

**MIAMI SHORES PLANNING AND ZONING BOARD**  
**Planning and Zoning Department Staff Report**

|                    |   |                                |                           |
|--------------------|---|--------------------------------|---------------------------|
| Hearing Date       | July 24, 2014   | Meeting Time                   | 7:00 P.M.                 |
| File Number        | PZ-6-14-2014116   | Folio Number                   | 11-3205-024-0040          |
| Owner              | Maritza Gaiqui Guardian of Natalia Garqui, 1450 NE 101st Street, Miami Shores, FL 33138-2613  |                                |                           |
| Applicant          | Same  |                                |                           |
| Agent              | None  |                                |                           |
| Property Address   | 1450 NE 101st Street  |                                |                           |
| Legal Description  | MIAMI SHORES BAY PK<br>ESTS AMD<br>PB 56-86<br>LOT 8 BLK 1<br>LOT SIZE 102.930 X 120<br>OR 13934-1065 1288 1  | Assessor's Building Value      | \$361,267                 |
| Property Sq. Ft.   | 12,351  | Building Sq. Ft.               | 3,584                     |
|                    |   | Flood Zone                     | VE10                      |
| Zoning             | R35   | Future Land Use Designation    | Single Family Residential |
| Existing Use       | One-family dwelling   | Comprehensive Plan Consistency | Yes                       |
| Existing Structure | 1-story; 3 bed/2.5 bath   | Year Built                     | 1954                      |
| Subject            | Variance, Sec. 702, Hardship variances. Sec. 400. Schedule of Regulations, Accessory Buildings ["Location: In rear yard only as defined in Sec. 201, not less than 15 ft. from the main building and not less than 10 ft. from any plot line of contiguous plot that bounds a side or front yard or not less than 5 ft. from any other plot line;"] Variance to permit the location of an electric generator in the side yard next to the dwelling and 7 ft. from the side plot line with a concrete pad 5.5 ft. from the side plot line. |                                |                           |
| Action Required    | Approve, Approve with Conditions, or Deny the Application   | Other Required Approvals       | Village Building Permits  |
| Staff Report       | David A. Dacquisto, Director, Planning and Zoning   | Report Date                    | July 9, 2014              |

**Background**

The applicant is applying for a hardship variance to:

Variance, Sec. 702, Hardship variances. Sec. 400. Schedule of Regulations, Accessory Buildings ["Location: In rear yard only as defined in Sec. 201, not less than 15 ft. from the main building and not less than 10 ft. from any plot line of contiguous plot that bounds a side or front yard or not less than 5 ft. from any other plot line;"]

All structures must meet or exceed the required 10 ft. side yard setback.

The applicant proposes to install an electric generator in the side yard on the south side of the property.

The generator is approximately 5 ft. long, 2.5 ft. wide and 3 ft. tall.

The generator would be located 7 ft. from the side plot line and installed on a concrete pad that would be located 5.5 ft. from the side plot line.

The applicant is requesting a variance of 4.5 ft. for a concrete pad and 3 ft. for an electric generator to permit their location within the 10 ft. side yard setback require by the zoning code.

The plan submitted by the applicant is not to scale and the generator shown on the plan may be larger than will actually be the case. A scale of 1 in. = 30 ft. may be used to approximate distances.

The applicant has stated in their application that locating the electric generator towards the bay would put the generator at risk during a storm causing damage and failure.

The applicant further states that a resident's medical condition and therapies necessitate constant power that would be interrupted during a power failure. Further information on this is provided in the application.

### **Variance Criteria**

Pursuant to Sec 702 Hardship variances, of the Miami Shores Village Code of Ordinances, Appendix A, the applicant must provide sufficient evidence to support a finding by the Planning Board that the variance requested meets all four (4) of the required criteria to grant a variance:

#### Variance Criteria

- (a) The alleged peculiar and unusual conditions affecting the property.
- (b) The alleged reasons why such conditions make it impossible strictly to apply specified provisions of this ordinance to the property.
- (c) The variance in such strict application that the applicant believes to be necessary in order to enable him to make a reasonable use of the property.
- (d) The reasons why the applicant is of the opinion that such variance would be in harmony with the intent and purpose of this ordinance, would not be detrimental to the existing use or prospective development of property in the vicinity, and would not give to the applicant an advantage with respect to the use of his property that is not enjoyed by the owners of similarly situated property.

The applicant has responded in the application to the criteria upon which the Planning and Zoning Board will consider the application.

Staff reviewed the applicant's response to the four (4) criteria and Staff finds that the application has not met all four (4) of the required criteria to grant a variance:

- (a) *The alleged peculiar and unusual conditions affecting the property.*
  - a. Applicant states that the property is one of the few with a backyard on Biscayne Bay making a generator more susceptible to damage during storms.

There is nothing peculiar or unusual about the property. There are numerous residences along Biscayne Bay and other residences on canals.

- (b) *The alleged reasons why such conditions make it impossible strictly to apply specified provisions of this ordinance to the property.*
  - a. Applicant states that there needs to be an exception for Bay Front properties.

The reasons for setbacks do not change due to location within Miami Shores. Variances are available for unique circumstances subject to proper review.

(c) *The variance in such strict application that the applicant believes to be necessary in order to enable him to make a reasonable use of the property.*

a. Applicant states that the variance requested is the minimum variance required.

The minimum variance to achieve what the applicant is seeking is 4.5 ft. for the pad and 3 ft. for the generator. Discrepancies in the actual request arise from conflicting information provided and the lack of an accurate scaled and dimensioned site plan.

(d) *The reasons why the applicant is of the opinion that such variance would be in harmony with the intent and purpose of this ordinance, would not be detrimental to the existing use or prospective development of property in the vicinity, and would not give to the applicant an advantage with respect to the use of his property that is not enjoyed by the owners of similarly situated property.*

a. The applicant states the request will not be detrimental to any existing or prospective development in the area. Other residences have generators at the side of their residence.

The current Planning Department has not approved generators in the side yard. Electric generators that meet setback requirements may be located in the side yard outside the required setback. Generators illegally situated within the required side yard setback are subject to code enforcement action.

### **Analysis**

The applicant's points on locating a generator near the bay are valid and may be the subject of consideration for a future code amendment.

If there is a need to treat Bay front properties differently when locating electric generators a variance is not the correct solution if the issue applies broadly and not to a specific property along the bay. Locating electric generators on waterfront properties may be the subject of consideration for a future code amendment.

The applicant failed to identify the medical condition of a resident as a mitigating factor under any of the four (4) required criteria to grant a variance.

The applicant has not met all four (4) of the required criteria to grant the variances requested.

The Planning and Zoning Board may consider all evidence provided and comment at the public hearing on this matter in arriving at their decision.

### **Recommendation**

Planning and Zoning staff recommend to the Planning and Zoning Board **DENIAL** of the variance with a finding that the applicant has not met all four (4) of the required criteria to grant the 4.5 ft. variance for a concrete pad and 3 ft. variance for an electric generator to permit their

location within the required 10 ft. side yard setback as required in the Code of Ordinances, Sec. 400. Schedule of Regulations, Accessory Buildings [“Location: In rear yard only as defined in Sec. 201, not less than 15 ft. from the main building and not less than 10 ft. from any plot line of contiguous plot that bounds a side or front yard or not less than 5 ft. from any other plot line;”], Article VII. Errors and Variances, Sec. 702 Hardship variances.

However, if the Planning Board finds that the applicant has provided sufficient evidence to support a finding that the application has met all four (4) of the required criteria to grant a variance under Section 702 of the Code of Ordinances and votes to approve the variance request, staff recommends the following conditions:

- 1) The applicant is granted a 4.5 ft. variance for a concrete pad and 3 ft. variance for an electric generator to permit their location within the required 10 ft. side yard setback
- 2) Applicant to obtain all required building permits before beginning work.
- 3) Applicant to meet all applicable code provisions at the time of permitting.
- 4) This variance is valid for a period of one (1) year from the date of approval. Building permits must be secured and work started within that time or a new variance will be required before work can commence.