



PLANNING DEPARTMENT

Variance Requests / Staff Analysis & Recommendation

TO: Board of Adjustment Members

**FROM: Jorge G. Gomez, AICP
Planning Director**

DATE: March 6, 2009

**SUBJECT: File No. 3407
Home RUS Development III, Inc.
5745 Pinetree Drive**

Request:

The applicant is requesting the following variances in order to retain an existing single family residence, pool and pool deck and an accessory structure located at the rear of the lot, as the result of a lot split:

1. A variance to all of the required interior side yard setback of 15'-0" in order to retain a loggia up to the south property line.

- Variance requested from:

Sec. 142-106. Setback requirements for a single-family detached dwelling.

The setback requirements for a single-family detached dwelling in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

(2) Side yards:

b. Interior sides. Any one interior side yard shall have a minimum of ten percent of the lot width or seven and one-half feet, whichever is greater.

2. A variance to waive 32'-6" of the minimum required sum of the side yards of 37'-6" in order to provide a sum of the side yards of 5'-0".

- Variance requested from:

Sec. 142-106. Setback requirements for a single-family detached dwelling.

The setback requirements for a single-family detached dwelling in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

(2) Side yards:

a. The sum of the required side yards shall be at least 25 percent of the lot width.

3. A variance to waive all of the interior side yard setback of 7'-6" required from a pool deck to an interior property line in order to retain the existing pool deck up to the south property line.
4. A variance to waive 3'-11" of the minimum required interior side yard setback of 9'-0" in order to retain the existing pool waterline at 5.14' from the south property line.

- Variances requested from:

Sec. 142-1133. Swimming pools.

This section applies to swimming pools in all districts. Accessory swimming pools, open and enclosed, or covered by a screen enclosure, or screen enclosure not covering a swimming pool, may only occupy a required rear or side yard, provided:

- (2) Side yard setback. A 7 1/2-foot minimum required setback from the side property line to a swimming pool deck or platform, or screen enclosures associated or not associated with a swimming pool. Nine-foot minimum required setback from side property line to the water's edge of the swimming pool.

5. A variance to waive 3'-7" of the minimum required interior side yard setback of 7'-6" for an accessory structure to an interior side property line in order to retain a one-story accessory structure at 3'-11" from the south property line.

- Variance requested from:

Sec. 142-1132. Allowable encroachments within required yards.

(a) Accessory buildings.

- (1) In all districts, except single-family districts, accessory buildings which are not a part of the main building may be constructed in a rear yard, provided such accessory building does not occupy more than 30 percent of the area of the required rear yard and provided it is not located closer than seven and one-half feet to a rear or interior side lot line and 15 feet when facing a street. Areas enclosed by screen shall be included in the computation of area occupied in a required rear yard lot but an open uncovered swimming pool shall not be included.

- (2) In single family districts, accessory buildings shall follow the regulations in (a)(1) except that:

- a. Setbacks. A two-story accessory structure shall not be located closer than seven and one-half feet to an interior side lot line, or the required side yard setback, whichever is greater, and a rear setback of 15 feet.

Hardship Criteria:

Section 118-353. Variance applications.

(d) In order to authorize any variance from the terms of these land development regulations and sections 6-4 and 6-41(a) and (b), the board of adjustment shall find that:

- (1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;
- (2) The special conditions and circumstances do not result from the action of the applicant;

- (3) *Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;*
- (4) *Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;*
- (5) *The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;*
- (6) *The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and*
- (7) *The granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan. The planning and zoning director may require applicants to submit documentation to support this requirement prior to the scheduling of a public hearing or anytime prior to the board of adjustment voting on the applicant's request*

Background and Analysis:

Zoning District: RS-3 Single-Family Residential District

A single family 2-story home built in 1929 currently exists on lots 18 and 19 at 5745 Pinetree Drive. A tennis court was built at some point on lot 17 for the use of the owners of the home on lots 18 and 19. In December 2007, the applicant obtained a building permit for a new two-story home on lot 17 at 5727 Pinetree Drive, without obtaining the proper division of lots. When the applicant came back to the City to make minor revisions to the approved plans for the new home, it became evident that a lot split would be required. By this time, the new home on lot 17 was almost completed. The applicant has requested an after-the-fact lot split from the Planning Board, File No. 1918. Both homes belong to the same entity at this time.

All of the variances requested are a result of the lot split. A variance was advertised to retain the front gate and fence, but upon research of the original microfilm, it was determined that the condition is original; therefore, no variance is required. The main home, without taking the loggia into consideration, has a legal non-conforming north interior setback of five feet and exceeds the required south interior side yard setback and the sum of the side yards. The issues arise with the pool, pool deck, loggia attached to the main house and the rear cabana. As the loggia is attached to the main house, it is considered part of the house. Since originally the home had the tennis court to the south of it, all setbacks were in compliance with regulations. The first variance is to retain the existing loggia up to the south property line. This loggia used to connect the main house with the tennis court to the south. Currently, it provides a backdrop for the pool deck area. The architectural character of that side of the home will be greatly affected by the removal of this loggia. The rest of the variances are of a similar nature; they are to retain what is built on the lot. Staff has met with the owner's representative on several occasions, and has discussed the conditions placed upon the requested variances, if granted by this Board.

Recommendation:

Staff recommends **approval** of the variances as requested with the following conditions:

1. The existing home at 5745 Pinetree Drive shall not be demolished. Plans for any future additions or modifications shall be submitted to the Design Review staff for a determination of whether any additions or modifications need to go before the Design Review Board.
2. No variances shall be permitted for the new structure under construction at 5727 Pinetree Drive. The nonconformities resulting from the lot split shall be removed before the issuance of a Certificate of Occupancy.
3. The existing walkways within the required front and side yards of the property at 5745 Pinetree Drive shall be brought into compliance with Land Development Regulations prior to the issuance of a Certificate of Occupancy for 5727 Pinetree Drive.
4. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.
5. A landscape plan for the entire site, inclusive of street trees as per the City of Miami Beach Master Street Tree Plan, along with plans for dense landscaping to be provided between both properties, and to buffer the existing mechanical equipment located at the south side of the rear yard, shall be submitted to and approved by staff prior to the issuance of a Certificate of Occupancy for 5727 Pinetree Drive.
6. The applicant shall comply with all conditions imposed by the Public Works Department.
7. The applicant shall obtain a full building permit within eighteen months (18) months from the date of this hearing. If the full building permit is not obtained within the specified time limits, the applicant shall, prior to expiration of such period, apply to the Board for an extension of time. At the hearing on such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. Failure to comply with this order shall subject the variance to Section 118-356, City Code, for revocation or modification of the variance.
8. The conditions on this Order are binding on the applicant, the property's owners and all successors in interest and assigns.

9. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

JGG:RL:DBR

cc: Gary Held, First Assistant City Attorney