

# MIAMI BEACH

## PLANNING DEPARTMENT

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### BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP   
Planning Director

DATE: February 05, 2016 Meeting

RE: BOA File No. 3803  
**501 North Shore Drive – Single Family Residence**

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The applicants, Claudia and Samuel Grossman are requesting variances to reduce the minimum required street side setback and the minimum sum of the side setbacks in order to construct a new one story single family home.

**STAFF RECOMMENDATION:**

Approval of the variance(s) with conditions.

**LEGAL DESCRIPTION:**

Lot 18, Block 61 of "Normandy Golf Course Subdivision", According to the Plat Thereof, as recorded in Plat Book 44 at Page 62 of the Public Records of Miami-Dade County, Florida.

**SITE DATA:**

Zoning -	RS-3
Future Zoning-	RS
Lot Size -	11,675 SF
Lot Coverage	
Existing	Not provided
Proposed-	4,537 SF / 40.7%
Maximum-	5,837.5 SF / 50%
Unit size	
Existing	Not provided
Proposed-	4,762 SF / 38.8%
Maximum	5,837.5 SF / 50%
Height-	
Proposed-	1 story

**EXISTING STRUCTURE:**

Vacant Lot: Yes

**THE PROJECT:**

The applicant has submitted documents entitled "Grossman Residence" as prepared by Rodolfo Garcia, P.E., signed and sealed December 18, 2015.

The applicant is requesting street side and sum of the side setback variances for the construction of a new one-story single family home.

The applicant is requesting the following variance(s):

1. A variance to reduce by 5'-0" the minimum required street side setback of 15'-0" in order to construct a new one-story single family residence at 10'-0" from the north side property line facing Vardon Street.

- 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.*

A building permit was obtained in 2014 for the substantial demolition and reconstruction of the existing one-story single family residence. The exterior side walls were retained to maintain the existing non-conforming side setbacks of the original house. However, during the foundation work, the free-standing walls collapsed. The applicant is proposing the same street side setback of 10 feet as the original house, where the Code requires 15 feet. The new structure complies with the front setback and exceeds the rear and minimum side setbacks required.

The north side of the property is abutting Vardon Street, a dead end right-of-way that is not fully paved and that connects with the waterway. The reduction of the street side setback to 10 feet would not negatively affect other adjacent property due to its corner location and previous home construction. The proposed low-scale one-story residence is compatible with the surrounding buildings, which consist of mostly one-story residences. The proposed new home would not have a larger impact on the neighborhood than the previous home.

Based on the previously reduced side setbacks existing on the site for many years and the fact that the retention of the exterior side walls failed during the construction of the home, staff finds that the applicant's request satisfies the practical difficulties criteria for the variance requested.

2. A variance to reduce by 2'-5" the minimum required sum of the side setbacks of 22'-6" in order to construct a new one-story single family home with a sum of the side setbacks of 20'-1".

- 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:*

*a. The sum of the required side yards shall be at least 25 percent of the lot width.*

This variance is associated with the previous request. The applicant is seeking to maintain the former home setbacks on the sides for the new structure. Both side setbacks are proposed at approximately 10 feet. This setback exceeds the minimum 7'-6" required on the interior side based on the lot width of 69.9 feet. The street side does not meet the minimum 15 feet, as noted in variance number 1. Therefore, the total sum of the sides requires a variance.

Staff finds that practical difficulties exist, as noted in the variance number 1. The applicant wishes to retain the previous setbacks existing on the property for many years and in the process of constructing the new home the exterior side walls became unstable and unsafe resulting in the two variances requested. The new residence also exceeds the minimum 22'-6" setback in the rear with more than 35 feet of setback. Other important requirements such as lot coverage, unit size and open space are satisfied. The project, as proposed would not be injurious to the neighbors or the urban context.

**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:**

The application, as submitted, appears to be consistent with the applicable requirements of the City Code, with the exception of the variance(s) requests herein. This 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 waterfront lot located in the RS-3 zoning district. The original one-story residence constructed in 1957 has been demolished and a new one-story single family home is proposed on the site. The applicant's intent was to retain as much as possible of the exterior side walls of the house which were constructed with non-conforming side setbacks of 10 feet. A building permit for the partial demolition and remodeling of the house was approved in May 2015 under B1402997. However, when the foundation work started and installation of piles adjacent to the remaining walls advanced, the free-standing walls were collapsing, as indicated by the applicant in the hardship letter. A professional engineer had also determined that the remaining walls were considered structurally unsafe and recommended demolition as per letter submitted with the application documents.

The project is a low-scale single family home as opposed to most two-story residences that regularly replace older homes in the city and are developed to the maximum extent permitted. It is not common to see new construction of a one-story single family home with the size and massing proposed. Although two variances are requested, if individually analyzed, only the reduction of the street side setback is technically not conforming as the other interior side setback actually has a lesser impact than what the Code requires, as noted in the variance description portion of this report.

In summary, staff has concluded that the variances requested meet the requirements of the practical difficulties criteria established in the City Code. As such staff recommends approval of the variances number 1 and 2 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 home, the Applicant will maintain gravel at the front of the construction site within the first 15'-0" of the required front and the first 5'-0" of the required street side 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.

3. The maximum unit size shall not exceed 40%, or such lesser number as may be required by the City Code at the time of Building Permit.
4. 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.
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. 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.
9. 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.
10. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
11. 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.
12. 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.
13. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.