

MIAMI BEACH

PLANNING DEPARTMENT
Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Board Members

DATE: March 7, 2025

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **ZBA24-0170 4521 Pine Tree Drive.**
Folio: 02-3223-002-0320

An application has been filed requesting variances to increase the maximum allowable height, to reduce the southern interior side setback, and to reduce the sum of the side setbacks, in order to allow for the construction of a new two-story home.

RECOMMENDATION:

Approval with conditions.

LEGAL DESCRIPTION:

Lot 45 of Indian Beach Corporation's Subdivision, according to the plat thereof, as Recorded in Plat Book 8, Page 61, of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Zoning:	RS-2	Lot Coverage	
Lot Size:	58,703 SF/1.347 AC	Existing:	N/A
Lot Width:	150'-0"	Proposed:	15,880 SF / 27.1%
Lot Depth:	388'-0"	Max:	17,611 SF / 30%

Unit Size

Existing:	N/A	Year Built:	1995
Proposed:	21,338 SF / 36.3%		
Max:	29,351 SF / 50%		

SURROUNDING PROPERTIES:

Height

Existing:	N/A	North:	Home, under construction
Proposed:	30'-0" /2-stories	South:	Pinetree Park
Max:	28'-0" /2-stories	West:	2 homes, 1934-1959
		East:	Indian Creek Waterway

THE PROJECT:

The applicant has submitted plans entitled "VILLA DEL MAR", as designed by **H2 - Architecture**, signed, sealed, and dated January 2, 2025.

The applicant is proposing to construct a new two-story single-family home with two accessory structures. The existing one-story single-family home on the site will be demolished.

The applicant is requesting the following variances from section 7.2.2.3 of the Land Development Regulations (LDRs):

1. A variance from section 7.2.2.3.b.1 to permit a maximum height of thirty (30) feet, where the maximum permitted height for a flat roof is twenty-eight (28) feet.
2. A variance from section 7.2.2.3.b.1 of the side interior setback of fifteen (15) feet, to permit a two-story portion of an accessory structure that encroaches beyond the rear yard setback to have an interior side yard setback of seven and a half (7.5) feet.
3. A variance from section 7.2.2.3.b.1 of the sum of the side setbacks of twenty-five percent (25%) of the lot width or thirty-seven and a half (37.5), to permit a two-story portion of an accessory structure that encroaches beyond of the rear yard setback, for a total sum of the side yard setbacks of twenty-one percent (21%) of the lot width or thirty-two (32) feet.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, staff has concluded that the plans and documents submitted with the application comply with the following hardship criteria, as they relate to the requirements of Section 2.8.3 of the Land Development Regulations:

1. 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;
2. The special conditions and circumstances do not result from the action of the applicant;
3. 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;
4. 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;
5. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
6. 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;
7. 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; and

8. 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.

COMPLIANCE WITH ZONING CODE:

A preliminary review of the project indicates that the application, as proposed, appears to be consistent with the City Code, with the exception of the requested variances.

The above noted comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 7.1.2.4(a)(i) of the Land Development Regulations establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.
Satisfied
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.
Satisfied
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Satisfied
- (4) Resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) shall be provided, in accordance with Chapter 4 of the Land Development Regulations.
Satisfied – To be reviewed at time of building permit.
- (5) The project applicant shall consider the 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. The applicant shall also specifically study the land elevation of the subject property and the elevation of surrounding properties.
Satisfied
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land and shall provide sufficient height and space to ensure that the entry ways and exits can be modified to accommodate a higher street height of up to three (3) additional feet in height.
Satisfied
- (7) In all new projects, all critical mechanical and electrical systems shall be located above base flood elevation. Due to flooding concerns, all redevelopment projects shall,

whenever practicable, and economically reasonable, move all critical mechanical and electrical systems to a location above base flood elevation.

Satisfied

- (8) Existing buildings shall be, where reasonably feasible and economically appropriate, elevated up to base flood elevation, plus City of Miami Beach Freeboard.

Not Applicable

- (9) 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 of 54 of the City Code.

Not Applicable

- (10) In all new projects, water retention systems shall be provided.

Satisfied

- (11) Cool pavement materials or porous pavement materials shall be utilized.

Satisfied – To be reviewed at time of building permit.

- (12) The project design shall minimize the potential for a project causing a heat island effect on site.

Satisfied – To be reviewed at time of building permit.

ANALYSIS:

The applicant is proposing to construct a new two-story home with two accessory structures on a waterfront lot fronting Pinetree Drive. The proposed home will replace the existing single-story home and is designed in a contemporary style. The accessory structures proposed consist of a gazebo and a guest house.

The applicant is requesting the following variances:

1. A variance to permit a maximum height of thirty (30) feet, where the maximum permitted height for a flat roof is twenty-eight (28) feet.

- Variance requested from section 7.2.2.3.b.1:

<i>BUILDING HEIGHT</i>	<i>RS-1</i>	<i>RS-2</i>
<i>Maximum Height (stories)</i>	<i>2 stories</i>	
<i>Maximum Height (feet) @</i>	<i>28 ft - flat roofs (3) (8)</i> <i>31 ft – sloped roofs (3) (8)</i>	

The applicant is proposing to construct the home with an additional 2' of height from what is otherwise permitted for a conventional home. The design flood elevation of the home is at the base flood elevation (BFE) plus a freeboard of 2', which is lower than the maximum freeboard of BFE plus 5'. As a result, the variance would not result in an overall height limit that could otherwise be permitted. Additionally, given the size

of the lot and large setback requirements, as well as the location next to a public park, the proposed additional height will not negatively impact surrounding properties.

The applicant is requesting the variance to allow for usable floor to ceiling height. The innovative design of the home requires a concrete slab above the first floor and a separate concrete slab for the second floor. This complicates the ability to provide appropriate floor-to-ceiling heights on the second floor, creating a practical difficulty for the applicant. The proposed design allows the second floor to be significantly recessed from the street front, thereby reducing the mass and visual impact of the structure to the public. As the proposed variance allows the home to maintain appropriate interior floor-to-ceiling heights, staff is supportive of the variance.

2. A variance of the side interior setback of fifteen (15) feet, to permit a two-story portion of an accessory structure that encroaches beyond the rear yard setback to have an interior side yard setback of seven and a half (7.5) feet.
 - Variances requested from section 7.2.2.3.b.1:

<i>BUILDING SETBACKS</i>	<i>RS-1</i>	<i>RS-2</i>
<i>Side, Interior Setback © Lots greater than 65 feet in width</i>	<u>10% of the lot width or 10 feet, whichever is greater and the sum of the required side yards shall be at least 25% of the lot width</u>	

The LDRs allow accessory structures to have a side interior setback of 7.5 feet for single-story structures or 15 feet for two-story structures within the rear yard of a property. The LDRs also provide that a rear yard is 15% of the lot depth up to a maximum of 50 feet. In this case, the property has a lot depth of 388 feet. Since 15% of the lot depth is 58.2 feet, the rear yard would be 50 feet.

The applicant is proposing to construct an accessory structure that encroaches into the 50-foot rear yard. The accessory structure is for a guest house and the portion encroaching into the 50-foot rear yard is proposed to have a roof deck. The applicant is proposing that the portion of the accessory structure that is encroaching into the rear yard setback follow the allowable interior side setback of 7.5 feet. The primary home structure complies with all of the setback requirements.

As the proposed accessory structure is closest to the property line that is abutting Pinetree Park, no negative impacts are anticipated from the granting of the variance. Given the site's long depth, the 50-foot requirement for a rear yard presents a hardship and practical difficulty, as it limits the area that could otherwise accommodate an accessory structure. In view of the foregoing, staff is supportive of the variance.

3. A variance of the sum of the side setbacks of twenty-five percent (25%) of the lot width or thirty-seven and a half (37.5), to permit a two-story portion of an accessory structure

that encroaches into the rear yard setback, for a total sum of the side yard setbacks of twenty-one percent (21%) of the lot width or thirty-two (32) feet.

- Variances requested from section 7.2.2.3.b.1:

<i>BUILDING SETBACKS</i>	<i>RS-1</i>	<i>RS-2</i>
<i>Side, Interior Setback © Lots greater than 65 feet in width</i>	<i><u>10% of the lot width or 10 feet, whichever is greater and the sum of the required side yards shall be at least 25% of the lot width</u></i>	

Variance 3 is related to Variance 2, as the portion of the accessory structure that encroaches into the rear setback area results in an inconsistency with the required sum of side yard setbacks. The primary home structure complies with all setback requirements, including the sum of side yard setbacks. For the reasons mentioned for Variance 2, there is a practical difficulties and hardship created by the required 50-foot rear yard. Therefore, staff is supportive of the granting of the variance.

Based on the dimensions of the lot and existing site conditions, staff finds that practical difficulties and a hardship exists for the construction of a new home at the subject site. The requested variances should not result in any negative impacts on the surrounding neighborhood. For these reasons, staff is supportive of the requested variances.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends the application be **approved, including the requested variance**, subject to the conditions enumerated in the attached Draft Order, which address any inconsistencies with the aforementioned Practical Difficulty and Hardship Criteria and Sea Level Rise criteria.

**BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA**

MEETING DATE: March 7, 2025

FILE NO. ZBA24-0170

PROPERTY: 4521 Pine Tree Drive

FOLIO: 02-3223-002-0320

APPLICANTS: Pine Tree Drive LLC

LEGAL

DESCRIPTION: Lot 45 of Indian Beach Corporation's Subdivision, according to the plat thereof, as Recorded in Plat Book 8, Page 61, of the Public Records of Miami-Dade County, Florida.

IN RE: An application has been filed requesting variances to increase the maximum allowable height, to reduce the southern interior side setback, and to reduce the sum of the side setbacks, in order to allow for the construction of a new two-story home.

FINAL ORDER

The applicant filed an application with the Planning Department for the following variances:

1. A variance from section 7.2.2.3.b.1 to permit a maximum height of thirty (30) feet, where the maximum permitted height for a flat roof is twenty-eight (28) feet.
2. A variance from section 7.2.2.3.b.1 of the side interior setback of fifteen (15) feet, to permit a two-story portion of an accessory structure that encroaches beyond the rear yard setback to have an interior side yard setback of seven and a half (7.5) feet.
3. A variance from section 7.2.2.3.b.1 of the sum of the side setbacks of twenty-five percent (25%) of the lot width or thirty-seven and a half (37.5), to permit a two-story portion of an accessory structure that encroaches beyond of the rear yard setback, for a total sum of the side yard setbacks of twenty-one percent (21%) of the lot width or thirty-two (32) feet.

The City of Miami Beach Board of Adjustment makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

- A. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the Planning Department Staff Report, the project as submitted satisfies the requirements of Section 2.8.3 of the Land Development Regulations. Accordingly, the Board of Adjustment has determined the following:
 - 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;

- ii. The special conditions and circumstances do not result from the action of the applicant;
 - 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;
 - 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;
 - v. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
 - 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;
 - 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; and
 - 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.
- B. The Board hereby **Approves** the requested variances and imposes the following conditions based on its authority in Section 2.8.4 of the Land Development Regulations:
- 1. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.
 - 2. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for planning permit and shall be located immediately after the front cover page of the permit plans.
 - 3. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
 - 4. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
 - 5. The final order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

6. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code, except to the extent of the variance(s) granted herein.
7. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit, Certificate of Use or Miami Beach Business Tax Receipt.

The decision of the Board regarding variances shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including staff recommendations, as modified by the Board of Adjustment, that the application for variance approval is GRANTED for the above-referenced project, subject to those certain conditions specified in Paragraph B hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans submitted to the Board of Adjustment in accordance with the conditions set forth in this Order, as applicable, with staff review and approval.

The issuance of this Order does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original Variance Approval was granted, the subject Approval will expire and become null and void, unless the applicant makes application to the Board for an extension of time, in accordance with the requirements and procedures of Section 2.2.4.6 of the Land Development Regulations; the granting of any such extension of time shall be at the discretion of the Board. If the Full Building Permit for the project shall expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the application will expire and become null and void.

In accordance with Chapter 2 of the Land Development Regulations, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this **Order** shall subject the application to Chapter 2 of the Land Development Regulations, for revocation or modification of the application.

Dated _____.

