

MIAMIBEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP
Planning Director



DATE: February 05, 2016 Meeting

RE: BOA File No. 3798
117 Palm Avenue – Single Family Residence

The applicant, Gary A. Friedman, is requesting variances to exceed the maximum area allowed for an accessory structure in reference to the main house and to exceed the maximum area for a second story, in order to construct a two story accessory buildings in the rear yard of the existing single family home.

STAFF RECOMMENDATION:

Approval of the variance with conditions.

LEGAL DESCRIPTION:

Lot 5, of "Palm Island Subdivision", According to the Plat Thereof, as recorded in Plat Book 6 at Page 54 of the Public Records of Miami-Dade County, Florida.

SITE DATA:

| | |
|----------------|------------------|
| Zoning - | RS-1 |
| Future Zoning- | RS |
| Lot Size - | 30,000 SF |
| Lot Coverage | |
| Existing | 7,646 SF / 25.4% |
| Proposed- | 8,648 SF / 28.8% |
| Maximum- | 9,000 SF / 30% |
| Unit size | |
| Existing | 6,506 SF / 21.6% |
| Proposed- | 7,686 SF / 25.6% |
| Maximum | 15,000 SF / 50% |
| Height- | |
| Existing- | 1 story |
| Proposed- | 2 stories |

EXISTING STRUCTURE:

| | |
|-------------------|-------------------|
| Year Constructed: | 1971 |
| Architect: | Chacon & Gonzalez |
| Vacant Lot: | No |
| Demolition: | None |

THE PROJECT:

The applicant has submitted plans entitled "Friedman Pool Cabanas & Loggia", as prepared by HaasKauf, LLC, Architects, signed and sealed December 17, 2015.

The applicant is requesting variances for the construction of a new two-story accessory building within the rear yard of the property.

The applicant is requesting the following variance(s):

1. A variance to exceed by 8.1% (529.4 SF) the maximum unit size permitted of 10% (650.6 SF) for an accessory building in relation to the unit size of the main house in order to construct a new two-story accessory building at 18.1% (1,180 SF) of the size of the main home (6,506 SF).

- Variance requested from:

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

(a) Accessory buildings.

(2) In single-family districts the following regulations shall apply to accessory buildings within a required rear yard:

b.Size. The area of accessory buildings shall be included in the overall unit size calculation for the site. In no instance shall the total size of all accessory building(s) exceed ten percent of the size of the main home on the subject site, or 1,500 square feet, whichever is less.

As proposed the accessory building exceeds the maximum unit size in relation to the main house. As per submitted drawings, the main house has a unit size of 6,506 SF and the accessory structure proposed is 1,180 SF. The lot area of approximately 30,000 SF would allow a maximum of 50% unit size or 15,000 SF and would permit an accessory structure of approximately 1,350 SF, if the main home were as large as it could be, which would have a much more significant impact than the proposed building on the surrounding properties. The unit size proposed is below the maximum unit size allowed if a new house were constructed on the site. The proposed building is setback 22'-6" from the rear property line and is not fully located within the 45' of required rear yard, which mitigates the impact that the proposed building would have on the adjacent properties. Staff finds that the existing house constructed in 1971 and its existing unit size create the hardship and the reason for the variance requested.

2. A variance to exceed by 8.4% the maximum permitted 50% of the first floor area for a second story in order to construct the second floor of an accessory building with 58.4% of the first floor area located within the rear yard.

- Variance requested from:

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

(a) Accessory buildings.

(2) In single-family districts the following regulations shall apply to accessory buildings within a required rear yard:

c.Two-story structures. The second floor of an accessory building shall not exceed 50 percent of the first floor area

The accessory building is primarily open on the first floor, including a bathroom and a storage area. The Code requires that no more than 50% of the first floor area of an accessory structure located in a required rear yard can be developed on the second story of the structure. In this case, the first floor area within the rear yard is open space and the second floor exceeds 8.4% of the maximum 50%. The intent of the 50% second floor area requirement is to reduce the massing of accessory buildings. The structures proposed by the applicant are consistent with this intent. The finish floor of the accessory building is 5.00' NGVD below the minimum flood elevation of 9.00' and, as such, the building height proposed is substantially lower than the height of a structure that is raised to flood elevation, as is the case with most new construction. Staff finds that the accessory building with the main enclosed areas on the second floor and the existing main house create the practical difficulties that justify the variance requested.

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. Second kitchens are subject to the review and discretion of the Planning Director, pursuant to City Code Section 142-905(b)(2), and may require the execution of a restrictive covenant. If a second kitchen is permitted by the Planning Director, a restrictive covenant, subject to the approval of the City Attorney, shall be required, indicating among other things, that the guest cottage will not be rented out separately as an apartment unit.

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.

VARIANCE REVIEW:

The subject site is an interior waterfront lot in the RS-1 zoning district containing a one story single family home constructed in 1971. The site is in the middle of two different flood zones with base flood elevation of 9.00' NGVD for the main house and elevation 10.00' NGVD for the rear. The existing house with a sloped roof is approximately 21' in height with a finish floor of 6.57' NGVD, below flood elevation. The applicant is proposing a new two story accessory building with finish floor of 5.00' NGVD, 5 feet below flood elevation. As proposed, the unit size of the accessory building exceeds the maximum 10% of the unit size of the main house and the second floor area located within the rear yard exceeds 50% of the area of the first floor. Two variances are requested for the project.

The proposed building has a much lower height and massing considering the potential maximum size of a new accessory building associated with the construction of a new house. Based on the lot area, the site could be developed up to 15,000 s.f. of unit size, constructed at flood elevation, and a height up to 31 feet for the main house and 20' for the accessory structure. The proposed building is 18'-10" high as measured from adjusted grade and the main living areas are proposed on the second floor. The total unit size proposed is well under the maximum permitted for the site.

Staff finds that the existing structures and site conditions create the practical difficulties for the variances requested. The proposed project would not be injurious or detrimental to the neighboring properties as much larger structures could be constructed. For these reasons, staff recommends approval of the variances as proposed.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **approval** of the variance(s) 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. During construction of the new building, the Applicant will ensure that all construction materials, including dumpsters and portable toilets, shall be located behind a 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
3. A revised landscape plan, 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. 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.
 - g. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.

4. 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.
5. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
6. The applicant shall comply with all conditions imposed by the Public Works Department.
7. 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.
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.