

THE CITY OF CORAL GABLES BOARD OF ADJUSTMENT
APRIL 6, 2009
CORAL GABLES CITY HALL, 405 BILTMORE WAY, COMMISSION CHAMBER
CORAL GABLES, FLORIDA

The meeting was scheduled to be held in Coral Gables City Hall Commission Chamber, Coral Gables, Florida, commencing at 8:00 a.m.

MEMBERS

A M J J A S O N D J F M APPOINTED BY:

Jorge Mora	P	X	X	X	X	X	X	X	X	C	P	E	Mayor Donald Slesnick II
Tony Bello	P	P	P	C	E	P	P	P	P	C	P	P	Vice Mayor William H. Kerdyk, Jr.
Sharon Langer, Esq.	P	P	E	C	E	P	P	P	E	C	P	P	Comm. Maria Anderson
Jaime Pozo, Esq.	E	E	P	C	P	E	P	E	P	C	E	P	Comm. Rafael "Ralph" Cabrera, Jr.
John C. Lukacs, Esq., Chairperson	P	P	P	C	P	P	P	P	P	C	P	P	Comm. Wayne "Chip" Withers
Sergio Artigues, Architect	P	P	P	C	E	P	P	P	P	C	P	P	Board of Adjustment
Dr. Joseph W. Briggle, Vice Chair	P	P	P	C	P	P	P	P	P	C	P	P	City Manager

STAFF:

Elizabeth L. Gonzalez, Acting Secretary
Joan Bailey, Court Reporter

A = Absent
C = Meeting Cancelled
E = Excused Absence
L = Late
P = Present
R = Resigned
X = Not on Board

THESE MINUTES DO NOT REQUIRE ANY ACTION BY THE CITY COMMISSION.

The meeting was called to order at 8:00 a.m. by the Chairperson who announced that six board members were present at that time. Four votes are necessary for any action thereof.

The Chairperson announced the following rules of procedure for the hearing:

1. Staff recommendation.
2. The applicant will present his/her case.
3. If there are speakers in favor of the application, they will be given the opportunity to be heard.
4. If there are speakers against the application, they will be given the opportunity to be heard.
5. The applicant will be given the opportunity of a rebuttal.
6. Public hearing closed.
7. Board members discussion.
8. Motion, second and a vote on the application.

1. Roll Call

Roll call was taken. Mr. Pozo had given prior notification of his inability to attend the Board of Adjustment meeting, as he would be on vacation.

A motion was made by Ms. Langer, seconded by Dr. Briggle to excuse Mr. Pozo's absence. A resolution was passed by voice vote.

RESOLUTION NO. 4939-ZB

2. Approval of the March 2, 2009 Recap

A motion was made by Ms. Langer, seconded by Dr. Briggle to approve the March 2, 2009 Recap. A resolution was passed by voice vote.

RESOLUTION NO. 4936-ZB

3. 8695-Z

Lot(s): 1 and 3 and all of Lot 2, Block: 109
Coral Gables Country Club Section 5, PB/PG: 23/55
(4710 Orduna Drive)

Emilio Cubero - Applicant
Luis and Camille Diaz - Owner(s)
David Wearne Johnson - Architect/Engineer

A hearing was held on case no. 8695-Z.

Present: Emilio Cubero - Applicant and Luis Diaz - Owner

APPLICANT'S PROPOSAL: In connection with the proposed single-family residence at the subject property, the Applicant requests the following variance(s) pursuant to the provisions of Ordinance No. 2007-01 as amended and known as the "Zoning Code."

1. Grant a variance to allow the new single-family residence to have a front setback of twenty-three feet, ten inches (23'-10") vs. single-family residences must provide a minimum of twenty-five (25'-0") feet as required by Section 4-101(D)(4)(a) of the Coral Gables "Zoning Code."

All as shown on plans which have received Final approval from the Board of Architects. Such approval is for architectural design only and is not an endorsement of any variance being requested by the Applicant.

STAFF OBSERVATION: The Applicant is requesting to encroach one foot, two inches (1'-2") into the required twenty-five (25'-0") foot front setback area.

Plans were submitted for an addition and remodeling on the subject property. The plans approved by the City staff clearly indicate the required twenty-five (25'-0") foot front setback distance.

This property is not unique in size or configuration. Although the front property line is an arc, there are numerous building sites within the City with similar conditions, and the residences on these sites were built according to the prescribed setbacks in the Coral Gables "Zoning Code." Allowing the Applicant to maintain a reduced front setback area, would confer a privilege not afforded to other properties. An error in the construction of any portion of the residential building, or deviation from the approved plans due to dimensional inaccuracies, does not constitute a hardship. Approval of the requested variance would set a dangerous precedent for similar cases in the future.

After review of the plans submitted, the Zoning Division staff recommends **DENIAL** of Item No. 1 of the Applicant's request.

STAFF RECOMMENDATION: Pursuant to **Section 3-806 STANDARDS FOR VARIANCES** of the "Zoning Code," the Zoning Division staff finds and the Board of Adjustment shall find as follows in regard to the Applicant's proposal as presented in their application for a variance from the provisions of Ordinance No. 2007-01, as amended and known as the "Zoning Code," and makes the following recommendations:

1. That special conditions and circumstances do not 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. That the special conditions and circumstances would result from the actions of the Applicant.
3. That granting the variance requested will confer on the Applicant a special privilege that is denied by these regulations to other lands, buildings or structures in the same zoning district.
4. That literal interpretation of the provisions of these regulations would not deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these regulations, and would not work unnecessary and undue hardship on the Applicant (see also definition of "necessary hardship").
5. That the variance granted is not the minimum variance that will make possible the reasonable use of the land, building or structure.
6. That granting the variance will change the use to one that is not permitted in the zoning district or different from other land in the same district.
7. That the granting of the variance will not be in harmony with the general intent and purpose of these regulations and that such variance will be injurious to the area involved or otherwise detrimental to the public welfare.

Based on the findings in paragraphs 1 through 7 above, the Zoning Division staff recommends **DENIAL** of Item 1 of the Applicant's proposal.

The Applicant testified that the encroachment into the front setback was unintentional and due to a miscalculation that was made when the garage portion of the house was built. When the front porch addition to the residence was constructed, exact measurements were taken from the dimension of the existing garage. This is where the Applicant believes the problem occurred, but was not discovered until the entire porch was constructed. This particular lot also has a front radius arch property line with no sidewalks, giving the feel of a much larger lot and making the problem more difficult to detect. Once the porch/balcony was near completion, the Applicant noticed that the southeast corner of the balcony was encroaching into the front setback; however, there was not an easy way to correct the problem aesthetically or economically because the column footings had already been set. Once detected, the Applicant notified the proper City officials to talk about ways to resolve the problem.

A motion was made by Ms. Langer, seconded by Mr. Bello to Approve item 1 of the Applicant's proposal.

RESOLUTION NO. 4937-ZB

A RESOLUTION APPROVING A REQUEST FOR A VARIANCE TO ORDINANCE NO. 2007-01 AS AMENDED AND KNOWN AS THE "ZONING CODE," TO WIT:

1. Grant a variance to allow the new single-family residence to have a front setback of twenty-three feet, ten inches (23'-10") vs. single-family residences must provide a minimum of twenty-five (25'-0") feet as required by Section 4-101(D)(4)(a) of the Coral Gables "Zoning Code."

A Resolution was passed and adopted due to the following roll call: "Yea" - Mr. Artigues, Mr. Bello, Dr. Briggle, Mr. Mora, Ms. Langer and Mr. Lukacs. "Nay" - None. "Excused" - Mr. Pozo.

4. 8697-Z

Lot(s): 28 through 30 inclusive, Block: 104
Coral Gables Biscayne Bay Section 1, Plat A, PB/PG: 25/63
(755 Tiziano Avenue)

Jennie S. Malloy - Applicant
Jennie S. Malloy - Owner
Paul A. Buzinec, A.I.A. - Architect/Engineer

A hearing was held on case no. 8697-Z.

Present: Jennie S. Malloy - Applicant and Owner

APPLICANT'S PROPOSAL: In connection with the proposed single-family residence at the subject property, the Applicant requests the following variance(s) pursuant to the provisions of Ordinance No. 2007-01 as amended and known as the "Zoning Code."

1. Grant a variance to allow the proposed standby generator in the side street yard vs. no accessory building or structure may be located in the area between the street and the main residential building, or any part thereof, as required by Section 5-101(B) of the Coral Gables "Zoning Code."
2. Grant a variance to allow the proposed standby generator in the side street yard vs. in no case shall an accessory building or structure be located closer to the front or side street of a lot or building site than the main or principal building as required by Section 5-101(C) of the Coral Gables "Zoning Code."
3. Grant a variance to allow the proposed standby generator to be at a maximum height of five and a half (5'-6") feet to the top of the generator from actual grade, and to have an area of twenty-one (21) square feet vs. standby generators shall be limited to a maximum height of four (4'-0") feet and may not exceed a ground area of twenty (20) square feet as required by Section 5-2801(A)(14) of the Coral Gables "Zoning Code."

All as shown on plans which have received Final approval from the Board of Architects. Such approval is for architectural design only and is not an endorsement of any variance being requested by the Applicant.

STAFF OBSERVATION: The Applicant is requesting a variance for a proposed stand-by generator to be located between the side street and the main residential building, and to be located closer to the side street than the main residential building.

Staff has reviewed the plans submitted. Due to the location of the pool and the location of the large septic drain field in the rear and interior side of the property, staff has determined the side street, Erwin Road, to be the most feasible location for the proposed generator. The location proposed complies with the required fifteen (15'-0") feet side street setback. In addition, the electrical panel for the home is located closest to the side street, and would facilitate the wiring installation for the generator. The proposed location also provides ample space for servicing the unit.

The new streamline design incorporates the diesel fuel tank built beneath the unit. Due to the built-in tank, the overall height of the generator is 5 1/2 feet, exceeding the allowable height by 1 1/2 feet. The total area of the generator is twenty-one square feet, exceeding the allowable area by one foot. Both the height and the area the generator exceeds over the allowable amount is minimal, and the homeowner has agreed to add additional plants to the existing lush landscaping in order to completely screen the unit from street view.

Staff recommends APPROVAL of Items 1, 2 and 3 of the Applicant's request.

STAFF RECOMMENDATION: Pursuant to **Section 3-806 STANDARDS FOR VARIANCES** of the "Zoning Code," the Zoning Division staff finds and the Board of Adjustment shall find as follows in regard to the Applicant's proposal as presented in their application for a variance from the provisions of Ordinance No. 2007-01, as amended and known as the "Zoning Code," and makes the following recommendations:

1. That special conditions and circumstances do 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. That the special conditions and circumstances do not result from the actions of the Applicant.

3. That granting the variance requested will not confer on the Applicant a special privilege that is denied by this Ordinance to other lands, buildings or structures in the same zoning district.
4. That literal interpretation of the provisions of the "Zoning Code" would deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the "Zoning Code," and would work unnecessary and undue hardship on the Applicant (see also definition of "necessary hardship").
5. That the variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure.
6. That granting the variance will not change the use to one that is different from other land in the same district.
7. That the granting of the variance will be in harmony with the general intent and purpose of the "Zoning Code," and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Based on the findings in paragraphs 1 through 7 above, the Zoning Division staff recommends **APPROVAL** of Items 1, 2 and 3 of the Applicant's proposal.

A motion was made by Dr. Briggle, seconded by Mr. Artigues to Approve items 1, 2 and 3 of the Applicant's proposal.

RESOLUTION NO. 4938-ZB

A RESOLUTION APPROVING A REQUEST FOR VARIANCES TO ORDINANCE NO. 2007-01 AS AMENDED AND KNOWN AS THE "ZONING CODE," TO WIT:

1. Grant a variance to allow the proposed standby generator in the side street yard vs. no accessory building or structure may be located in the area between the street and the main residential building, or any part thereof, as required by Section 5-101(B) of the Coral Gables "Zoning Code."
2. Grant a variance to allow the proposed standby generator in the side street yard vs. in no case shall an accessory building or structure be located closer to the front or side street of a lot or building site than the main or principal building as required by Section 5-101(C) of the Coral Gables "Zoning Code."
3. Grant a variance to allow the proposed standby generator to be at a maximum height of five and a half (5'-6") feet to the top of the generator from actual grade, and to have an area of twenty-one (21) square feet vs. standby generators shall be limited to a maximum height of four (4'-0") feet and may not exceed a ground area of twenty (20) square feet as required by Section 5-2801(A)(14) of the Coral Gables "Zoning Code."

A Resolution was passed and adopted due to the following roll call: "Yea" - Mr. Bello, Dr. Briggle, Mr. Mora, Ms. Langer, Mr. Artigues and Mr. Lukacs. "Nay" - None. "Excused" - Mr. Pozo.

During discussion the board proposed that City staff should have the ability to approve requests for the installation of generators under these conditions instead of having applicants request a variance(s) from the Board of Adjustment. It was suggested that staff craft a resolution to the City Commission to address this concern.

Meeting adjourned at 8:26 a.m.

**THE CITY OF CORAL GABLES
BOARD OF ADJUSTMENT**

Elizabeth L. Gonzalez, Acting Secretary