

Board of Adjustments and Appeals
Tuesday, March 15, 2022
@ 6:00 p.m.



City of Indian Rocks Beach

1507 Bay Palm Boulevard, Indian Rocks Beach, Florida 33785

www.indian-rocks-beach.com

Administrative
727/593-2517
727/596-4759 (Fax)

Library
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Public Services
727/595-6889
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AGENDA

CITY OF INDIAN ROCKS BEACH BOARD OF ADJUSTMENTS AND APPEALS

TUESDAY, MARCH 15, 2022 @ 6:00 P.M.

CITY COMMISSION CHAMBERS

1507 BAY PALM BOULEVARD, INDIAN ROCKS BEACH, FLORIDA 33785

1. CALL TO ORDER.
2. ROLL CALL.
3. APPROVAL OF MINUTES: JANUARY 18, 2022
4. **BOA CASE NO. 2022-05 — 799 EAST GULF BOULEVARD (REVISED)**
Owner/Applicant: Rory Burton
Agent/Representative: Wess Ripley
Subject Location: 799 East Gulf Boulevard
Legal Description: A portion of Lot 25, La Hacienda Replat, according to the plat thereof recorded in Plat Book 39, Pages 1 and 2, Public Records of Pinellas County, Florida, formerly La Hacienda Subdivision recorded in Plat Book 36, Pages 73 and 74.

Parcel #: 12-30-14-47412-000-0251
Variance Request: Variance request to Section 110-344(5) of the Code of Ordinances to encroach 5 feet into the north 8 foot side yard setback, resulting in a north side yard setback of 3 feet, for the installation of a swimming pool, on property located at 799 East Gulf Boulevard, Indian Rocks Beach, Florida, and legally described as a portion of Lot 25, La Hacienda Replat, according to the plat thereof recorded in Plat Book 39, Pages 1 and 2, Public Records of Pinellas County, Florida, formerly La Hacienda Subdivision recorded in Plat Book 36, Pages 73 and 74.
5. OTHER BUSINESS.
6. ADJOURNMENT.

APPEAL: If a person decides to appeal any decision made with respect to any matter discussed at such meeting or hearing, will need a record of the proceedings and for such purposes, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based, per s. 286.0105, F.S. Verbatim transcripts are not furnished by the City of Indian Rocks Beach and should one be desired, arrangements should be made in advance by the interested party (i.e. court reporter).

In accordance with the Americans with Disability Act and s. 286.26, F.S., any person with a disability requiring reasonable accommodation in order to participate in this meeting should contact the City Clerk's office with your request telephone 727/595-2517 or doreilly@irbcity.com no later than seven (7) business days prior to the proceeding for assistance.

POSTED: March 10, 2022

AGENDA ITEM NO. 1
CALL TO ORDER

AGENDA ITEM NO. 2
ROLL CALL

AGENDA ITEM NO. 3
APPROVAL OF MINUTES

**MINUTES — JANUARY 18, 2022
CITY OF INDIAN ROCKS BEACH
BOARD OF ADJUSTMENTS AND APPEALS**

The Regular Meeting of the Indian Rocks Beach Board of Adjustments and Appeals was held on **TUESDAY, JANUARY 18, 2022**, at 6:00 p.m., in the City Commission Chambers, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida.

1. **CALL TO ORDER.** Chair DeVore called the meeting to order at 6:02 p.m.

2. **ROLL CALL:**

PRESENT: Chair Stewart DeVore, Vice-Chair David Watt, Board Member Rick Alvarez, Board Member Michael A. Campbell, and 1st Alternate Board Member Karen O'Donnell.

OTHERS PRESENT: City Attorney Randy Mora, Planning Consultant Hetty C. Harmon, AICP, and City Clerk Deanne B. O'Reilly, MMC.

ABSENT: Board Member Jim Labadie.

VACANT POSITION: 2nd Alternate Board Member.

(To provide continuity for research, items are listed in agenda order although not necessarily discussed in that order.)

City Attorney Mora stated that each of the cases the Board will be considering tonight are quasi-judicial proceedings not legislative. In a quasi-judicial capacity, the Board is not making the law, but rather applying the law to establish criteria and guidance in the City Code based on the competent, substantial evidence the Board receives this evening.

3. **APPROVAL OF MINUTES: NOVEMBER 16, 2021**

MOTION MADE BY MEMBER ALVAREZ, SECONDED BY VICE CHAIR WATT, TO APPROVE THE NOVEMBER 16, 2021, MINUTES. UNANIMOUS APPROVAL BY ACCLAMATION.

4. **BOA CASE NO. 2022-01 — 1701 GULF BOULEVARD**
Owner/Applicant: Guppy's on the Beach, LLC
Eugen Fuhrman
Agent/Representative: Sofarelli Architecture
Subject Location: 1701 Gulf Boulevard, Indian Rocks Beach, Florida
Legal Description: Indian Beach Re-Revised, Block 65, Lots 3 and 4
Parcel #: 01-30-14-42030-065-0030

- structures or buildings in the same zoning district. *There are no special conditions or circumstances peculiar to the land.*
- b. The special conditions and circumstances do not result from the actions of the applicant. *The applicant did not create any special conditions or circumstances.*
 - c. Granting the variance will not confer on the applicant any special privilege that is denied by subpart B to other lands, structures or buildings in the same zoning district. *Granting the variance would confer special privileges to the applicant.*
 - d. Literal interpretation of the provisions of subpart B would deprive other properties in the same zoning district under the terms of subpart B and would work unnecessary and undue hardship upon the applicant. *The approval of this variance request would not deprive other owners of use and enjoyment of their properties.*
 - e. The variance granted is the minimum variance that will make possible the reasonable use of the land, structure or building. *This is the minimum variance to allow the owner to install the umbrellas.*
 - f. The granting of the variance will be in harmony with the general intent and purpose of subpart B, and such variance will not be injurious to the area involved or be otherwise detrimental to the public welfare. *Granting the variance will not be in harmony with the general intent and purpose of subpart B.*

STAFF RECOMMENDATION: Based on the variance review criteria of Section 2-152, of the Code of Ordinances, staff recommends denial of the request.

NOTICE: A 15-day notice was mailed by first class mail to the property owners within 150 feet in any direction of the subject property and posted on subject property on January 3, 2022, pursuant to Section 2-149, of the Code of Ordinances.

CORRESPONDENCE RECEIVED: Letter of support received from Erwin and Lucy Scheuringer, 1713 Gulf Boulevard.

[End of Staff Report]

City Attorney Mora read by title only Agenda Item No. 4, BOA Case No. 2022-01, 1701 Gulf Boulevard.

City Attorney Mora inquired of the members if they had any ex-parte communications with the applicant or their agent, with all members responding negatively.

City Attorney Mora inquired of the members if any of them had conducted a site visit for the limited purpose of evaluating the application, with Chair DeVore responding in the affirmative.

Planning Consultant Harmon stated staff felt that the umbrellas would be more permanent.

Vice-Chair Watt asked if a permit was applied for the removable umbrellas, which is the part that he does not understand. He asked if a permit was required for the umbrellas, and asked if the umbrellas would be removed nightly?

Planning Consultant Harmon explained the applicant came in to construct a retaining wall, and part of that permit was for the permanent umbrella bases and three cantilever umbrellas.

Scott Bebell, 1701 Gulf Boulevard, representing the applicant, Eugen Fuhrman, stated the umbrella base sits in concreted in the ground, but the actual umbrella can be removed at any given time. The umbrellas are removable and fold up. When the project was started, it was more about safety. He explained during the afternoon storms when there are wind gusts, the tables and umbrellas are picked up, sometimes causing accidents.

Mr. Bebell stated they decided to redo the existing retaining wall and beautify the restaurant more. They had their architect look into better safety outside umbrellas, and the oversized umbrellas for their outside patio area were the best for safety. It made sense for them to find a removable one because they had asked for other requests in the years past about detached awnings and the flag sails, which are all permanent structures and prohibited by the City Code.

Mr. Bebell stated the large umbrellas and permanent umbrella bases just seemed the most logical thing that was found that works in both ways. If approved, the patio would have three (3) oversized umbrellas instead of ten (10), rated 160 mph hurricanes, and removable. The umbrellas are not a permanent structure. The 12 inch by 12 inch bases are in the ground set in concrete and are permanent.

Member Campbell stated that as his colleague has suggested in one way of looking at this, the applicant does not need a variance if the umbrellas are removed nightly. If the variance is not granted, and the umbrellas are left up, then the applicant would receive a code violation.

Member Campbell asked if the applicant was planning on removing the umbrellas nightly.

Mr. Bebell responded if need be. He said they are before the Board because Guppy's has been in Indian Rocks Beach for 29 years. He stated Guppy's had been great stewards to the township, and they want to make sure that they do it right. Sneaking the umbrellas in is not really in their thought process and was not the right thing to do either.

Vice-Chair Watt stated there needs to be some clarification if the umbrellas would be permanent or removed nightly. He said leaving the umbrellas up permanently would violate the City Code.

weigh at least 100 pounds each. The City had another restaurant remove a permanent sail over their back patio.

Member Campbell stated as far as the Planning Consultant's review of the site plan, there is no place that is not in the setback where the umbrellas could go.

Planning Consultant Harmon responded that is correct.

Vice-Chair Watt asked if variances could be written conditionally, specifically if there is a variance for this type of umbrella that would be collapsed nightly and if the City has some enforcement mechanism. Because if they are left up, that is a permanent-style structure, and that is what staff is concerned about. There seems to be a fix, but how does that get into part of the variance.

City Attorney Mora restated the question: "Can the Board recommend conditions on variances?" Yes, a proportionate condition can be directly related to the variance. However, a condition cannot be made in exchange for a gift to the City.

City Attorney Mora stated variances are not for use but structures. The structure at issue here is the umbrella. From a staff interpretation and Building Code, ordinary has to do with the fact that while components of the umbrella may be removed, it is part in parcel to in-ground, cemented-in structure, whether that is a base or otherwise. It has the capacity to be a fixed structure on the property, and then that structure has parts that may be able to be disassembled, and that seems to be where a lot of this discourse has gone this evening. Because the size of that structure becomes increasingly visible, it becomes a more perceived violation that would be more apparent to others than perhaps just the in-ground base that exists.

City Attorney Mora stated Vice-Chair Watt's question is: "Can the Board make a condition that, for example, based on Vice-Chair Watt's discussion, a variance is granted since the removable parts should be removed on a nightly basis. Any removable would constitute a . . ." If that is the direction that Vice-Chair Watt is going in.

City Attorney Mora stated it is ultimately the Board's call based on the testimony presented this evening to decide.

City Attorney Mora stated he does not wish to color it or tell the Board what it was. But, thus far, it appears the testimony that the Board has heard is the applicant has said since the structures may remain overnight or in any situation and be perceived as a structure present in violation of the City Code. The applicant requested a variance to be good stewards of the City and eliminate any discussion about the umbrellas.

City Attorney Mora stated staff has recommended that the applicant seek a variance to eliminate the perception at some point in the process.

MOTION TO RECOMMEND APPROVAL TO THE CITY COMMISSION CARRIED UNANIMOUSLY.

City Attorney Mora announced that BOA Case No. 2022-01 would be on the City Commission Regular Meeting Agenda on Tuesday, February 8, 2022, beginning at 5:00 p.m. He just wanted to state that for anyone present that the February 8, 2022 City Commission Regular Meeting starts at 5:00 p.m., which is earlier than usual.

5. BOA CASE NO. 2022-02 — 436-20TH AVENUE

Owner/Applicant: John Kevin Emmons, Sr.

Agent/Representative: Nuroom Corporation

Subject Location: 436-20th Avenue, Indian Rocks Beach, Florida

Legal Description: That portion of Lot 2, Eighteenth Addition to Re-Revised Map of Indian Beach, according to the Plat thereof, recorded in Plat Book 38, Page 12, Public Records of Pinellas County, Florida, described as follows: From the Point of Beginning at the most southerly corner of said Lot 2, run North 76°45'33" East, 75 feet along the South boundary of said Lot 2; thence North 12°24'47" West 64.75 feet; thence North 47°11'30" West 12 feet; thence South 68°08'46" West, 71 feet; thence South 14°04'37" East, 64.0.5 feet to the Point of Beginning.

Parcel #: 06-30-15-42354-000-0021

Variance Request: Variance request from Section 110-131 (1)(f)(2)(ii), of the Code of Ordinances, of 3 feet into the required 10-foot rear yard setback, resulting in a total rear yard setback of 7 feet, to allow for an addition.

[Beginning of Staff Report]

SUBJECT — BOA CASE NO. 2022-02: A variance request from Section 110-131 (1)(f)(2)(ii) of the Code of Ordinances of 3 feet into the required 10-foot rear yard setback, resulting in a total rear yard setback of 7 feet, to allow for an addition to the property located at 436-20th Avenue Indian Rocks Beach, Florida, and legally described as that portion of Lot 2, Eighteenth Addition to Re-Revised Map of Indian Beach, according to the Plat thereof, recorded in Plat Book 38, Page 12, Public Records of Pinellas County, Florida, described as follows: From the point of beginning at the most southerly corner of said Lot 2, run North 76°45'33" East, 75 feet along the South boundary of said Lot 2; thence North 12°24'47" West 64.75 feet; thence North 47°11'30" West 12 feet; thence South 68°08'46" West, 71 feet; thence South 14°04'37" East, 64.0.5 feet to the point of beginning. Property ID # 06-30-15-42354-000-0021

OWNER:

John K. & Kimberly P. Emmons

- e. The variance granted is the minimum variance that will make possible the reasonable use of the land, structure or building. *This is the minimum variance to allow the owner to construct the kitchen addition as desired.*
- f. The granting of the variance will be in harmony with the general intent and purpose of subpart B, and such variance will not be injurious to the area involved or be otherwise detrimental to the public welfare. *Granting the variance will not be in harmony with the general intent and purpose of subpart B.*

STAFF RECOMMENDATION: Based on the variance review criteria of Section 2-152 of the Code of Ordinances, staff recommends denial of the request.

PUBLIC NOTICE: A 15-day notice was mailed by first class mail to the property owners within 150 feet in any direction of the subject property and posted on subject property on January 3, 2022, pursuant to Section 2-149, of the Code of Ordinances.

CORRESPONDENCE RECEIVED: Letters of support received from Joseph C. Hatch, Jr., 428 20th Avenue, David Allen, 440 20th Avenue, Frank S. Pecoraro Sr. and Penny Pecoraro, 444 20th Avenue, 2007 20th Avenue Parkway, and Anthony Elliott, 2005 20th Avenue Parkway.

[End of Staff Report]

City Attorney Mora read by title only Agenda Item No. 5, BOA Case No. 2022-02, 436-20th Avenue.

City Attorney Mora inquired of the members if they had any ex-parte communications with the applicant or their agent, with all members responding negatively.

City Attorney Mora inquired of the members if any of them had conducted a site visit for the limited purpose of evaluating the application, all members responding negatively.

City Attorney Mora duly swore in all persons planning to give testimony during the quasi-judicial proceeding.

Planning Consultant Harmon stated the subject property is located at 436-20th Avenue and is surrounded by three separate lots. The applicant would like to expand the kitchen 7 feet by 15 feet. The kitchen is located on the backside of the residence, thereby causing the addition to encroach 3 feet into the required 10-foot rear yard setback. She stated there is room on the right side to expand the residence. However, the applicant would like to expand on the existing kitchen located in the back of the home.

Mr. Emmons responded evidently, yes. He said that he did not erect the fence. The fence was there when he purchased the property.

Member Campbell asked if the fence comes from the elbow junction, as shown on the diagram. In other words, does the side fence bend at the point where the fence comes together.

Mr. Emmons stated the whole property is completely fenced.

Planning Consultant Harmon stated the fence line is not shown on the survey.

Member Campbell asked if the fence was there when he bought the house.

Mr. Emmons responded yes. He stated he had painted and put nails in the fence and got a permit to put a fence on the other side.

Member Campbell asked if his backyard neighbor filed an agreement to this?

Mr. Emmons stated he has worked with owners behind him, and they have submitted a letter of support. He said that he had received letters of support from all three abutting property owners.

Vice-Chair Watt asked what the left side yard setback is?

Planning Consultant Harmon stated 7 feet. She said all setbacks comply with the City Code except for the rear yard setback.

Planning Consultant Harmon stated staff discussed several different options with the applicant.

Rick Myrick, Nuroom Corporation, the applicant's representative, 2140 Sunnydale Boulevard, Clearwater, Florida, stated most of the property is on the right side of the house for the buildable area. However, there is the FEMA 50% Rule. *[Basic rule: If the cost of improvements or the cost to repair the damage exceeds 50 percent of the market value of the building, it must be brought up to current floodplain management standards.]* He said the cost would exceed the FEMA 50% Rule if the kitchen were moved to the other side. The logical thing to do would be to leave the bedrooms where they are and extend the kitchen in the back to create some additional dining area for the kitchen, which is the objective.

Member Campbell stated he wanted to make sure that the representations he understands are being made under oath. It is 10 feet from the proposed kitchen addition to where the fence is sitting regardless of the property line. That both Mr. Emmons and Mr. Myrick are testifying is a true fact.

in and demolish that house and build that entire new house within 7 feet of that property line.

Planning Consultant Harmon stated that was incorrect. The new house would have to meet all current setback requirements.

Vice-Chair Watt stated the variance does not travel with the property.

Planning Consultant Harmon said for that purpose.

City Attorney Mora explained the variance granted travels with the property. It is not an absolute right to those dimensions at infinite lengths. For example, the applicant is seeking a variance to encroach into the 10-foot required rear yard setback by 3 feet to construct a 7-foot by 15-foot addition onto the existing kitchen. The next owner would be able to build within the same footprint but not expand further than the original variance.

Vice-Chair Watt stated the variance request reads: "*A variance request for a 3-foot into the required 10-foot rear setback, resulting in a total rear yard setback of 7 feet, to allow for an addition to the property*". The variance request does not identify the addition.

City Attorney Mora stated he understands that, and the other part of that is based on the totality of the record evidence and everything else. That kind of precision can typically be found in the correspondence that the applicant is later issued after the City Commission public hearing.

Chair DeVore opened the public hearing.

Kirby Bowers, 2104 Bay Boulevard, spoke in support of the variance. He stated a variance is needed because if the applicant moved everything to the other side, the FEMA 50% Rule would come into play.

MOTION MADE BY VICE-CHAIR WATT, SECONDED BY MEMBER CAMPBELL, TO RECOMMEND TO THE CITY COMMISSION APPROVAL OF BOA CASE NO. 2022-02. A VARIANCE REQUEST FROM SEC. 110-131 (1)(f)(2)(ii) OF THE CODE OF ORDINANCES, OF 3 FEET INTO THE REQUIRED 10-FOOT REAR YARD SETBACK, RESULTING IN A TOTAL REAR YARD SETBACK OF 7 FEET, TO ALLOW FOR A 7 FEET BY 15 FEET ADDITION TO THE EXISTING KITCHEN, FOR THE PROPERTY LOCATED AT 436-20TH AVENUE, INDIAN ROCKS BEACH, FLORIDA, AND LEGALLY DESCRIBED AS THAT PORTION OF LOT 2, EIGHTEENTH ADDITION TO RE-REVISED MAP OF INDIAN BEACH, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 38, PAGE 12, PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: FROM THE POINT OF BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LOT 2, RUN NORTH 76°45'33" EAST, 75 FEET ALONG THE SOUTH BOUNDARY OF SAID LOT 2; THENCE NORTH 12°24'47" WEST

to the map or plat thereof as recorded in Plat Book 5, Pages 6 and together with but without warranty that portion of vacated right-of-way of Beach Drive, lying west and between the westerly extension of the north line of said Lot 8 and the south line of north one-half of Lot 8, of the Public Records of Pinellas County, Florida. Parcel #01-30-14-42030-011-0080

OWNER Louis Joseph Mendel III
PROPERTY LOCATION: 2006 Beach Trail #B
ZONING: CT- Commercial Tourist

Direction	Existing Use	Zoning Category
North	Commercial Tourist	CT
East	Commercial Tourist	CT
South	Commercial Tourist	CT
West	Gulf of Mexico	N/A

BACKGROUND:

The applicant is requesting a variance for the south side yard setback for the installation of a swimming pool. They are requesting the pool encroach 4 feet 6 inches into the 7-foot side yard setback. This duplex was built in 1997 and was illegally subdivided causing the lot to be non-conforming and half the width of most platted City lots.

Sec. 2-152. Variances.

(a) *Generally; criteria for granting variances from the terms of subpart B.*

(1) The Board of Adjustments and Appeals shall make recommendations on and the City Commission shall decide variance applications will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of subpart B will result in unnecessary and undue hardship. In order to recommend or decide any variance from the terms of subpart B, the Board or the City Commission shall consider each of the following:

- a. 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. *The duplex was built in 1997 and the lot was illegally subdivided around 1999 causing the lots to be non-conforming limiting the width of the lot.*
- b. The special conditions and circumstances do not result from the actions of the applicant. *The applicant did not create any special conditions or circumstances.*
- c. Granting the variance will not confer on the applicant any special privilege that is denied by subpart B to other lands, structures or buildings in the same

stated this duplex was built in 1997 and was illegally subdivided, causing the lot to be nonconforming and half the width of most platted City lots. Several duplexes along the Gulf of Mexico have been illegally subdivided in the 2000s, making them nonconforming lots.

Planning Consultant Harmon provided a PowerPoint Presentation showing aerial views of the property, a diagram of the proposed pool, and pictures of the proposed pool.

Planning Consultant Harmon stated a common party wall agreement between the two dwelling units exists.

Planning Consultant Harmon stated the pool does meet the north side setbacks. She and the contractor spoke about moving the pool more to the north side, but the pool would be in front of the sliding glass doors, and there would be more room on the south side for activity and noise.

Planning Consultant Harmon stated if the contractor could meet both side setbacks, there would be no issues.

Planning Consultant Harmon stated staff recommends denial.

Member Campbell clarified that this unit dwelling is an illegal subdivision of an existing lot, yet a building permit was issued. He said it is important to understand if this dwelling unit is sitting on the lot line and if the City has already approved it sitting on the lot line that makes a difference to him.

Planning Consultant Harmon stated she does not know the whole history of the events that occurred with the subdivision of these lots.

Planning Consultant Harmon stated the Planning Directors in Pinellas County have worked with the Pinellas County Property Appraiser's Office concerning creation of nonconforming lots. Now, the Pinellas County Property Appraiser Office does contact the municipality about any lot splits.

Vice-Chair Watt stated what is required rear setback for pools abutting the Gulf-of-Mexico?

Planning Consultant Harmon stated according to the City Code, a swimming pool located on lots abutting the Gulf of Mexico may be located within the required front yard setback of 18 feet, but eastward of the coastal construction control line (CCCL), provided that before the issuance of a permit, the applicant provides a set of calculations and engineered drawings signed by a licensed professional engineer registered in Florida stating that the proposed swimming pool will not affect the integrity or functioning of the seawall under the most adverse conditions.

Member Alvarez stated that if the pool is reconfigured, a variance would not be required.

Mr. Mendel stated that three duplexes were built and illegally subdivided in this area. He further explained that the duplex at 2002 Beach Trail has a large pool, but both units share the pool. The duplex at 2004 Beach Trail, both units each have a pool. He stated all those pools were built 3 feet to the property line.

Mr. Mendel stated if he is not granted a variance, he would have a 9-foot wide pool. He is asking for the minimal variance. He stated that whether it is a 9-foot or 12-foot wide pool, the same amount of noise would be generated.

Chair DeVore opened the public comment session for this agenda item.

Andy Hyde, 2006 Beach Trail, Unit #A, stated his wife and he sent an email to the City, which he read into the record:

"My name is Lori Hyde and I have been a resident at 2006 Beach Trail, Unit A since 2013. I am unable to make the Board of Adjustments and Appeals meeting on January 18, 2022 therefore I would like to make my opinions known via this email.

My husband and I bought in IRB, specifically our place, due to the tranquillity of Beach Trail and the town as a whole. As I understand it, set backs are put in place to provide a relatively private place to live and prevent landowners from crowding the property of others, among other things. Over the years variances have been made for neighbors to build big pools, with no landscaping in place to mitigate noise or provide privacy, and our peaceful property isn't always peaceful anymore.

In speaking with Hetty Harmon, she made it known our properties would be nonconforming or unapproved today as currently constructed since they don't prevent overcrowding or the ability to sit in our home and not smell smoke/hear noise from neighbors.

The setbacks are 7 foot 6 inches on each side, and the variance is to take away more than half of that leaving us only a 3 foot setback to remain. The setbacks are not negatively affecting the ability to build a pool, or unique to the property. The pool can be smaller or moved more toward the other side of the property. This is not an extreme hardship!

As our common wall agreement states "No exterior construction of any nature shall be commenced or maintained upon any Unit without the written consent of the other Owners". While I am not in favor of providing a variance, I will however provide permission to build the pool only IF the pool is built within the current set backs and bushes installed along with solid fencing to provide privacy and noise barriers that are permanently maintained.

Thank you for your time and consideration.

*Best,
/s/ Lori Hyde"*

MOTION TO RECOMMEND *DENIAL* TO THE CITY COMMISSION APPROVED UNANIMOUSLY.

[FOR THE RECORD, THE APPLICANT WITHDREW HIS APPLICATION ON JANUARY 20, 2022.]

7. BOA CASE NO. 2022-04 — 210-21ST AVENUE

Owner/Applicant: Three Sisters Development Co LLC
Agent/Representative: Modern Pools
Subject Location: 210-21st Avenue
Legal Description: Indian Beach Re-Revised 13th Addition, Lot 25
Parcel #: 06-30-15-42264-000-0250
Variance Request: Variance requests from Sections 110-344(2)(f)(1) and 110-344(2)(f)(3), of the Code of Ordinances, to allow a variance of 2 feet 6 inches into the 25-foot front yard setback, resulting in a total front yard setback of 22.5 feet, and 2 feet 6 inches into the 7-foot 6 inch side yard setback, resulting in a total side yard setback of 5 feet, to allow for the installation of a swimming pool.

[Beginning of Staff Report]

SUBJECT: BOA CASE NO. 2022-04 — 210-21ST AVENUE: Variance request from Section 110-344(2)(f)(1) and Section 110-344(2)(f)(3) to encroach 2 feet 6 inches into the 25-foot front yard setback, resulting in a total front yard setback of 22.5 feet and 2 feet 6 inches into the 7-foot 6 inch side yard setback, resulting in a total side yard setback of 5 feet, for the installation of a swimming pool, for property located at 210-21st Avenue Indian Rocks Beach, Florida, and legally described as Lot 25, Thirteenth Addition to Re-Revised Map of Indian Beach, according to the map or plat thereof, as recorded in Plat Book 31, Page 38, of the Public Records of Pinellas County, Florida. Parcel #06-30-15-42264-000-0250.

OWNER Three Sisters Development Co LLC
PROPERTY LOCATION: 210-21st Avenue
ZONING: RM-1- Medium Density Residential

Direction	Existing Use	Zoning Category
North	Residential	RM-1
East	Residential	RM-2
South	Residential	RM-1
West	Residential	RM-1

variance will not be in harmony with the general intent and purpose of subpart B.

STAFF RECOMMENDATION: Based on the variance review criteria of Section 2-152 of the Code of Ordinances, staff recommends denial of the request.

PUBLIC NOTICE: A 15-day notice was mailed by first class mail to the property owners within 150 feet in any direction of the subject property and posted on subject property on January 3, 2022, pursuant to Section 2-149 of the Code of Ordinances.

CORRESPONDENCE RECEIVED: Letters of objections were received from: Patricia A. Noel, 2104 Bay Boulevard, Guy and Sharon Coren, 2107 Bay Boulevard, and Leigh Ann and John Brunson, 2012 Bay Boulevard.

[End of Staff Report]

City Attorney Mora read by title only Agenda Item No. 7, BOA Case No. 2022-04, 210-21st Avenue.

City Attorney Mora inquired of the members if they had any ex-parte communications with the applicant or their agent, with all members responding negatively.

City Attorney Mora inquired of the members if any of them had conducted a site visit for the limited purpose of evaluating the application, all members responding negatively.

City Attorney Mora duly swore in all persons planning to give testimony during the quasi-judicial proceeding.

Planning Consultant Harmon stated the applicant is requesting a variance to encroach 2 feet 6 inches into the 25-foot front yard setback, resulting in a total front yard setback of 22.5 feet and 2 feet 6 inches into the required 7-foot 6-inch east side yard setback, resulting in a total east side yard setback of 5 feet, for the installation of a swimming pool.

Planning Consultant Harmon stated the duplex was built in 1963 and had one pool located on the west side of the property that meets all the required setbacks. The property is located at 210-21st Avenue.

Planning Consultant Harmon stated that nothing in the City Code addresses the number of pools on a single lot.

Planning Consultant Harmon provided a PowerPoint Presentation showing an aerial of the property, site plans with the proposed pool, photographs of the property looking north, northwest, and west.

that required a variance. It is Mr. Brown's representation, and he is asking for blessing for this newer proposal that would not ordinarily require a variance in his estimation.

City Attorney Mora asked Planning Consultant Harmon if this was the first time she had seen this document.

Planning Consultant Harmon responded affirmatively.

City Attorney Mora stated the Board is an advisory board to the City Commission and is not equipped or necessarily qualified to opine on the fly as to its compliance with the City Code.

City Attorney Mora stated this is Mr. Brown's client's application, and he is at the helm of it. He wants to be clear and asked Mr. Brown if he is still seeking a variance on the original design or if the original plan is being withdrawn for which a variance was required.

Mr. Brown stated he would still seek a variance on the original design submitted, and if not granted, they would seek a building permit on the new design.

City Attorney Mora stated the Board has an application before them for a design that would require a variance notwithstanding the record evidence of an alternative arrangement.

Chair DeVore opened the public comment.

Heiko Bonner, 2009 Bay Boulevard, stated he lives diagonally across the street from the subject property. He said he feels it is not necessary to put a pool at the intersection of Bay Boulevard and 21st Avenue. He stated pools create a lot of noise at two and three in the morning.

John Brunson, 2012 Bay Boulevard, stated the subject property is directly across the street from his residence. Both properties are on corner lots. As had been pointed out, it is a duplex, but the property does have one pool already on it. The addition of another pool would create unwanted noise and activity levels. This property has a history of high-level noise and disturbing the peace police calls that are on record. Neighbors have called the sheriff's office on several occasions to quiet the renters down at different times of the night.

Mr. Brunson stated the other concern that he has is that reducing the side setback could also create a safety hazard. He said for traffic on Bay Boulevard coming up to 21st Avenue, the proposed 6-foot fence would reduce the sight line and restrict the traffic turning from 21st Avenue onto Bay Boulevard. He has noticed many "roll through stops" at that stop sign. He believes this would just accelerate an opportunity for an accident in the area.

Mr. Brunson stated he does not think the proposal enhances the neighborhood or the City. He asks that the Board "kill" the proposal.

do people choose a place for 100 years that has hung at least part of its hat on attracting people to come and visit its beaches and restaurants? He does not know if the restaurants would survive without the vacation rentals.

Mr. Ruth stated he has to wonder what the motives are when the neighbors do not bother to call him, (owner of the property), one time in the two and half years that he has owned the property.

Heiko Bonner, 2009 Bay Boulevard, stated Bay Boulevard does not go straight; it curves. If a pool or a fence is put up on the corner, it would be a traffic hazard at the intersection there.

John Brunson, 2012 Bay Boulevard, stated the comments made by the applicant: Why anybody would move to an area that Airbnbs populate. And the revenue generated from the vacationers attracted to this area to enjoy is what a lot of IRB residents take as every day that is the way it is. He is not, nor does he believe his neighbors are against Airbnb. He stated this rental property has a history of noise levels and the police being called. At this time, he cannot produce a record of the last two years that the sheriff's office has been dispatched to the subject location. He stated his neighbors had requested such information and that information was being sent to them. It is about the noise level. He is sorry this happens. He does not have any bones to pick with the property owner. It is a nice-looking property, but again it creates a challenge and unlivable conditions for some of them, and that is what it is about.

Monica Ruth, applicant, 446 Country Club Road, Belleair, stated she wanted to address some of the neighbors' comments. She said they had not received one phone call regarding noise coming from their property. As stated by her husband, their name and phone number appear on a sign in the front yard of their property. She said if she heard noises coming from her neighbors every day and sometimes at 2:00 a.m., she would be calling the owners non-stop. They run a very tight ship, have very strict rules, and there is absolutely no noise outside after 9:00 p.m. They have removed renters in the past from disobeying the rules. They sincerely care about Indian Rocks Beach and about having a good business. They are not here to promote rowdiness or noise. They are here to, if anything, enhance the community. They sincerely care about their business.

Chair DeVore closed the public comment session.

Mr. Browne stated they were trying to design the pool to conform and look like the other pool on the other side. They also took into consideration the sight line. The pool area would not go past the front, and the pool would meet all Indian Rocks Beach City Codes for fencing and the sight line triangle. The tree is not an oak tree and does not have to be removed. It is a nuisance tree, and his clients would prefer it be removed.

Agent/Representative:	Wess Ripley
Subject Location:	799 East Gulf Boulevard
Legal Description:	A portion of Lot 25, La Hacienda Replat, according to the plat thereof recorded in Plat Book 39, Pages 1 and 2, Public Records of Pinellas County, Florida, formerly La Hacienda Subdivision recorded in Plat Book 36, Pages 73 and 74, being more particularly described as follows: Commencing at the Southwesterly corner of Lot 25, said point being the point of beginning, thence along a curve (the Westerly property line of Lot 25) concave to the West, having a radius of 6841.44', a central angle of 0°16'22", and a chord of 32.57' bearing N 11°30'51" W; thence N. 78°00'09" E, a distance of 110.79' to the Easterly property line of Lot 25 said point being a point of curvature of a non-tangent curve, concave to the West, having a radius of 6951.44' a central angle of 0°16'03", and a chord of 32.47' bearing N 9°41'13" W; thence Southerly along said curve, a distance of 32.47'; thence S 77°56'17" W, a distance of 109.76' to the point of beginning.
Parcel #:	12-30-14-47412-000-0251
Variance Request:	Variance request from Section 110-344(3)(f)(3)(I), of the Code of Ordinances, to allow a variance of 2 feet into the south 7-foot 6-inch side yard setback and 5 feet into the north 7-foot, 6-inch side yard setback, resulting in a north side yard setback of 2 feet 6 inches and a south side yard setback of 5 feet 6 inches, to allow for the installation of a swimming pool.

[Beginning of Staff Report]

SUBJECT — BOA CASE NO. 2022-05: A variance request from Section 110-344(3)(f)(3)(i) to allow a variance of 2 feet into the south 7-foot 6-inch side yard setback and 5 feet in to the north 7-foot 6-inch side yard setback resulting in a north side yard setback of 2 feet 6 inches and a south side yard setback of 5 feet 6 inches to allow for the installation of a swimming pool, for property located at 799 East Gulf Boulevard, Indian Rocks Beach, Florida, and legally described as a portion of Lot 25, La Hacienda Replat, according to the plat thereof recorded in Plat Book 39, Pages 1 and 2, Public Records of Pinellas County, Florida, formerly La Hacienda Subdivision recorded in Plat Book 36, Pages 73 and 74.

OWNER

Rory Burton

- e. The variance granted is the minimum variance that will make possible the reasonable use of the land, structure or building. *This is the minimum variance to allow the owner to construct the pool as proposed.*
- f. The granting of the variance will be in harmony with the general intent and purpose of subpart B, and such variance will not be injurious to the area involved or be otherwise detrimental to the public welfare. *Granting the variance will not be in harmony with the general intent and purpose of subpart B.*

STAFF RECOMMENDATION: Based on the variance review criteria of Section 2-152 of the Code of Ordinances, staff recommends denial of the request.

PUBLIC NOTICE: A 15-day notice was mailed by first class mail to the property owners within 150 feet in any direction of the subject property and posted on subject property on January 3, 2022, pursuant to Section 2-149, of the Code of Ordinances.

CORRESPONDENCE RECEIVED: No correspondence was received.

[End of Staff Report]

City Attorney Mora read by title only Agenda Item No. 8, BOA Case No. 2022-05, 799 East Gulf Boulevard.

City Attorney Mora stated that no one was present beyond staff for the record.

City Attorney Mora inquired of the members if they had any ex-parte communications with the applicant or their agent, with all members responding negatively.

City Attorney Mora inquired of the members if any of them had conducted a site visit for the limited purpose of evaluating the application, all members responding negatively.

City Attorney Mora duly swore in all persons planning to give testimony during the quasi-judicial proceeding.

Planning Consultant Harmon stated the applicant is requesting a variance of 2 feet into the south 7-foot 6-inch side yard setback and 5 feet into the north 7-foot 6-inch side yard setback for installing a swimming pool. The property is located at 799 East Gulf Boulevard, and it is a duplex.

Planning Consultant Harmon provided a PowerPoint Presentation showing aerial views of the property, a survey of the property, proposed drawings of the swimming pool.

25 SAID POINT BEING A POINT OF CURVATURE OF A NON-TANGENT CURVE, CONCAVE TO THE WEST, HAVING A RADIUS OF 6951.44' A CENTRAL ANGLE OF 0°16'03", AND A CHORD OF 32.47' BEARING N. 9°41'13" W; THENCE SOUTHERLY ALONG SAID CURVE, A DISTANCE OF 32.47'; THENCE S. 77°56'17" W., A DISTANCE OF 109.76' TO THE POINT OF BEGINNING. PARCEL #: 12-30-14-47412-000-0251.

ROLL CALL VOTE:

AYES: CAMPBELL, O'DONNELL, WATT, ALVAREZ, DEVORE

NAYS: NONE

MOTION CARRIES UNANIMOUSLY TO RECOMMEND *DENIAL* TO THE CITY COMMISSION.

THE BOARD OF ADJUSTMENTS AND APPEALS RECOMMENDS *DENIAL* OF BOA CASE NO. 2022-05, 799 EAST GULF BOULEVARD, TO THE CITY COMMISSION.

City Attorney Mora announced that BOA Case No. 2022-01 would be on the City Commission Regular Meeting Agenda on Tuesday, February 8, 2022, beginning at 5:00 p.m. He just wanted to state for anyone present that the February 8, 2022, City Commission Regular Meeting starts at 5:00 p.m., which is earlier than usual.

9. OTHER BUSINESS.

City Clerk O'Reilly announced that there will be no Board of Adjustments and Appeals Meeting in February.

10. ADJOURNMENT.

MOTION MADE BY MEMBER ALVAREZ, SECONDED BY MEMBER CAMPBELL, TO ADJOURN THE MEETING AT 7:56 P.M. UNANIMOUS APPROVAL BY ACCLAMATION.

March 15, 2022

Date Approved

Stewart DeVore, Chair

/dor

AGENDA ITEM 4.

**BOA CASE NO. 2022-05
799 East Gulf Boulevard**

BOARD OF ADJUSTMENTS AND APPEALS
AGENDA MEMORANDUM

MEETING OF:

Board of Adjustment: March 15, 2022
City Commission: April 12, 2022

AGENDA ITEM: 4

SUBMITTED AND

RECOMMENDED BY: Hetty C. Harmon, AICP
City Planner

APPROVED BY:

Brently Gregg Mims
City Manager



SUBJECT:

BOA CASE NO. 2022-05: Variance request from Section 110-344(5) to allow a variance of 5 feet in to the north 8 foot yard setback resulting in a north side yard setback of 3 feet to allow for the installation of a swimming pool for property located at 799 E. Gulf Boulevard, Indian Rocks Beach, Florida, and legally described as a portion of Lot Twenty-Five (25), LA HACIENDA REPLAT, according to the plat thereof recorded in Plat Book 39, Pages 1 and 2, Public Records of Pinellas County, Florida, formerly LA HACIENDA SUBDIVISION recorded in Plat Book 36, Pages 73 and 74, being more particularly described as follows:

Commencing at the Southwesterly corner of Lot 25, said point being the point of beginning, thence along a curve (the Westerly property line of Lot 25) concave to the West, having a radius of 6841.44', a central angle of 0°16'22", and a chord of 32.57' bearing N. 11°30'51" W.; thence N. 78°00'09" E., a distance of 110.79' to the Easterly property line of Lot 25 said point being a point of curvature of a non-tangent curve, concave to the West, having a radius of 6951.44' a central angle of 0°16'03", and a chord of 32.47' bearing N. 9°41'13" W; thence Southerly along said curve, a distance of 32.47'; thence S. 77°56'17" W., a distance of 109.76' to the point of beginning.

Parcel #12-30-14-47412-000-0251

OWNER

LOCATION of PROPERTY:

ZONING:

Rory Burton

799 E Gulf Blvd

RM-2- Medium Density Residential

Direction	Existing Use	Zoning Category
North	Residential	RM-2
East	Intracoastal	N/A
South	Residential	RM-2
West	Residential	RM-2

BACKGROUND:

The applicant is requesting variance for the north side yard setback for the installation of a swimming pool. They are requesting the pool encroach 5 feet in to the north 8 foot side yard setback leaving a setback of 3 ft.

Sec. 2-152. - Variances.

(a) *Generally; criteria for granting variances from the terms of subpart B.*

(1) The board of adjustments and appeals shall make recommendations on and the city commission shall decide variance applications will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of subpart B will result in unnecessary and undue hardship. In order to recommend or decide any variance from the terms of subpart B, the board or the city commission shall consider each of the following.

a. 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.

The duplex was built in 2005 and the lot was illegally subdivided in 2005 causing the lots to be non-conforming limiting the width of the lot.

b. The special conditions and circumstances do not result from the actions of the applicant.

The applicant did not create any special conditions or circumstances.

c. Granting the variance will not confer on the applicant any special privilege that is denied by subpart B to other lands, structures or buildings in the same zoning district.

Granting the variance would confer special privileges to the applicant.

d. Literal interpretation of the provisions of subpart B would deprive other properties in the same zoning district under the terms of subpart B and would work unnecessary and undue hardship upon the applicant.

The approval of this variance request would not deprive other owners of use and enjoyment of their properties.

e. The variance granted is the minimum variance that will make possible the reasonable use of the land, structure or building; and

This is the minimum variance to allow the owner to construct the pool as proposed.

f. The granting of the variance will be in harmony with the general intent and purpose of subpart B, and such variance will not be injurious to the area involved or be otherwise detrimental to the public welfare.

Granting the variance will not be in harmony with the general intent and purpose of subpart B.

STAFF

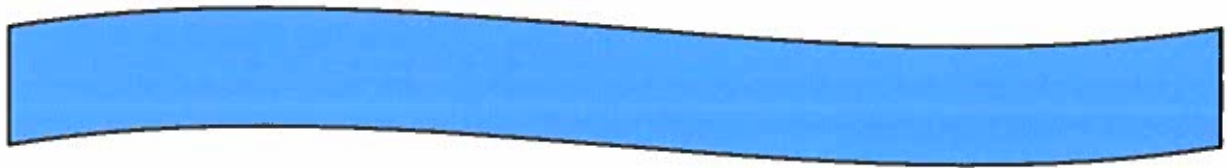
RECOMMENDATION: Based on the variance review criteria of Section 2-152, staff recommends denial of the request.

BOA RECOMMENDATION:

MOTION:

I move to recommend to the City Commission APPROVAL/DENIAL of BOA CASE 2022-05: Variance request from Section 110-344(5) to allow a variance of 5 feet in to the north 8 foot yard setback resulting in a north side yard setback of 3 feet to allow for the installation of a swimming pool for property located at 799 E. Gulf Boulevard, Indian Rocks Beach, Florida, and legally described as a portion of Lot Twenty-Five (25), LA HACIENDA REPLAT, according to the plat thereof recorded in Plat Book 39, Pages 1 and 2, Public Records of Pinellas County, Florida, formerly LA HACIENDA SUBDIVISION recorded in Plat Book 36, Pages 73 and 74, being more particularly described as follows:

Commencing at the Southwesterly corner of Lot 25, said point being the point of beginning, thence along a curve (the Westerly property line of Lot 25) concave to the West, having a radius of 6841.44', a central angle of 0°16'22", and a chord of 32.57' bearing N. 11°30'51" W.; thence N. 78°00'09" E., a distance of 110.79' to the Easterly property line of Lot 25 said point being a point of curvature of a non-tangent curve, concave to the West, having a radius of 6951.44' a central angle of 0°16'03", and a chord of 32.47' bearing N. 9°41'13" W; thence Southerly along said curve, a distance of 32.47'; thence S. 77°56'17" W., a distance of 109.76' to the point of beginning.



799 E. Gulf Blvd.
BOA CASE NO. 2022-05



BOA CASE 2022-05: Variance request from Section 110-344(5) to allow a variance of 5 feet in to the north 8 foot yard setback resulting in a north side yard setback of 3 feet to allow for the installation of a swimming pool for property located at 799 E. Gulf Boulevard, Indian Rocks Beach, Florida, and legally described as a portion of Lot Twenty-Five (25), LA HACIENDA REPLAT, according to the plat thereof recorded in Plat Book 39, Pages 1 and 2, Public Records of Pinellas County, Florida, formerly LA HACIENDA SUBDIVISION recorded in Plat Book 36, Pages 73 and 74.



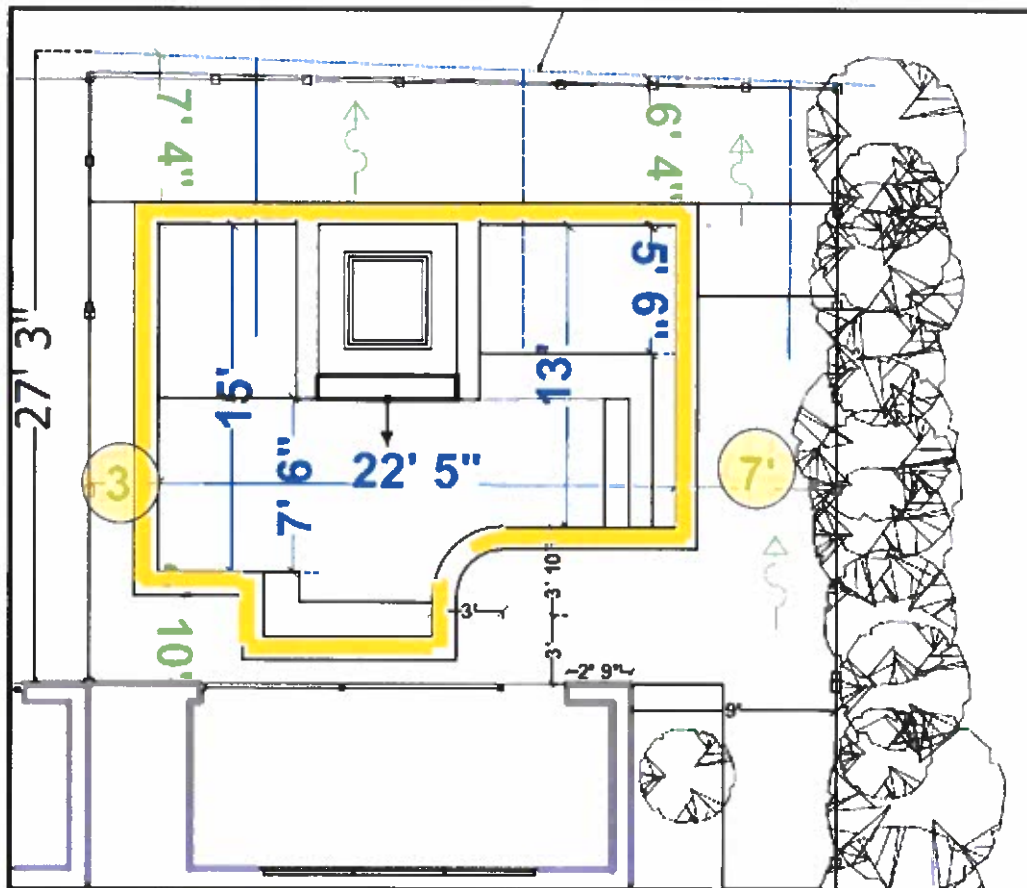
799 E. Gulf Blvd



799 E. Gulf Blvd



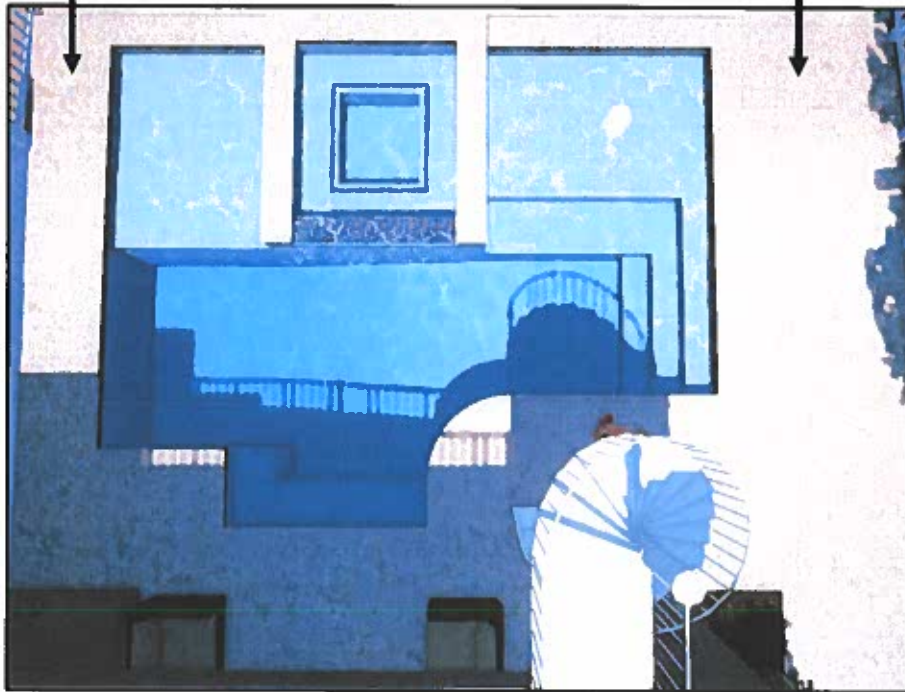
799 E. Gulf Blvd



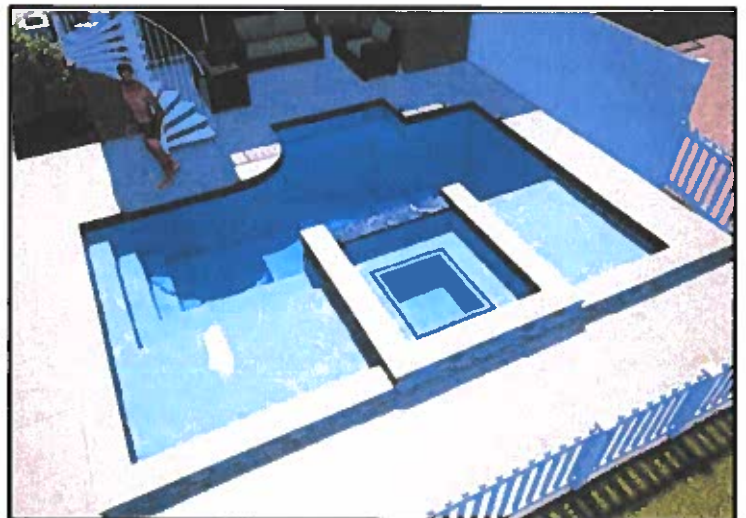
799 E. Gulf Blvd

3'0" setback

7'0" setback



799 E. Gulf Blvd



**FEBRUARY 8, 2022
CITY COMMISSION MINUTES
(PORTION THEREOF)**

RECORDED IN PLAT BOOK 38, PAGE 12, PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: FROM THE POINT OF BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LOT 2, RUN NORTH 76°45'33" EAST, 75 FEET ALONG THE SOUTH BOUNDARY OF SAID LOT 2; THENCE NORTH 12°24'47" WEST 64.75 FEET; THENCE NORTH 47°11'30" WEST 12 FEET; THENCE SOUTH 68°08'46" WEST, 71 FEET; THENCE SOUTH 14°04'37" EAST, 64.0.5 FEET TO THE POINT OF BEGINNING. PROPERTY ID # 06-30-15-42354-000-0021

Vice Mayor-Commissioner McCall stated the hardship is the diagonal shape of the lot and the position of the home on the lot.

ROLL CALL VOTE:

AYES: HOUSEBERG, HOOFNAGLE, McCALL, HANNA, KENNEDY

NAYS: NONE

MOTION TO APPROVE CARRIED UNANIMOUSLY.

6C. BOA CASE NO. 2022-05 — 799 EAST GULF BOULEVARD

Considering a variance request from Section 110-344(3)(f)(3)(i) of the Code of Ordinances to encroach 2 feet into the south 7-foot 6-inch side yard setback and 5 feet into the north 7-foot 6-inch side yard setback, resulting in a south side yard setback of 5 feet 6 inches and a north side yard setback of 2 feet 6 inches, to allow for the installation of a swimming pool, for the property located at 799 East Gulf Boulevard, Indian Rocks Beach, Florida, and legal described as a portion of Lot 25, La Hacienda Replat, according to the plat thereof recorded in Plat Book 39, Pages 1 and 2, Public Records of Pinellas County, Florida, formerly La Hacienda Subdivision recorded in Plat Book 36, Pages 73 and 74.

[Beginning of Staff Report]

SUBJECT — BOA CASE NO. 2022-05: A variance request from Section 110-344(3)(f)(3)(i) to encroach 2 feet into the south 7-foot 6-inch side yard setback and 5 feet into the north 7-foot 6-inch side yard setback, resulting in a north side yard setback of 2 feet 6 inches and a south side yard setback of 5 feet 6 inches, for the installation of a swimming pool, for property located at 799 East Gulf Boulevard, Indian Rocks Beach, Florida, and legally described as a portion of Lot 25, La Hacienda Replat, according to the plat thereof recorded in Plat Book 39, Pages 1 and 2, Public Records of Pinellas County, Florida, formerly La Hacienda Subdivision recorded in Plat Book 36, Pages 73 and 74.

OWNER

Rory Burton

PROPERTY LOCATION: 799 E Gulf Boulevard

ZONING:

RM-2- Medium Density Residential

Direction	Existing Use	Zoning Category
North	Residential	RM-2
East	Intracoastal	N/A
South	Residential	RM-2
West	Residential	RM-2

BACKGROUND:

The applicant is requesting a variance for the north and south side setbacks for the installation of a swimming pool. They are requesting the pool encroach 2 feet into the south 7-foot 6 inch side yard setback and 5 feet into the north 7-foot 6 inch side yard setback.

Sec. 2-152 Variances.

(a) *Generally; criteria for granting variances from the terms of subpart B.*

(1) The Board of Adjustments and Appeals shall make recommendations on and the City Commission shall decide variance applications will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of subpart B will result in unnecessary and undue hardship. In order to recommend or decide any variance from the terms of subpart B, the Board or the City Commission shall consider each of the following:

- a. 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. *The duplex was built in 2005 and the lot was illegally subdivided in 2005 causing the lots to be non-conforming limiting the width of the lot.*
- b. The special conditions and circumstances do not result from the actions of the applicant. *The applicant did not create any special conditions or circumstances.*
- c. Granting the variance will not confer on the applicant any special privilege that is denied by subpart B to other lands, structures or buildings in the same zoning district. *Granting the variance would confer special privileges to the applicant.*
- d. Literal interpretation of the provisions of subpart B would deprive other properties in the same zoning district under the terms of subpart B and would work unnecessary and undue hardship upon the applicant. *The approval of this variance request would not deprive other owners of use and enjoyment of their properties.*
- e. The variance granted is the minimum variance that will make possible the reasonable use of the land, structure or building. *This is the minimum variance to allow the owner to construct the pool as proposed.*

- f. The granting of the variance will be in harmony with the general intent and purpose of subpart B, and such variance will not be injurious to the area involved or be otherwise detrimental to the public welfare. *Granting the variance will not be in harmony with the general intent and purpose of subpart B.*

STAFF RECOMMENDATION: Based on the variance review criteria of Section 2-152 of the Code of Ordinances, staff recommends denial of the request.

BOARD OF ADJUSTMENTS AND APPEALS. The Board of Adjustments and Appeals recommended denial to the City Commission by a vote of 5 to 0.

PUBLIC NOTICE: A 15-day notice was mailed by first class mail to the property owners within 150 feet in any direction of the subject property and posted on subject property on January 23, 2022, pursuant to Section 2-149, of the Code of Ordinances.

CORRESPONDENCE RECEIVED: No correspondence was received.

LEGAL ADVERTISEMENT: A legal notice was published in the January 26, 2022-edition, of the St. Pete Time Section of the Tampa Bay Times, for public hearing that has been scheduled on February 8, 2022, for BOA Case No. 2022-05.

[End of Staff Report]

City Attorney Mora read by title only Agenda Item No. 6C, BOA Case No. 2022-03, 799 East Gulf Boulevard.

City Attorney Mora inquired of the City Commission Members if they had any ex-parte communications with the applicant or their agent, with all members responding negatively.

City Attorney Mora inquired of the City Commission Members if any of them had conducted a site visit for the limited purpose of evaluating the application, with all members responding negatively.

City Attorney Mora duly swore in all persons planning to give testimony during the quasi-judicial proceeding.

Planning Consultant Harmon stated the subject property is located at 799 East Gulf Boulevard and was built as a duplex. The duplex was split down the center with a party wall agreement. The lots were illegally subdivided in 2003. A letter from the previous planning and zoning director stated the lots could not be subdivided. Both lots are 32 feet wide and are adjoined by a party wall agreement.

Commissioner Hoofnagle asked if there was a variance to subdivide the lot, with Planning Consultant responding no.

Planning Consultant Harmon stated several lots on Beach Trail have also been illegally subdivided.

Planning Consultant Harmon stated that the Planning Directors in Pinellas County have worked with the Pinellas County Property Appraiser's Office concerning creating nonconforming lots. Now, the Pinellas County Property Appraiser Office does contact the municipality about any lot splits.

Planning Consultant Harmon stated the south side unit wants to put in a pool. Originally, the applicant requested variances to encroach 5-foot, 6 inches into the north side setback and 2-foot, 6 inches into the south side setback.

Planning Consultant Harmon provided a PowerPoint Presentation of a redesigned swimming pool that encroaches 5 feet into the north side yard setback.

Planning Consultant Harmon stated the applicant submitted a new drawing last week reducing the size of the pool to encroach 5 feet into the north side setback, which is the other side of the duplex.

Planning Consultant Harmon stated a letter of support was received from Andrew M. Quinn, 801 East Gulf Boulevard, who owns the other side of the duplex, and a letter of opposition from Karl Balducci, 805 East Gulf Boulevard.

Planning Consultant Harmon stated staff recommends denial because the applicant could meet all required setbacks. The Board of Adjustments and Appeals recommended denial by a vote of 5 to 0.

Megan Stinebergen, 799 East Gulf Boulevard, stated they would like to put a pool in the backyard, and their neighbor Mr. Quinn has written a letter of support. Mr. Quinn owns the lefthand side of the duplex.

Mayor-Commissioner Kennedy asked if Ms. Stinebergen lives on the property.

Ms. Stinebergen stated she lives there part-time but lives in Wisconsin full-time. She said that they come here once every five weeks.

Commissioner Hoofnagle asked Ms. Stinebergen if she is requesting a variance on just one side now because the application is for two variances: the north and the south side yard setbacks.

Wess Ripley, the applicant's representative, 2340 126th Drive E, Parrish, stated they had redesigned the pool to eliminate the south side yard variance and only need a variance to encroach 5 feet into the north side yard setback (the shared property line). He stated according to the documents that were drafted up when this property was subdivided, it stated that the property owner would be able to build-up to the lot line and made no mention of setback requirements.

Commissioner Hoofnagle asked if that document had been submitted into the record, with Mr. Ripley responding that he provided a copy to the Planning Consultant.

Planning Consultant Harmon stated she might have that document, but the City did not approve it. It was a civil document between the two properties and is not something for the City to review.

Mayor-Commissioner Kennedy opened the public hearing. Hearing and/or seeing no one wishing to speak, the public hearing was closed.

COMMISSIONER HOOFNAGLE MADE A MOTION TO DENY BOA CASE NO. 2022-05 — 799 EAST GULF BOULEVARD. MOTION FAILED FOR LACK OF A SECOND.

MOTION MADE BY COMMISSIONER HOUSEBERG, SECONDED BY VICE MAYOR-COMMISSIONER McCALL TO APPROVE BOA CASE NO. 2022-05 — 799 EAST GULF BOULEVARD.

Vice Mayor-Commissioner McCall stated some things that went on with this property that created a hardship unbeknownst to the property owners. There is a common wall agreement between the two units and stated the applicant did redesign the pool so that it only affects the other side of the duplex, from which the City received a letter of approval from.

Commissioner Hoofnagle stated he fails to see the hardship that necessitates the swimming pool that encroaches upon the setbacks. He believes the pool could be made smaller.

City Clerk O'Reilly stated Commissioner Houseberg needs to be more specific on her motion since the applicant had submitted a redesign of the swimming pool eliminating the south side yard setback.

[The City Commission recessed at 6:33 p.m.]

[The City Commission re-adjourned at 6:35 p.m.]

Planning Consultant Harmon stated the variance request would be 5 feet into the north 8-foot side yard setback, leaving a 3-foot north side yard setback.

Planning Consultant Harmon explained the total side yard setback is 15 feet with a minimum of 7 feet on either side. The applicant has 7 feet on one side, so the other side has to be 8-foot.

City Attorney Mora stated for clarity in the record when was the amended proposal submitted to the City, with Planning Consultant Harmon responding Friday, February 4th.

Commissioner Hoofnagle asked, as a point of procedure, has that amended variance request gone to the Board of Adjustments and Appeals.

City Clerk O'Reilly responded negatively. She stated the legal advertisement, and the 15-day notice to surrounding property owners had the original variance request information.

Commissioner Hoofnagle stated that this needs to go back to the Board of Adjustments and Appeals as a point of order. In his opinion, he does not believe this has been sufficiently documented.

City Attorney Mora asked if the pool proposal in the PowerPoint Presentation presented to the City Commission is configured entirely differently than what was submitted to the Board of Adjustments and Appeals.

Planning Consultant Harmon responded affirmatively. She stated that both designs were included within the agenda packet. However, the PowerPoint Presentation provided to the City Commission showed the revised pool proposal.

City Attorney Mora stated it is his understanding that the Board of Adjustments and Appeals considered one proposal. After that Board of Adjustments and Appeals Meeting, the applicant materially changed the relief sought and changed the configuration materially, which was presented to the City Commission through the PowerPoint Presentation this evening.

Planning Consultant Harmon stated that was correct.

Commissioner Hoofnagle stated the City Commission did not amend this application. The applicant amended the proposal.

City Attorney Mora stated the City Commission is not directing the relief change.

City Attorney Mora stated usually the applicant withdraws their application. However, the applicant is working with the City, and the City appreciates that. However, he stated that the City does have a process that it must adhere to.

City Attorney Mora stated his advice is this matter should be tabled until such time that the Board of Adjustments and Appeals can first consider the same application, the same relief request that the City Commission is considering.

Commissioner Hanna confirmed that the matter would have to be re-advertised and re-noticed with the correct variance information, with City Attorney Mora responding affirmatively.

Mr. Ripley stated after the Board of Adjustments and Appeals Meeting, he had discussions with Planning Consultant Harmon, and they agreed that if the south side setback encroachment could be eliminated and only work with the shared side, they could have a better chance of having the variance granted.

City Attorney Mora stated he understands that the applicant is reducing the original variance requested, and the City is not faulting the applicant for that.

City Attorney Mora stated the City needs to make sure that a series of administrative boxes had been checked. In doing that, the applicant may have very well increased his client's chances of gaining the relief requested that may be the case, but just not tonight. In doing that, the applicant has changed what his client had originally requested.

City Attorney Mora explained that variance applications are first submitted to the Board of Adjustments and Appeals for recommendations and then to the City Commission for final decision. The Board of Adjustments and Appeals never considered the applicant's revised relief.

City Attorney Mora stated the City has a procedure to adhere to, which has not been adhered to here, and that is what the City Commission is trying to resolve this evening.

City Attorney Mora stated his advice to the City Commission is ultimately their decision on how they wish to proceed. This is not here on the ordinary procedure as dictated by Section 2-149 of the Code of Ordinances for variances.

City Attorney Mora stated the point of order would have to be resolved first, which is the application is not here on the proper procedure.

Mayor-Commissioner Kennedy asked what is the will of the City Commission? Would the City Commission like to table this BOA Case and refer it back to the Board of Adjustments and Appeals, or how would the City Commission like to proceed?

Commissioner Houseberg stated she would like to proceed.

Commissioner Hanna stated he would like to do whatever is procedurally correct.

Commissioner Hoofnagle stated he does not object to proceeding but would like to ensure that the language is consistent and appropriate. He is confused at having written requests and being told at a meeting verbally that it is something different and then trying to engineer this new variance orally. He finds it prone to error, and he does not think it is appropriate.

Vice Mayor-Commissioner McCall stated the redesign is a material change, and the City Code needs to be followed. Therefore, the application needs to be resubmitted to the Board of Adjustments and Appeals for their recommendation.

City Attorney Mora asked how this BOA Case was advertised.

City Clerk O'Reilly responded that it was advertised as submitted originally.

City Attorney Mora stated it was advertised for a relief different than the relief sought this evening. He would suggest to the City Commission that this is an added procedural defect in putting adjacent property owners and the public at large on notice of the relief sought tonight, which relief is voluntarily modified in advance of the hearing, so that is another issue to consider.

Mayor-Commissioner Kennedy said because of the legalities, the City Commission will be tabling this agenda item and referring it back to the Board of Adjustments and Appeals.

City Attorney Mora stated, for the record, that the City Commission did not deny any relief requested this evening.

Commissioner Hoofnagle stated BOA Case No. 2022-05 has been tabled without prejudice, which means no judgment has been applied to the merits of the case. It has just been procedurally delayed.

FOR THE RECORD: BOA CASE 2202-05 HAS BEEN TABLED AND REFERRED BACK TO THE BOARD OF ADJUSTMENTS AND APPEALS BECAUSE OF THE NEWLY SUBMITTED PLAN MATERIALLY CHANGING THE RELIEF SOUGHT.

7. **OTHER LEGISLATIVE MATTERS:** None.
8. **WORK SESSION ITEMS [DISCUSSION ONLY]:** None.
9. **OTHER BUSINESS.**

Mayor-Commissioner Kennedy stated she would like to schedule a work session on what constitutes a hardship or information on what constitutes a hardship as everyone has a different idea of what a hardship is.

1/3/22

RE: 799 E. Gulf Blvd variance for pool

To Whom it may Concern;

I am ~~opposed~~ to this variance request.

I have spoken to several residents in the affected party radius and we all agree that a pool at a short term vacation residence would create a noise concern that would be an acute and chronic problem.

This house has a history already of being a host for STUR.

This property is already a non conforming property and I don't want this concern to be compounded

Karl Balducci



owner 805 E. Gulf Blvd

February 8, 2022

Andrew M. Quinn
801 East Gulf Blvd
Indian Rocks Beach, FL 33785

Reference: BOA Case No. 2022-05

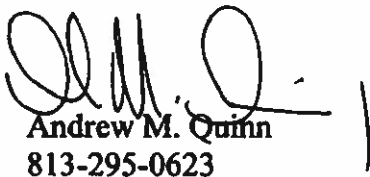
To: City Commission of the City of Indian Rocks Beach, Pinellas County, Florida

Sirs:

The undersigned is the property owner immediately adjacent to the property seeking a variance as outlined in referenced case. As such, I am not opposed to the variance, as requested. It is my understanding that, if the variance is approved, a somewhat larger pool can be built on the property than if the variance is declined. My lack of opposition to the variance in no way reflects my position regarding the actual building of a pool on Referenced property.

Please contact me should you have any questions or concerns.

Sincerely,


Andrew M. Quinn
813-295-0623



Administrative

727/595-2517

Library

727/596-1822

Public Services

727/595-6889

727/596-4759 (Fax) **NOTICE OF PUBLIC MEETING** 727/593-5137 (Fax)

THE CITY OF INDIAN ROCKS BEACH — BOARD OF ADJUSTMENTS AND APPEALS

TUESDAY, MARCH 15, 2022 @ 6:00 P.M.

1507 BAY PALM BOULEVARD, INDIAN ROCKS BEACH, FLORIDA 33785

The Board of Adjustments and Appeals of the City of Indian Rocks Beach, Pinellas County, Florida, an advisory board to the City Commission, will conduct a public meeting on **TUESDAY, MARCH 15, 2022**, which meeting convenes at 6:00 p.m., or as soon as thereafter, in the City Commission Chambers, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida, on **BOA CASE NO. 2022-05 (REVISED)**.

YOU ARE HEREBY NOTIFIED as a property owner of land within 150 feet of the property located at **799 EAST GULF BOULEVARD, INDIAN ROCKS BEACH, FLORIDA 33785**, of the following variance request:

A variance request to Section 110-344(5) of the Code of Ordinances to encroach 5 feet into the north 8-foot side yard setback, resulting in a north side yard setback of 3 feet, for the installation of a swimming pool, on property located at 799 East Gulf Boulevard, Indian Rocks Beach, Florida, and legally described as a portion of Lot 25, La Hacienda Replat, according to the plat thereof recorded in Plat Book 39, Pages 1 and 2, Public Records of Pinellas County, Florida, formerly La Hacienda Subdivision recorded in Plat Book 36, Pages 73 and 74. Parcel #12-30-14-47412-000-025.

FOR FURTHER INFORMATION REGARDING THIS REQUEST, PLEASE CONTACT PLANNING CONSULTANT HETTY C. HARMON AT 863/646-4771, EXT. 211 OR E-MAIL: hharmon@irbcity.com

If you desire to either support or object to the referenced variance, you may appear at the Indian Rocks Beach Board of Adjustments and Appeals Meeting on said date, or submit in writing your support or objections to Deanne B. O'Reilly, City Clerk, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida, 33785, or e-mail: doreilly@irbcity.com. All correspondence must be received by the City Clerk no later than **TUESDAY, MARCH 15, 2022 by 2:00 p.m.** The City will make such records available during normal business hours, Monday through Friday, 7:30 a.m. to 4:00 p.m., to any interested person at his or her request and expense.

If any person desires to appeal a decision made with respect to this request, such person will need a record of the proceedings and for such purposes, they may need to ensure that a verbatim record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based, per Section 286.0105, Florida Statutes. Verbatim transcripts are not furnished by the City of Indian Rocks Beach and should one be desired, arrangements (i.e. court reporter) should be made in advance by the interested party.

In accordance with Section 286.26, Florida Statutes, persons with a disability requiring reasonable accommodations in order to participate in this meeting should contact the City Clerk's Office with your request by telephone (727/595-2517) or email: doreilly@irbcity.com no later than seven (7) business days prior to the proceeding.

Notice was mailed by first class mail to the property owners within 150 feet in any direction of the subject property and posted on subject property on February 28, 2022. (Sec. 2-149 of the Code of Ordinances.)

/dor

12-30-14-20205-000-0050
UNIT 5
CYPRESS COVE I CONDO

SHANNON, DENISE ANN REV LIV TRUST
SHANNON, DENISE A TRE
6646 SWEETBRIAR LN
LAKELAND FL 33813-3553

12-30-14-47412-000-0250
25 TH CUR LT RAD 6841.44FT
FROM SW'LY COR OF SD LOT
PART OF LOT 25 DESC AS
LA HACIENDA REPLAT

QUINN, ANDREW MICHAEL JR TRE
QUINN, ANDREW MICHAEL JR REVOCABLE TRUST
801 E GULF BLVD
INDIAN ROCKS BEACH FL 33785-3739

12-30-14-55321-000-0030
USE OF BOAT SLIP 3
UNIT 3 TOGETHER WITH THE
CONDO
MARINERS COVE LANDING

KOEHNE, CLARENCE
KOEHNE, CHANDA
729 E GULF BLVD UNIT C
INDIAN ROCKS BEACH FL 33785-3747

12-30-14-20205-000-0040
UNIT 4
CYPRESS COVE I CONDO

ROGERS, JOHN E
800 E GULF BLVD APT 4
INDIAN ROCKS BEACH FL 33785-3743

12-30-14-20205-000-0001
LAND AROUND BLDGS)
COMMON ELEMENTS - (AKA
CYPRESS COVE I CONDO

CYPRESS COVE 1 CONDO ASSN
812 E GULF BLVD
INDIAN ROCKS BEACH FL 33785-3714

12-30-14-02394-000-0890
LOT 89
BAHIA VISTA SUB

EAVES, ORVAL DENNIE
EAVES, DEBRA M
728 E GULF BLVD
INDIAN ROCKS BEACH FL 33785-3708

12-30-14-47412-000-0270
WATER LOT B IN FRONT
FT OF LOT 26 AND PART OF
W 55FT OF LOT 27 AND E 10
LA HACIENDA REPLAT

JOHNSON, DAVID
JOHNSON, SUSAN
1340 STRAWBERRY LN
LEXINGTON KY 40502-2742

12-30-14-20205-000-0030
UNIT 3
CYPRESS COVE I CONDO

SCHULTZ, SANDRA J
LIPINSKI, DEBRA L
800 E GULF BLVD UNIT 3
INDIAN ROCKS BEACH FL 33785-3743

12-30-14-55321-000-0060
UNIT 6
CONDO
MARINERS COVE LANDING

NAZAROV, OLEG
NAZAROVA, ELENA
706 AV VICTORIA
WESTMOUNT QC H3Y 2S1

12-30-14-20205-000-0020
UNIT 2
CYPRESS COVE I CONDO

KYKER, RICHARD E
KYKER, JOYCE K
201 S HOBBS RD
KNOXVILLE TN 37934-1015

12-30-14-47412-000-0240
S'LY OF LOT 24 TO A PNT TH
OF WATER LOT B IN FRONT &
LOT 24 AND RIP RTS AND PT
LA HACIENDA REPLAT

BALDUCCI, KARL R
805 E GULF BLVD
INDIAN ROCKS BEACH FL 33785-3762

12-30-14-55321-000-0050
USE OF BOAT SLIP 5
UNIT 5 TOGETHER WITH THE
CONDO
MARINERS COVE LANDING

DOMBROWSKI, TRUDY
729 E GULF BLVD UNIT 5
INDIAN ROCKS BEACH FL 33785-3738

12-30-14-55321-000-0020
USE OF BOAT SLIP 2
UNIT 2 TOGETHER WITH THE
CONDO
MARINERS COVE LANDING

WESSELS, WILLIAM H & VIRGINIA M REV LIVING TRUST
WESSELS, WILLIAM H TRE
811 N US ROUTE 15
DILLSBURG PA 17019-1618

12-30-14-55321-000-0040
MARINERS COVE LANDING
USE OF BOAT SLIP 4
UNIT 4 TOGETHER WITH THE
CONDO

BASTAN, JAMES
BASTAN, BONNIE
296 WYCKOFF RD
EATONTOWN NJ 07724-1410

12-30-14-02394-000-0900
LOT 90
BAHIA VISTA SUB

HUGHES, MICHAEL D
HUGHES, CAROL L
316 27TH ST S
BRIGANTINE NJ 08203-1812

12-30-14-47412-000-0280
WATER LOT B ON S
FT OF LOT 27 AND PART OF
W 55 FT OF LOT 28 AND E 10
LA HACIENDA REPLAT

ZACK, ANDREW E
114 DOUGLAS ST
HOMOSASSA FL 34446-3805

12-30-14-20205-000-0010
UNIT 1
CYPRESS COVE I CONDO

KIMMEY, ALAINA
800 E GULF BLVD APT 1
INDIAN ROCKS BEACH FL 33785-3743

12-30-14-47412-000-0230
LOT 23
LA HACIENDA REPLAT

COFFEE, CHAD
STULL-COFFEE, SHELLEY
2315 TABLE ROCK CT

12-30-14-55321-000-0010

UNIT 1
CONDO
MARINERS COVE LANDING

EICHER, SHARMAN L LIVING TRUST
EICHER, SHARMAN L TRE
9200 98TH AVE
SEMINOLE FL 33777-1724

12-30-14-55321-000-0001

COMMON ELEMENTS
CONDO
MARINERS COVE LANDING

MARINERS COVE LANDING CONDO ASSN INC
2949 WEST BAY DR
BELLEAIR BLUFFS FL 33770-2621

12-30-14-47412-000-0260

IN FRONT
RTS AND PT OF WATER LOT B
LOT 26 LESS E 10FT AND RIP
LA HACIENDA REPLAT

CAROTENUTO, FRANK
CAROTENUTO, LOUISE
307 LA HACIENDA DR
INDIAN ROCKS BEACH FL 33785-3716

12-30-14-02394-000-0050

LOT 5
BAHIA VISTA SUB

HUNTER, NICHOLAS A
HUNTER, MELANIE
2285 POINTE PL
CINCINNATI OH 45244-2999

12-30-14-47412-000-0420

WATER LOT B LESS DEEDS
LA HACIENDA REPLAT

PINELLAS COUNTY
ATTN: ENVIRONMENTAL MGMT
315 COURT ST
CLEARWATER FL 33756-5165

APPLICATION FOR VARIANCE

CITY OF INDIAN ROCKS BEACH PLANNING AND ZONING DEPARTMENT

Enquiries: Tel: (727) 517-0404 Fax: (727) 596-4759

Web: <http://www.indian-rocks-beach.com/>

Address: 1507 Bay Palm Boulevard, Indian Rocks Beach, FL 33785

For Office Use Only

Application No.

2022-05 REVISED

Date Received

02-15-2022

APPLICANT

Name:

Address:

City:

Zip Code:

Tel:

Fax:

Mobile:

Email:

AGENT/REPRESENTATIVE

Name:

Company:

Address:

City:

Zip Code:

Tel:

Fax:

Mobile:

Email:

SITE DETAILS

Address: Parcel ID:

City: Zip Code:

Legal Description:

Zoning: Future Land Use:

Size:

SITE DETAILS CONTINUED...

Does applicant own any property contiguous to the subject property? ☐ Yes ☒ No

If yes, provide address
and legal description:

Have previous applications been filed for this property? ☐ Yes ☒ No

If yes, describe:

Has a certificate of occupancy or completion been refused? ☐ Yes ☒ No

If yes, describe:

Does any other person have ownership or interest in the property? ☐ Yes ☒ No

If yes, is ownership or
interest contingent or
absolute:

Is there an existing contract for sale on the property? ☐ Yes ☒ No

If yes, list all parties on
the contract:

Is contract conditional or absolute? ☐ Conditional ☐ Absolute

Are there options to purchase? ☐ Yes ☒ No

VARIANCE REQUEST**Regulation****Required****Proposed****Total
Requested**

Gulf-front setback (feet):

Bay-front setback (feet):

Alley setback (feet):

VARIANCE REQUEST CONTINUED...

<u>Regulation</u>	<u>Required</u>	<u>Proposed</u>	<u>Total Requested</u>
Rear-no alley setback (feet):			
Rear-north/south street (feet):			
Street-front setback (feet):			
Side-one/both setback (feet):	7' min/15' comb	3' min/10' comb	3' min/10' comb
Minimum green space (%):			
Habitable stories (#):			
Minimum lot size (sq. ft.):			
Building height (feet):			
Off-street parking (spaces):			
ISR (%):			
FAR (%):			
Dock length (feet):			
Dock width (feet):			
Signage (#):			
Accessory structure (sq. ft.):			
Accessory structure height (feet):			
Lot size (sq. ft.):			

* The request is to extend 5' into the 8' setback on the north side yard.

Other:

What is the proposed use of the property?

Residential home.

HARDSHIP

A variance is granted on the basis of evidence being presented that justifies an undue and unnecessary hardship upon the applicant; a hardship that prevents reasonable use of the property. The following criteria, set forth in Code Section 2-152, Variances, will be used to evaluate the request for variance in order to determine if a hardship is present and if the variance will impact the overall public welfare.

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:

The developer, who subdivided the lot, built the 2-unit town home with a shared party wall. This created a non-conforming lot situation which the current owner was not aware of. Current owner intends to build a pool in the backyard, but the current lot side setbacks significantly restrict the space available for the proposed pool when it was originally planned to extend much closer to the shared party wall line as allowed per Declaration of Covenants Article VI - Use Restrictions, Sec. 14 Swimming Pools: states that "It shall not be required that the Pool meet the setback requirement from the common Lot Line. In the event the Owner intending to install a pool seeks a variance the other Owner shall not object to such variance but shall consent in writing to such variance."

Special conditions and circumstances do not result from the actions of the applicant:

Due to the limited width of the lot shared with the adjacent property on a shared party wall, the homeowner does not have full proper use of the property. Without a variance to extend closer to both side property lines creates an undue hardship is created in not having the width required to build a pool.

Granting this variance will not confer on the applicant any special privilege that is denied by the chapter to other lands, structures or buildings in the same zoning district:

The literal interpretation of the provisions of Subpart B, Code Sections 78 through 110, would deprive other properties in the same zoning district under the terms of Subpart B and would work unnecessary and undue hardship upon the applicant:

HARDSHIP CONTINUED...

The variance granted is the minimum that will make possible the reasonable use of the land, structure or building:

The requested variance is to build the pool 3ft from the water's edge to the shared party wall(north property line) as opposed to 8ft off property line. Maintaining the min 7ft from the water's edge to the south side property line does not affect the opposite side setback requirement. Engineering has already approved the distance and location from the seawall as designed.

The granting of the variance will be in harmony with the general intent and purpose of Subpart B and such variance will not be injurious to the area involved or be otherwise detrimental to the public welfare:

Granting of this variance will not be injurious to the area involved or be otherwise detrimental to the public welfare. The only adjacent property that is affected by this variance is on the shared party wall. That property owner has written and submitted a letter of approval.

I (we) believe the Board of Adjustment and Appeals and the City Commission should grant this application because:

The restrictive nature of the setbacks in conjunction with the shared party wall severely limit the usable lot width, and thus the available depth and size of the pool, so as to make the construction of a pool impractical and would place undue hardship upon the applicant.

AGENT OF RECORD

Date: 12-13-21

I, Rory Burton do hereby designate and appoint

Wess Ripley as my agent of record for the purposes of representing me during the Planning and Zoning Department's review process of my application. My agent of record is hereby vested with authority to make any representations, agreements or promises, which are necessary or desirable in conjunction with the review process. My agent of record is authorized to accept or reject any conditions imposed by any reviewing board or entity.

Name: Rory Burton Signature: [Signature]

My agent of record may be contacted at:

Company: _____

Address: _____

City/State: _____ Zip Code: _____

Telephone: _____ Fax: _____

Before me this date personally appeared:

Name: Rory J Burton

Signature: [Signature]

☒ Personally known/Form of Identification Drivers License

Who, being first duly sworn, deposes and attests that the above is a true and correct certification.

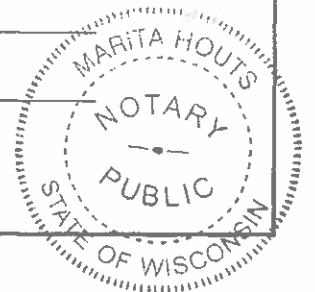
Sworn to and subscribed before me this: Day: 13 Month: December, 2021

Notary Public State of ~~Florida~~ at Large: [Signature]
Wisconsin

Notary Public Commission Expiration: 2/17/24

~~State of Florida~~ state of Wisconsin

County: ~~Pinellas~~
Winnebago



CERTIFICATION

Date: 12-13-21

I hereby certify that I have read and understand the contents of this application, and that this application together with supplemental data and information, is a true representation of the facts related to the request; that this application is filed with my approval, as owner, evidenced by my signature appearing below.

It is hereby acknowledged that the filing of this application does not constitute automatic approval of the request. Further, if the request is approved, I will obtain all necessary permits and comply with all applicable orders, codes, conditions and regulations pertaining to the use of the property.

I hereby grant authorization to any city official to inspect, as reasonable times, the site of the request.

Before me this date personally appeared:

Name: Rory Burton

Signature: [Signature]

☒ Personally known/Form of Identification Drivers License

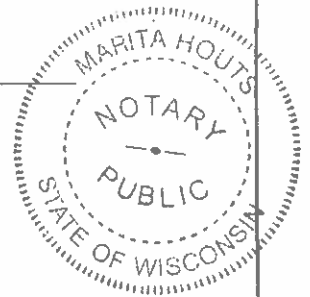
Who, being first duly sworn, deposes and attests that the above is a true and correct certification.

Sworn to and subscribed before me this: Day: 13 Month: December, 20 21

Notary Public State of ~~Florida~~ Wisconsin at Large: [Signature]

Notary Public Commission Expiration: 2/17/24

State of ~~Florida~~ Wisconsin
County: ~~Pine~~ Winnebago



APPLICATIONS FILED BY CORPORATIONS MUST BEAR THE SEAL OF THE CORPORATION OVER THE SIGNATURE OF AN OFFICER AUTHORIZED TO ACT ON BEHALF OF THE CORPORATION.

AGENDA ITEM NO. 5

OTHER BUSINESS

AGENDA ITEM NO. 6

ADJOURNMENT