

# MIAMI BEACH

## PLANNING DEPARTMENT

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### BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP  
Planning Director



DATE: October 02, 2015 Meeting

RE: BOA File No. 3786  
**1515 West Avenue – Multifamily Building**

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The applicant, Westgate Condo Association., is requesting an after-the-fact variance to reduce the required interior side setback for air conditioning units located on the north side of the property.

#### **HISTORY:**

The application initially came before the Board on September 11, 2015 and was continued to a date certain of October 2, 2015, at the request of the applicant.

#### **STAFF RECOMMENDATION:**

Approval of the variance with additional conditions.

#### **LEGAL DESCRIPTION:**

Lot 8, Block 66-A of "Commercial Subdivision of Alton Beach Realty Co.", According to the Plat Thereof, as recorded in Plat Book 6 at Page 55 of the Public Records of Miami-Dade County, Florida.

#### **SITE DATA:**

Zoning -	RM-1
Future Zoning-	RM-1
Lot Size -	7,500 SF
Existing Use-	Residential Multifamily (12 units)
Proposed Use-	Same

#### **EXISTING STRUCTURE:**

Year Constructed:	1951
Architect:	M. M. Ungaro
Vacant Lot:	No
Demolition:	No

#### **THE PROJECT:**

The applicant has submitted documents entitled "Request for Variance" and a survey dated March 19, 2015.

The applicant is requesting an after-the-fact variance for the installation of eight (8) air conditioning units located on the north side of the property.

The applicant is requesting the following variance(s):

1. A variance to reduce by 5'-4" the minimum required interior side setback of 7'-6" for mechanical equipment in order to retain eight (8) air conditioning units at a minimum of 2'-2" from the north property line.
  - Variance requested from:

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

*(f) Central air conditioners, emergency generators and other mechanical equipment. Accessory central air conditioners, generators and any other mechanical equipment, including attached screening elements, may occupy a required side or rear yard, in single-family, townhome, or in the RM-1 residential multifamily low intensity districts, provided that:*

*(1) They are not closer than five feet to a rear or interior side lot line or ten feet to a side lot line facing a street.*

*(2) The maximum height of the equipment including attached screening elements, shall not exceed five feet above current flood elevation, with a maximum height not to exceed ten feet above grade, as defined in subsection 114-1, of the lot at which they are located.*

*(3) If visible from the right-of-way, physical and/or landscape screening shall be required.*

*(4) Any required sound buffering equipment is located outside the minimum five-foot yard area specified in subsection (f)(1) of this section.*

*(5) If the central air conditioning and other mechanical equipment do not conform to subsections (1), (2), (3), and (4) above, then such equipment shall follow the setbacks of the main structure.*

The existing building has a non-conforming side setback of 5'-0" on the north side and eight air conditioning units have been installed on this side without the appropriate building permits. The building was constructed originally with wall mounted air conditioning units that still exist in some apartments. The building has non-conforming setbacks on the south side and rear. Because access to the apartments occurs on the south side with two stairs and an open corridor, this side is not suitable to install air conditioning units at the ground level. Further, the rear of the property facing the alley has a setback of less than 5 feet. Therefore, the most reasonable place to locate the exterior air conditioning equipment is on the north side where the visibility from the street is reduced.

However, due to the closeness of the adjacent building to the installed mechanical equipment, staff recommends that a solid concrete block wall with a minimum of 7' in height be installed along the entire length of the adjacent building at a height that would cover the installed equipment on the subject property. This would visually screen the equipment and mitigate noise from the condensing units. The applicant has agreed to this condition as expressed in the hardship letter. Based on the existing site conditions staff is supportive of the applicant's request.

**PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board of Adjustment finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that also indicate the following, 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 inconsistent with the following sections of the City Code, in addition to the requested variance(s):

1. The picket fence located in the right of way on the front of the property shall be removed or relocated inside the property lines with a building permit. If the fence is relocated inside property lines, the spear tops shall be removed.

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 lot containing a 12 unit two-story multifamily building constructed in 1951. Some property owners have replaced the original wall mounted air conditioning units with exterior condenser units located on the north side of the property. As the setback for this side is only 5 feet, the equipment does not comply with the minimum setback of 7'-6" required by the City Code. Based on the existing constraints for the property, there is no other suitable place to install the air conditioning units and comply with at least 5 feet of setback from the property lines.

At the September 11, 2015 meeting, neighbors from the adjacent building to the north, which are most affected by the placement of the air conditioning units, expressed opposition to the variance request due to the noise impact from the existing mechanical equipment. In order to mitigate the impact to the residential building on the north side, staff recommends the replacement of the chain link fence with a solid concrete block wall material at a height up to the top of the air conditioning units and along the entire length of the adjacent building and that any future installation of air conditioning units be within the northeast area facing the parking of the adjacent building and no closer than two feet six inches (2'-6") from the property line.

Staff would note that the site has a picket fence located at the front of the property in the right of way. A building permit shall be obtained for the removal or relocation of the front fence inside the property lines including the removal of the spear tops.

In summary, staff is supportive of the variance requested and recommends approval with the modifications outlined.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends **approval** of the variance as requested, subject to the following conditions:

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. A building permit shall be obtained for the removal or relocation of the front fence to be inside the property lines including the removal of the spear tops. The front fence shall be relocated or removed before obtaining final zoning inspection approval for the installation of the existing air conditioning units.
3. A new solid concrete block wall, a minimum of seven (7') feet high shall be installed within the length of the adjacent building on the north side of the property, in a manner to be reviewed and approved by staff. If the height of the installed air conditioning units exceed seven (7') feet, the units shall be relocated to the roof, or the applicant shall return to the Board and request a modification for the increased height.
4. A revised landscape plan and hardscape 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.
5. Applicant agrees that in the event Code Compliance receives complaints of unreasonably loud noise from mechanical and/or electrical equipment, and determines the complaints to be valid, even if the equipment is operating pursuant to manufacturer specifications, the applicant shall take such steps to mitigate the noise with noise attenuating materials as reviewed and verified by an acoustic engineer, in a manner to be reviewed and approved by staff.

6. 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.
7. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
8. The applicant shall comply with all conditions imposed by the Public Works Department.
9. The conditions on this Order are binding on the applicant, the property's owners and all successors in interest and assigns.
10. This 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 granted herein.
12. This Order shall be recorded, at the expense of the applicant, in the Public Records of Miami-Dade County; the original or a certified copy shall be provided to the Planning Department prior to the issuance of a Building Permit.

TRM:MAB:IV

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