

MIAMI BEACH

PLANNING DEPARTMENT
Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Board Members

DATE: November 1, 2024

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **ZBA24-0167 – 5821 Pine Tree Drive.**
Folio: 02-3211-014-0260

An application has been filed requesting variances from the minimum required sum of side yard setbacks and the minimum required interior side yards, in order to construct two accessory structures to an existing architecturally significant home.

RECOMMENDATION:

Approval with conditions.

HISTORY:

July 16, 2024: The Planning Director determined that the existing single-family residence is architecturally significant. (File No. DRB24-1035).

LEGAL DESCRIPTION:

Lots 11 And 12, Block 3, Beach View Addition, according to the plat thereof, as recorded in Plat Book 16, Page 10, of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Zoning:	RS-3	Height	
Lot Size:	32,367 SF/ 0.74 Acres	Existing:	32'-2"/2-stories
Lot Width:	150'	Proposed:	N/A
		Max:	N/A

Unit Size		Year Built:	1935
Existing:	7,742 SF/23.9%	Architect:	John & Coulton Skinner,
Proposed:	10,735 SF/33.17%		
Max:	16,184 SF/50%		

Lot Coverage	
Existing:	4,648 SF/14.36%
Proposed:	7,688 SF/23.75%
Max:	9,710 SF/30%

SURROUNDING PROPERTIES:

East:	Indian Creek
North:	2-story Home, 1935
South:	2-story Home, 1926
West:	3 2-story Homes

THE PROJECT:

The applicant has submitted plans entitled "Greenberg Residence", as prepared by **TAG Architecture LLC**, dated 9/8/2024.

The applicant is proposing to construct two accessory structures on a lot with an existing

architecturally significant, two-story waterfront home. One accessory structure will be a two-story guesthouse in the rear yard and the other will be a summer kitchen and bar with storage in the side yard to the south of the primary home. The home was originally constructed in 1935 and maintains its Mediterranean Revival Style of architecture. The applicant will be maintaining the architectural integrity of the home.

The applicant is requesting the following variances from section 7.2.2.3(b)(1) of the LDRs:

1. A variance of the minimum required side yard setback of 15' in order to construct a two-story guesthouse in the rear yard with a side setback of 8'-8" on the northern side of the property.
2. A variance from the minimum required side yard setback of 15' in order to construct a one-story structure with a side setback of 10'-0" on the southern side of the property.
3. A variance from the sum of the required side yard setback of 25% of the lot width, 37'-8", in order to construct both accessory structures resulting in a sum of side yard setbacks of 18'-8.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, staff has concluded that the plans and documents submitted with the application comply with the following hardship criteria, as they relate to the requirements of Section 2.8.3 of the Land Development Regulations:

1. 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;
2. The special conditions and circumstances do not result from the action of the applicant;
3. Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;
4. Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;
5. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
6. The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare;

7. 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; and
8. The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.

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.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 7.1.2.4(a)(i) of the Land Development Regulations establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.
Satisfied
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.
Satisfied
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Satisfied
- (4) Resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) shall be provided, in accordance with Chapter 4 of the Land Development Regulations.
Satisfied – To be reviewed at time of building permit.
- (5) The project applicant shall consider the adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact. The applicant shall also specifically study the land elevation of the subject property and the elevation of surrounding properties.
Satisfied
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land and shall provide sufficient height and space to ensure that the entry ways and exits can be modified to accommodate a higher street height of up to three (3) additional feet in height.
Not Applicable

- (7) In all new projects, all critical mechanical and electrical systems shall be located above base flood elevation. Due to flooding concerns, all redevelopment projects shall, whenever practicable, and economically reasonable, move all critical mechanical and electrical systems to a location above base flood elevation.

Satisfied

- (8) Existing buildings shall be, where reasonably feasible and economically appropriate, elevated up to base flood elevation, plus City of Miami Beach Freeboard.

Not applicable – the home will not be modified.

- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.

Not Applicable

- (10) In all new projects, water retention systems shall be provided.

Not Applicable

- (11) Cool pavement materials or porous pavement materials shall be utilized.

Satisfied – To be reviewed at time of building permit.

- (12) The project design shall minimize the potential for a project causing a heat island effect on site.

Satisfied – To be reviewed at time of building permit.

ANALYSIS:

The applicant will be maintaining the architectural integrity of the home, and the proposal is well within the limits for lot coverage and unit size. Since the home was determined to be architecturally significant the applicant can take advantage of the incentives for the retention of architecturally significant single-family homes located outside of historic districts in section 7.2.2.4 of the Land Development Regulations (LDRs). These incentives include reductions for side and rear setbacks for projections from the primary structure. Since these incentives only apply to additions to the primary structure, the applicant will be seeking variances for proposed accessory structures. If these accessory structures were connected to the primary structure, the requested variances would not be necessary.

The applicant is requesting the following variances:

1. A variance of the minimum required side yard setback of 15' in order to construct a two-story guesthouse in the rear yard with a side setback of 8'-8" on the northern side of the property.

- Variance requested from Section 7.2.2.3(b)(1):

Side, Interior Setback Lots greater than 65: **10% of the lot width or 10 feet, whichever is greater**

The lot is 150 feet in width and the existing home has a northern interior side setback of 7'-8" towards the front of the home and 8'-8" towards the rear of the home; both setbacks are legal non-conforming. The proposal is for the two-story accessory building to be built with an 8'-8" setback, consistent with the primary structure. However, accessory structures are required meet the required side interior setback, which in this case would be 15'.

In order to maintain compatibility with the existing home, the applicant is proposing to build the structure in line with the edge of the existing home. If the structure were connected to the primary home, it would be allowed to follow a 5' setback as is provided for in the architectural significance incentives for which the home is eligible; however, this would detract from the architectural integrity of the rear of the home. In light of the practical difficulties of preserving and maintaining the architecturally significant home and given that the proposed accessory structure is within the allowance for projections from architecturally significant homes, staff is supportive of the variance.

2. A variance from the minimum required side yard setback of 15' in order to construct a one-story structure with a side setback of 10'-0" on the southern side of the property.
 - Variance requested from Section 7.2.2.3(b)(1):

Side, Interior Setback Lots greater than 65: **10% of the lot width or 10 feet, whichever is greater**

The lot is 150 feet in width and the existing home has a southern interior side setback of 45'-10". The proposal is for the one-story accessory building to be built with a 10' interior side setback, which is generally consistent with the northern interior side setback of the primary structure. Although the proposed accessory structure would align with the front façade of the primary structure, it is required to follow the minimum interior side setback of the primary building, which in this case would be 15'.

In order to maintain compatibility with the existing home and not detract from its architectural integrity, the applicant is proposing to build the structure with a separation from the existing home. Given the existing large side setback, this is an appropriate location for such a structure. If the structure were connected to the primary home, it would be allowed to follow a 5' setback as is provided for in the architectural significance incentives for which the home is eligible. Given the practical difficulties of preserving and maintaining the architectural integrity of the home and given that the structure is proposed within the area that allows for projections from architecturally significant homes, staff is supportive of the variance.

3. A variance from the sum of the required side yard setback of 25% of the lot width, 37'-8", in order to construct both accessory structures resulting in a sum of side yard setbacks of 18'-8".
 - Variance requested from Section 7.2.2.3(b)(1):

Side, Interior Setback Lots greater than 65: **the sum of the required side yards shall be at least 25% of the lot width**

The lot 150 feet in width and the existing home has a sum of side yard setbacks of 53'-10". Given the lot width, a sum of side yard setback of 37'-8" would be required. The two accessory structures propose a sum of side yard setbacks of 18'-8". If these structures were connected to the primary home, they would be allowed to follow a 5' setback, regardless of the sum of side yards, as is provided for in the architectural significance incentives for which the home is eligible.

The variances requested would allow the applicant to build reasonable additions, while maintaining the architectural integrity of an architecturally significant home. Given the practical difficulties of preserving and maintaining the architectural integrity of the existing home and considering the accessory structure is proposed within the allowance for projections from architecturally significant homes, staff is supportive of the variance.

Based upon the existing site conditions, including existing setbacks, existing lot coverage, and unit size, staff finds that practical difficulties exist. The requested variances are minor in nature and should not result in any negative impacts on the surrounding neighborhood. For the reasons noted above, staff is supportive of the requested variances.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends the application be **approved, including the requested variances**, subject to the conditions enumerated in the attached Draft Order, which address any inconsistencies with the aforementioned Practical Difficulty and Hardship Criteria and Sea Level Rise criteria.

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

MEETING DATE: November 1, 2024

FILE NO. ZBA24-0167

PROPERTY: 5821 Pine Tree Drive.

FOLIO: 02-3211-014-0260

APPLICANTS: Jason and Renee Greenberg

LEGAL

DESCRIPTION: Lots 11 And 12, Block 3, Beach View Addition, according to the plat thereof, as recorded in Plat Book 16, Page 10, of the Public Records of Miami-Dade County, Florida.

IN RE: An application has been filed requesting variances from the minimum required sum of side yard setbacks and the minimum required interior side yards, in order to construct two accessory structures to an existing architecturally significant home.

FINAL ORDER

The applicant filed an application with the Planning Department for the following variances:

1. A variance of the minimum required side yard setback of 15' in order to construct a two-story guesthouse in the rear yard with a side setback of 8'-8" on the northern side of the property.
2. A variance from the minimum required side yard setback of 15' in order to construct a one-story structure with a side setback of 10'-0" on the southern side of the property.
3. A variance from the sum of the required side yard setback of 25% of the lot width, 37'-8", in order to construct both accessory structures resulting in a sum of side yard setbacks of 18'-8.

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 2.8.3 of the Land Development Regulations. Accordingly, the Board of Adjustment has determined the following:
 - i. 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;
 - ii. The special conditions and circumstances do not result from the action of the applicant;

- iii. Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;
 - iv. Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;
 - v. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
 - vi. The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare;
 - vii. 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; and
 - viii. The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.
- B. The Board hereby **Approves** the requested variances and imposes the following conditions based on its authority in Section 2.8.4 of the Land Development Regulations:
- 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 copy of all pages of the recorded Final Order shall be scanned into the plans submitted for planning permit and shall be located immediately after the front cover page of the permit plans.
 - 3. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
 - 4. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
 - 5. 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.
 - 6. 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.

7. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit, Certificate of Use or Miami Beach Business Tax Receipt.

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 approval is GRANTED for the above-referenced project, subject to those certain conditions specified in Paragraph B hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans submitted to the Board of Adjustment in accordance with the conditions set forth in this Order, as applicable, with staff review and approval.

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 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 Section 2.2.4.6 of the Land Development Regulations; the granting of any such extension of time shall be at the discretion of the Board. If the Full Building Permit for the project shall expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the application will expire and become null and void.

In accordance with Chapter 2 of the Land Development Regulations, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this **Order** shall subject the application to Chapter 2 of the Land Development Regulations, for revocation or modification of the application.

Dated _____.

BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

