

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

Hearing Date	March 24, 2016	Meeting Time	7:00 P.M.
File Number	PZ-02-16-201619	Folio Number	11-3101-018-0080
Owner	Richard Boullon		
Applicant	Same		
Agent	None		
Property Address	85 NW 102nd Street		
Legal Description	NAVARRO SUB PB 12-59 LOT 17 & W15FT LOT 18 BLK 1 LOT SIZE 70.000 X 108 OR 16553-2687 0994 4	Assessor's Building Value	N/A
Property Sq. Ft.	7,560	Building Sq. Ft.	1,125
		Flood Zone	X
Zoning	R15	Future Land Use Designation	Single Family Residential
Existing Use	One-family dwelling	Comprehensive Plan Consistency	Yes
Existing Structure	1 story; 2 bed/2 bath	Year Built	1979
Subject	Pursuant to Articles IV, V and VI of Appendix A Zoning, Sec. 400 Schedule of Regulations and Sec. 600, Sec. Sec. 702 Hardship variance. Sec. 400. Schedule of Regulations. Yard setbacks. Wood deck in side yard.		
Action Required	Approve, Approve with Conditions, or Deny the Application	Other Required Approvals	Village Building Permits MDDRER/EPRD
Staff Report	David A. Dacquisto, Director, Planning and Zoning	Report Date	February 29, 2016

**Background**

The applicant has applied for a 12.5 ft. variance to legalize an attached deck construct 2.5 ft. from the side plot line.

Attached decks have the same setback as the residence. The minimum required setback side yard setback from a side street to a deck attached to a residence is 15 feet. Any deck not attached to the residence must be located not less than 15 ft. from a residence.

This applicant was before the board July 23, 2015 with the same variance request.

The residence was constructed on a corner lot. The residence faces NW 102nd Street and the west side of the residence is on NW 1st Avenue.

The residence was constructed with a rear yard of 22 ft. (a 15 ft. rear yard is required) in depth and the westerly side yard along NW 1<sup>st</sup> Avenue has a setback of 25 ft. (a 15 ft. side/street yard setback is required).

The deck is approximately 20 ft. wide and 22.5 ft. in depth. The deck is located approximately 2.5 ft. from the side plot line.

Code Enforcement issued a Courtesy Notice on February 24, 2015 informing the applicant of the need to secure a building permit for the work undertaken.

The applicant applied for a building permit on February 25, 2015. Planning staff rejected the application on February 25, 2015 and noted on the denial that:

A 15 ft. side yard setback is required between the deck and the side plot line.

Code Enforcement issued a Notice of Violation on March 19, 2015 based on the failure to secure a building permit for the work undertaken.

The same building permit was submitted to planning staff for review May 13, 2015 and planning staff rejected the application on May 15, 2015 and noted on the denial that:

A 15 ft. side yard setback is required between the deck and side plot line.

A 15 ft. side/street yard setback is required between the residence and side plot line on a corner plot where the plot's rear yard adjoins the neighbor's side plot line. The Planning and Zoning Board has determined that an attached deck is part of the residence and has the same setback as the residence.

### **Analysis**

Code Provisions:

Schedule of Regulations

Side Yard Setback Requirements: For dwellings: 10 ft., except that on a corner plot the rear line of which adjoins the side line of a plot to the rear, the side yard on the street side shall have a width of not less than 15 ft. For other buildings or structures: Same as for dwellings unless otherwise specified in this Code of Ordinances.

### ***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 the existing development leaves little area to construct a deck however the limitations on development on the site are the result of previous owners siting of the residence on the plot and not the plot itself a smaller deck may be constructed in an alternative location.*

- (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 the property is a corner plot limiting development possibilities however a residence was constructed providing use for the plot and a deck is possible under the provisions of the code on the easterly side of 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.*
- a. Applicant states that the deck must be constructed in its present location due to the location of the residence on the plot, the existence of the residence provides for 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.*
- a. The applicant states that the deck is in harmony with the house; the deck was built to code and approved by the Department of Health in Dade County. The situation of the residence on the plot is not uncommon in Miami Shores; the applicant purchased the residence with the existing conditions and has use of the property. The Miami-Dade department of Health does not have jurisdiction to approve decks in Miami Shores only to determine that the deck will not interfere with a septic system.

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.”

### **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 construct a wood deck 2.5 ft. from the side plot line on a corner residence where the rear plot line of the residence adjoins the side line of a plot to the rear, as required in the Code of Ordinances, Sec. 400 Schedule of Regulations; 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 allow a wood deck in the side yard 2.5 ft. from the side plot line.
- 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.