



LARRY ANTHONY & MARY SHARON RESIDENCE  
APPLICATION FOR SIDE-YARD SETBACK VARIANCES  
5768 PINE TREE DRIVE \* ZBA23-1058 \* PART 1 OF 4

**ZBA23-0159**  
**APPLICATION FOR SIDE-YARD SETBACK VARIANCES**  
for residence of  
LARRY ANTHONY SHARON & MARY SHARON  
5768 PINE TREE DRIVE  
MIAMI BEACH, FLORIDA 33140

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January 8, 2024

**VIA HAND DELIVERY**

The Chairperson and Members of the  
Miami Beach Board of Adjustment  
c/o Mr. Michael Belush  
City of Miami Beach Planning Department  
1700 Convention Center Drive, 2nd Floor  
Miami Beach, Florida 33139

**Re: ZBA23-0159 / Application for Interior Side Yard Setback Variances (2) for  
the construction of a new residential swimming pool at single-family home  
located at 5768 Pine Tree Drive Miami Beach, FL (the "Property")**

Dear Chairperson and Members of the Board of Adjustment:

Our firm represents Larry and Mary Sharon (collectively, the "**Applicants**"), in connection with land use and zoning matters relating to the Property. Please accept this Letter of Intent as part of the application to the Board of Adjustment (the "**BOA**" or the "**Board**") for approval of two (2) interior side yard setback variances for the construction of a new residential swimming pool at the Property (the "**Application**").

**I. The Property**

The Property is zoned Single Family Residential (RS-4) on the City of Miami Beach Official Zoning Map and designated Single-Family Residential District (RS) on the City's Future Land Use Map. The Property contains two (2) structures—the primary residence, which fronts Pine Tree Drive, and a guesthouse, located in the rear yard, both constructed in 1925 (collectively, the "**Home**"). The Home contains approximately 4,570 square feet and has a Mediterranean-influenced design. The Property contains a side access driveway along the northern façade of the primary residence. The north side of the driveway is flanked by lush landscaping. An interior courtyard, nestled between the main residence and guest house serves as a focal point for the Property.

As shown in the survey conducted by Survey Pros, Inc., enclosed, the interior courtyard contains an existing small swimming pool that provides almost no circulation space between the water's edge and the southwest corner of the northwest wing of the main residence. The survey



also calls out an existing small spa pool located at the southwest corner of the Property, which encroaches into the rear setback (the “**Existing Conditions**”). The Applicants, who purchased the property in July of 2022, acquired the Property with an intent to preserve the scale and character of the existing residence. At the same time, the Applicants feel the need for some updating of the Property including modern safety enhancements. As such, the Applicants seek to construct a reconfigured swimming pool that will not only enhance the Property, but to also provide a safer pool deck area.

The Property is currently (at the time of this application being filed) undergoing certain alterations. Staff has informed the Applicants that at the time they purchased the Property, it was eligible to be designated as an *architecturally significant home* pursuant to Section 7.2.2.4 of the Miami Beach Resiliency Code (the “Resiliency Code”). While it was always Applicants intent to substantially restore the Home maintaining its style and scale, until they finished undertaking the design process with their architect, they did not know whether the resulting design for the Home would allow it to remain eligible for the *architecturally significant* designation. Accordingly, they did not pursue the designation at the time. Staff has just recently confirmed that even with the alterations currently underway, the Property remains eligible to be determined to be an *architecturally significant home*. Unfortunately, the enhanced zoning provisions provided to *architecturally significant homes* do not provide sufficient relief to avoid the need for the Applicants to pursue the variances applied for herein.<sup>1</sup> Accordingly, the Applicants respectfully request the Board grant the two (2) variances applied for herein to be able to proceed with the construction of a new swimming pool under the current single-family regulations as further described below and exhibits accompanying the Application.

## **II. Variance Requests**

The Applicant requests the following variances (collectively, the “**Variance Requests**”):

- 1. A variance from Section 7.2.2.3(b)(12)(P) of the Resiliency Code to allow for an interior side yard setback of 3’-10” from the north property line to the swimming pool deck (water wall) where a minimum setback of 7’-6” is required; and**

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<sup>1</sup> With their already permitted alterations, as well as with this application, the Applicants are not utilizing the enhanced zoning benefits that come with designating their home as *architecturally significant*. However, Applicants’ planned alterations to the Property embody the style, scale, character and massing of the original residence itself and of the built context of its immediate area, in a manner that befits an *architecturally significant home*, as Applicants have been informally advised by Staff.

**2. a variance from Section 7.2.2.3(b)(12)(P) of the Resiliency Code to allow for an interior side yard setback of 5'-0" from then north property line to the water's edge where a minimum setback of 9'-0" is required.**

As stated above, when the Applicants acquired the Property, it was, and still is their intention to preserve the style, scale and character of the existing structures while making some "livability" improvements and updating. The Applicants seek to construct a new swimming pool to improve upon the existing conditions, in terms of style, usability and safety. The southernmost extent of the proposed swimming pool is limited by the guest house's exterior staircase. As shown in the photographs submitted as part of this Application, the guesthouse contains an exterior staircase, which lands on the pool deck. To provide an appropriate landing on the pool deck, the south end of the pool must be located at, or north of, the east projection of the north side of the clear width of the stairway.<sup>2</sup> Accordingly, the proposed swimming pool is located to ensure an appropriate landing is provided. The exterior staircase is an existing condition. It is not from the result of any action by the owners and is a special condition unique to the Property and part of what gives the property its character and *architectural significance*.<sup>3</sup>

The proposed new swimming pool has a wet area that is 30 feet in length.<sup>4</sup> The northernmost five feet (5') of that length is an in-pool spa area that replaces the existing non-conforming spa (which will be eliminated upon approval of the variance requests). At the south end, a seven-foot (7') sun ledge is proposed. That leaves an open swimming area of only eighteen feet (18') in length. It would not be practical to construct a shorter swimming pool. As a result, the variances requested are necessary to ensure the pool deck has safe and appropriate clearances, appropriate access is provided to the guest house, and the swimming pool is at least a minimal usable size.

Pursuant to the City Charter Subpart B – Related Special Acts, specifically Article I, Section 2, variances may be analyzed where there are practical difficulties or unnecessary

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<sup>2</sup> See Florida Building Code-Residential, 2020 edition ("FBCR") §§ R311.7.1, R311.7.6.

<sup>3</sup> Even though the Property has not been formally designated as *architecturally significant*, it is the Applicants' desire to maintain the Property's architectural significance to the extent practicable, just as it is public policy in the City to strongly encourage the same. See, e.g., Resiliency Code § 7.2.2.4.

<sup>4</sup> The swimming pool length of 30 feet being proposed is based on Applicants concern that a shorter swimming pool will have diminished usability and that a smaller swimming pool will diminish the value of the property rather than enhance it. See Aerial Plan for view of the relative sizes of swimming pools in the home's immediate neighborhood.

hardships. The term “practical difficulties” refers to conditions of the land in question.<sup>5</sup> Relevant factors to be considered in determining whether sufficient practical difficulties exist include: (1) how substantial the requested variance is; (2) whether the variance will result in a substantial change to the character of the neighborhood or create a substantial detriment to adjoining properties; (3) whether the violation can be cured by some method other than the granting of a variance; and (4) whether, in light of the manner in which the violation arose and considering all relevant factors, the interests of justice will be served by granting the variance. *Id.*

This Applicant provides the relevant factors to support a determination that a practical difficulty exists. First, given the minor nature of the Variance Requests, the proposed variance would have negligible impact and does not pose a significant departure from the Land Development Regulations. Second, The Variance Requests do not entail a substantial change to the character of the neighborhood, nor do they pose a substantial detriment to adjoining properties. As can be seen in the enclosed Aerial View, the introduction of a pool aligns with the existing landscape of the community, of the fourteen (14) homes on the same block, ten (10) contain pools. Furthermore, within the immediate vicinity, larger pools are already in existence, underscoring the compatibility of our proposed smaller pool with the existing neighborhood aesthetic. Third, the Variance Requests are the minimum necessary to develop the proposed swimming pool in accordance with the intent of the RS-4 zoning district regulations. The current design of the proposed swimming pool is the result of existing site constraints. As stated above, the location of the proposed swimming pool was determined so as not encroach into Florida Building Code’s minimum required bottom landing of the existing guest house’s second floor entry stair. See, e.g., site plans and photos of guest house stair, enclosed. Fourth, granting the Variance Requests align with the interests of justice, as it ensures fairness and equity in light of the existing conditions in the neighborhood. Many nearby properties contain larger pools, such that the granting of the requested variances would result in the Applicants being similarly situated to its neighbors in the immediate neighborhood. Approving the requested variances is essential to ensure that Applicants can have a pool that is not only compliant with the neighborhood's established norms but also practical and usable for their household. Denying the variance would create an unnecessary disparity, as it would hinder Applicants ability to enjoy a pool similar to that which is now enjoyed by the otherwise similarly situated surrounding properties.

In addition, the Variance Requests should be approved as they are in accordance with the standards of review for a Variance application, as provided in Section 2.8.3.a of the Resiliency Code, and support the intent of the RS-4 regulations. Specifically, a Variance shall be approved upon demonstration of the following:

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<sup>5</sup> See State ex rel. Branum v. Bd. of Zoning Adjustment of City of Kansas City, Mo., 85 S.W.3d 35, 41 (Mo. Ct. App. 2002).

- (i) *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.*

**Satisfied;** As mentioned above, the Applicants purchased the Property with the exterior guesthouse and its staircase as it exists today. This condition is peculiar to the land as these structures were constructed prior to the Applicants' purchasing the Property. The guesthouse's exterior staircase is a unique configuration, which limits the ability to construct and locate a swimming pool in the center of the internal courtyard and is the driver of the Variance Requests.

- (ii) *The special conditions and circumstances do not result from the action of the applicant.*

**Satisfied;** The special condition, the location of the guesthouse's exterior staircase, is a result of the original construction of the Property and not the result of actions taken by the Applicants. The exterior staircase is an existing condition and was established before the Applicants' ownership of the Property.

- (iii) *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.*

**Satisfied;** Approval of the Variance Requests will not confer any special privilege on the Applicant that would be otherwise denied or detrimental to similarly situated properties within the RS-4 zoning district or the immediate area. A cursory review of the size of swimming pools at homes in the Applicant's immediate neighborhood show pool sizes that are at least 30 feet long for most of the pools. Notably, Applicant's next-door neighbor has a swimming pool that appears to be approximately 40 feet in length (versus the 30 feet proposed in this application).

- (iv) *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.*

**Satisfied;** Failure to approve the Variance Requests will create a hardship on the Applicants as they would not be able to construct and maintain a swimming pool that is

30 feet in length where a significant percentage of Applicant's neighbors have pools that are 30 feet in length and larger (including the much larger swimming pool in the adjacent property to the north<sup>6</sup> ).

- (v) *The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.*

**Satisfied;** The Variance Requests are the minimum required to develop the proposed swimming pool in accordance with the intent of the RS-4 zoning district regulations. The current design of the proposed swimming pool is the result of challenging site constraints. As stated above, the pool is designed to ensure compliance with the FBCR by limiting the swimming pools south end to not encroach in the guest house stair's required bottom landing.

- (vi) *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.*

**Satisfied;** The Variance Requests do not negatively impact the surrounding neighborhood, as the Property is in compliance with all other RS-4 zoning regulations, including height, lot coverage and setbacks.

- (vii) *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.*

**Satisfied;** The Variance Requests will allow for the redevelopment of the Property consistent with the City Comprehensive Plan and will not reduce levels of service.

- (viii) *The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.*

**Satisfied;** Please refer to the Sea Level Rise and Resiliency Review provided below.

### **III. Sea Level Rise and Resiliency Review Waiver**

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<sup>6</sup> See DRB File No. DRB17-0143.



Section 7.1.2.4.a of the Resiliency Code provides review criteria for compliance with the City's recently adopted sea level rise and resiliency criteria.

- (i) A recycling or salvage plan for partial or total demolition shall be provided.

*N/A*

- (ii) Windows that are proposed to be replaced shall be hurricane proof impact windows.

*N/A. However, windows being replaced under the current building permit in effect (and not a part of this application) are impact-resistant windows that have been product approved for the High Velocity Hurricane Zone as set forth in the Florida Building Code.*

- (iii) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.

*N/A. However, where feasible and appropriate, windows being replaced under the current building permit in effect are operable.*

- (iv) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.

*New landscaping will contain Florida friendly plants.*

- (v) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change compact, including a study of land elevation and elevation of surrounding properties were considered.

*Yes, however, the improvements contained in the Application are all exterior and the elevation of the pool deck is limited by the existing finish floor elevations of the main residence and guest house.*

- (vi) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.

*N/A.*

- (vii) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.

*Yes. All critical mechanical and electrical systems that are a part of the improvements covered by the Application shall be above base flood elevation or otherwise be compliant with the applicable requirements of Chapter 54 of the City Code.*

- (viii) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.

*N/A.*

- (ix) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter 54 of the City Code.

*N/A.*

- (x) Where feasible and appropriate, water retention systems shall be provided.

*Yes.*

#### **IV. Conclusion**

The Applicant is requesting approval of the Variance Requests for the construction of a new swimming pool on the Property. For the reasons set forth above, Applicants respectfully request the Board of Adjustment grant the requested variances.

Sincerely,



Robert S. Fine

Enclosures

cc: Larry Sharon  
Hector Martinez, AIA