

ZONING ANALYSIS

**PARADISE POINT DRIVE, LLC
VPB-12-005**



Village of Palmetto Bay
FLORIDA

ZONING ANALYSIS

APPLICANT: Paradise Point Drive, LLC

PH: VPB-12-005

ADDRESS: 5863 Paradise Point Drive

ZIP: 33157-3685

SECTION: 25-55-40

HEARING DATE: September 24, 2012

COUNCIL DISTRICT: 1

ITEM: 1

A. GENERAL INFORMATION

REQUEST: The applicant is requesting a variance of height requirements to permit the construction of a new three-story single-family home on a parcel zoned Modified Single-Family Residential District (R1-M).

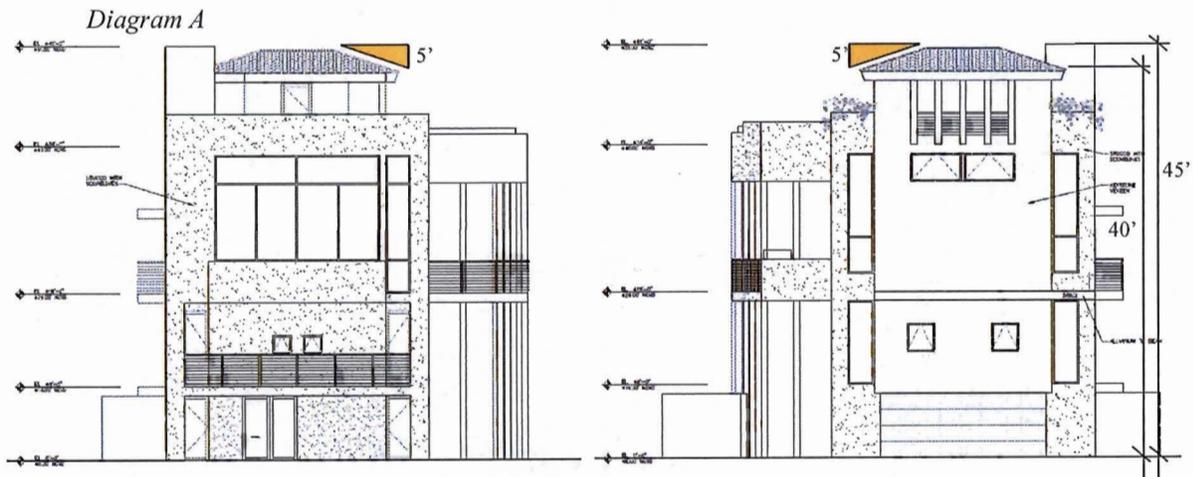
ADDRESS: 5863 Paradise Point Drive, Palmetto Bay, FL

LOT SIZE: 7,342 sq. ft.

FOLIO #: 3350250090080

B. BACKGROUND

The applicant is requesting a variance of height requirements to permit the construction of a new single-family home with a proposed height of 45' where 35' is permitted on a vacant parcel zoned Modified Single-Family Residential District (R1-M), or in the alternative a modification of Miami-Dade County zoning resolution 5ZAB-243-97, in order to construct a single-family home with a height of 45' where 40' is approved under the resolution for a single family residence. In 2009 the Village enacted its Land Development Code and in so doing, rezoned the subject property. The property was zoned under Miami-Dade County as RU-1M and The R1-M district was selected as being the closest in dimensions to the structures already constructed under the County Zoning Resolution 5ZAB-243-97. The effect of the rezoning was to change the way heights of building were calculated. Previously, the height was measured from the roof's eve and exempted any parapet. The Village's R1-M zoning district regulations measures height from the roof ridge. As a result, for the applicant can't enjoy the same development standard applied to other properties within the development, the applicant must now seek a height variance. Other homes in the development have an actual height of 45' (due to the roof eve/parapet differential) as they were built under the Miami-Dade County Code. Diagram A depicts the proposed elevation which is the subject of the variance request.



C. ZONING HEARING HISTORY (3438, 1909, 4384, 3-ZAB-60-67, 4-ZAB-461-72, Circuit Court, 4-ZAB-79-91, CZAB-136-97, 5ZAB-243-97)

On November 8th, 1949, the Board of County Commissioners via resolution **No. 3438 approved** a district boundary change from Interim (GU) to Bungalow Courts (RU-3B), Liberal Business (BU-3) and Light Manufacturing (IU-1)

On August 7th, 1958, the Board of County Commissioners via resolution **No. 1909 denied** the applicants request for a district boundary change from Bungalow Courts (RU-3B), Liberal Business (BU-3) and Light Manufacturing (IU-1) to Light Manufacturing (IU-1).

On January 7th, 1960, the Zoning Commission via resolution **No. 4384 rescinded** resolution **No. 3438** rezoning to BU-1A, BU-2, RU-4A, RU-4 and E-M.

On February 15th, 1967, the Metropolitan Dade County Zoning Appeals Board via resolution **3-ZAB-60-67 approved** the applicants request with conditions for an unusual use permit to permit a canal excavation.

On September 13th, 1972, the Metropolitan Dade County Zoning Appeals Board via resolution **4-ZAB-461-72 denied** the applicants request with conditions for a special exception to permit an apartment hotel, marina restaurant, office and store, boat storage facilities, sewage plant and recreational facilities all within private drives in lieu of public streets and roads. In addition to an unusual use permit, to permit a sewage plant, private recreational areas, and excavation of the boat slips and a Use Variance to permit outdoor motor repair in the BU-1A district as permitted in the BU-3 district and to permit the trans-versing of the EU-M district as access to the business and apartment district.

In 1972, the Circuit Court of appeals **approved** with conditions the applicants request for a special exception to permit an apartment hotel, marina restaurant, office and store, boat storage facilities, sewage plant and recreational facilities all within private drives in lieu of public streets and roads. In addition to an unusual use permit to permit sewage plant, private recreational areas, and excavation of the boat slips and a Use Variance to permit outdoor motor repair in the BU-1A district as permitted in the BU-3 district and to permit the trans-versing of the EU-M district as access to the business and apartment district.

On March 27th, 1991, the Metropolitan Dade County Zoning Appeals Board via resolution **4-ZAB-79-91 approved** with conditions the applicants request for a non-use variance of zoning regulations to permit the construction of a 29 slip boat dock without the principle residential use.

On July 16th, 1997, the Metropolitan Dade County Zoning Appeals Board via resolution **5-ZAB-243-97 approved** with conditions the applicants request for a non-use variance of zoning regulations to permit 2 lots with areas of 4,401 sq. ft. and 4,868 sq. ft. (5,000 sq. ft. minimum required) and to permit certain units to setback 15' (25' required) from the rear property line and allow 3 story units (2 stories permitted) and to permit lots with 0 frontage (50' required) to have access to a public street via a public drive along with a special exception to permit units with a height of 40' (35' permitted), along with an unusual use variance to permit an entrance feature consisting of two 15' high pilasters and a decorative wall, varying from 6' to 8' in height where a maximum of 6' is permitted.

On December 4th, 1997, the Metropolitan Dade County Zoning Appeals Board via resolution **CZAB-6-97 approved** with conditions the applicants request for a non-use variance of zoning regulations to permit an observation tower to setback 0' (25' required) from the rear (north) property line and an unusual use to permit recreation area, to wit; a 35' high observation tower.

In December 2009, the Village of Palmetto Bay rezoned the entire Village under its own land development code, and rezoned the property to R-1M, Village designation of the Modified Single-Family Residential District, which district is substantially similar to the former County designation of RU-1M.

C. NEIGHBORHOOD CHARACTERISTICS

ZONING

FUTURE LAND USE DESIGNATION

Subject Property:

R-1M; Modified Single
 –Family District

Low Density Residential (LDR)
 2.5 to 6 D.U. per gross acre

Surrounding Properties:

NORTH: R-1M; Modified Single
 –Family District

Low Density Residential (LDR)
 2.5 to 6 D.U. per gross acre

SOUTH: Biscayne Bay

WEST: R-1M; Modified Single
 –Family District

Low Density Residential (LDR)
 2.5 to 6 D.U. per gross acre

D. SITE AND BUILDINGS

Site Plan Review:	Acceptable
Scale/Utilization of Site:	Acceptable
Location of Building(s):	Acceptable
Compatibility:	Acceptable
Landscape Treatment:	Acceptable with conditions
Open Space:	Acceptable
Buffering:	Acceptable
Access:	Acceptable
Visibility/Visual Screening:	Acceptable

E. ANALYSIS

The following is a review of the request pursuant to variance criteria at Section 30-30.6(e) of the Code of Ordinances. The "Background" section of this report is hereby incorporated into this analysis and its corresponding criteria by reference.

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

Analysis: Pursuant to Section 30-30.6(b) of the Code, a variance may be requested for setback lines, lot width, street frontage, lot depth, lot coverage, landscape or open space requirements, height limitations, yard regulations, fence and wall regulations, signs, parking, and flood regulations approved under Section 30-100.6, of the Code of Ordinances, and other matters specifically permitted as variances pursuant to this Division. The request is for a variance of height requirements.

Finding: Consistent

Criteria (2) Existence of special conditions or circumstances. That 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.

Analysis: The subject property is located within the Paradise Point Subdivision and was approved with a variance of lot frontage and height requirements in 1997. The subject property was recently rezoned by the Village to R-1M. The effect was to change the way heights of building were calculated. Previously, under the County Code, the height was measured up to the roof's eave, and exempted the parapet and mechanical equipment and shafts. Today's code measures up to the roof ridge and precludes the parapet. As a result, for the applicant to is unable to enjoy the same development standard as other properties within the development.

Finding: Consistent

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

Analysis: The special condition on site is due to the irregular lot size and location of the parcel which requires homes to be elevated one floor above. In addition the Village rezoned the parcel in 2009. As a result of the rezoning and the adoption of the new code, the applicant's right to construct a single-family home was limited relative to that enjoyed by his neighbors.

Finding: Consistent

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

Analysis: The request, if approved will allow the applicant to construct a single-family three-story home to a height similar to other homes in the immediate

neighborhood. The first floor of all the residential units must not be "habitable" due to floodplain requirements. The structures must be elevated one story due to storm surges and flood concerns. The structure to be constructed is of a height comparable to the other single-family homes located within the development.

Finding: Consistent

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

Analysis: Financial or economic hardships may not be considered in reviewing this application and no claim has been as such.

Finding: Consistent

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

Analysis: Homes with a height of 45' or even higher, are common in the immediate neighborhood. The additional 10' [current code R-1M], or in the alternative 5' [under County zoning resolution 5ZAB-243-97], variance request will allow the applicant to construct a home of the same height, and enjoy the same development standards, as other properties in the immediate development.

Finding: Consistent

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

Analysis: The typical home within the Paradise Point Subdivision has an overall height of 45'. Given such, the request may be considered the minimum variance that will make reasonable use of the land and structure.

Finding: Consistent

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

Analysis: The request may be considered in harmony with the general intent and purpose of the Comprehensive Plan because the scale and height of the home is compatible with the character and height of other homes in the immediate and surrounding neighborhood.

Finding: Consistent

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

Analysis: The intent of this criterion is to provide the Council with an opportunity to recommend any conditions based on their evaluation and understating of the technical and non-technical aspects of the application. Should the Mayor and Council be inclined to approve the request with conditions they should provide clear guidance to mitigate the potential impacts created by the proposed variance. In addition, the Council can recommend conditions to ensure compliance with the Comprehensive Plan, Chapter 30 of the LDC or any duly enacted ordinance. The Council's suggestions are intended to provide conditions that would augment or revise the conditions that may be proposed by the Planning Department.

Finding: As determined by the Mayor and Council

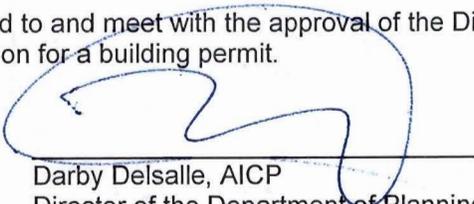
F. NEIGHBORHOOD SERVICES

Code Compliance	No Objection
DERM	Required
Building and Capital Projects	Required
Public Works	Required

H. RECOMMENDATION

Staff recommends approval with conditions under Section 30-30.6 of the Code to allow plans entitled "Casa @ Paradise Point, 5863 Paradise Point Drive, Palmetto Bay, FL, 33157" consisting of nine (9) sheets dated stamped received July 31st, 2012, as prepared by MATUE Architecture Incorporated.

1. The applicant shall comply with the requirements of all other applicable departments/agencies as part of the Village of Palmetto Bay building permit submittal process.
2. The application must meet the minimum requirements of Chapter 24 of the Code of Miami-Dade County.
3. The applicant shall relocate all existing trees affected by the proposed home to another location within the property and shall be noted on the plans submitted to the Building Department. Compliance with this requirement shall be noted on the plans.
4. A landscape plan be submitted to and meet with the approval of the Director prior to the submittal of an application for a building permit.


Darby Delsalle, AICP
Director of the Department of Planning & Zoning