



PLANNING DEPARTMENT

Variance Requests / Staff Analysis & Recommendation

TO: Board of Adjustment Members

**FROM: Jorge G. Gomez, AICP
Planning Director**

DATE: September 5, 2008

**SUBJECT: File No. 3375
Casa D'Azzurro - Eric Korchia
250 East San Marino Drive**

Request:

The applicant is requesting the following variances in order to permit the construction of a swimming pool within the front yard of single family residence currently under construction:

1. A variance to waive 4'-0" of the required 20'-0" minimum front setback for a swimming pool in order to build the exterior side of the infinity edge gutter at 16'-0" from the front (north) property line, facing 3rd Terrace.
 - Variance requested from:
Sec. 142-1133. Swimming pools.
This section applies to swimming pools in all districts. Accessory swimming pools, open and enclosed, or covered by a screen enclosure, or screen enclosure not covering a swimming pool, may only occupy a required rear or side yard.
 - Supplementary section:
Sec. 142-106. Setback requirements for a single-family detached dwelling.
The setback requirements for a single-family detached dwelling in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:
(1) *Front: The front setback requirement for these districts shall be 20 feet.*
2. A variance to waive 18'-0" of the required front yard setback of 20'-0" in order to locate the pool equipment pad at 2'-0" from the front (north) property line, facing 3rd Terrace.

- Variance requested from:

Sec. 142-1132. Allowable encroachments within required yards.

- (j) *Hot tubs, showers, saunas, whirlpools, toilet facilities, swimming pool equipment, decks. In all districts, hot tubs, showers, whirlpools, toilet facilities, decks and cabanas are structures which are not required to be connected to the main building but may be constructed in a required rear yard, provided such structure does not occupy more than 30 percent of the area of the required rear yard and provided it is not located closer than 7 1/2 feet to a rear or interior side lot line. Swimming pool equipment may be located in the rear and/or side yard when it is at least two feet from a rear or interior side lot line; however, when a side yard faces a street, swimming pool equipment shall be located at least ten feet from the property line with landscaping or fencing constructed in a manner that prevents it being viewed from the street. Freestanding, unenclosed facilities including surrounding paved or deck areas shall adhere to the same setback requirements as enclosed facilities.*

Hardship Criteria:

Section 118-353. Variance applications.

- (d) *In order to authorize any variance from the terms of these land development regulations and sections 6-4 and 6-41(a) and (b), the board of adjustment shall find that:*
- (1) *Special conditions and circumstances 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) *The special conditions and circumstances do not result from the action of the applicant;*
 - (3) *Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;*
 - (4) *Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;*
 - (5) *The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;*
 - (6) *The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and*
 - (7) *The granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan. The planning and zoning director may require applicants to submit documentation to support this requirement prior to the scheduling of a public hearing or anytime prior to the board of adjustment voting on the applicant's request*

Background and Analysis:

Zoning District: RS-4 Single Family Residential District

The applicant is requesting a variance to build a new swimming pool on a corner lot with a single family residence, currently under construction. The request to build a swimming pool in the required front yard of corner lots is common in single family districts. The front entrance to the house is designed to face on East San Marino Drive, but for zoning purposes, the front of the lot is on 3rd Terrace. In this particular case, the house

currently under construction was approved earlier this year. Because of the siting of the home and its driveway access being at the rear, there is basically no other option to place the pool anywhere else without a variance; this corner provides the largest space available to build a swimming pool. The home that was originally built on this lot, now demolished, was built in 1949, and in 1961, a pool, a pool screen enclosure and a deck were built roughly ten feet from the front property line. At that time, a variance request was not made, but a building permit was approved for the construction, according to the building card for the property. The proposed 15' width of the pool is an industry standard, and there is no decking proposed beyond the north infinity edge of the pool, allowing for ample areas to be landscaped and sodded. Furthermore, a swimming pool may be allowed at 10 feet from a side facing the street, without requiring a variance; this applicant re requesting to locate the water's edge of the pool at 16 feet from the north property line.

The second request is to allow the pool equipment to be located at 2'-0" from the front property line. Staff believes that this should be relocated somewhere else within the property, further back, as there are some areas within the property that would permit the location of this equipment without interfering with any required setbacks.

Recommendation:

Staff recommends **approval of variance 1 as requested and denial of variance 2,** with the following conditions:

1. The proposed pool equipment shall be relocated to meet its required setbacks.
2. The proposed swimming pool shall meet the minimum required setbacks on the east and west sides.
3. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.
4. The applicant shall submit a hold harmless letter to the City Attorney's Office in a form acceptable to the City Attorney indemnifying and holding harmless the city against any claim or loss in the event of an accident involving a motor vehicle or other instrumentality due to the proximity of the pool to the public right-of-way.
5. A visual barrier shall be provided to screen the swimming pool from view along all public right-of-ways and shall consist of hedge, wall or fence not less than five (5) feet in height.
6. A landscape plan for the entire site, inclusive of street trees as per the City of Miami Beach Master Street Tree Plan, shall be submitted to and approved by staff before a building permit is issued for construction.

7. The applicant shall comply with all conditions imposed by the Public Works Department.
8. The applicant shall obtain a full building permit within eighteen months (18) months from the date of this hearing. If the full building permit is not obtained within the specified time limits, the applicant shall, prior to expiration of such period, apply to the Board for an extension of time. At the hearing on such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. Failure to comply with this order shall subject the variance to Section 118-356, City Code, for revocation or modification of the variance.
9. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

JGG:RL:DBR

cc: Gary Held, First Assistant City Attorney