

**THE CITY OF CORAL GABLES BOARD OF ADJUSTMENT
JANUARY 10, 2011
CORAL GABLES CITY HALL, 405 BILTMORE WAY, COMMISSION CHAMBER
CORAL GABLES, FLORIDA**

The meeting was scheduled to be held in Coral Gables City Hall Commission Chamber, Coral Gables, Florida, commencing at 8:00 a.m.

MEMBERS	J F M A M J J A S O N D	APPOINTED BY:
Jorge Mora	P	Mayor Donald Slesnick
Tony Bello	P	Vice Mayor William H. Kerdyk, Jr.
Vivian De Las Cuevas-Diaz	P	Comm. Maria Anderson
Dr. Katherine De Blij	P	Comm. Rafael "Ralph" Cabrera, Jr.
John C. Lukacs, Esq., Chairperson	P	Comm. Wayne "Chip" Withers
Sergio Artigues, Architect	P	Board of Adjustment
Dr. Joseph W. Briggles, Vice Chair	P	City Manager

STAFF:

Elizabeth L. Gonzalez, Secretary
Joan Bailey, Court Reporter
Martha Salazar-Blanco, Zoning Official
Carmen Olazabal, Building & Zoning Director

A = Absent
C = Meeting Cancelled
E = Excused Absence
L = Late
P = Present
R = Resigned
X = Not on Board

THESE MINUTES DO NOT REQUIRE ANY ACTION BY THE CITY COMMISSION

The meeting was called to order at 8:00 a.m. by the Chairperson who announced that seven board members were present at that time. Four votes are necessary for any action thereof.

The Chairperson announced the following rules of procedure for the hearing:

1. Staff recommendation.
2. The applicant will present his/her case.
3. If there are speakers in favor of the application, they will be given the opportunity to be heard.
4. If there are speakers against the application, they will be given the opportunity to be heard.
5. The applicant will be given the opportunity of a rebuttal.
6. Public hearing closed.
7. Board members discussion.
8. Motion, second and a vote on the application.

1. Roll Call

Roll call was taken. Seven members were present.

2. Approval of the December 6, 2010 Recap

A motion was made by Mr. Bello, seconded by Dr. Briggie to approve the December 6, 2010 Recap. A resolution was passed by voice vote.

RESOLUTION NO. 5006-ZB

3. BA-10-07-3866

Lots: 15 & 16, Block: 44
Country Club Sec. 3, PB/PG: 10/52
(909 Algaringo Avenue)

Faith Read Xenos – Owner/Applicant
Kenneth R. Pfeiffer – Architect

A hearing was held on case no. BA-10-07-3866.

Present: Faith Read Xenos – Owner/Applicant
Luanne Ellis – Essig Pools, Inc.

APPLICANT'S PROPOSAL: In connection with the proposed swimming pool, pool deck and screen wall for the existing single family residence at the subject property, the Applicant requests the following variances pursuant to the provisions of Ordinance No. 2007-01 as amended and known as the “Zoning Code.”

- 1) Grant a variance to allow the proposed swimming pool and pool deck for the existing residence to be located in the area between the street and the main residential building or any part thereof vs. no accessory building or structure may be located in the area between the street and the main residential building or any part thereof as required by Sections 4-101 (D) (5) (a) and 5-101 (B) of the Coral Gables “Zoning Code.”
- 2) Grant a variance to allow the proposed swimming pool and pool deck for the existing residence to be located closer to the front or side street of a lot or building site than the main or principal building vs. in no case shall an accessory building or structure be located closer to the front or side street of a lot or building site than the main or principal building as required by Sections 4-101 (D) (5) (b), 5-101 (C), 5-108 (D) (1), and 5-108 (I) of the Coral Gables “Zoning Code.”

- 3) Grant a variance to allow the proposed swimming pool for the existing residence to be visible in both the front and side street elevation vs. on corner lots, swimming pools may be located within an L of the building provided that such L is not visible in both the front and side street elevation as required by Section 5-108 (H) of the Coral Gables "Zoning Code."
- 4) Grant a variance to allow the existing three feet six inches (3'6") masonry wall with an additional two feet three inches (2'3") of wrought iron on top and four feet (4'0") of concealing landscape adjacent to existing fence wall to be used for screening from street view vs. in all cases where a swimming pool is constructed which will be visible from a street, a four (4'0") foot wall shall be erected upon the premises between the street and the swimming pool as required by Section 5-108 (E).
- 5) Grant a variance to allow the proposed swimming pool for the existing residence to have a setback less than the required setback for the residence vs. the proposed swimming pool shall provide the same required setback for a residence located on the parcel where pool is to be constructed as required by Section 5-108 (D) (1) of the Coral Gables "Zoning Code."
- 6) Grant a variance to allow the proposed swimming pool for the existing residence to have a side street setback (Toledo Street) of thirteen (13'0") feet vs. the proposed swimming pool to maintain a minimum side street setback of fifteen (15'0") feet as required by Sections 4-101 (D) (4) (b) and 4-101 (D) (5) of the Coral Gables "Zoning Code."
- 7) Grant a variance to allow the proposed pool deck for the existing residence to have a side street setback (Toledo Street) of nine (9'0") feet vs. the proposed pool deck to maintain a minimum side street setback of fifteen (15'0") feet as required by Sections 4-101 (D) (4) (b) and 4-101 (D) (5) of the Coral Gables "Zoning Code."

STAFF OBSERVATION: The Applicant is requesting several variances which pertain to the proposed swimming and pool deck. This irregular shaped property is bordered by Toledo Street and Algaringo Avenue, creating a very unique situation, thereby limiting the available space to build a swimming pool and deck.

Items number 1, 2, and 3 are variance requests for the swimming pool and pool deck location. The Coral Gables "Zoning Code" stipulates the following: no accessory building or structure may be located in the area between the street and the main residential building or any part thereof, no accessory building or structure may be located closer to the front or side street of a lot or building site than the main or principal building and swimming pools may be located within an "L" of the building provided that such "L" is not visible in the both the front and side street elevations.

Items number 5, 6 and 7 pertain to the swimming pool and pool deck encroaching into the required side street setback area. The distance from the swimming pool being proposed is at thirteen feet (13'0") feet from the side street property line and the distance being proposed for the pool deck is at nine (9'0") feet from the side street property line where a minimum of fifteen (15'0") is required for both the swimming pool and pool deck.

After reviewing the plans for the swimming pool and pool deck on this particular site, Staff notes that there would be a favorable recommendation for the swimming pool and deck in this proposed location if an alternate design, with a smaller size pool and deck that comply with the required setback areas were presented. However, due to the proximity of the swimming pool and deck to the side street property line and the encroachment into the required setback area, Staff cannot recommend favorably of Items No. 1, 2, 3, 5, 6 and 7.

The Zoning Division Staff recommends **DENIAL** of Item No. 1, 2, 3, 5, 6 and 7 as requested by the Applicant.

STAFF RECOMMENDATION: Pursuant to **Section 3-806 STANDARDS FOR VARIANCES** of the “Zoning Code,” the Zoning Division Staff finds and the Board of Adjustment shall find as follows in regard to the Applicant's proposal as presented in their application for a variance from the provisions of Ordinance No. 2007-01, as amended and known as the “Zoning Code,” and makes the following recommendations:

1. That special conditions and circumstances do not 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. That the special conditions and circumstances would result from the actions of the Applicant.
3. That granting the variance requested will confer on the Applicant a special privilege that is denied by these regulations to other lands, buildings or structures in the same zoning district.
4. That literal interpretation of the provisions of these regulations would not deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these regulations, and would not work unnecessary and undue hardship on the Applicant (see also definition of “necessary hardship”).
5. That the variance granted is not the minimum variance that will make possible the reasonable use of the land, building or structure.
6. That granting the variance will not change the use to one that is not permitted in the zoning district or different from other land in the same district.
7. That the granting of the variance will not be in harmony with the general intent and purpose of these regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Based on the findings in paragraphs 1 through 7 above, the Zoning Division Staff recommends **DENIAL** of Item No. 1, 2, 3, 5, 6 and 7 of the Applicant's request.

STAFF OBSERVATION: With regard to Item No. 4, the Zoning Code requires a four (4'0”) feet wall in height be erected between the street and the swimming pool if the swimming pool is visible from a street. The Applicant is requesting to maintain the existing three feet six inches

(3'6") masonry wall with an additional two feet three inches (2'3") of wrought iron and four feet (4'0") of concealing landscape adjacent to the wall in lieu of adding an additional wall or adding height to the existing wall. The Zoning Division Staff finds the existing condition complies with the intent of screening the swimming pool from the street view and is a minimal request.

The Zoning Division Staff recommends **APPROVAL** of Item No. 4 as requested by the Applicant.

STAFF RECOMMENDATION: Pursuant to **Section 3-806 STANDARDS FOR VARIANCES** of the "Zoning Code," the Zoning Division Staff finds and the Board of Adjustment shall find as follows in regard to the Applicant's proposal as presented in their application for a variance from the provisions of Ordinance No. 2007-01, as amended and known as the "Zoning Code," and makes the following recommendations:

1. That special conditions and circumstances do 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. That the special conditions and circumstances would not result from the actions of the Applicant.
3. That granting the variance requested will not confer on the Applicant a special privilege that is denied by these regulations to other lands, buildings or structures in the same zoning district.
4. That literal interpretation of the provisions of these regulations would deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these regulations, and would not work unnecessary and undue hardship on the Applicant (see also definition of "necessary hardship").
5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
6. That granting the variance will not change the use to one that is not permitted in the zoning district or different from other land in the same district.
7. That the granting of the variance will be in harmony with the general intent and purpose of these regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Based on the findings in paragraphs 1 through 7 above, the Zoning Division Staff recommends **APPROVAL** of Item No. 4 of the Applicant's request.

The homeowner and the representative from the pool company were present. Ms. Ellis stated based on the unusual shape of the lot, the generator in the backyard and the existing overhead

power lines, there was no other feasible location to place the pool. Also, the pool's configuration is the minimal design in order for the pool to be effective and merit building a pool.

Attorney Bruce Amich from 9130 S. Dadeland Blvd., #1500, representing Angelo and Esther Pratt of 3815 Toledo Street spoke against the requested variances mainly due to his clients concerns about the visibility of the pool facing their property. The homeowner presented pictures of visibility of the retaining wall and shrubs.

Board Member Sergio Artigues stated the design of the pool was minimal as well as the requested encroachment into the setback. He also asked if additional landscaping could be planted and permanently maintained to visually screen the pool and deck.

Ms. Martha Salazar-Blanco, Zoning Official stated a restrictive covenant could be required and completed by the owner, which states "landscaping will be planted and maintained adjacent to the existing barrier wall with a height between 5 and 6 feet."

A motion was made by Mr. Artigues and seconded by Mr. Bello to approve the Applicant's request.

RESOLUTION NO. 5007-ZB

A RESOLUTION APPROVING A REQUEST FOR VARIANCES TO
ORDINANCE NO. 2007-01 AS AMENDED AND KNOWN AS THE
"ZONING CODE," TO WIT:

A Resolution was passed and adopted due to the following roll call: "Yeas" – Mrs. De Las Cuevas-Diaz, Dr. De Blij, Mr. Artigues, Mr. Bello, Dr. Briggie, Mr. Mora, Mr. Lukacs. "Nays" – None.

4. BA-10-12-3714

Lot: 29, Block: 26
Cocoplum Sec. 2 Plat G, PB/PG: 134/59
(141 Orquidea Avenue)

Angel Berisiartu – Architect/Applicant
Jorge & Majda Casado – Owners

A hearing was held on case no. BA-10-12-3714.

Present: Angel Berisiartu – Architect/Applicant

APPLICANT'S PROPOSAL: In connection with the proposed swimming pool, spa, pool deck and gazebo for the existing single family residence at the subject property, the Applicant requests

the following variance pursuant to the provisions of Ordinance No. 2007-01 as amended and known as the "Zoning Code."

- 1) Grant a variance to allow the proposed swimming pool, spa, pool deck and gazebo for the existing residence to be located in the area between the street and the main residential building or any part thereof vs. no accessory building or structure may be located in the area between the street and the main residential building or any part thereof as stipulated by Sections 4-101 (D) (5) (a) and 5-101 (B) of the Coral Gables "Zoning Code."

STAFF OBSERVATION: This property is located in the Cocoplum subdivision. The property site is unusual whereby the front of the property faces Orquidea Avenue and the rear property boundary is bordered by Isla Dorada Boulevard. The property site has an average width, but is unusually long in length. The residence was designed to optimize the efficiency of the lot area.

The swimming pool, spa, pool deck and gazebo are being proposed in the rear yard between the residence and Isla Dorada Boulevard. The special condition of having a rear street limits the available area to build accessory structures and comply with the Zoning Code's requirement of not building accessory structures in the area between the street and the residence. The proposed swimming pool, spa, pool deck and gazebo comply with required setbacks and with the required maximum lot coverage. After review of the property site, the configuration of the residence, and surrounding properties, staff finds due to the physical constraints of the lot the proposed location of all auxiliary and accessory structures is feasible and in harmony with the adjacent properties.

Due to the uniqueness and special condition of the property site, the Zoning Division Staff recommends **APPROVAL** of Item No. 1 as requested by the Applicant.

STAFF RECOMMENDATION: Pursuant to **Section 3-806 STANDARDS FOR VARIANCES** of the "Zoning Code," the Zoning Division Staff finds and the Board of Adjustment shall find as follows in regard to the Applicant's proposal as presented in their application for a variance from the provisions of Ordinance No. 2007-01, as amended and known as the "Zoning Code," and makes the following recommendations:

1. That special conditions and circumstances do 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. That the special conditions and circumstances would not result from the actions of the Applicant.
3. That granting the variance requested will not confer on the Applicant a special privilege that is denied by these regulations to other lands, buildings or structures in the same zoning district.
4. That literal interpretation of the provisions of these regulations would deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of

these regulations, and would not work unnecessary and undue hardship on the Applicant (see also definition of “necessary hardship”).

5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
6. That granting the variance will not change the use to one that is not permitted in the zoning district or different from other land in the same district.
7. That the granting of the variance will be in harmony with the general intent and purpose of these regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Based on the findings in paragraphs 1 through 7 above, the Zoning Division Staff recommends **APPROVAL** of Item No. 1 of the Applicant’s request.

A motion was made by Mrs. Diaz De Las Cuevas and seconded by Dr. Briggie to approve the Applicant’s request.

**A RESOLUTION APPROVING A REQUEST FOR VARIANCES TO
ORDINANCE NO. 2007-01 AS AMENDED AND KNOWN AS THE
“ZONING CODE,” TO WIT:**

- 1) Grant a variance to allow the proposed swimming pool, spa, pool deck and gazebo for the existing residence to be located in the area between the street and the main residential building or any part thereof vs. no accessory building or structure may be located in the area between the street and the main residential building or any part thereof as stipulated by Sections 4-101 (D) (5) (a) and 5-101 (B) of the Coral Gables “Zoning Code.”

A Resolution was passed and adopted due to the following roll call: “Yeas” – Mr. Artigues, Dr. De Blij, Mr. Bello, Dr. Briggie, Mr. Mora, Mrs. De Las Cuevas-Diaz and Mr. Lukacs. “Nays” – None.

RESOLUTION NO. 5008-ZB

Meeting adjourned at 8:30a.m.

**THE CITY OF CORAL GABLES
BOARD OF ADJUSTMENT**

Elizabeth L. Gonzalez
Secretary