


MIAMI BEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP 
Planning Director

DATE: January 6, 2017 Meeting

RE: File No. ZBA16-0031
4712 North Bay Road – Single Family Residence

The applicant, Gregg H. Fierman / 4712 NBR, LLC, is requesting a variance to exceed the maximum lot coverage allowed in order to construct a new accessory building in the rear of the existing two-story single family home.

STAFF RECOMMENDATION:

Denial of the variance.

LEGAL DESCRIPTION:

Lot 11, Block 1, of "Nautilus Subdivision", According to the Plat Thereof, as recorded in Plat Book 8 at Page 95 of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Zoning -	RS-3
Future Zoning-	RS
Lot Size -	17,067 SF
Lot Coverage	
Existing-	6,019.2 / 35.2%*
Proposed-	6,058.77 SF / 35.5%*
Maximum-	5,120.1 SF / 30%
Unit size	
Existing-	7,554.03 SF / 44.26%*
Proposed-	7,593.59 SF / 44.59%*
Maximum	8,533.5 SF / 50%
Height-	
Existing-	31'-0" pitched roof
Proposed-	same

EXISTING STRUCTURE:

Year Constructed:	2004
Architect:	Jarosz Rosello
Vacant Lot:	None
Demolition:	None

Grade:	+4.29' NGVD*
Flood:	+7.00' NGVD
Flood/Grade Difference:	2.71'
Adjusted Grade:	+5.64' NGVD
Finish Floor Elevation:	+8.0' NGVD

* As represented by the applicant.

THE PROJECT:

The applicant has submitted plans entitled "4712NBR Residence", as prepared by Z.W.Jarosz Architect, P.A., signed and sealed November 21, 2016.

The applicant is requesting a variance for the construction of a new accessory building at the rear of the existing single family home property.

The applicant is requesting the following variance:

1. ~~A variance to exceed by 5.5% the maximum allowed lot coverage of 30% for a two story home in order to construct an accessory building in the rear yard and increase the lot coverage to 35.5%.~~

- 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-3, Maximum Lot Coverage for a 2-story Home (% of lot area): 30%.

The existing single family home, constructed in 2004 is currently considered a non-conforming building with a lot coverage at 35.2% that exceeds the maximum 30% lot coverage allowed for two-story structures. The applicant is proposing an accessory building in the rear yard that features a gazebo open in all sides and a bathroom. The area of the gazebo does not count in the lot coverage calculation. However, the bathroom must be counted in the lot coverage which increases the non-conformity of the structures.

The property does not have accessory buildings at the rear and the gazebo is a common structure associated with a pool in most single family homes. The applicant is also in the process of obtaining permits for renovations to the interior of the house including a new jacuzzi. The gazebo as proposed can be constructed without increasing the lot coverage of the property and without the need for a variance. The configuration of the house, with its 6,019 square feet of lot coverage, three (3) bathrooms on the ground floor, and five (5) bathrooms on the second floor is a reasonable use of the property. The addition of the new bathroom is a self-imposed condition that does not meet the practical difficulties criteria for the granting of this variance.

As the variance requested is the result of the applicant's actions and is not the minimum variance required to make a reasonable use of the property, staff recommends that the Board denies the applicant's request.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicants have submitted plans and documents with the application that staff has concluded **DO NOT** 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 submitted with the application **DO NOT** 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;

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 consistent with the City Code, with the exception of the requested variances. 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 an interior waterfront lot facing North Bay Road. The existing two story single family home was constructed in 2004. The main structure is considered legal non-conforming regarding lot coverage as it exceeds the maximum permitted lot coverage under today's Code. The applicant is proposing the addition of a one story accessory building and is requesting a variance to exceed the lot coverage allowed for its construction.

Staff has no objection to the proposed open gazebo associated with the outdoor pool. However, the bathroom addition that creates the variance request is not warranted by any practical difficulties or undue hardship. The compliance with the Code would not deprive the applicant of any rights; on the contrary, as currently configured, the property contains a special benefit to the applicant that is not common in the City's single family district, as the

existing lot coverage of 35.2% exceeds the maximum lot coverage of 30% for new home construction.

Staff recommends that the variance request be denied due to a lack of hardship or practical difficulties.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **denial** of the variance request. However, should the Board find that the variance requested satisfies 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, staff recommends that the project be 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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**BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA**

PROPERTY: 4712 North Bay Road

FILE NO. ZBA16-0031

IN RE: The application for a variance to exceed the maximum lot coverage allowed in order to construct a new accessory building in the rear of the existing two-story single family home.

LEGAL DESCRIPTION: Lot 11, Block 1, of "Nautilus Subdivision", According to the Plat Thereof, as recorded in Plat Book 8 at Page 95 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: January 6, 2017.

ORDER

The applicant, Gregg H. Fierman / 4712 NBR, LLC, filed an application with the Planning Department for the following variance:

1. A variance to exceed by 5.5% the maximum allowed lot coverage of 30% for a two story home in order to construct an accessory building in the rear yard and increase the lot coverage to 35.5%.

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

- b. In order to identify, protect and preserve mature trees on site, which are suitable for retention and relocation, a Tree Report prepared by a Certified Tree Arborist shall be submitted for the mature trees on site.
- c. Any tree identified to be in good overall condition shall be retained, and ~~protected in their current location if they are not in conflict with the proposed~~ home, or they shall be relocated on site, if determined feasible, subject to the review and approval of staff. A tree care and watering plan also prepared by a Certified Arborist shall be submitted prior to the issuance of a Building Permit or Tree Removal/Relocation Permit. Subsequent to any approved relocation, a monthly report prepared by a Certified Arborist shall be provided to staff describing the overall tree performance and adjustments to the maintenance plan in order to ensure survivability, such report shall continue for a period of 18 months unless determined otherwise by staff.
- d. Existing trees to be retained on site shall be protected from all types of construction disturbance. Root cutting, storage of soil or construction materials, movement of heavy vehicles, change in drainage patterns, and wash of concrete or other materials shall be prohibited.
- e. Any existing plant material within the public right-of-way may be required to be removed, at the discretion of the Public Works Department.
- f. Canopy shade trees as required by code should be provided in the public ROW subject to the review and approval of the Urban Forestry Division and the Planning Department
- g. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.
- h. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
- i. The applicant shall verify, prior to the issuance of a Building Permit, the ~~exact location of all backflow preventors and all other related devices and fixtures.~~ The location of backflow preventors, Siamese pipes or other related devices and fixtures, if any, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans, and shall be subject to the review and approval of staff.
- j. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms. The location of any exterior transformers and how they are screened with landscape material from the right-of-way shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.

- k. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect or the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.
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- 5. 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.
 - 6. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
 - 7. The applicant shall comply with all conditions imposed by the Public Works Department.
 - 8. 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.
 - 9. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
 - 10. 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.
 - 11. 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.
 - 12. 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 (Condition Nos. 1-12, 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 "4712NBR Residence", as prepared by

Z.W.Jarosz Architect, P.A., signed and sealed November 21, 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 _____, 2017.

BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Michael Belush, AICP
Planning and Zoning Manager
For the Chair

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Michael Belush, Planning and Zoning Manager 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 _____ ()

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

PROPERTY: 4712 North Bay Road

FILE NO. ZBA16-0031

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MEETING DATE: January 6, 2017.

ORDER

The applicant, Gregg H. Fierman / 4712 NBR, LLC, filed an application with the Planning Department for the following variance:

1. ~~A variance to exceed by 5.5% the maximum allowed lot coverage of 30% for a two story home in order to construct an accessory building in the rear yard and increase the lot coverage to 35.5%. (Variance denied)~~

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 **DO NOT** 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.

IT IS HEREBY ORDERED, based upon the foregoing finding 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 the staff recommendation, that the Application is **DENIED WITHOUT PREJUDICE** for the above-referenced project.

Dated this _____ day of _____, 2017.

BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Michael Belush, AICP
Planning and Zoning Manager
For the Chair

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Michael Belush, Planning and Zoning Manager 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 _____ ()

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