

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: **ZBA24-0165 – 6 La Gorce Circle.**
Folio: 02-3210-003-0030

An application has been filed requesting a variance from the minimum required rear setback, in order to construct an accessory building to an existing single-story home.

RECOMMENDATION:

Approval with conditions.

LEGAL DESCRIPTION:

Lots 3, Block 1, LaGorce Island, a subdivision according to the plat thereof, as recorded in Plat Book 34, Page 83, of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Zoning:	RS-2	Accessory Structure Height
Lot Size:	20,404 SF/ 0.468 Acres	Existing: N/A
Lot Width:	100'	Proposed: 12' – 1-story
		Max: 12' – 1-story/ 20' – 2 stories

Unit Size

Existing:	9,473 SF/46.43%
Proposed:	9,932 SF/48.67%
Max:	10,202 SF/50%

Year Built: 2013

Lot Coverage

Existing:	5,249 SF/25.72%
Proposed:	5,708 SF/27.97%
Max:	6,121 SF/30%

SURROUNDING PROPERTIES:

East:	1-story home, 2010
North:	2-story home, 1997/Roxbury Lane
South:	Biscayne Bay
West:	1-story home, 1953

THE PROJECT:

The applicant has submitted plans entitled "6 La Gorce Residence Pavilion", as prepared by **Portuondo Perotti Architects, Inc.**, dated 9/6/2024.

The applicant is proposing to construct a one-story accessory structure on a lot with an existing two-story home. The accessory structure is a cabana/pavilion with a bathroom and will be located adjacent to the existing pool.

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

1. A variance of the minimum required rear yard setback of 15'-3" in order to construct a single-story accessory structure with a rear yard setback of 12'-8 1/2".

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.
Satisfied
- (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 proposed one-story accessory structure will utilize an accordion door system to provide a shaded sitting area and wet bar, and has been designed in an architectural style that is compatible with the existing home.

The applicant is requesting the following variances:

1. A variance of the minimum required rear yard setback of 15'-3" in order to construct a single-story accessory structure with a rear yard setback of 12'-8 1/2".

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

Rear Setback: **15 % of the lot depth**

20 feet minimum

50 feet maximum

The lot has a depth of 202.8 feet and the required rear yard setback of 30.42 feet. The LDR's provide that the rear setback for accessory structures on waterfront lots is one-half the rear yard setback, which in this case would be 15.21 feet. The proposal is for the single-story accessory building to be built with a rear yard setback of 12.71 feet. The accessory structure would be located on the eastern portion of the lot, and the proposal complies with unit size, lot coverage, and open space requirements.

The applicant previously received a building permit to construct the accessory structure in a manner that complied with the minimum rear setback requirements; however, this required the demolition and reconstruction of the existing pool. The cost of demolishing and reconstructing the pool presents a practical difficulty and the applicant is requesting a variance to eliminate the need to demolish and reconstruct the pool. Also, building the structure in compliance with the required rear setback and reconstructing the pool would result in an accessory structure that is awkwardly placed on the site.

The intent of the rear yard setback for accessory structures on waterfront lots is to preserve side views from adjacent properties. The proposal should not result in any negative impacts to views on the adjacent property, given that it has an existing legally non-conforming accessory structure adjacent to the proposed structure that blocks side views.

Based upon the existing site conditions, staff finds that practical difficulties exist for the construction of the accessory structure at the subject site. The requested variance is 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 variance.

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. ZBA24-0165

PROPERTY: 6 La Gorce Circle.

FOLIO: 02-3210-003-0030

APPLICANTS: Sean B. Smith

LEGAL

DESCRIPTION: Lots 3, Block 1, LaGorce Island, a subdivision according to the plat thereof, as recorded in Plat Book 34, Page 83, of the Public Records of Miami-Dade County, Florida.

IN RE: An application has been filed requesting a variance from the minimum required rear setback, in order to construct an accessory building to an existing single-story home.

FINAL ORDER

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

1. A variance of the minimum required rear yard setback of 15'-3" in order to construct a single-story accessory structure with a rear yard setback of 12'-8 1/2".

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 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

BY: _____
Rogelio A. Madan, AICP
Development and Resiliency Officer
for Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____,
_____, by Rogelio A. Madan, Development & Resilience Officer 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:
Print Name:
Notary Public, State of Florida
My Commission Expires:
Commission Number:

Approved As To Form:
City Attorney's Office _____()

Filed with the Clerk of the
Board of Adjustment on _____()