

1 Section 2. Findings of fact.

2 The applicants' property is located at 17300 SW 87 Court, Palmetto Bay, Florida. Pursuant to
3 Section 30-30.6, of the Code, the applicants are requesting a variance of setback requirements to
4 permit a pool (15' x 30') to setback 10 feet from the (south) interior side property line where 20 feet
5 is required. The physical limitations due to the irregular shape and configuration of the existing
6 home and the presence of a utility easement has created a special condition upon this property
7 which is not applicable to other structures within the general area. If the pool was to be placed in
8 accordance with setback, the pool would be located directly behind the master bedroom, which
9 would not allow the applicants to visually monitor their children while in the pool from the interior
10 of the home or from the screened patio.

11
12 The record reflects that staff looked for alternative locations and has concluded that due to the
13 irregular shape of the home and existing utility easements (overhead power line) the alternative
14 locations may not be suitable for a pool. The proposed location as indicated in the plans submitted
15 would allow the applicants to construct the pool while addressing the life and safety concerns.

16
17 Pursuant to Section 30-30.6 of the Village of Palmetto Bay's Land Development Code (LDC), the
18 applicants are requesting a variance of setback requirements to allow for the construction of a new
19 pool (15' x 30') to setback of 10 feet from the (south) interior side property line where 20 feet is
20 required on a property zoned E-M, Estate Modified District.

21
22 The Council held a public hearing and the property and the applicant (Rex Lehmann) spoke in favor
23 of the project. The Council incorporates by reference the minutes, audio tape, and transcript (if
24 transcribed) into its findings of fact.

25
26 The adopted 2009 Amended Village of Palmetto Bay Comprehensive Plan, Future Land Use Map
27 designates the site as Estate Density Residential. The residential density allowed in this category is
28 less than 2.5 dwelling units per gross acre.

29
30
31 **ZONING**

30
31 **FUTURE LAND USE DESIGNATION**

32
33 **Subject Property:**

34
35 E-M; Single-Family
36 Residential District

34
35 Estate Density Residential
36 less than 2.5 D.U. per gross acre

37
38 **Surrounding Properties**

39
40 **NORTH:** E-M; Single-Family
41 Residential District

39
40 Estate Density Residential;
41 less than 2.5 D.U. per gross acre

42
43 **SOUTH:** E-M; Single-Family
44 Residential District

42
43 Estate Density Residential;
44 less than 2.5 D.U. per gross acre

1			
2	EAST:	E-M; Single-Family	Estate Density Residential;
3		Residential District	less than 2.5 D.U. per gross acre
4			
5	WEST:	E-M; Single-Family	Estate Density Residential;
6		Residential District	less than 2.5 D.U. per gross acre
7			
8			

9 Section 3. Standard of Review.

10
11 On December 2009, the Village Council adopted Division 30-30 of the Code, relating to
12 “Development Approval Procedures.” Section 30-30.6 of the Code, entitled “Variances” governs
13 the process for addressing a variance request. The Village defined a variance as “a relation of the
14 terms of Chapter 30 of the Code, due to an unnecessary and undue hardship when relation of terms
15 is not contrary to the public interest and results from conditions peculiar to the property and not the
16 result of the actions of the applicant that may result from a literal enforcement of Chapter 30 of the
17 Code.” In short, the Village has adopted a strict hardship standard for reviewing a variance request.
18 The Village Council specifically identified permitted variances at subsection (b), and prohibited
19 variances at subsection (c).

20
21 In Section 30-30.6(b) of the Code, a variance is authorized to be granted by the Village Council, after
22 quasi-judicial public hearing, only for setback lines; lot width; street frontage; lot depth; lot coverage;
23 landscape or open space requirements; height limitations; yard regulations; fence and wall
24 regulations; signs; parking; and flood regulations approved under Section 30-100.6, of the Code of
25 Ordinances, and other matters specifically permitted as variances pursuant to this Division.

26
27 According to Section 30-30.6(c) of the Code, the Village Council may not grant a variance to allow a
28 prohibited use, or one that is contrary to the Comprehensive Plan or Section 30-30.6 of the Code.
29 Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall
30 a variance be granted because of the presence of non-conformities in the zoning district or uses in
31 an adjoining zoning district or because of prior variances granted. Similarity, a variance shall not be
32 granted which increases nor has the effect of increasing density or intensity of a use beyond that
33 permitted by the Comprehensive Plan or Chapter 30 of the Code.

34
35 Pursuant to Section 30-30.6(e) of the Code, the Village Council may after public hearing, adopt a
36 written resolution granting, granting with conditions or denying the variance request. The criteria
37 for reviewing the variance are as follows:

- 38
39 (1) That the variance is in fact a variance allowed in this Division and is within the province of
40 Village Council.

41
42 The Village Council found that the variance requested is allowed and within the province of the
43 Village Council as this is an unnecessary and undue hardship to the property owner. The request is
44 not contrary to the public interest and results from conditions peculiar to the property and not the

1 result of the actions of the applicants. Financial considerations are not taken into consideration
2 while reviewing this request.

3
4 (2) Existence of special conditions or circumstances. That special conditions and circumstances
5 exist which are peculiar to the land, structure, or building involved and which are not applicable to
6 other lands, structures, or buildings in the same zoning district.

7
8 The Village Council determined that the home was designed in an upside down "T" layout with the
9 common living areas located towards the south interior side of the property and bedrooms towards
10 the rear and north. The existing layout of the home creates the hardship due to the design and
11 placement of the structure on site.

12
13 (3) That the special conditions and circumstances do not result from the actions of the
14 applicant.

15
16 The Council determined that there exists a special condition on site due to the existing layout of the
17 home. The Council took notice that the applicants are concerned that constructing the pool within
18 the setback requirements will create a number of life and safety issues including limited visibility and
19 monitoring of the children from the interior common areas of the home since all common areas in
20 this house are located directly towards the south. The existing setback requirements under the E-M
21 zoning designation, the pool would have to be located directly behind the house's master bedroom.
22 The existing home was built in 1971 and was acquired by the applicants in 2003.

23
24 (4) That granting the variance requested will not confer on the applicant any special privilege
25 that is denied by Chapter 30 to other lands, buildings, or structures in the same zoning district.

26
27 The Council determined that the request if approved will allow the applicants to construct a
28 swimming pool. The pool will be located along the south interior property line, its proposed
29 location would be the minimum variance requested without creating a potential life and safety issue.

30
31 (5) Financial difficulties or economic hardship shall not be a factor for determining whether a
32 variance should be granted.

33
34 The Council determined that there are no financial or economic hardships related to this application.

35
36 (6) That literal interpretation of the provisions of Chapter 30 would deprive the applicant of
37 rights commonly enjoyed by other properties in the same zoning district under the terms of Chapter
38 30 and would work unnecessary and undue hardship on the applicant. The purchase of property
39 which has an illegal nonconformity with Chapter 30 shall not be considered a hardship for the
40 granting of a variance, nor shall conditions peculiar to the property owner be considered.

41
42 The Council determined that the physical limitations due to the design layout and placement of the
43 home limit the property owners' options in the placement and location of the pool.

1 (7) That the variance granted is the minimum variance that will make possible the reasonable
2 use of the land, building, or structure.

3
4 The Council determined that the requested variance will have a minimum adverse impact to the
5 adjacent properties in the immediate area. The existing dense landscaping and wooden fence
6 surrounding the applicants' property in the rear as well on the interior sides provides an excellent
7 buffer to minimize potential noise impacts from the use of the pool and/or other activities.

8
9 (8) That the grant of the variance will be in harmony with the general intent and purpose of the
10 comprehensive plan and Chapter 30, and that the variance will not be injurious to the area involved
11 or otherwise detrimental to the public welfare.

12
13 The Council found that this variance will be in harmony with the general intent and purpose of the
14 Comprehensive Plan and Chapter 30 of the Code. The scale, height, and size are appropriate and
15 compatible with the character of the surrounding neighborhood.

16
17 (9) In granting any variance, Village Council may prescribe appropriate conditions to mitigate
18 the proposed variance and to ensure safeguards in conformity with the comprehensive plan and
19 Chapter 30 or any other duly enacted ordinance. Violation of conditions and safeguards, when made
20 a part of the terms under which the variance is granted, shall be deemed a violation of this chapter
21 and shall nullify the variance development approval.

22
23 Approval of the variance requests will be consistent with the densities of the 2009 Future Land Use
24 Map. The Council has recommended additional conditions based on their evaluation and
25 understating of the technical and non-technical aspects of the application. The Applicants have
26 agreed to the Conditions imposed by Council. The conditions shall provide clear guidance to
27 mitigate the potential impacts created by the proposed variances.

28
29 According to Section 30-30.6(f) of the Code, once a written decision is made by the Village Council,
30 that resolution shall be recorded in the public records. The resolution granting a variance shall be
31 deemed applicable to the development for which it is granted and not to the individual applicant,
32 provided that no resolution granting a variance shall be deemed valid with respect to any use of the
33 premises other than the use specified in the application for a variance development approval (See:
34 Section 30-30.6(g) of the Code). As with all applications, if a variance is granted, the development
35 approval shall be valid for 24 months from the date of approval, or that date approved by the
36 Village Council, if a longer period is authorized during the public hearing (See: Section 30-30.2(k) of
37 the Code). In short, Section 30-30.2(k) of the Code requires that the variance be utilized,
38 constructed, if applicable, within the two year period.

39
40
41 Section 4. Conclusions of law.

42 1. The Application is in compliance with the adopted 2005 Village of Palmetto Bay
43 Comprehensive Plan, and Future Land Use Map.

1 2. The standard of review for a variance is found at Section 30-30.6 of the Village's
2 Land Development Code. That the Applicant's request for a setback variance is in compliance with
3 the applicable hardship standards.
4

5 Section 5. Order.
6

7 The Village Council approves the request for a variance of setback requirements to permit a pool
8 (15' x 30'). The variance is in keeping with the basic intent and purpose of the zoning and land use
9 regulations. In addition, the requested variance will not have a negative impact on the surrounding
10 area since the proposed location of the pool is surrounded by dense landscaping and wooden fence
11 that will significantly minimize noise and aesthetic impacts. As such, approval of this application is
12 in character with the surrounding uses, and would be consistent with the Village's Comprehensive
13 Plan.
14

15 Therefore the Council approves the variance request pursuant to Section 30-30.6 of the Code to
16 allow plans entitled "Lehmann Project Drawing" 17300 SW 87th Court, Palmetto Bay, FL 33157,
17 consisting of two (2) sheets dated stamped received July 19, 2010, with the following conditions:
18

- 19 1. The applicants are to comply with the requirements of all other applicable
20 departments and agencies as part of the Village of Palmetto Bay's building permit submittal
21 process.
22
- 23 2. The application must meet the minimum requirements of Chapter 24 of the Code of
24 Miami-Dade County.
25
- 26 3. The applicants are to maintain at a minimum 35 percent of the lot area with
27 landscape pervious area as per Section 30-54.4 (a)(d)(8) of the Village's Code and shall be
28 noted on the plans submitted to the Building Department.
29
- 30 4. The applicants shall maintain at all times the 6 feet wood fence along the south
31 interior property line as to preserve the additional buffer to the adjacent property.
32
- 33 5. The applicants shall relocate all existing trees affected by the proposed pool to
34 another location within the property and shall be noted on the plans submitted to the
35 Building Department. Compliance with this requirement shall be noted on the plans.
36
- 37 6. Failure to submit for building permits within 90 days of this development approval
38 shall result in the variance and zoning resolution to be void or seek extension prior to the
39 expiration of the ninety day period.
40
- 41 7. The Applicants shall install a pool safety fence.
42
- 43 8. The applicants shall install porous pavers around the pool to assist with on-site water
44 runoff retention.
45

1 9. This is a final order.

2
3 Section 6. Record.

4 The record shall consist of the notice of hearing, the application, documents submitted by the
5 applicant and the applicant's representatives to the Village of Palmetto Bay Planning and Zoning
6 Department in connection with the applications, the Village's recommendation and attached cover
7 sheet and documents, the testimony of sworn witnesses and documents presented at the quasi-
8 judicial hearing, and the tape and minutes of the hearing. The record shall be maintained by the
9 Village Clerk.

10
11 Section 7. This resolution shall take effect immediately upon approval.

12 PASSED and ADOPTED this [20] day of September, 2010.

13
14 Attest: Meighan Alexander
15 Meighan Alexander
16 Village Clerk

Eugene P. Flinn, Jr.
Eugene P. Flinn, Jr.
Mayor

17
18
19 APPROVED AS TO FORM:

20
21 Eye A. Boutsis
22
23 Eye A. Boutsis,
24 Village Attorney

25
26 FINAL VOTE AT ADOPTION:

27
28 Council Member Ed Feller YES
29
30 Council Member Howard Tendrich YES
31
32 Council Member Shelley Stanczyk YES
33
34 Vice-Mayor Brian Pariser YES
35
36 Mayor Eugene P. Flinn, Jr. YES
37