

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

PROPERTY: 1340 Bay Drive.

FILE NO. ZBA16-0019

IN RE: The application for variances to reduce the required front, sides and sum of the side yard setbacks, and to exceed the maximum length of a wall associated with a partial 2-story portion of the home, in order for the home to be considered as a single story home for zoning purposes.

**LEGAL
DESCRIPTION:** See attached "Exhibit A".

MEETING DATE: December 7, 2016.

ORDER

The applicant, David and Cindy Eisenberg, filed an application with the Planning Department for the following variance(s) which were either approved by the Board with modifications, or denied.

The following variance was denied by the Board:

1. A variance to reduce by 1'-11" the minimum front setback of 20'-0" in order to construct a new one-story single family home at 18'-1" from the front property line.

The following variances were approved by the Board:

2. A variance to reduce by 2'-6" the minimum interior side setback of 10'-0" in order to construct a new single family home at 7'-6" from a side property line.
3. A variance to reduce reduce by 7'-10" the minimum required sum of the side setbacks of 22'-10" in order to construct a new single family home with a sum of the side setbacks of 15'-0".
4. A variance to exceed by 10'-2" the maximum length of 25'-0" for a wall associated with a partial 2-story portion of the home, in order for the home to be considered as a single story home for zoning purposes with a wall length of 35'-2".

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, but **only** as to variances #2, #3, and #4. Accordingly, the Board of Adjustment has determined the following, as to variances #2, #3, and #4:

MB

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 variance(s) #2, #3, and #4, as noted and **Denies** variance #1, as noted and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:

1. Substantial modifications to the plans submitted and approved as part of the application, 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 second floor shall not be expanded beyond the limits shown.
3. The finished level of the first floor shall not exceed base flood elevation (BFE) plus 2.5 feet.
4. The parking located within the front yard shall comply with the setback and pervious area requirements of the City Code.
5. No increase in lot coverage, beyond that shown in the plans presented to the Board, shall be permitted.
6. During construction work, the Applicant will maintain gravel at the front of the construction site within the first 15'-0" of the required front yard to mitigate disturbance of soil and mud by related personal vehicles exiting and entering the

site, and with an 8'-0" high fence with a wind resistant green mesh material along the front and street side of the property. All construction materials, including dumpsters and portable toilets, shall be located behind the construction fence and not visible from the right-of-way. All construction vehicles shall either park on the private property or at alternate overflow parking sites with a shuttle service to and from the property. ~~The Applicant shall ensure that the contractor(s) observe good~~ construction practices and prevent construction materials and debris from impacting the right-of-way.

7. Where one or more parcels are unified for a single development, the applicant shall execute and record a unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney
8. A Construction Parking and Traffic Management Plan (CPTMP) shall be approved by the Parking Director pursuant to Chapter 106, Article II, Division 3 of the City Code, prior to the issuance of a Building Permit.
9. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:
 - a. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan for all trees to be retained on site. Such plan shall be subject to the review and approval of staff, and shall include, but not be limited to a sturdy tree protection fence installed at the dripline of the trees prior to any construction.
 - 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 wall 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.
- 10. 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.
-
- 11. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
 - 12. The applicant shall comply with all conditions imposed by the Public Works Department.
-
- 13. 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.

14. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
15. 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.
16. 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.
17. 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. 1-17, 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 "Eisenberg Residence" as prepared by Strang Architecture, dated August 25, 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 21st day of DECEMBER, 2016.

BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

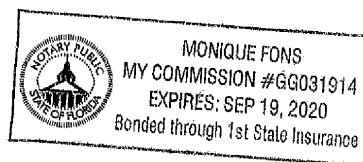
BY: Michael Belush

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 21st day of December, 2016, 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: Monique Fons

Print Name: MONIQUE FONS

Notary Public, State of Florida

My Commission Expires: 9/19/2020

Commission Number:

Approved As To Form:

City Attorney's Office (Nicholas Kallezi) 12/14/2016

Filed with the Clerk of the Board of Adjustment on 12/21/2016 (JF)

MB

EXHIBIT 'A'**PARCEL A**

All of Lot B and the East 1/2 of Lot 7, Block 14, of OCEAN SIDE SECTION OF THE ISLE OF NORMANDY, as recorded in Plat Book 25, Page 60, of the Public Records of Miami-Dade County, Florida; said East 1/2 of said Lot 7, Block 14, being more particularly described as follows:

Beginning at the intersection of the dividing line between Lots 7 and 8, Block 14, with the southerly line of Bay Drive as shown on the Plat entitled OCEAN SIDE SECTION OF THE ISLE OF NORMANDY, as recorded in Plat Book 25, Page 60, of the Public Records of Miami-Dade County, Florida; run in a southeasterly direction along the dividing line between said Lot 7 and 8, Block 14, a distance of 170 feet to a point on the northerly shore of Biscayne Bay, thence run along the arc of a circular curve deflecting to the left having for its elements a central angle of $1^{\circ} 35' 19.88''$ a radius of 1803.05 feet, a distance of 25 feet to the center point of said Lot 7, (chord of said curve deflecting to the right $89^{\circ} 12' 20.06''$ a distance of 24.998 feet); thence run in a northwesterly direction along the center line of Lot 7, Block 14, along a line deflecting to the right $90^{\circ} 47' 39.94''$ from the chord of the last mentioned curve, a distance of 170 feet to a point on the southerly line of Bay Drive; thence run in a northeasterly direction along the southerly line of Bay Drive along the arc of a circular curve deflecting to the right, having for its elements a central angle of $1^{\circ} 35' 19.88''$ a radius of 1873.05 feet, a distance of 27.357 feet, (chord of said curve deflecting $90^{\circ} 47' 39.94''$ to the right, a distance of 27.355 feet) to the Point of Beginning.

PARCEL B

The West 10 feet of Lot 9, Block 14, of OCEAN SIDE SECTION OF THE ISLE OF NORMANDY, as recorded in Plat Book 25, Page 60, of the Public Records of Miami-Dade County, Florida.

MB