

**TOWN OF GOLDEN BEACH  
COMMUNITY DEVELOPMENT  
MEMORANDUM**

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**To:** Building Regulatory Advisory Board  
Town of Golden Beach

**From:** Michael J. Miller, AICP *MJM*  
Consultant Town Planner

**Date:** August 23<sup>rd</sup>, 2021

**Subject:** Zoning Variance Application  
Multiple (5) Variances for Proposed Single-Family Home  
399 Ocean Boulevard  
Lot 1 in Block B  
MMPA Project No.04-0101-0528

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**ISSUE**

The landowner / applicant, Barry S. Somerstein, Trustee under Trust Agreement dated March 10<sup>th</sup>, 2021, has filed an application with the Town for consideration of five (5) variances for a proposed new single-family home (no Site Development Plan submitted to date) on a full-sized oceanfront lot (75-foot width). The application package includes a standard BRAB application form with five (5) separate variance petitions requesting variances from the Town Code in order to construct a new single-family residence. Additionally, a set of conceptual plans was included to help explain / illustrate the items. The subject lot adjoins the Town's Beach Pavilion site on its south side.

Following are the applicant's current variance requests:

- **Variance #1** - Variance from Section 66-69.1(d)(1)(c) to allow the lowest habitable floor to be constructed at an elevation of 23.0' NGVD vs. 20.2' NGVD which is the maximum permitted by Code.
- **Variance #2** - Variance from Section 66-262(b)(1) to allow portions of proposed angled oceanfront balconies for the future 1<sup>st</sup> & 2<sup>nd</sup> floors to extend out from the rear home façade towards the ocean 11' when only 4' is permitted by the Code. This would align with the eastern edge of the Town's Beach Pavilion bathroom building.
- **Variance #3** - Variance from Section 66-186(a) to allow a decorative 11' tall wall to be constructed along the northern lot line adjoining the Town's Beach Pavilion site from Ocean Blvd. to the eastern edge of the lot. The Code provisions allow varying fence / wall heights ranging from 6' near Ocean Blvd. and the house footprint descending to 2' near the beach.



- **Variance #4** - Variances from Section 66-69.1(h)(1)(b) to allow for a reduction in the required side yard setback from 10' to 7.5'; and from Section 66-69.1(h)(1)(c) to allow for partial relief for the additional side yard setback for the 2<sup>nd</sup> story above 18' (1' : 1' increased setback along the northern side of the lot for one quarter (¼) of its length as opposed to two-thirds (2/3) of its length which is permitted by Code.
- **Variance #5** - Variances from Section 66-69.1(h)(2) to allow for a reduction of the 10' min. side setback for a free-standing garage / guest quarters to 5'; and to not require the 2<sup>nd</sup> story garage / guest quarters building massing above 18' to be setback additionally at the required 1' : 1' increase as required by Code.

## **ANALYSIS**

As per the Town's request MMPA has completed our review of the above referenced variance application and provide the following comments for consideration:

## **OVERVIEW OF APPLICATION**

The site is currently developed with a 2-story / 5,200+/- square foot home originally constructed in 1948 with minor additions in 1957 and 2006 according to the Miami-Dade Property Appraiser's website. According to the survey provided the site is relatively flat in topography ranging from about 10.0' NGVD near Ocean Blvd. to about 9.0' NGVD at the rear (oceanfront) property line. This is lower than most of the other lots along the oceanfront where dunes undulate with elevations ranging from 10.0' NGVD to over 13.0' NGVD. As mentioned previously the subject site abuts the Town's Beach Pavilion site to its south. The property was apparently sold in March 2021. The plan is to demolish the existing house and other site improvements and construct a new 2-story home, a free-standing 2-story garage / guest quarter building near Ocean Blvd., and other typical accessory structures and uses (pool / cabana / fire pit / etc.). The rectangularly shaped platted lot is a typical but not large and/or wide full-sized lot that is 75' in width and 250' in depth (18,750 sq. ft.). The Miami-Dade Property Appraiser's website notes the lot area at 21,000 square feet but this commonly includes some un-platted lands east of the platted lot towards the water. The survey data indicates that the existing home was built with less restrictive setbacks and other design requirements that were allowed years ago than exist today. Of special note is there appears to be only a 5' building setback from the main house to the northern property line that abuts the park while a 7.8' side setback along the southern property line. Although not shown the existing 2<sup>nd</sup> story most likely has no additional setbacks for the taller portions of the structure.

It appears the collective group of requested variances are based solely on the adjoining Town Beach Pavilion compatibility / relationship. The justification statements refer to the "busy / noisy" Town oceanfront park site. The land is generally flat and is unremarkable in shape or size. Our initial reaction is there has been an existing 2-story home occupied next to the Town's oceanfront park site for 73+/- years, and a new replacement 2-story house is proposed. MMPA notes other site design issues that must be addressed at time of site plan review (ex. - freestanding garage size is inadequate for vehicles - 10' deep). It is stated that conversations have occurred with the Town's administration staff about the project and possible alterations to the development criteria. There could be a compatibility issue between a residence and an active community park, but not often. MMPA was not party to any of those conversations; therefore, we are reacting only to the variance paperwork submitted. Due to the quasi-judicial nature of variances caution is urged, so as not to taint the proceedings or outcome.



As the five (5) variance requests are all related, our staff report will analyze them collectively, as the applicant's justification is similar on every request. The design intent seems to be to allow the new house / garage to be placed closer to the Town's park site and not pinch-in as required for taller portions of the structures. A much taller (11') buffer wall is requested – this would provide a much superior noise / visual buffer – and there is no real need to lower the wall heights near the ocean as the neighbor to the north (Town) view vistas are not blocked – which is the intent of Town's cascading lower wall heights near the beach / water. Rather than our firm's preparation of five (5) separate variance staff reports this report will address all. The Town officials are encouraged to read each of the applicant's variance package written and backup materials, in addition to the MMPA staff report.

***Special Variance #1 Comments***

The applicant is requesting a variance to raise the lowest habitable floor slab elevation to a height of 23.0' NGVD versus the 20.2' height limit set forth in the Code (max. 2.0' above the lowest structural member @ 18.2' NGVD east of the CCCL). The applicant argues that due to the low elevation of the adjoining street (Ocean Blvd.) there is inadequate height for the ground level uses. The Town's adjoining street elevation zoning criteria only applies to the allowable height of a freestanding garage / guest quarters placed in the Zone One front yard 60' main house setback area – not the main house. The correct Code section is cited for the main house, but the real hardship may be the existing / proposed land elevations, the FDEP oceanfront building height & structural requirements, and the Town's height measurement criteria. Other oceanfront landowners with higher land elevation situations have focused on that as justification which is valid. The applicant should revise their variance application justification text to include a discussion about the existing lot grades, the FDEP and Town 18.2' / 20.2' limits and the limited useability of the grade level spaces due to the limited height span.

In this instance where the house will be located the existing / proposed land elevations range around 10.0' NGVD. Since FDEP requires the lowest structural beam to be at least 18.2' NGVD and the Town allows a maximum of 2' above that for the lowest habitable floor (20.2' NGVD) this would leave about 8.0' of useable height for the ground floor areas. Typically, at least 8' is necessary for a garage / storage use and about 9' of useable height is desired for a functional floor. The applicant is requesting a variance to increase the lowest habitable floor elevation from 20.2' NGVD to 23.0' NGVD which would provide about 11.0' of height for the ground / grade level home areas (garage / other). Several other oceanfront owners have requested / been granted similar variances (a range of hgt. increases have been approved) due to the undulating oceanfront dune elevations. In the past the Town's administration has supported raising the first habitable floor elevation slightly, to provide for an adequate inside dimension for use (8'+/-). The applicant is requesting the additional height so as to not alter the garage / other grade level areas / install lifts. The applicant has committed that if the variance is granted, the overall height of the house would not exceed the normal height limit (27.5' above 20.2' = 47.7' NGVD) but mentions 50.6' NGVD. While MMPA understands the reason for the request, we feel this site is no different or unique than other oceanfront sites that have built following the current standards or requested elevation increases to somewhat less heights at about 21.5' – 22.0' NGVD to the 1<sup>st</sup> habitable floor elevation.

***Special Variance #5 Comments***

The applicant is requesting a variance to use a 5' side setback and not increase the side setback for taller portions of the building (over 18') for the garage / guest quarters. The Town Code allows a



freestanding garage (normally 20' x 20') at grade and an accessory 2<sup>nd</sup> story guest accommodation. MMPA notes the conceptual plans show a 20' wide x only 10' deep "garage" with a much larger 2<sup>nd</sup> floor cantilevering southward. That garage size is not functional for any vehicle and will have to be modified. Carports are not permitted in the Town since 1989. The question on setback relief is up to the Town officials based on the evidence submitted.

#### **NON-USE VARIANCE JUSTIFICATION**

- 1) *The variance requested is for relief from the provisions of the Town Code.*

The applicant seeks relief from those Code sections mentioned above.

**MMPA Comment** – The Code sections stated are correct.

- 2) *In order to recommend the granting of the variance, it must meet all of the following criteria (please provide a response to each item):*

- a. *The Variance is in fact a Variance from a zoning regulation as set forth within the Zoning Chapter of the Zoning Code.*

**Applicants Response:** Yes – this is a variance from the current regulations.

**MMPA Comment** – Yes, we agree.

- b. *Special conditions and circumstances exist which are peculiar to the land or structure involved, and which are not applicable to other lands or structures in the same district.*

**Applicants Response:** For each of the five (5) individual variance requests both written justifications and illustrations are provided. All of the variance justifications are based on the belief that the neighboring Beach Pavilion site negatively affects this site, even though a 2-story house has existed on this site for 73+/- years with no known problems. However, it can be argued that special conditions or circumstances exist which are peculiar to this site versus most others in the same district. It is noted a home abuts the north side of the park.

**MMPA Comments** – As stated above, the adjoining street elevations have nothing to do with the height measurement of the main house – that applies only if there is a freestanding garage / guest quarters in the 60' front yard setback area. The real hardship may be the existing / proposed land elevations, the FDEP oceanfront building height & structural requirements, and the Town's height measurement criteria. Other oceanfront landowners with similar land elevation situations have used that justification which is valid. As to the raised lowest habitable floor elevation the applicant states that mechanical vehicle lifts are being proposed so they need to extra garage height. If the Town agrees this could be a valid reason to allow the height increase. As to the balcony encroachment there is mention of the Town's lifeguard stand as a reason - but why be closer to it? Placing the house closer to a perceived "problem" - the Town's park (less setbacks) does not make much sense to us. There are no



architect drawings submitted showing the northern house facade elevations – are there windows or is the elevation more solid to screen the park activities? The applicant states there may be less windows. The increased wall height is a valid issue and request. The freestanding garage / guest unit side setback is minimal and if the Town allows the 11' buffer wall there is no adjoining lot issues.

- c. *The special conditions and circumstances do not result from the actions of the applicant.*

**Applicants Response:** The Beach Club was established for public use.

**MMPA Comment –** We agree the conditions and circumstance are not a result of actions of the applicant. The Beach Pavilion, existing land elevations, FDEP restrictions, and Town Code limitations create the site conditions the designers must deal with. Again, it is noted a sizable 2-story house has existed next the Town's park for 73 years with no apparent problems. Some of the requests do not appear to us as related to screening the park.

- d. *Granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Chapter of the Town Code to other lands or structures in the same district.*

**Applicants Response:** The granting of the variances will not confer special privileges to the current owner but will allow the development for a more private residence and consistent with accommodations granted to other properties.

**MMPA Comment –** We disagree with the applicant's assertions in general that the park is a problem (most sites near parks have higher values) but recognize the Town's park presents a different compatibility issue than most others where houses may exist on both sides of the homesite. Some of the requests such as the taller wall will do a great deal to buffer the park and create privacy. Again, no conceptual architect plans were provided showing the intended northern home façade – if there are lots of windows and the building is closer to the park what benefit is there to relax regulations.

- 3) *Literal interpretations of the provisions of the Zoning Chapter of the Town Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of zoning regulations and would work unnecessary and undue hardship on the applicant.*

**Applicants Response:** A literal interpretation of the Code would cause unnecessary hardship. Without the variances, the necessary mitigation to ensure a privacy and noise buffer across the north boundary.

**MMPA Comment –** MMPA believes there is some truth to the applicant's response. However, we disagree with the applicant's assertions in general that the park is a problem but recognize the Town's park presents a different compatibility issue than most others where houses may exist on both sides of the homesite. Some of the requests such as the taller wall will do a great deal to



buffer the park and create privacy. Again, no conceptual architect plans were provided showing the intended northern home façade – if there are lots of windows and the building is closer to the park what benefit is there to relax regulations. The site is reasonably sized and not odd shaped. A substantial home has existed on the lot for 73+/- years with no known problems.

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

**Applicants Response:** Yes. Granting the variances would make a reasonable use of the land and the structure while protecting the privacy of this property.

**MMPA Comment –** MMPA disagrees with the applicant's claim that the variances requested are the "minimum" variances necessary for a reasonable use of the land or structure. The site is reasonably sized and not odd shaped. A substantial home has existed on the lot for 73+/- years with no known problems. A taller buffer wall (11') would do the most to buffer the land uses and create privacy. Relaxing setbacks a few feet will do nothing to create more privacy. Allowing a balcony to extend closer to an "objectionable" park building is odd – what is the hardship sought? Several other oceanfront owners have requested / been granted variances (a range of hgt. increases have been approved) but not many at the requested elevation. The land elevation of this lot (9'-10') is lower than most others that have been granted relief.

- 5) *The granting of the variance will be in harmony with the general intent and purpose of the Town Code and the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.*

**Applicants Response:** The granting of this variance(s) is in harmony with the Code and does not pose threat to the public.

**MMPA Comment –** MMPA agrees in general with the applicant's claim that the variances requested may be in harmony with the general intent and purpose of the Code, and there would not be "injury" to the surrounding areas or general welfare. The general intent of the Code is to provide proper and reasonable land development regulations to guide the type of high-quality homes the Town desires. Much study and thought has occurred over the years to create the set of regulations applied to all development. While there could be some compatibility issues between this homesite and the park, again a large 2-story home has existed on this site for 73+/- years with no known problems. While the taller buffer wall height can be easily defended, none of the other requests seem to be related to the lands use compatibility argument in our opinion. MMPA recommends caution to the Town on this request.

## **SUMMARY**

MMPA was requested to review and comment on the requested variances. MMPA has attempted to analyze each of the five (5) requests and provide the Town with analysis / design comments.

While MMPA understands the new owner's requests, we feel most of the requests do not relate to the compatibility situation used as justification. While a taller buffer wall is easy to understand and would do the most to buffer the park site, allowing the home to be closer to the "objectionable" park makes little sense to MMPA. As we have done over the years, we strongly urge the Town to limit the approval of unnecessary variances just to suit an owner where there is no real unique shape to the lot or situation, as this creates uncertainty to the general public and confers an appearance of special privilege.





## TOWN OF GOLDEN BEACH

### Date Change - Notice of Public Hearing

The **Town Council** of the Town of Golden Beach will hold a Public hearing on the following proposal:

(5) Variance Request(s)  
X New Residential Structure

Construction of a new home Zone 1 – Ocean Front.

1. Variance request from Town Code 66-69.1 - Zone One; (d) (1) (b) (c): Lowest Habitable Floor Height. Main Residence and Building Height:

(a). Primary residential structures built on lots with a street Frontage of 75 feet shall not exceed 27.5 feet in height.

(c) The height measurement for main residences shall be measured from the lowest habitable Living Area which is a maximum of two feet above the FDEP lowest structural member (18.2 feet NGVD). This height measurement shall include all portions of the main residence east of the 60-foot front Setback line or Coastal Construction Control Line (CCCL), whichever is westerly.

Request is to allow the first habitable floor to start at 23' NGVD instead of 20.02' NGVD as stated in the Town's code and not exceed a building height of 50.5' NGVD

2. Variance request from Town Code Section 66-186 (a). - Height restrictions.

(a) In Zone One no wall or fence between estates or lots shall be constructed or altered to exceed in height the following: Parallel to the side property line within 60 feet of the west property line, a height of six feet; thence easterly along patios and main house structure to height of six feet; thence easterly for 30 feet, a height of four feet; thence easterly to the ocean front, a height of two feet. No wall or fence higher than two feet may be erected on the east (Ocean Front) property line. No wall or fence higher than six feet above the crown of the road may be erected on the (Ocean Boulevard) property line.

Request is to allow the wall along the North side property line to be at 11' from finished site grade to the eastern edge of the Lot.

3. Variance request from Town Code Section 66.69-1- Zone One (Oceanfront properties).

(h) Side yard Setbacks. 1 - Main Residence.

(b) For lots or any combination of lots with 75 feet or more of Frontage, no portion of any building shall be closer than ten feet from each side lot line

(c) All residences designed as two-story structures shall be required to increase the side Setbacks along two-thirds of the length of the second story by one foot for each one foot (1:1) of building height above the first 18 feet.

Request is to allow a 7.5' side yard setback from the North side property line instead of the 10' outlined in the code and to allow the upper floors along the North side property line of proposed structure partial relief to allow the side yard setback of the second-story above the 18' (1:1) increased setback along the norther side of the lot for ¼ of its' length as opposed to two-thirds (2/3<sup>rd</sup>) of its' length which is outlined in the code.

4. Variance request from Town Code Section 66-262(b)(1) Balconies

(b) Balconies are permitted in Zones One, Two, and Three subject to the following criteria:

(1) Balconies located on the front or rear façade of a building may not extend more than four feet into the yard beyond the respective setback.

And from Town Code Section 66-141 – Projections

(b) Balconies and rooftops designed to support habitable activities consistent with section 66-261, and stairs leading to balconies or such rooftops shall not extend into side Setbacks and shall not extend more than four feet into rear or front yard Setback areas.

Request is to allow for the angled balconies on the 1<sup>st</sup> and 2<sup>nd</sup> floors to extend out from the rear of the home (east façade of the house) to encroach more than 4' into the rear yard setback at 11.0' aligning with the Pavilion bathrooms.



5. Variance request from Town Code Section 66-69.1(h)(b)(c)(2)

(h) *Side yard Setbacks.* (1) Main Residence.

b. For lots or any combination of lots with 75 feet or more of Frontage, no portion of any building shall be closer than ten feet from each side lot line.

c. All residences designed as two-story structures shall be required to increase the side Setbacks along two-thirds of the length of the second story by one foot for each one foot (1:1) of building height above the first 18 feet.

(2) *Garage/Guest Accommodations.* A garage structure may be built separate from the main house, in which event it shall be set back a minimum ten feet from any Side Property Line. If such a structure is constructed with a second story, the sidewalls shall be set back along two-thirds of the length of the second story an additional one foot for each one-foot (1:1) of total building height above the first 18 feet.

Request is to allow for a reduction of the 10' minimum side setback for a free-standing garage/guest quarters to be at a 7.5' side yard setback and to not require the 2<sup>nd</sup> floor building above the 18' feet in height to be setback the required 1':1" increase over the 18 foot height along the North property line.

JOB ADDRESS:	399 Ocean Boulevard, Golden Beach, FL.
OWNER ADDRESS:	200 East Broward Blvd., Suite 1800 Ft Lauderdale, FL. 333013160
REQUESTED BY:	Barry E. Somerstein Trs, Under Trust Agreement dated March 10, 2021
LEGAL DESCRIPTION:	Lot 1, Block B, GB Section B, PB 9-52
FOLIO NO.:	19-1235-002-0370

The **TOWN COUNCIL** will consider this item:

PLACE: GOLDEN BEACH TOWN HALL  
1 GOLDEN BEACH DR., GOLDEN BEACH, FL.  
September 27, 2021 at 6pm (tentatively) (via zoom; go to the Town's website; goldenbeach.us for details).

If you wish to submit written comments for consideration, they should be submitted to the Office of the Golden Beach Town Manager, prior to the scheduled meeting. If you have any questions regarding the proposed action, you may contact the Building Department at (305) 932-0744

DATED: September 17, 2021

  
Linda Epperson, Building & Zoning Director

PURSUANT TO FLA. STATUTE 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT: IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE COUNCIL, BOARD OR COMMITTEE WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, AFFECTED PERSONS MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. ANY INDIVIDUAL WHO BELIEVES HE OR SHE HAS A DISABILITY WHICH REQUIRES A REASONABLE ACCOMMODATION IN ORDER TO PARTICIPATE FULLY AND EFFECTIVELY IN A MEETING OF THE BUILDING REGULATION BOARD MUST SO NOTIFY THE TOWN CLERK, AT (305) 932-0744 AT LEAST 24 HOURS PRIOR TO THE DATE OF THE MEETING.



5. Variance request from Town Code Section 66-69.1(h)(b)(c)(2)

(h) *Side yard Setbacks.* (1) Main Residence.

b. For lots or any combination of lots with 75 feet or more of Frontage, no portion of any building shall be closer than ten feet from each side lot line.

c. All residences designed as two-story structures shall be required to increase the side Setbacks along two-thirds of the length of the second story by one foot for each one foot (1:1) of building height above the first 18 feet.

(2) *Garage/Guest Accommodations.* A garage structure may be built separate from the main house, in which event it shall be set back a minimum ten feet from any Side Property Line. If such a structure is constructed with a second story, the sidewalls shall be set back along two-thirds of the length of the second story an additional one foot for each one-foot (1:1) of total building height above the first 18 feet.

Request is to allow for a reduction of the 10' minimum side setback for a free-standing garage/guest quarters to be at a 5' side yard setback and to not require the 2<sup>nd</sup> floor building above the 18' feet in height to be setback the required 1':1" increase over the 18 foot height.

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FOLIO NO.:	19-1235-002-0370

The **BUILDING REGULATION ADVISORY BOARD** will consider this item:

PLACE: GOLDEN BEACH TOWN HALL  
1 GOLDEN BEACH DR., GOLDEN BEACH, FL  
DATE: September 14, 2021 at 6pm (Via Zoom)

Join Zoom Meeting

<https://us02web.zoom.us/j/89291108015?pwd=NS8rWnJhN2lmSUJolcmFadHErei8vZz09>

Meeting ID: 892 9110 8015

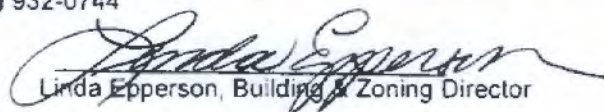
Passcode: 752288

The **TOWN COUNCIL** will consider this item:

PLACE: GOLDEN BEACH TOWN HALL  
1 GOLDEN BEACH DR., GOLDEN BEACH, FL  
October 19, 2021 at 6pm (tentatively) (via zoom, go to the Town's website, goldenbeach.us for details)

If you wish to submit written comments for consideration, they should be submitted to the Office of the Golden Beach Town Manager, prior to the scheduled meeting. If you have any questions regarding the proposed action, you may contact the Building Department at (305) 932-0744

DATED: August 26, 2021

  
Linda Epperson, Building & Zoning Director

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## TOWN OF GOLDEN BEACH Notice of Public Hearing

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      (5)       Variance Request(s)  
      X       New Residential Structure

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(c) The height measurement for main residences shall be measured from the lowest habitable Living Area which is a maximum of two feet above the FDEP lowest structural member (18.2 feet NGVD). This height measurement shall include all portions of the main residence east of the 60-foot front Setback line or Coastal Construction Control Line (CCCL), whichever is westerly

Request is to allow the first habitable floor to start at 23' NGVD instead of 20.02' NGVD as stated in the Town's code and not exceed a building height of 50.5' NGVD

2. Variance request from Town Code Section 66-186 (a). - Height restrictions.

(a) In Zone One no wall or fence between estates or lots shall be constructed or altered to exceed in height the following: Parallel to the side property line within 60 feet of the west property line, a height of six feet, thence easterly along patios and main house structure to height of six feet, thence easterly for 30 feet, a height of four feet, thence easterly to the ocean front, a height of two feet. No wall or fence higher than two feet may be erected on the east (Ocean Front) property line. No wall or fence higher than six feet above the crown of the road may be erected on the (Ocean Boulevard) property line

Request is to allow the wall along the North side property line to be at 11' from finished site grade to the eastern edge of the Lot

3. Variance request from Town Code Section 66.69-1- Zone One (Oceanfront properties)

(h) Side yard Setbacks. 1 - Main Residence.

(b) For lots or any combination of lots with 75 feet or more of Frontage, no portion of any building shall be closer than ten feet from each side lot line

(c) All residences designed as two-story structures shall be required to increase the side Setbacks along two-thirds of the length of the second story by one foot for each one foot (1:1) of building height above the first 18 feet.

Request is to allow a 7.5' side yard setback from the North side property line instead of the 10' outlined in the code and to allow the upper floors along the North side property line of proposed structure partial relief to allow the side yard setback of the second-story above the 18' (1:1) increased setback along the northern side of the lot for ¼ of its' length as opposed to two-thirds (2/3<sup>rd</sup>) of its' length which is outlined in the code

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And from Town Code Section 66-141 – Projections

(b) Balconies and rooftops designed to support habitable activities consistent with section 66-261, and stairs leading to balconies or such rooftops shall not extend into side Setbacks and shall not extend more than four feet into rear or front yard Setback areas.

Request is to allow for the angled balconies on the 1<sup>st</sup> and 2<sup>nd</sup> floors to extend out from the rear of the home (east façade of the house) to encroach more than 4' into the rear yard setback at 11.0' aligning with the Pavilion bathrooms



# W. TUCKER GIBBS, P.A.

ATTORNEY AT LAW

P.O. BOX 1050  
COCONUT GROVE FL 33133

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September 9, 2021

VIA E-MAIL

Honorable Chairperson and Members  
Building Regulation Advisory Board  
Town Hall  
1 Golden Beach Drive  
Golden Beach, Florida 33160

**Re: 399 Ocean Boulevard, Application for Five Variances as Part  
of New Construction, BRAB Meeting September 14, 2021**

Dear Chairperson Hollo and Members  
of the Building Regulation Advisory Board:

I represent Joel Newman who owns the property at 355 Ocean Boulevard in Golden Beach. Because of his close proximity to the property subject to referenced variance requests, he will be impacted by those requests to a greater extent than the community in general.

Mr. Newman has serious concerns with that application. The applicant seeks five zoning variances that allow for intrusions into code-required setbacks, and increases in height of the proposed single-family house and wall. Yet its requests fail to meet the zoning code requirements to grant variances. For this basic reason he opposes these five variances.

The town code requires that the applicant show that it meets each of the seven requirements for a variance set out in section 66-41(a). Because the applicant is required to meet all of the criteria, it is only necessary to address those provisions that are not met.

The requested five variances each fail to meet the following zoning code variance requirements:

**66-41(a)(6).** *The Variance granted is the minimum Variance that will make possible the reasonable use of the land or structure;*

The requested individual variances are not necessary for the property owner to have the reasonable use of its property and, therefore, do not meet the requirements in city code section 66-41(6).



The key element in determining whether a variance applicant meets this reasonable use requirement is whether it is virtually impossible to use the property in accordance with the existing zoning code. "... [A]n indispensable requirement of a hardship variance [is] that no reasonable use could be made of the property without it..." *Auerbach v. City of Miami*, 929 So.2d 693, 693-95 (Fla. 3d DCA 2006). See also *Phillips South Beach v. City of Miami Beach*, 117-118 In *Phillips*, the court determined that "Based on this precedent case law this Court finds that it must apply the 'no reasonable use' hardship standard when reviewing the Board of Adjustment's Variance Order." That means that the record must show, and the Building Regulation Advisory Board and eventually the Town Council must determine, that the applicant cannot use the property as currently zoned without the variances.

In *Herrera v. City of Miami*, 600 So.2d 561 (Fla. 3d DCA 1992), a case specifically addressing an almost identical "reasonable use" variance provisions in the City of Miami Zoning Code, the Third District Court of Appeal overturned a circuit court appellate order upholding a city commission grant of a variance. It stated: "Nowhere in the circuit court's eight-page opinion is there the critical finding that, without the variance, it is virtually impossible to use the land as it is presently zoned..." *Herrera*, 562-563.

Therefore, where the applicant can build a smaller zoning-code-compliant project on the site, it has the reasonable use of its property without the need for the variances. The applicant has failed to present any evidence that it could not utilize the site pursuant to the zoning code requirements without the necessity of any of the variances. It seeks the requested variances not to allow the minimum code-compliant development on the property, but to allow the non-zoning-code-compliant structures it wants to build. The Third District Court of Appeal and the Miami-Dade County Circuit Court Appellate Division are clear that this is not permitted.

**66-41(a)(5).** *Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of [the] zoning regulations and would work unnecessary and undue hardship on the applicant.*

The five variance requests fail to meet the requirements for a hardship as required by section 66-41(a)(5). To obtain a variance, a property owner must show a hardship that makes it



impossible to use its land pursuant to the property's zoning. Florida case law clearly states that a hardship is established where the applicant shows that no reasonable use of the property can be made without the requested variance.

"...[A] 'hardship' may not be found unless no reasonable use can be made of the property without the variance; or, stated otherwise, 'the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.'" *Bernard v. Town Council of Town of Palm Beach*, 569 So.2d 853, 854-855 (Fla. 4<sup>th</sup> DCA1990).

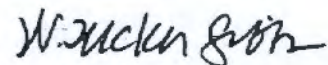
In 2006, the Third District Court of Appeal emphatically confirmed that a setback variance without the requisite showing that no reasonable use could be made of a property without a variance, required quashal of that variance. *Auerbach v. City of Miami*, 694-695. The court held that a court's failure to deny such a variance not only conflicts with well-established Florida cases but is a failure to apply the correct law. *Id.*

Any reliance on the adjacent parking lot as the basis of a hardship is misplaced. This is because any alleged hardship must render it virtually impossible to use the land consistent with the applicable zoning regulations. Since the property can be developed consistent with the zoning code without the need for the variances there is no hardship.

For these reasons, my client urges the Building Regulation Advisory Board to recommend to the Town Council to deny the five variance requests when it considers this matter.

Thank you for your consideration of this request.

Sincerely,



W. Tucker Gibbs

cc: Mayor Singer and Town Council Members  
Alexander Diaz, Town Manager  
Stephen Helfman, Town Attorney  
Lisette Perez, Town Clerk  
Linda Epperson, Building and Zoning Director  
Joel Newman



**TOWN OF GOLDEN BEACH**  
**APPLICATION FOR**  
**BUILDING REGULATION ADVISORY BOARD MEETING/HEARING**

Property Location: 399 Ocean Boulevard

APPROVED Meeting Date: 9/14/21

Variance Hearing Dates: Advisory Board

DISAPPROVED  
VARIANCE REC. Town Council

APPROVAL FROM THE BUILDING REGULATION ADVISORY BOARD IS REQUIRED FOR:

- A. Plans for new residence
- B. Plans for addition to or exterior alterations of an existing structure.
- C. Additional structures on premises of existing residences
- D. Review of landscape plan for new construction, renovation or addition to existing residence.
- E. Recommendation to Town Council for the approval or denial of variances and special exceptions.
- F. Recommendation to Town Council for interpretation regarding apparent conflicts or inconsistencies in the zoning provisions in Chapters 46 & 66

**APPLICATION HEARING PROCESS**

**Building Approval:**

Applicant shall submit 2 completed packages for review and approval. Each package shall consist of an application, survey, warranty deed and drawings as required. The plans shall be sized as follows: 1 set 11" x 17", 1 full size set 24" x 36" and 1 CD containing all drawings marked with the address. This is separate from the landscaping plan submittal

**Landscape Approval - Separate Submittal from the Building Submittal**

Applicant shall submit 2 complete packages for review and approval. Each package shall consist of an application, existing landscape and tree disposition survey, proposed site plan and landscape plans as required. The plans shall be sized as follows: 1 set 11 x 17, 1 full size set 24" x 36" and 1 CD containing all drawings separate from the building plan submittal.

**Zoning Variance Approval:**

Submittals for a zoning variance: submit 2 complete packages for approval: each package shall consist of an application, survey, warranty deed and drawings are required. The plans shall be sized as follows: 1 set; 11" x 17", 1 full size set, 24" x 36" and 1 CD containing all drawings.

**Final Submittal Requirement:**

Eight days prior to the meeting and after all approvals have been obtained. The applicant shall submit for the Board's approval an additional 6 completed application packages, for both Building and Landscaping, which shall consist of a copy of the completed application, approved plans 1 full size set, 24" x 36", and 7 sets 11 x 17, a survey, warranty deed, and any other required documentation by the reviewer.

The Building Regulation Advisory Board (B.R.A.B.) meets at 6:00 P. M. on the second Tuesday of every month. Applications must be submitted 40 days prior to scheduled meeting, **(not including the day of the meeting)**, by 2:00 P.M. that day to allow for preliminary review and for mailing of a public notice if a variance is requested.

Any variances required must be heard and approved by the Town Council after the Building Regulation Advisory Board has considered the item. The Variance will be heard by the Town Council, in the following month, (on the third Tuesday), after the Building Regulation Advisory Board's action, at the Town Council's regularly scheduled meeting.

**\*\*\*NOTICE\*\*\***

**INCOMPLETE APPLICATIONS WILL NOT BE PROCESSED. PLEASE MAKE SURE THAT YOU, THE APPLICANT, HAVE CHECKED AND MARKED ALL THE REQUIREMENTS OF THE APPLICATION.**



**TOWN OF GOLDEN BEACH**  
**APPLICATION FOR**  
**BUILDING REGULATION ADVISORY BOARD HEARING**

1. The application deadline date will be strictly complied with. No application will be accepted after that date and time.
2. The Building Department will review the application package. If it is determined that the application is incomplete, the item will not be accepted and returned to the applicant for correction.
3. During the three (3) week period from deadline date to the hearing date the following events shall take place in proper order:
  - a. During the first week of submittal, the zoning and landscape reviewers, or the Town's designated agent will review the application and complete a comment sheet specifying all deficiencies for correction.
  - b. The comment sheet will be emailed to the applicant as soon as the review is completed.
  - c. If the deficiencies are substantial the application will be moved to the next scheduled meeting/hearing of the B.R.A.B.
  - d. If the deficiencies are minor, the applicant must submit the corrections including the revised paperwork within 15 days of the scheduled meeting/hearing. Corrections not received for a scheduled Agenda item will be deferred to the next B.R.A.B. meeting/hearing date.
4. A Notice of Hearing for variance will be mailed no later than 10 days before the date of meeting, as per Town Code.
5. During the third week all applications with plans and documents shall be properly arranged. One complete copy of the package will be given to the processor and prior to the scheduled meeting one set will be delivered to each Board member. The Building Dept shall retain all originals for the records.
6. All applicants shall be made aware that incomplete applications or deficiencies not corrected in time as per these regulations, will not be included on the agenda, and are hereby rejected, and will be returned to the applicant.
7. After the meeting, three (3) copies of the approved items (one full size and 2 ledger) will be retained by the building department, the applicant must request the two reduced sized sets for inclusion into the building permit package.



**TOWN OF GOLDEN BEACH  
BUILDING REGULATION ADVISORY BOARD  
SCHEDULE OF FEES**

Appropriate fee shall be paid at time of application you will be charged for each item included in the plans. These fees are not refundable.

<u>Type of request</u>	<u>Fee</u>
1. Residence (new construction).....	\$300.00
2. Addition/Remodel of existing structure.....	\$225.00
3. Fencing, site walls, driveways, pool decks (charged per each item included in the plans)	\$150.00
4. Accessory Building or Structure.....	\$150.00
5. Swimming pools.....	\$100.00
6. Docks.....	\$100.00
7. Boat Lifts.....	\$100.00
9. Carports, awnings.....	\$100.00
10. Landscape plan review; required for new construction, addition and remodeling project. (submit plans with site plan elevations separate from the building plan approval package)	\$300.00
11. Resubmissions, based on original fee paid...	75.0%
12. Zoning Variances and special exceptions, per variance or exception:	
a. First variance/ exception. ....	\$750.00
b. Per additional variance/exception, for the same initial variance (example: request for a dock, affecting two different codes)	\$200.00
c. When a variance is granted, the property owner, at his expense, shall have the resolution for the variance recorded in the public records of Miami-Dade county, and two (2) certified copies of the recorded resolution shall be submitted to the Town for inclusion into the property records	
d. If the Town Council grants a variance, a building permit must be secured within two years of the approval date or the variance will become null and void	
13. Request to the Board for verification of any section of the Zoning Code, For each Section to be verified	\$100.00



**TOWN OF GOLDEN BEACH  
BUILDING REGULATION ADVISORY BOARD  
SCHEDULE OF FEES**

14. Application for the legalization of construction built without the approval of the B.R.A.B., when the Board should have approved such construction, will be assessed a fee equal to four (4) times the regular fee applicable to the matter.

15. Special Requests for a meeting, variance, or waiver of plat hearing:

- a. For matters that have been heard, but the process had not been completed, i.e., tabled subjects, or unfinished subjects to be continued, the applicant must notify the Building & Zoning Department in writing if they would like the item continued

If the notification is received by the Department before the deadline for the next B.R.A.B. meeting, there will be no charge for the continuance. If the notification is received after the deadline, and the applicant still wants the matter included in the agenda for the next meeting, there will be a special fee of

\$200.00

- b. If the agenda has already been prepared and the applicant wants the matter to be heard, the request must be received in writing to be added to the agenda at the beginning of the meeting with the approval of the Building Official or Building & Zoning Director. There will be a special fee of

\$200.00

- c. When a special meeting or hearing of the B.R.A.B. is requested by an applicant, for either a new matter or continuance of a subject already heard, there will be a special fee for a 2 hour time period of

\$500.00

If the time limit is exceeded, an additional fee of ½ of the fee will be assessed for the second time period

\$250.00



TOWN OF GOLDEN BEACH  
APPLICATION FOR  
BUILDING REGULATION ADVISORY BOARD HEARING

Applicant check here	Complete application, sign, and notarize.	Bldg Dept Use
<input checked="" type="checkbox"/>	If a zoning variance is applied for, the petition for variance, pages 9, 10 and 11 shall be submitted with the application and shall include: <ul style="list-style-type: none"> <li>a. Property Legal Description</li> <li>b. Property Folio number</li> <li>c. Street address</li> <li>d. Owners of record</li> <li>e. Owner and agent names and signatures properly notarized.</li> </ul>	
<input type="checkbox"/>	Initial submittal as directed on page one; surveys, building plans, Warranty Deeds, and applications, After Zoning approval is issued completed sets are to be submitted 8 days prior to the meeting date as follows: Seven (7) copies no larger than 11" x 17" & 1 original full size sealed set 24" x 26". The same amount of copies are required for a variance. Each completed package shall consist of 1 each of an application, survey, Warranty Deed and building plans. Submit 1 CD with all documents included	
<input type="checkbox"/>	Conceptual construction drawings prepared and signed by a licensed design professional that shall include, at a minimum, the following: <ul style="list-style-type: none"> <li>a. Site plan at a scale not less than 1/8" = 1'-0"</li> <li>(Include grade elevations)</li> <li>b. Proposed Floor Plan views, at a scale not less than 1/4"=1'-0"</li> <li>c. Cross and longitudinal sections preferably through vaulted areas, if any.</li> <li>d. Typical exterior wall cross section.</li> <li>e. Full elevations showing flat roof and roof ridge height and any other higher projections.</li> <li>f. Sample board of construction materials to be used.</li> <li>g. Existing and proposed ground floor elevations (NGVD).</li> <li>h. Grading &amp; Drainage Calculations</li> <li>i. Zone 3 Properties: Affidavit of Seawall Conformity</li> </ul>	
<input type="checkbox"/>	Landscaping Plan, separate from building plan package, prepared and signed by a licensed landscape design professional: The same amount of copies as outlined in the Building plan submittal. Each completed package shall consist of 1 each of an application, existing landscape survey, Warranty Deed, landscape plans with building site plans. Mark CD accordingly (separate from building)	
<input type="checkbox"/>	First Floor and Second Floor area calculations marking the geometrical areas used to calculate the overall floor areas.	
<input type="checkbox"/>	Colored rendering showing new construction or proposed addition. Marked with the applicable address.	
<input type="checkbox"/>	Estimated cost of proposed work. For additions/remodels fair market value of property showing land value and structure value separately.	
<input type="checkbox"/>	Site plan detailing construction site personnel parking.	



TOWN OF GOLDEN BEACH  
APPLICATION FOR  
BUILDING REGULATION ADVISORY BOARD HEARING

Application fee: \_\_\_\_\_

Request hearing in reference to:

New residence/addition: NEW RESIDENCE Variance(s): 5 VARIANCE REQUESTS  
Exterior alterations: \_\_\_\_\_ Other Structure: \_\_\_\_\_  
Date application filed: \_\_\_\_\_ For hearing date: SEPTEMBER 14th, 2021

1. Project information:

Project description: A NEW 2 STORY OCEAN FRONT RESIDENCE

Legal Description: LOT 1, BLOCK B, GOLDEN BEACH, PLAT BOOK 9, PAGE 52, MIAMI DADE COUNTY, FLORIDA

Folio #: 19-1235-002-0370

Address of Property: 399 OCEAN BOULEVARD

2. Is a variance(s) required: Yes ☒ No ☐ How Many? 5  
(If yes, please submit variance application form for each request).

Owner's Name: Barry E Somerstein Trustee Phone \_\_\_\_\_ Fax \_\_\_\_\_

Owner's address: 200 E Broward Blvd, Unit 1800 City/State Fort Lauderdale, FL Zip 33301

Email address: Ariel@kllq.com

Agent: Ariel Friedler Phone \_\_\_\_\_ Fax \_\_\_\_\_

Agent's address: 200 E Broward Blvd, Unit 1800 City/State Fort Lauderdale, FL Zip 33301

Email address: Ariel@kllq.com

Architect: S H Brandt & Associates Phone (954) 564-2111 Fax \_\_\_\_\_

Email address: Steve@shbrandt.com & Kristina@shbrandt.com

Contractor: \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_

3. Describe project and/ or reason for hearing request: approval of variances for the development of a new 2 story residential project

4. The following information is submitted for assisting in review:

Building Plans:

Conceptual: ☐ Preliminary: ☐ Final: ☐  
Other: \_\_\_\_\_

5. Estimated cost of work: \$ \_\_\_\_\_  
Estimated market value of: Land \$ \_\_\_\_\_  
Building \$ \_\_\_\_\_

(Note: If estimated cost of work is 40% of the market value of the building an independent appraisal is required).



TOWN OF GOLDEN BEACH  
APPLICATION FOR  
BUILDING REGULATION ADVISORY BOARD HEARING

6. Is hearing being requested as a result of a Notice of Violation? NO
7. Are there any structures on the property that will be demolished? YES
8. Does legal description conform to plat? YES
9. Owner Certification: I hereby certify that I am the owner of record (\*) of the property described in this application and that all information supplied herein is true and correct to the best of my knowledge.

Signature of owner(s): [Signature] as trustee

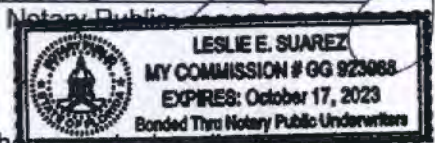
Acknowledged before me this 30<sup>th</sup> day of July, 2021

Type of identification:

Personally Known

[Signature] - Suarez

Owner/Power of Attorney Affidavit:



I, being duly sworn, depose and say I am the owner (\*) of the property described in this application and that I am aware of the nature and request for: \_\_\_\_\_ relative to my property and I am hereby authorizing \_\_\_\_\_ to be my legal representative before the Building Regulation Advisory Board and Town Council.

[Signature] as trustee  
Signature of owner(s)

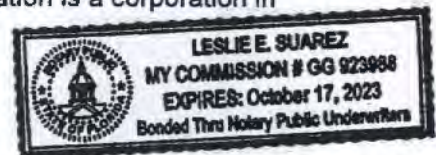
Acknowledged before me this 30<sup>th</sup> day July 20 21

Type of identification:

Personally Known

[Signature] - Suarez  
Notary Public

(\*) If owner of record is a corporation then the president with corporate seal, the president and the secretary (without corporate seal), or duly authorized agent for the corporation may execute the application, proof that the corporation is a corporation in good standing.





TOWN OF GOLDEN BEACH  
APPLICATION FOR  
BUILDING REGULATION ADVISORY BOARD HEARING

Property Address: 398 OCEAN BOULEVARD, GOLDEN BEACH, FLORIDA 33160  
Legal Description: LOT 1, BLOCK B, GOLDEN BEACH, PLAT BOOK 9, PAGE 52, MIAMI DADE COUNTY, FLORIDA  
Owner's Name: BARRY E SOMMERSTEIN TRUST Phone                      Fax                       
Agent's Name: ARIEL FRIEDLER Phone                      Fax                       
Board Meeting of: 9/14/21

- NOTE: 1. **Incomplete applications will not be processed.**  
2. Applicant and/or architect must be present at meeting.

Application for: VARIANCES FOR THE NEW RESIDENCE LOCATED AT 398 OCEAN BOULEVARD  
Lot size: 75' X 250'  
Lot area: 18,750 SF  
Frontage: 75'  
Construction Zone: ZONE ONE  
Front setback: PRIMARY RESIDENCE 60' - DETACHED GARAGE/GUEST 20' + 1 TO 1 ABOVE 18' HEIGHT  
Side setback: 10' INTERIOR SIDE YARD - VARIANCE TO REDUCE TO 7 1/2 FEET AND 5 FEET FOR GARAGE  
Rear setback: MATCH ADJACENT RESIDENCE REAR BUILDING LINE - 73'5" FROM REAR PROPERTY LINE  
Coastal Construction: Yes ☒ No ☐ East of coastal const. control line: Yes ☒ No ☐  
State Road A1A frontage: YES 75'-0"  
Swimming pool: ☒ Yes ☐ No Existing:                      Proposed: NEW POOL  
Fence Type: MASONRY WALL WITH STUCCO FINISH Existing:                      Proposed: NEW MASONRY WALL  
Finished Floor elevation N.G.V.D.:                       
Seawall:                      Existing:                      Proposed: NEW WALL  
Lot Drainage:                       
How will rainwater be disposed of on site?                     

Adjacent use (s): SINGLE FAMILY RESIDENCE TO THE SOUTH AND THE LOGGIA BEACH PARK TO THE NORTH  
Impervious area:                       
% of impervious area:                       
Existing ground floor livable area square footage:                       
Proposed ground floor livable area square footage:                       
Existing 2<sup>nd</sup> floor livable area square footage:                       
Proposed 2<sup>nd</sup> floor livable area square footage:                       
Proposed % of 2<sup>nd</sup> floor over ground floor:                       
Vaulted area square footage:                       
Vaulted height:                       
Color of main structure:                       
Color of trim:                       
Color & material of roof:                       
Building height (above finished floor elevation): 27'-6" FROM 1ST HABITABLE FLOOR LEVER TO ROOF DECK  
Swale: (Mandatory 10'-0" from edge of payment, 10 ft. wide x 1 ft. deep minimum):                     

Existing trees in Lot:                      in Swale:                       
Proposed trees in Lot:                      in Swale:                       
Number & type of shrubs:                       
Garage Type:                      Existing:                      Proposed:                       
Driveway width & type:                     

Signature of Applicant:  Date: 9/14/21

BUILDING REGULATION ADVISORY BOARD APPLICATION (July 2020)



TOWN OF GOLDEN BEACH  
BUILDING REGULATION ADVISORY BOARD  
APPLICATION FOR  
PETITION FOR VARIANCE

Date: 9/14/21

Fee: \_\_\_\_\_

I, BARRY E SOMERSTEIN TRUSTEE hereby petition the Town of Golden Beach for a variance from the terms of the Town of Golden Beach Code of Ordinances affecting property located at:  
398 OCEAN BLVD Folio No. 19-1235-002-0370

As specified in the attached "Application for Building Regulation Advisory Board" and related supporting material.

1. The Variance requested is for relief from the provisions of (list section number(s) of the Town of Golden Beach Code of Ordinances): \_\_\_\_\_

SEE ATTACHED VARIANCE SUBMISSION DOCUMENTS

2. In order to recommend the granting of the variance, it must meet all the following criteria (please provide a response to each item):

- a. The Variance is in fact a Variance from a zoning regulation as set forth within the Zoning Chapter of the Town Code. \_\_\_\_\_

SEE ATTACHED VARIANCE SUBMISSION DOCUMENTS

- b. Special conditions and circumstances exist which are peculiar to the land or structure involved, and which are not applicable to other lands or structures in the same district. \_\_\_\_\_

SEE ATTACHED VARIANCE SUBMISSION DOCUMENTS

- c. The special conditions and circumstances do not result from the actions of the applicant. \_\_\_\_\_

SEE ATTACHED VARIANCE SUBMISSION DOCUMENTS

- d. Granting the Variance requested will not confer on the applicant any special privilege that is denied by the Zoning Chapter of the Town Code to other lands or structures in the same district. \_\_\_\_\_

SEE ATTACHED VARIANCE SUBMISSION DOCUMENTS



TOWN OF GOLDEN BEACH  
BUILDING REGULATION ADVISORY BOARD  
PETITION FOR VARIANCE

3. Literal interpretations of the provisions of the Zoning Chapter of the Town Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of zoning regulations and would work unnecessary and undue hardship on the applicant. \_\_\_\_\_

SEE ATTACHED VARIANCE SUBMISSION DOCUMENTS

4. The Variance granted is the minimum Variance that will make possible the reasonable use of the land or structure. \_\_\_\_\_

SEE ATTACHED VARIANCE SUBMISSION DOCUMENTS

5. The granting of the Variance will be in harmony with the general intent and purpose of the Town Code and the Variance will not be injurious to the area involved or otherwise detrimental to the public welfare. \_\_\_\_\_

SEE ATTACHED VARIANCE SUBMISSION DOCUMENTS

Does the Variance being requested comply with all the above listed criteria?  
☐ Yes ☐ No

6. Our code states that submission of a written statement is invited and encouraged. Has the applicant (petitioner) explained the variance to the owners of the nearest adjacent residences and sought their approval in writing? Yes ☐ No ☐  
Please attach any written letters of no objection to this petition.

7. Is this request related to new construction? ☐ Yes ☐ No

8. Is construction in progress? \_\_\_\_\_

9. Is this request as a result of a code violation? \_\_\_\_\_

10. Did this condition exist at the time property was acquired? ☐ Yes ☐ No

11. Is this request sought as a remedy to a case to be heard, or action taken by the Special Magistrate? \_\_\_\_\_

12. Do you have a building permit? ☐ Yes ☐ No

Building Permit No. \_\_\_\_\_ Date issued: \_\_\_\_\_



TOWN OF GOLDEN BEACH  
BUILDING REGULATION ADVISORY BOARD  
PETITION FOR VARIANCE  
AFFIDAVIT BY OWNER

Affidavit by Owner for Variance Request(s):

Folio No.: 19-1235-002-0370 Address: 399 OCEAN BOULEVARD

Legal Description: LOT 1, BLOCK B, GOLDEN BEACH, PLAT BOOK 9, PAGE 52,  
MIAMI DADE COUNTY, FLORIDA


Being duly sworn, deposes and says: That He/She is the Owner named in the application for Building Advisory Board for the hearing date of 9/14/21 relating to Variance requests for construction or other work to be performed on, or in connection with, the premises located as indicated in the application.

I acknowledge notification by The Town of Golden Beach, that granting of a variance(s) by The Town Council, is conditioned on the following:

1. That a Building Permit for the contemplated work pursuant to the Variance must be issued within two (2) years from the date of the approval of the Resolution granting such variance request.
2. If a Building Permit is not issued within the two (2) year time limit set then the Resolution granting the Variance approval will be null and void.
3. That as the applicant, and at my own expense, I shall record a certified copy of the Resolution in the public records of Miami-Dade County and return two (2) certified copies to the Golden Beach Town Hall for inclusion into my property records.

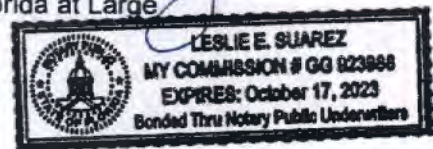
  
\_\_\_\_\_  
Signature of Owner or Legal Representative

Sworn to and subscribed before me this 30<sup>th</sup> day of July, 2021

  
\_\_\_\_\_  
Notary Public State of Florida at Large

☒ Personally know to me

☐ Produced Identification





TOWN OF GOLDEN BEACH  
BUILDING REGULATION ADVISORY BOARD APPLICATION FOR  
PETITION FOR VARIANCE

DATE: 7-29-21

FEE: \_\_\_\_\_

I, hereby petition the Town of Golden Beach for a variance from the terms of the Town of Golden Beach Code of Ordinances affecting property located at:  
399 OCEAN BOULEVARD Folio No. 19-1235-002-0370

Variance #1

1. Variance from Section 66-69.1 (d)(1)(c) to allow lowest habitable floor to an elevation of 23.0 NGVD (20.2' NGVD is the maximum permitted by code - 18.2'+2' NGVD)

Total building height not to exceed 50'-6" NGVD

2. In order to recommend the granting of the variance, it must meet all the following criteria (please provide a response to each item):

- a. The Variance is in fact a Variance from a zoning regulation as set forth within the Zoning Chapter of the Town Code.

Yes this is a variance from the current zoning regulation

- b. Special conditions and circumstances exist which are peculiar to the land or structure involved, and which are not applicable to other lands or structures in the same district.

- Lowest uninhabitable floor level is at 11'-6" NGVD (*crown of road is 9.9 NGVD*). If first floor started at 20.2' NGVD, lowest uninhabitable floor would have a ceiling height of 6'-6" (+2ft ceiling build up). Level would be unusable for all permissible uses of this level, creating unnecessary and undue hardship.

We are requesting the following ceiling heights:

- 12ft ceiling in the garage,
- 9'-6" ceiling *Ground Floor* gym/storage
- 12ft ceiling *First Floor* main living
- 11ft ceiling *Second Floor* bedrooms

Overall building height does not exceed 50.5 NGVD; in line with recent variance requests.



- 
- Architectural floor plan of the second floor of a building. The plan includes the following rooms and areas:
- Bedroom:** Located in the upper left, with dimensions 11'-0" x 11'-0".
  - Guest Bedroom:** Located below the Bedroom, with dimensions 11'-0" x 11'-0".
  - Main Living:** Located in the center, with dimensions 11'-0" x 11'-0".
  - Gym:** Located in the lower center, with dimensions 11'-0" x 11'-0".
  - Garage:** Located in the lower left, with dimensions 11'-0" x 11'-0".
  - Pool Deck:** Located in the lower right, with dimensions 11'-0" x 11'-0".
  - Structural Elements:** Includes columns, walls, and a roof level. Dimensions for setbacks and clearances are provided.
  - Notes:**
    - "In-ground Swimming Pools, Hot Tubs and Spas shall not exceed two feet above a grade level Swimming Pool Deck, Patio, or Terrace."
    - "LIFEGUARD STATION" is indicated near the pool deck.

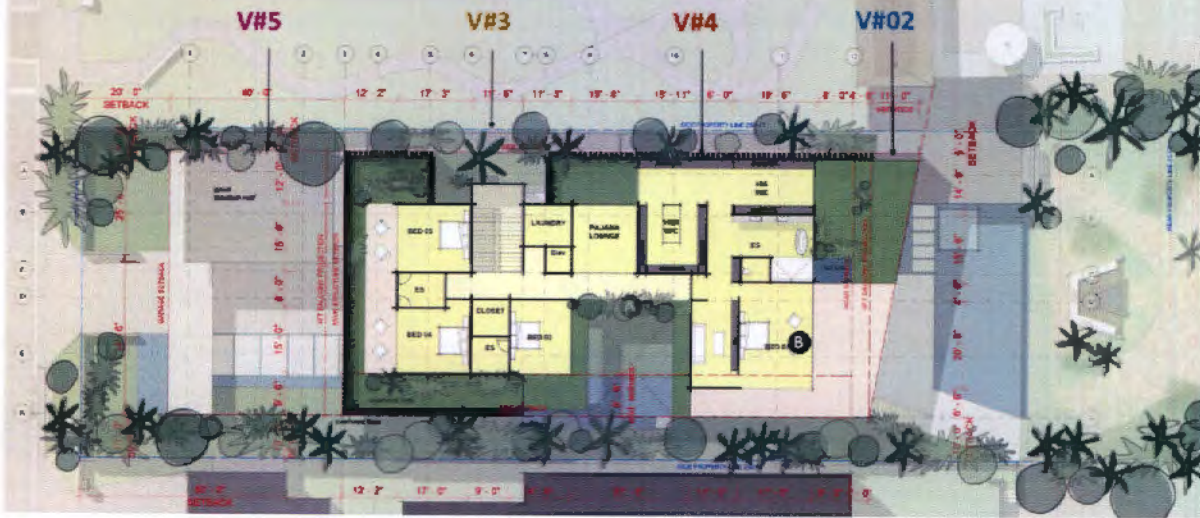
## MAIN STRUCTURE



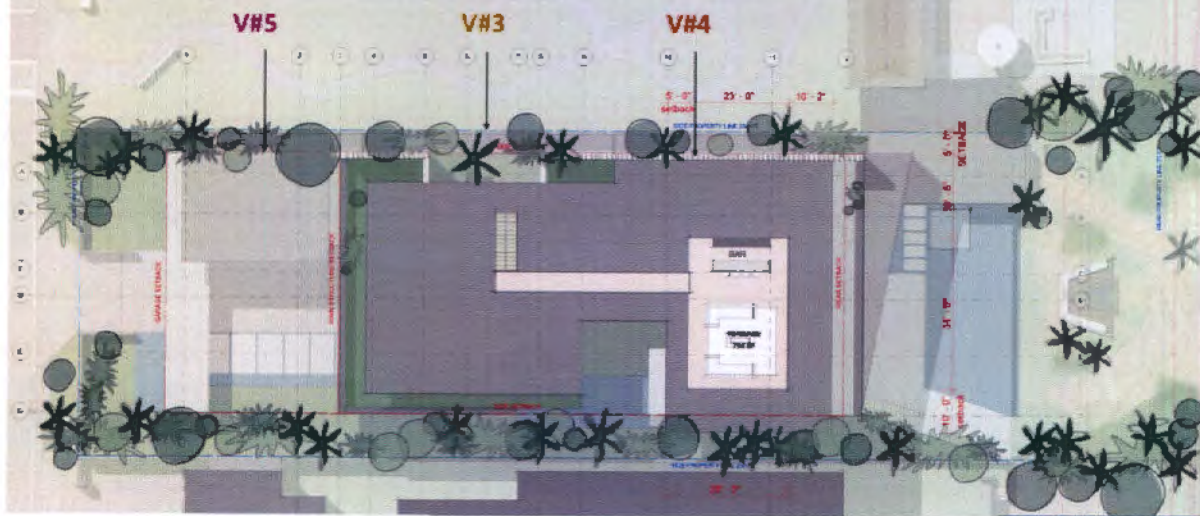
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## SECOND FLOOR



## ROOF PLAN











- c. The special conditions and circumstances do not result from the actions of the applicant.

The conditions existed prior to the purchasing of the property.

- d. Granting the Variance requested will not confer on the applicant any special privilege that is denied by the Zoning Chapter of the Town Code to other lands or structures in the same district.

The request for the variance is due to the conditions established by the Town's code. The Town has granted similar accommodations to most new development projects. Also, no other home has a lifeguard station located in the line of sight.

3. Literal interpretations of the provisions of the Zoning Chapter of the Town Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of zoning regulations and would work unnecessary and undue hardship

Literal interpretation of the code referenced would make the ground floor unusable and limit the ability to make use of lifts. Without the variance the lifeguard station will create undue hardship on the views as it would not allow subject property to enjoy full uninterrupted views of the beach as other Golden Beach zone one residents do



4. The Variance granted is the minimum Variance that will make possible the reasonable use of the land or structure.  
The amount requested is the minimum height necessary to make use of lifts and maintain usable ceiling heights.

5. The granting of the Variance will be in harmony with the general intent and purpose of the Town Code and the Variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

The granting of this variance is in harmony with the code and does not pose a threat to the public.

6. Our code states that submission of a written statement is invited and encouraged. Has the applicant (petitioner) explained the variance to the owners of the nearest adjacent residences and sought their approval in writing? Yes ☐ No. ☒  
Please attach any written letters of no objection to this petition.

7. Is this request related to new construction? ☒ Yes ☐ No

8. Is construction in progress? NO

9. Is this request as a result of a code violation? NO

10. Did this condition exist at the time property was acquired? ☒ Yes ☐ No

11. Is this request sought as a remedy to a case to be heard, or action taken by the Special Magistrate? NO

12. Do you have a building permit? ☐ Yes ☒ No



TOWN OF GOLDEN BEACH  
BUILDING REGULATION ADVISORY BOARD APPLICATION FOR  
PETITION FOR VARIANCE

DATE: 7-29-21  
FEE: \_\_\_\_\_

I, hereby petition the Town of Golden Beach for a variance from the terms of the Town of Golden Beach Code of Ordinances affecting property located at:  
399 OCEAN BOULEVARD Folio No. 19-1235-002-0370

Variance #2

1. The Variance requested is for relief from the provisions of (list section number(s) of the Town of Golden Beach Code of Ordinances): 66- 262 (b) (1) - (allowable balcony projection 4'-0" at rear facade of building). We are asking for a variance to extent the first floor balcony and second floor balcony an additional 11'-0" out on the northeast corner of the building to line up with the beach club bathroom. The balcony will taper back to the allowable 4'-0" south east corner creating an angled balcony/terrace over the ground floor pool area which does not impact any visibility for the southern neighbor.

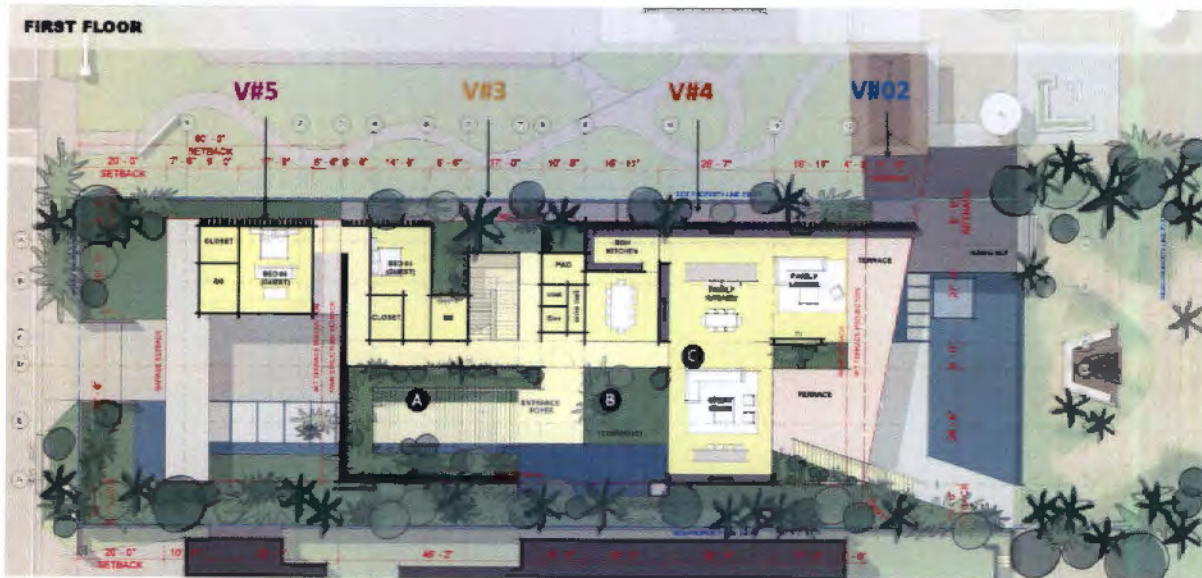




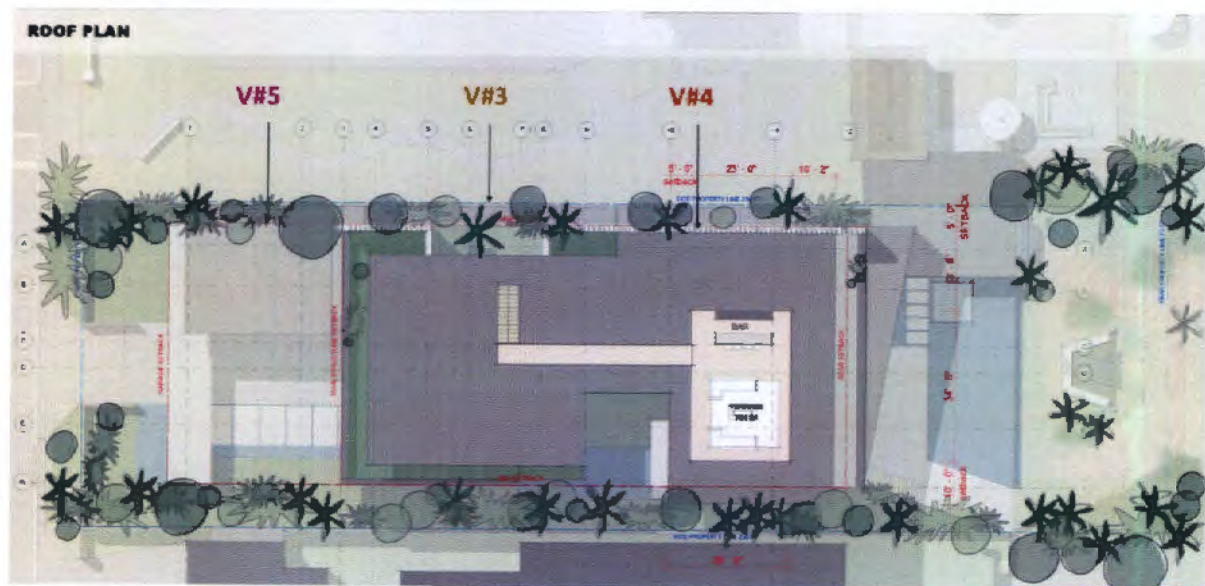
# GROUND FLOOR



# FIRST FLOOR







2. In order to recommend the granting of the variance, it must meet all the following criteria (please provide a response to each item):
  - a. The Variance is in fact a Variance from a zoning regulation as set forth within the Zoning Chapter of the Town Code.

Yes this is a variance from the current zoning regulation

b. Special conditions and circumstances exist which are peculiar to the land or structure involved, and which are not applicable to other lands or structures in the same district.

- Lot location is unique in that its only existing property in zone one that is located directly adjacent to a Public Beach Club (privacy and noise issue) and not a single family residence.
- Only property facing ocean with a neighboring structure that is situated beyond average rear setback line
- Only property facing ocean with a neighboring structure directly on property line.
- Shielding against Public Beach Club is important for the livability of subject property. Beach Club visitors will easily be able to view into subject property without added screening.
- Southern neighbor views unaffected – neighbors balcony already orientated itself away from beach club therefore not compromising passage view.
- Variance won't be injurious to southern neighbor as request only pertains to Northern property line. Site line of southern neighbor won't be impeded as balcony variance is increased diagonally behind site line towards northern property line.
- Without the variance the Public Beach Club to the north will create undue hardship on privacy and noise levels for subject project.





## VARIANCE #02: BALCONY PROJECTION

SPS SPATIAL PROGRAMMING TO SUPPORT THE CITY OF SAO TÁ 1 of 10



US MIA, OCEAN BLVD

### VIEW 02 HARDSHIP:

Beach club structure is in direct line of site as viewed from existing second floor level (21.6 NGVD)

Without the variance to increase balcony projection on northern property line only, the *Public Beach Club* to the north will create undue hardship on privacy and noise levels and not allow us to enjoy useability of terrace along our full property width as other Golden Beach zone one residents do.



SAOTA

- c. The special conditions and circumstances do not result from the actions of the applicant.

Any single family residence would have a direct sight line from the beach club into the first floor living area. The additional 11'-0" would allow for additional screening from the sight line of the beach club and public areas into the residence. The beach club activities create an unusual circumstance for this property and is not the same for other single family residence ocean side.

- d. Granting the Variance requested will not confer on the applicant any special privilege that is denied by the Zoning Chapter of the Town Code to other lands or structures in the same district.

Granting this variance will not confer special privilege to the current owner but will allow the development for a more private residence.

3. Literal interpretations of the provisions of the Zoning Chapter of the Town Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of zoning regulations and would work unnecessary and undue hardship

Most, if not all other homes, do not have large/tall structures behind the average rear setback, nor are they next to a public park. By not allowing this variance which provides a method to mitigate the sound and privacy concerns, this property would experience a hardship that no other property needs to mitigate.

4. The Variance granted is the minimum Variance that will make possible the reasonable use of the land or structure.

Yes, granting this variance would make a reasonable use of the land and the structure while protecting the integrity of this property. The land owner is only requesting a variance that lines up with the existing structure in the Beach Club.

5. The granting of the Variance will be in harmony with the general intent and purpose of the Town Code and the Variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

The granting of this variance is in harmony with the code and does not pose a threat to the public.

6. Our code states that submission of a written statement is invited and encouraged. Has the applicant (petitioner) explained the variance to the owners of the nearest adjacent residences and sought their approval in writing? Yes ☐ No ☒  
Please attach any written letters of no objection to this petition.

7. Is this request related to new construction? ☒ Yes ☐ No

8. Is construction in progress? NO

9. Is this request as a result of a code violation? NO

10. Did this condition exist at the time property was acquired? ☒ Yes ☐ No

11. Is this request sought as a remedy to a case to be heard, or action taken by the Special Magistrate? NO

12. Do you have a building permit? ☐ Yes ☒ No



TOWN OF GOLDEN BEACH  
BUILDING REGULATION ADVISORY BOARD APPLICATION FOR  
PETITION FOR VARIANCE

DATE: \_\_\_\_\_

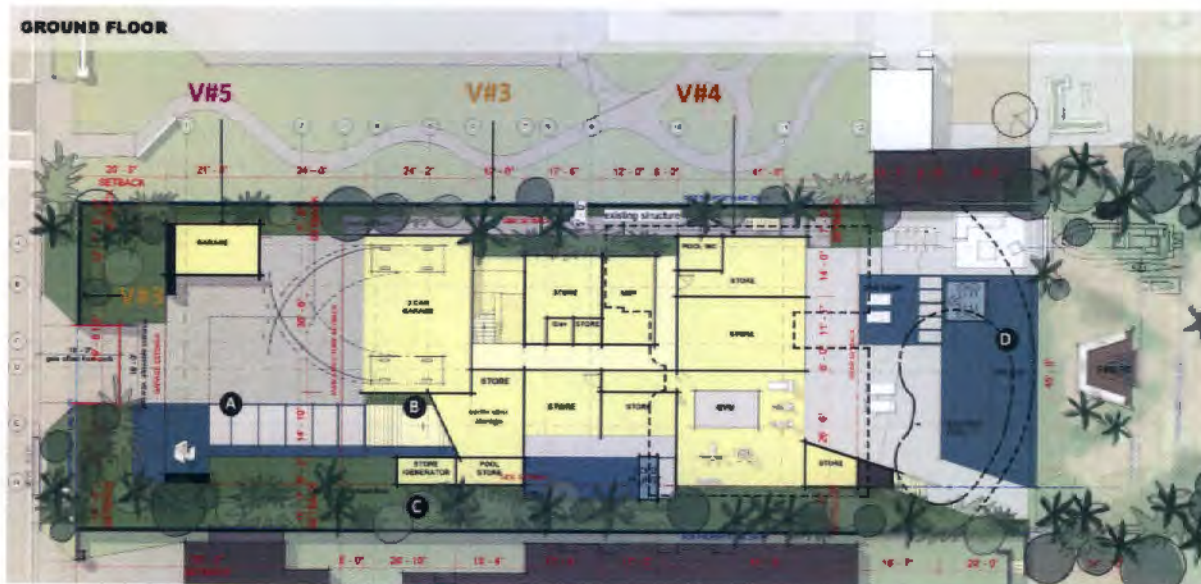
FEE: \_\_\_\_\_

I, hereby petition the Town of Golden Beach for a variance from the terms of the Town of Golden Beach Code of Ordinances affecting property located at:  
399 OCEAN BOULEVARD Folio No. 19-1235-002-0370

**Variance #3**

1. The Variance requested is for relief from the provisions of (list section number(s) of the Town of Golden Beach Code of Ordinances): Section 66-186 (a) to allow a wall along the northern property line to be higher than six (6) feet above the crown of the road. Variance request is to allow a wall along the entire northern property line and northwest corner to be eleven (11) feet above crown of road.
2. In order to recommend the granting of the variance, it must meet all the following criteria (please provide a response to each item):
  - a. The Variance is in fact a Variance from a zoning regulation as set forth within the Zoning Chapter of the Town Code.

Yes this is a variance from the current zoning regulation



- b. Special conditions and circumstances exist which are peculiar to the land or structure involved, and which are not applicable to other lands or structures in the same district.

- Unique property location, higher buffer wall needed for privacy and security from Public Beach Club.
- 19.5 NGVD high Beach Club storage unit located on property line.

- c. The special conditions and circumstances do not result from the actions of the applicant.

The special circumstance is the not a result of the applicant. The Beach Club was established for public use. The additional height will help mitigate the sound and noise.

- d. Granting the Variance requested will not confer on the applicant any special privilege that is denied by the Zoning Chapter of the Town Code to other lands or structures in the same district.

Granting this variance will not confer special privilege to the current owner but will allow the development for a more private residence. Similar accommodations were granted to 401 and 699 which have similar challenges.

3. Literal interpretations of the provisions of the Zoning Chapter of the Town Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of zoning regulations and would work unnecessary and undue hardship

Keeping the required 6' high wall on the north property line could cause unforeseen disturbances for this residential property and would deprive the owner of the privacy at other properties.

4. The Variance granted is the minimum Variance that will make possible the reasonable use of the land or structure.

Yes, granting this variance would make a reasonable use of the land and the structure while protecting the privacy of this property.

5. The granting of the Variance will be in harmony with the general intent and purpose of the Town Code and the Variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

The granting of this variance is in harmony with the code and does not pose a threat to the public.

6. Our code states that submission of a written statement is invited and encouraged. Has the applicant (petitioner) explained the variance to the owners of the nearest adjacent residences and sought their approval in writing? Yes ☐ No ☒  
Please attach any written letters of no objection to this petition.

7. Is this request related to new construction? ☒ Yes ☐ No

8. Is construction in progress? NO



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12. Do you have a building permit?

☐

Yes

☒

No

Building Permit No. \_\_\_\_\_ Date issued: \_\_\_\_\_