

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

Hearing Date	March 23, 2017	Meeting Time	7:00 P.M.
File Number	PZ-2-17-20175	Folio Number	11-2232-029-0020
Owner	Luis and Maria Guerra		
Applicant	Same		
Agent	None		
Property Address	1155 NE 104 th Street		
Legal Description	EVEVINGSIDE PB 44-53 LOT 2 BLK 1 LOT SIZE 75.000 X 130 OR 19672-4751 05 2001 1	Assessor's Building Value	\$399,054
Property Sq. Ft.	9,750	Building Sq. Ft.	3,587
		Flood Zone	AE8
Zoning	R20	Future Land Use Designation	Single Family Residential
Existing Use	One-family dwelling	Comprehensive Plan Consistency	Yes
Existing Structure	2 story; 4 bed/3 bath	Year Built	2004
Subject	Pursuant to Articles IV, V and VI of Appendix A Zoning, Sec. 702 Hardship variance. Sec. 400 Schedule of Regulations; Side yard setback and rear yard setback: Division 15. Waterfront Lands, Sec. 534. Development. (1) and (4); Sec. 600.		
Action Required	Approve, Approve with Conditions, or Deny the Application	Other Required Approvals	Village Building Permits Miami Dade Department of Regulatory and Economic Resources
Staff Report	David A. Dacquisto, Director, Planning and Zoning	Report Date	March 1, 2017

Background

The applicant is requesting a 10 ft. variance to build a 75 ft. wide deck from side plot lot line to side plot line with a 0 ft. setback.

Structures must be set back not less than 10 ft. from side plot line.

The applicant is requesting a variance to the rear yard setback in excess of 15 ft. to build the 75 ft. wide deck beyond the top of the bank and over the canal.

The applicant is proposing to construct a 55 ft. wide 7 ft. deep dock 7 ft. into the canal and 2 ft. past the rear property line. The proposed dock meets setback requirements.

The applicant states that the work is necessary to correct a condition that was created by a previous owner who excavated along the canal without permits to install a new seawall.

The violation cited is:

- 1) *Installation of seawall along canal requires approval & permits from Miami Dade Department of Regulatory and Economic Resources and permits from Miami Shore Village.*

The proposed work does not include a seawall to stabilize the bank and there is no indication in the application how the proposed work would correct the violation. The proposed deck covers the area excavated and does nothing to stabilize it.

The agreement with the village was that that a fine of \$8,000 be paid and that was done. The second condition was that the violation, as written above, be corrected. The work as proposal does not address the violation there is no seawall or bank stabilization proposed.

Analysis

The plans have preliminary approval from the Miami-Dade Department of Regulatory and Economic Resources.

The applicant has written in the submittal that the work was required to settle a violation and agreement with the village. Should the board approve the variance there is no guarantee that the proposed work would satisfy the violation. That determination would be made not by the board but by the village manager with the village attorney and code compliance.

Side yard setback is 10 feet.

Shoreline setback is 15 feet for accessory structures

Division 15. Waterfront Lands

Sec. 534. - Development.

Any new development on land adjacent to Biscayne Bay, Biscayne Canal or other tributaries of the bay shall be subject to special approval under Article VI of this ordinance. The site plans shall be reviewed with respect to:

(1) Retention of natural vegetation near the water's edge;

(2) Storm drainage that detains the first one inch in natural or filtered structural facilities; and

(3) Construction that is sensitive to the floodplain and avoids its filling.

(4) Unless otherwise specified, setbacks for waterfront plots shall be measured from the plot line. Where the plot line extends into the canal or bay or over the bulkhead, seawall or riprap, setbacks shall be measured from the landward edge of the cap of the bulkhead, seawall or the top of the riprap (where said riprap has been placed in accordance with the provisions of Chapter 24 of the Miami-Dade County Code) or from the mean high water line as defined in Chapter 177, Part 2, Florida Statutes, where no bulkhead, seawall or riprap exists.

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 work proposed is to correct illegal excavation of the canal to construct a seawall. The excavation of the bank was done by a previous owner and the applicant was aware of the situation when purchasing the property. The village forgave approximately \$140,000 in fines to allow the purchase to go through. The work proposed does not correct the violation and does not propose a seawall to stabilize the bank.
- (b) The alleged reasons why such conditions make it impossible strictly to apply specified provisions of this ordinance to the property.*
 - a. Applicant states the work by the previous applicant requires the corrective action proposed i.e. the deck. The excavation of the bank was done by a previous owner and the applicant was aware of the situation when purchasing the property. The village forgave approximately \$140,000 in fines to allow the purchase to go through. The applicant may apply for a permit to construct a seawall to stabilize the bank.
- (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 the variance is necessary to utilize the yard due to the excavation. The excavation of the bank was done by a previous owner and the applicant was aware of the situation when purchasing the property. The village forgave approximately \$140,000 in fines to allow the purchase to go through. The applicant may apply for a permit to construct a seawall to stabilize the bank and apply for a dock permit to construct a dock in the canal.

- (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 work would allow repair of the property. The excavation of the bank was done by a previous owner and the applicant was aware of the situation when purchasing the property. The village forgave approximately \$140,000 in fines to allow the purchase to go through. The proposed work does not appear to repair the damage to the dock but hides it under a deck.

The request fails to meet basic criteria for requesting a variance.

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, 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 construction of a deck and dock as shown on the plans submitted and made a part of this approval.
- 2) This approval by the planning board of this project does not in itself satisfy the conditions of the "Declaration of Use and Covenant Running with the Land," and the "Settlement Agreement," and this approval is not to be considered agreement by the Village of Miami Shores that the terms of the "Declaration of Use and Covenant Running with the Land," and the "Settlement Agreement," have been satisfied.
- 3) Applicant to obtain all required building permits before beginning work.
- 4) An erosion and sedimentation plan subject to review and approval by the building official is required if ground cover is removed or as required by the building official. Properly installed soil erosion measures (silt fences, straw barriers, etc.) and anti-tracking area at all construction entrances are required to be put in place and maintained if ground cover is removed or as required by the building official. Required erosion control measures must be in place prior to footings inspection.
- 5) The applicant shall provide an architect or engineer's drainage plan and report to certify to the building official that the site provides storm drainage that detains the first one inch in natural or filtered structural facilities prior to the issuance of a building permit by the Building Official.
- 6) The applicant is responsible for the installation and maintenance of drainage structures and any site modifications shown on the drainage plan that are necessary to provide storm drainage that detains the first one inch in natural or filtered structural facilities. Minor modifications to the approved drainage plan shall require a new signed architect or

engineer's drainage plan that shall be subject to review and approval of the Building Official and the Planning Director. Major changes to the approved drainage plan including the construction of drainage improvements such as but not limited to mounds and walls, shall require a new site plan review application and review and approval by the Planning and Zoning Board.

- 7) All drainage improvements shall be installed in accordance with the approved drainage plan before final inspection by the Building Official.
- 8) The applicant shall repair and maintain the onsite drainage system in accordance with the approved drainage plan except that major changes shall require Planning and Zoning Board approval as stated in Condition #5.
- 9) Applicant to obtain all required permits and approvals from the Miami-Dade Department of Regulatory and Economic Resources.
- 10) Applicant to meet all applicable code provisions at the time of permitting.
- 11) Applicant to meet all applicable code provisions at the time of permitting.
- 12) 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.