

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

Hearing Date	March 26, 2015	Meeting Time	7:00 P.M.
File Number	PZ-3-15-2015176	Folio Number	11-3205-019-0080
Owner	Esther Budebo, 1155 NE 102nd Street Miami Shores, FL 33138-2615		
Applicant	Same		
Agent	None		
Property Address	1155 NE 102 nd Street		
Legal Description	MIAMI SHORES SEC 8 REV PB 43-67 LOT 8 BLK 175 LOT SIZE 123.370 X 130 OR 17068-0154 1195 1	Assessor's Building Value	\$218,737
Property Sq. Ft.	16,038	Building Sq. Ft.	3,349
		Flood Zone	AE8
Zoning	R20	Future Land Use Designation	Single Family Residential
Existing Use	One-family dwelling	Comprehensive Plan Consistency	Yes
Existing Structure	1 story; 3 bed/2 bath	Year Built	1979
Subject	Variance, Sec. 702, Hardship variances. Sec. 523.1. Construction. (6) Roofing materials. Variance to permit the applicant to paint/dye a residential roof.		
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	March 9, 2015

Background

The applicant was found by code enforcement to have painted a clay Spanish S tile roof on the applicant's residence. The applicant received a "Notice of Violation" from code enforcement with adjudication pending the outcome of the applicant's variance request.

The applicant is requesting a variance to materials to paint a residential clay Spanish S tile roof.

The applicant's roof was a pink color and is now painted a terra cotta red.

The zoning code does not have a provision to allow a clay tile roof to be painted.

Painting the surface of clay tile means that the tile will not have the same color intensity throughout as required by the zoning code under permitted roof types. Sec. 523.1 "(a) Clay tile the color of which is impregnated with the same color intensity throughout"

The purpose of the provision is to maintain the same roof color across the entire roof regardless of wear or chipping of tiles. If the surface of a color through tile is chipped the exposed underlying color will be the same as the surface of the tile and the chip will not be noticeable.

Roofing material is regulated in the zoning code under the following section.

Zoning Code Sec. 523.1 Construction

(6) *Roofing materials.* All roofs with inclines of not less than two and one-half inches per foot and all mansard fascia's shall be limited to the following materials:

- (a) Clay tile the color of which is impregnated with the same color intensity throughout;
- (b) White concrete tile;
- (c) Solid colored cement tile impregnated with the same color intensity throughout;

- (d) Thick butt variegated slate;
- (e) Metal with a factory finish and that has received a "notice of acceptance" from Miami Dade County and that is labeled "Miami-Dade County Product Control Approved" may be used as roofing material for residences and commercial buildings subject to review and approval of the planning board, in accordance with the following:
 1. The subject residence is constructed in the high modern, post-war modern, ranch or Key West architectural style, or a variation thereof.
 2. The type of roof shall be limited to standing seam metal and shall specifically exclude metal roofing intended to replicate barrel tile or Spanish-S tile.
 3. The color of the roof shall be subject to approval by the planning board and shall be limited to colors that are not bright or highly reflective and that are harmonious with the exterior color of existing buildings on the plot and the neighborhood in general.
 4. The details, color, and manner of installation shall be consistent with the architectural design, style, and composition of the residential or commercial structure.
 5. The use of a metal roof is architecturally compatible with the established scale, context, and character of the surrounding area.
- (f) Glazed tiles.
- (g) Slurry coats for concrete tiles are not permitted.
- (h) Asphalt shingles may be used to replace an existing asphalt shingle roof if an engineer's evaluation is provided to the village certifying that the roof is not structurally adequate to utilize any of the approved roofing materials.
- (i) Metal shingles may be used in commercial zones only.
- (j) Notwithstanding the above, multicolored roofs and nonstandard colors may only be used upon advance approval by the planning board.
- (k) Any substantial change from existing materials in place, shall require the approval of village staff for aesthetics and harmony with other buildings in the proximity thereof.

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 and Zoning Board that the variance requested meets all four (4) of the required criteria to grant a variance. Review begins with the first criteria and the applicant must meet each of the criteria in order before the Planning and Zoning Board may consider the next criteria, failure to meet any 1 of the 4 criteria will result in the denial of the variance request:

Sec. 702. – Hardship variances.

A variance is a relaxation of the terms of the ordinance where such action will not be contrary to the public interest by such petition demonstrating compliance with the requirements, limitations and criteria specified below, and where, owing to conditions peculiar to the property, other than conditions relating to the financial circumstances of the applicant or the result of actions of the applicant, a literal enforcement of this ordinance would leave the property owner with no reasonable use of the property.

The planning board may consider the fact a property is listed on the National Historic Register or has been designated as a historic landmark by the Miami Shores Village Council, as a basis for granting a variance.

An applicant who is of the opinion that it is impossible to apply strictly one or more of the provisions of Appendix A Zoning to their property, may appeal to the planning board, fully setting forth:

- (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 tile was cleaned and exfoliated to receive the pigment in such a way that the paint/dye will not chip or fade and in a manner that will make it impossible to remove the paint/dye.
- (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 it is not possible to remove the paint/dye.
- (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 it is not possible to remove the paint/dye.
- (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 new roof color matches the neighboring properties and looks better.

Analysis

The request fails to meet basic criteria for requesting a variance. The planning and zoning board cannot consider a variance based on "conditions relating to the financial circumstances of the applicant or the result of actions of the applicant."

The applicant painted/dyed the roof creating the condition for which the variance is asked to cure.

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) There are no peculiar or unusual conditions affecting the property. Using paint/dye on a clay tile roof that according to the applicant cannot be removed is a self-imposed hardship and the application of paint/dye to a roof is not related to an unusual condition affecting the property.
- (b) There are no peculiar or unusual conditions affecting the property where such conditions make it impossible to strictly apply specified provisions of this ordinance to the property. Using paint/dye on a clay tile roof that according to the applicant cannot be removed is a self-imposed hardship. The applicant had other options including cleaning the roof or replacing the roof.
- (c) The applicant has reasonable use of the residence and lives on the property. The applicant had other options including cleaning or replacing the roof that met code requirements. Using paint/dye on a clay tile roof that according to the applicant cannot be removed is a self-imposed hardship.
- (d) The roof may deteriorate over time exposing the underlying color of the clay tile leaving a damaged roof that is not in harmony with the community. The granting of the request would grant the applicant a privilege not enjoyed by owners of similarly situated property as other property owner's pressure wash their roofs or otherwise keep them clean. Roofs that are damaged or faded may be replaced.

The applicant has not met all four (4) of the required criteria to grant the variance 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 variance to paint a clay Spanish S tile roof as required in the Code of Ordinances, Sec. 523.1. Construction. (6) Roofing materials. (a) Clay tile the color of which is impregnated with the same color intensity throughout; 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 variance to paint/dye the clay Spanish S tile roof at 1155 NE 102nd Street terra cotta red.
- 2) Applicant to obtain all required building permits for work already completed and any additional building permits that may be required.
- 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 the signing of the Development Order by the Board Chair. Building permits must be secured and work started within that time or a new variance will be required before work can commence.