 Meeting

RE: File No. ZBA0716-0017  
**5960 La Gorce Drive – Single Family Residence**

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The applicant, Mijanou Spurdle is requesting after the fact variances from the required rear setback to retain a trellis structure, from the required landscape open space within the rear yard and from the required side setback to retain the pool deck; and variances to exceed the maximum lot coverage permitted for a two-story structure, and to reduce the required rear and street side setbacks for the construction of a second story addition and renovations to the existing one-story single family home.

#### **STAFF RECOMMENDATION:**

Approval of variance(s) #1, #2, #4, #5 and #6 with modifications.

**Denial** of variance # 3.

#### **LEGAL DESCRIPTION:**

Lot 1, Block 10, of "Beach View Addition", According to the Plat Thereof, as recorded in Plat Book 16 at Page 10 of the Public Records of Miami-Dade County, Florida.

#### **SITE DATA:**

Zoning -	RS-4
Future Zoning-	RS
Lot Size -	9,785 SF
Lot Coverage	
Existing-	3,777 SF /
Proposed-	3,777 SF / <b>38.5%* Variance Requested</b>
Maximum-	2,935 SF / 30%
Unit size	
Existing-	3,458 SF / 35%
Proposed-	4,892 SF / 50%
Maximum-	4,892.5 SF / 50%
Height-	
Existing-	~10'-4"
Proposed-	21'-10" – flat roof
Maximum-	24'-0" – flat roof

#### **EXISTING STRUCTURE:**

Year Constructed:	1949
Architect:	Unknown
Vacant Lot:	No
Demolition:	Partial

**THE PROJECT:**

The applicant has submitted documents and plans entitled “150105-Spurdle Residence” as prepared by R+O Studio, signed and sealed July 26, 2016.

The applicant is requesting after the fact variances from the required rear setback to retain a trellis structure, from the required landscape open space within the rear yard and from the required side setback to retain the pool deck; and variances to exceed the maximum lot coverage permitted for a two-story structure, and to reduce the required rear and street side setbacks for the construction of a second story addition and renovations to the existing one-story single family home.

The applicant is requesting the following variance(s):

1. An after the fact variance to reduce by 15'-0" the minimum required rear setback of 20'-0" in order to retain a trellis structure at 5'-0" from the rear property line.

- Variance requested from:

**Sec. 142-106. Setback requirements for a single-family detached dwelling.**

*The setback requirements for a single-family detached dwelling in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:*

**(3) Rear: The rear setback requirement shall be 15 percent of the lot depth, 20 feet minimum, 50 feet maximum. At least 70 percent of the required rear yard shall be sodded or landscaped pervious open space; the water portion of a swimming pool may count toward this requirement.**

The house features a trellis structure within the rear yard that does not comply with the required rear setback of 20 feet. The applicant is requesting an after the fact variance to retain this non-conforming structure. The house appears to have been originally constructed with a non-conforming rear setback of approximately 14 feet. Original plans or building card of the property could not be found and it is unknown when the trellis was constructed. Due to the location of the site, adjacent to the Golf Course, the trellis as an open structure would not negatively impact the adjacent public property or the surrounding context, as it would have less impact than an allowable detached accessory building. Staff is supportive of this variance as the house, constructed in 1949, will be renovated and retained. The existing rear yard of the property is already reduced by the building footprint and by a five (5') foot utility easement that impose difficulties to construct any accessory structure, as allowed by the Code.

2. An after the fact variance to reduce by 27.9% (436 s.f.) the minimum required open space of 70% (1,092 s.f.) within the required rear yard in order to provide an open space of 42% (656 s.f.).

- Variance requested from:

**Sec. 142-106. Setback requirements for a single-family detached dwelling.**

*The setback requirements for a single-family detached dwelling in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:*

- (3) *Rear: The rear setback requirement shall be 15 percent of the lot depth, 20 feet minimum, 50 feet maximum. At least 70 percent of the required rear yard shall be sodded or landscaped pervious open space; the water portion of a swimming pool may count toward this requirement.*

The applicant will be reducing the non-conforming pavement within the rear yard of the property. However, the proposed paved area exceeds the maximum allowed. Staff is not opposed to a small increase of impervious surface in this case, due to the restrictions of the available rear yard. However, considering that the trellis with pavement provides a reasonable outdoor auxiliary use to the owner, and that the building footprint reduces the landscape area in all required yards, staff recommends that the deck area adjacent to the trellis with approximately 277 s.f. be removed to compensate for the reduction of open space in other required yards and that this area be landscaped in order to improve drainage and retention of water run-off on site. Staff recommends that the variance be modified to "reduce by 10% (109.2 s.f.) the minimum required open space of 70% (1,092 s.f.) within the required rear yard in order to provide an open space of 60%" (936 s.f.)".

Staff finds that the limited area within the rear yard, creates the practical difficulties for the variance requested with the modification underlined above.

3. An after the fact variance to reduce by 2'-6" the minimum required interior side setback of 7'-6" from a side property line to a pool deck, in order to retain the pool deck at a minimum of 5'-0" from the south side property line.
- Variance requested from:

**Sec. 142-1133. Swimming pools.**

*This section applies to swimming pools in all districts, except where specified. Accessory swimming pools, open and enclosed, or covered by a screen enclosure, or screen enclosure not covering a swimming pool, may only occupy a required rear or side yard, provided:*

*(2)Side yard setback. A seven and one-half-foot minimum required setback from the side property line to a swimming pool deck, or platform, the exterior face of an infinity edge pool catch basin, or screen enclosures associated or not associated with a swimming pool.*

The existing pool deck is setback a range from 5'-7" to 5'-0" from the side property line. The pool was constructed in 2003 under permit B0300258. This permit did not include a pool deck and records for its construction were not found. Due to the existing footprint of the house which encroaches on all required yards, and the extent of paving, which is part of variance request #2 for the required open space in the rear, staff recommends that the pool deck comply with the required 7'-6" side setback, except for a small portion connecting to the side walkway, as allowed by the Code. Staff finds that the applicant's request, in this case, does not meet the practical difficulties or hardship criteria and recommends that the variance be **denied**.

4. A variance to exceed by 8.5% the maximum allowed lot coverage of 30% for a two story home in order to increase the lot coverage to 38.5% for the construction of a second story addition to the existing one story home.

- Variance requested from:

**Sec. 142-105. - Development regulations and area requirements.**

*(b) The development regulations for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:*

*(1) Lot area, lot width, lot coverage, unit size, and building height requirements. The lot area, lot width, lot coverage, and building height requirements for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:*

**Zoning District: RS-2, Maximum Lot Coverage for a 2-story Home (% of lot area): 30%.**

The house, as a one story building is allowed to reach a maximum lot coverage of 50%. The existing structure has a lot coverage of 38.5%, which exceeds the maximum 30% for two-story structures. Unless a variance is approved, the applicant cannot increase the area of the home on the second floor up to 50% without making alterations to the existing ground floor. However, the existing house is non-conforming on all setbacks and a pool located in the larger area available for a ground floor addition, which makes impractical the expansion of the ground floor and creates an undue hardship on the applicant. Instead, a second story addition is proposed to increase the floor area up to 50%, as permitted in single family homes. Staff would note that the code allows the increase in lot coverage up to 40% for two-story homes that has been determined to be architecturally significant. The house has not been reviewed for this process, but it is likely that it may be considered a significant structure. Based on this possibility, a variance would not be required for similar single family homes constructed within the same time. Staff finds that the applicant's request satisfies the practical difficulties for the granting of the variance, as the existing structure will be renovated and retained and there is no increase in floor area at the ground level.

5. A variance to reduce by 2'-6" the minimum required rear setback of 20'-0" in order to construct a second story addition at 17'-6" from the rear property line following the existing building walls.

- Variance requested from:

**Sec. 142-106. Setback requirements for a single-family detached dwelling.**

*The setback requirements for a single-family detached dwelling in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:*

**(3) Rear: The rear setback requirement shall be 15 percent of the lot depth, 20 feet minimum, 50 feet maximum. At least 70 percent of the required rear yard shall be sodded or landscaped pervious open space; the water portion of a swimming pool may count toward this requirement.**

The existing home has a non-conforming rear setback of 14.3' and 17.5'. The second story addition is proposed to follow the 17.5' setback. The location of this addition, close to the rear, minimizes the alteration to the front and side facing street facades. Staff is supportive of this variance request as the existing front and side facing a street are retained and the existing footprint of the building restricts the increase in area of the home creating practical difficulties to develop a new addition on the property.

6. A variance to reduce by 10'-0" the minimum required street side setback of 15'-0" in order to construct a second story addition at 5'-0" from the street side property line.

- Variance requested from:

**Sec. 142-106. Setback requirements for a single-family detached dwelling.**

*The setback requirements for a single-family detached dwelling in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:*

**(2)Side yards:**

**b. Side, facing a street. Each required side yard facing a street shall be no less than ten percent of the lot width or 15 feet, whichever is greater.**

The second story addition is proposed at a 5 foot setback following the footprint of the first floor facing the street side, where 15 feet is required. The addition is proposed toward the rear, facing the La Gorce Golf Course, which would cause a minimum impact on the adjacent neighboring properties across the street and on the existing home. The house, as proposed, would be significantly lower in mass than a brand new two-story home, which may have a more significant impact in the existing urban context. Staff finds that the existing footprint of the home and the area limitation at the ground floor with non-conforming yards, creates the practical difficulties that result in the variance requested. As the existing structure will be retained and renovated staff has no objection to the setback request. In most 1940's homes, the existing configuration of the first floor dictates the envelope of the second floor, in order to add available floor area and minimize the impact on the existing structure. Staff recommends approval of this variance.

**PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

The applicant has submitted plans and documents with the application that staff has concluded only partially (as noted) satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, staff has concluded that the plans and documents with the application partially satisfy compliance with the following hardship criteria, 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;

**Satisfied for variance requests #1, #2, #4, #5 and #6;**

**Not Satisfied for variance request #3;**

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

**Satisfied for variance requests #1, #2, #4, #5 and #6;**

**Not Satisfied for variance request #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 requests #1, #2, #4, #5 and #6;**  
**Not Satisfied for variance request #3;**

- 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 requests #1, #2, #4, #5 and #6;**  
**Not Satisfied for variance request #3;**

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

**Satisfied for variance requests #1, #2, #4, #5 and #6;**  
**Not Satisfied for variance request #3;**

- 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 requests #1, #2, #4, #5 and #6;**  
**Not Satisfied for variance request #3;**

- 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 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), for the following reasons:

1. Section 142-1132(j). The existing deck shall be setback 7'-6" from the rear property line.

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 on a dead end street abutting the la Gorce Golf Course at the rear. The property contains a one-story residence constructed in 1949. The original home appears to be constructed toward the rear with non-conforming setbacks on all sides. Original building records or building card for the property have not been found. As per available building department information, there are no records of any significant construction work done on the building structure. The applicant is proposing renovations to

retain the single story home including new impact windows and doors, conversion of the existing garage to laundry room, relocation of air conditioning equipment to the roof, reduction of pavement within the rear yard, retention of a trellis structure and a new second story addition. Multiple variances are requested for the renovation and addition to the existing one-story home.

Variance requests #1 and #2 pertain to modifications to the rear yard of the property to mitigate several existing non-conforming conditions. The pavement within the 5-foot utility easement will be removed, the concrete slab and generator will be relocated off of the easement and existing pavement will be reduced. However, two (2) after-the-fact variances are required to retain a trellis structure (variance #1) and to reduce the required open space within the rear yard (variance #2). Staff is supportive of variance #1 and #2, due to the existing reduced rear yard and the low impact of the open trellis structure. However, because available landscaped area is already reduced in other required yards by the existing building footprint, staff recommends that the impact of variance #2 be reduced to provide at least 60% of the required 70% landscape open space within the existing rear yard. Further, a minimum of 7'-6" of setback is required for any deck within required yards, as noted in the zoning compliance section of this report.

Variance #3 to retain a non-conforming pool deck pavement is also requested. However, this request is not associated with the retention of the structure and if granted would reduce the amount of landscape and green area needed for drainage and retention of stormwater within the property, which are important factors in successfully addressing flooding in the area. Staff recommends that this variance be denied, due to a lack of hardship or practical difficulties.

Variances #4, #5 and #6 are related to the addition of a second story structure in order to increase the unit size to the maximum 50%. The existing house exceeds the maximum 30% lot coverage allowed for a two-story home and, as a one-story structure, is also restricted by the non-conforming setbacks and pool location making the expansion of the first floor practically unfeasible. Because the 1949 structure will be retained and renovated and the new addition is proposed to be placed at the rear where any adverse impact is minimized, staff is supportive of the applicant's request in this case, and recommends approval of the three (3) variances.

Staff finds that the proposed addition is not detrimental to the adjacent properties and finds that the variances requested are the minimum necessary to upgrade the property to more current living standards and minimize the alteration to the one-story single family home. The physical location of the building, pool and trellis structure are existing conditions, not created by the applicant, and meet the practical difficulty criteria of the City's Charter to grant variances #1, #2, #4, #5 and #6.

### **RECOMMENDATION:**

In view of the foregoing analysis, staff recommends **approval** of the variance(s) #1, #4, #5 and #6 as requested, approval of variance #2, as modified and denial of variance #3, subject to the conditions enumerated in the attached Draft Order which address the inconsistencies with the aforementioned Practical Difficulty and Hardship criteria, as applicable.

TRM:MAB:IV

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