

RESOLUTION NO. 2012-79

ZONING APPLICATION VPB-12-005

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; GRANTING THE APPLICATION OF PARADISE POINT DRIVE, LLC, LOCATED AT 5863 PARADISE POINT DRIVE, IN WHICH THE APPLICANT REQUESTS 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); PROVIDING AN EFFECTIVE DATE.

WHEREAS, the applicant made an application for a height variance for the property located at 5863 Paradise Point Drive, as described in the Village of Palmetto Bay Department of Planning and Zoning Recommendation, which is attached to this resolution; and,

WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial hearing on the application at Village Hall, 9705 East Hibiscus Street on October 22, 2012; and,

WHEREAS, the Mayor and Village Council finds, based on substantial competent evidence in the record, that the application for the height variance is consistent with the Village of Palmetto Bay Comprehensive Plan and the applicable land development regulations; and,

WHEREAS, based on the foregoing finding, the Mayor and Village council determined to grant the applications, as provided in this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. A public hearing on the present applications was held on October 22, 2012, in accordance with the Village's "Quasi-judicial hearing procedures." Pursuant to the testimony and evidence presented during the hearing, the Village Council makes the following findings of fact, conclusions of law and final order.

Section 2. Findings of fact.

1. 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 5-ZAB-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.

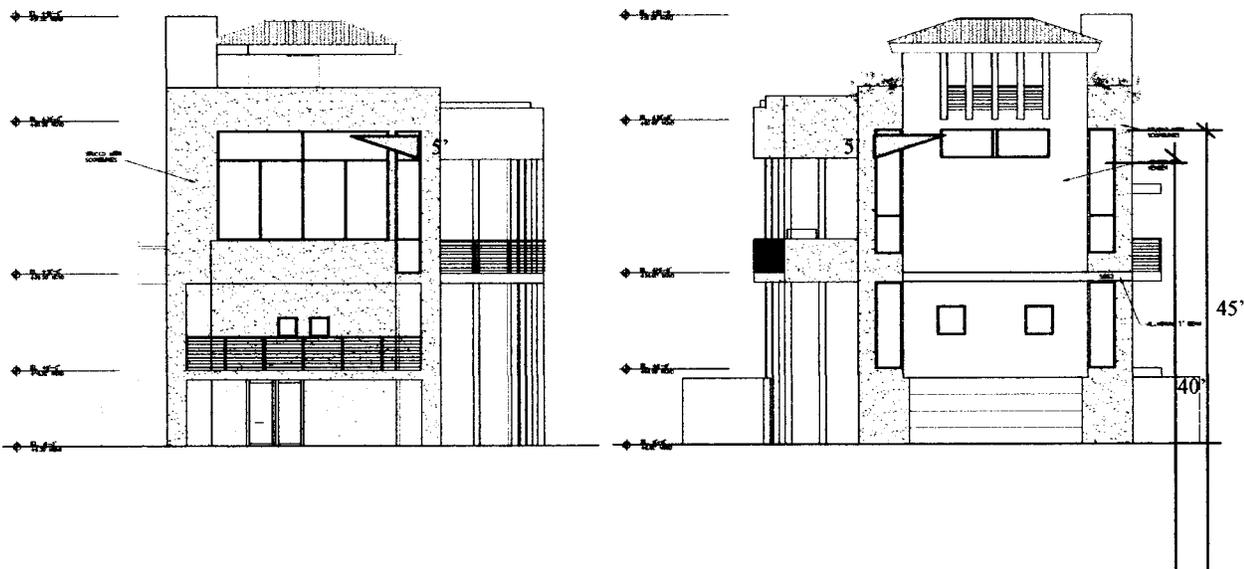
2. On July 16th, 1997, the Metropolitan Dade County Zoning Appeals Board via resolution 5-ZAB-243-97 *approved* with conditions the a request for a non-use variance of zoning regulations to permit 2 lots with areas of 4,401 sq. ft. and 4,868 sq. ft. (5,000 sq. ft. minimum required) and to permit certain 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).

3. In 2009 the Village enacted its Land Development Code (LDC) and in so doing, rezoned the subject property. The property's previous zoning, under Miami-Dade County, was RU-1M, Estate Modified District. The new Village, zoning changed it to R1-M district which provided for development standards similar to the those previously required under the County's RU-1M. The rezoning had no effect on the previous variance as that approval runs with the land.

4. The inadvertent effect of the Village's adopting its own LDC 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 newly adopted LDC provisions measures height from the roof ridge, rather than the roof's eve, thus limiting the development envelop.

5. As a result, for the applicant to enjoy the same development standard applied to other properties within the development as originally contemplated at time 5-ZAB-243-97 was approved, the applicant must now seek a height variance. Existing homes in the development have heights that range from 44' of 48' (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.

Diagram A



6. No testimony or evidence was presented during the public hearing to dispute consistency with the Village's Comprehensive Plan.

7. The Village adopts and incorporates by reference the Planning & Zoning Department staff report, which expert report, is considered competent substantial evidence.

8. Roney Mateu, of Mateu Architecture, testified as to the design and physical attributes of the land. The physical layout of the land due to federal floodplain requirements precludes habitable space within the first 12 feet of height. Additionally, the western portion of the property bounded by the bay is covered in tall, over 22 foot tall mangroves, which create a physical limitation as to the view from the ocean front property. The structure consists of two floors of possible habitable space, with the second floor, the roof top floor, providing access to the bay view. The first floor, some 12 feet above ground level, is precluded a view due to the mangroves. The structures must be elevated one story due to storm surges and flood concerns.

9. The prior code, under 33-55, of Miami-Dade County provided that the building height of chimneys, cupolas, domes, elevators, bulkheads, shafts and enclosures for mechanical equipment shall not be considered a part of a building for height calculations. Nor shall it apply to active and passive recreational facilities provided on the roof of a building, provided that the enclosed portion of such facilities shall not exceed 60 percent of the total area of such roof, and provided that the same does not exceed one (1) story or twenty (20) feet in height. The Village is silent as to any rooftop amenities. Based upon aerials contained in the Agenda package at least a third of the property, adjacent to the bay, is covered in mangroves.

10. Residents living within the development testified, based upon personal knowledge, that the mangroves exceed 22 or more feet in height.

11. Counsel for applicant, Scott Silver, presented argument that the application is consistent with and designed under the same standard as originally contemplated for the community.

12. Mr. Mateu testified that the modification to the height requirements by the change in the definition as to calculating height limited the building development envelope and the property owner would not be able to enjoy the view, a view enjoyed by all the other homes within the development. The property owner would lose a benefit that the other property owners enjoyed, some with four levels of habitable space, and this property with only two stories of habitable space.

13. A neighbor Jean Baker testified that the height proposed is consistent with the height of other structures within the development, and that keeping the height would ensure that the parcel is a "member of the community".

14. A resident testified that the view appears to be the hardship unique to the land.

15. Mr. Tucker Gibbs, attorney for the adjacent property owner, argued that there was no hardship, and that the property owner should make a reasonable use of the land without a hardship variance under the Village's Code.

Section 3. Conclusions of law.

A variance request is reviewed pursuant to Section 30-30.6(e) of the Village of Palmetto Bay's Code of Ordinances.

1. The Village Council finds the request consistent with the criteria of subsections (1) through (6), of Section 30-30.6(e). In accordance with subsection (1), the variance is in fact a variance allowed pursuant to the Village's Land Development Code and is within the province of Village Council. There is no discrepancy with the Village's Comprehensive Code and is thus, consistent with the Comprehensive Plan. No testimony or evidence was presented during the public hearing to dispute consistency with the Village's Comprehensive Plan. Under the Village's zoning code, a variance may be requested for amongst other things, height limitations, as provided under Section 30-100.6, of the Code of Ordinances.

2. The Village Council finds the request consistent with the criteria of subsection (2), in that there exists a special condition(s) or circumstance(s), which is 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 subject property is located within the Paradise Point Subdivision and was approved with a variance of lot frontage and height requirements in 1997. In 2009 the Village enacted its LDC and in so doing, rezoned the subject property 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 eve, 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 is prohibited from enjoying the same development standard as other properties within the development. There are 15 lots within the development of which 13 (two lots are currently undeveloped) are constructed to a height of 40 or more feet, including mechanical equipment, parapets and shafts. All 13 structures, due to the height variances previously provided have a bay view above the mangroves surrounding the peninsula.

3. The Village Council finds the request consistent with the criteria of subsection (3), in that the special conditions and circumstances do not result from the actions of the applicant, and is due to the irregular lot size and location of the parcel which requires homes to be elevated one floor above which led to the granting of variance 5-ZAB-243-97 by the County in 1997. In addition the Village established its own LDC and 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. Additionally, the testimony of the applicant's architect Roney Mateo, Mateo Architecture, indicated that due to the federal flood plain requirements, the first 12 feet in height of the property could not be habitable space. Thus, according to the architect for the applicant only 13 feet of height would remain for habitable space of the 35 feet permitted as of right under the code. Additionally, the land is waterfront property, and this property is surrounded, along the shoreline, by massive mangroves, which are precluded from trimming by the State and Miami-Dade County PERA (formerly DERM). These mangroves preclude view of the bay for a structure at 35 feet. The existing structures within the development are all between 40 and 48 feet in height and enjoy a view of the bay due to the added height allowed under the County Code. The applicant did not create the situation relating to the mangroves and is unable to cure the view issue, due to the protection provided by the State's Environmental Resource Management.

4. The Village Council finds the request consistent with the criteria of subsection (4), in that granting of the variance requested would 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. The variance 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 and would ensure the view corridor enjoyed by the other single-family homes in the development.

5. The Village Council finds the request consistent with the criteria of subsection (5), in that financial difficulties or economic hardship is not a factor for determining whether a variance should be granted.

6. The Village Council finds the request consistent with the criteria of subsection (6), in 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. In 2009 the Village enacted its LDC and in so doing, rezoned the subject property 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. Existing homes within the neighborhood have a height of 45' or even higher. 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 conceal the mechanical equipment as required per code and will accommodate the shaft for the elevator without compromising the overall height of each floor. Without an approved variance, the property owners would be denied an amenity commonly enjoyed by other property owners within the neighborhood. Beyond the subject property, there only remains one additional parcel that is undeveloped. All the other single-family homes are of a height of 40 feet or more, as provided under the County zoning resolution.

7. The Village Council finds the request consistent with the criteria of subsection (7), in that the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure. 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. Additionally, due to the mangrove trees blocking the ocean front view, the additional height is required in order to enjoy the same view as the existing homes located within the development.

8. The Village Council finds the request consistent with the criteria of subsection (8), in 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. 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.

9. The Village Council accepts the recommendations of staff as to conditions to be imposed on the application. No additional conditions are imposed by the Council.

Section 4. Order.

The Village Council grants the variance request, with conditions pursuant to Section 30-30.6 of the Code, with a maximum permitted height of 45 feet as substantially similar to the 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 MATEU Architecture Incorporated are hereby approved with the following conditions:

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.
5. This is a final order.

Please note that the above referenced plans are a schematic and could change as to final form, due to modifications that may be made by the Home Owner's Association' architectural review committee. The plans must conform to the height set forth in the plans.

Section 5. Record.

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

Section 6. This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this 22nd day of October, 2012.

Attest: Meighan Alexander
Meighan Alexander
Village Clerk

Shelley Stanczyk
Shelley Stanczyk
Mayor

*executed
11/9/2012*

APPROVED AS TO FORM:

Fred A. Boutsis
Fred A. Boutsis
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore	<u>YES</u>
Council Member Howard Tendrich	<u>YES</u>
Council Member Joan Lindsay	<u>Absent</u>
Vice-Mayor Brian W. Pariser	<u>YES</u>
Mayor Shelley Stanczyk	<u>YES</u>