



# TOWN OF HIGHLAND BEACH

## VARIANCE APPLICATION

Petition # \_\_\_\_\_

Fees Paid/Receipt No. # \_\_\_\_\_

Variance and/or Appeal to Board of Adjustment & Appeals and/or Town Commission are \$2,500.00.

PROPERTY OWNER INFORMATION		
<b>Name:</b> Stephen Garchik and Marla Garchik	<b>Phone:</b> 703-467-9390	<b>Fax:</b>
<b>Mailing Address:</b> 2474 S. Ocean Blvd., Highland Beach, FL 33487		
<b>Email Address:</b> sgarchik@sjmpartners.com		

AUTHORIZED AGENT		
<b>Name:</b> J. Michael Marshall, Esq.	<b>Phone:</b> 954-745-5248	<b>Fax:</b>
<b>Mailing Address:</b> 100 S.E. 3rd Avenue, Suite 2700, Fort Lauderdale, FL 33394		
<b>Email Address:</b> michael.marshall@nelsonmullins.com		

PROPERTY INFORMATION ASSOCIATED WITH THIS PETITION	
<b>Address:</b> 2474 S. Ocean Blvd., Highland Beach, FL 33487	<b>Subdivision:</b> BYRD BEACH SUB IN
<b>PCN:</b> 24-43-46-28-09-000-0131	<b>Lot Size:</b> 0.5520 acres
<b>Zoning District:</b> RS	<b>Present Use:</b> Residential Single Family

1. Present Structures (type):  
Outdoor gazebo-style accessory structure  
\_\_\_\_\_
2. The proposed use will be:  
Provide cover for outdoor dining area  
\_\_\_\_\_
3. If this petition is granted, the effect will be to (brief description – i.e. to reduce side yard from 7' to 2'):  
Permit the accessory structure to extend into the rear yard, reducing the rear setback for the accessory structure from 20 feet to 4 feet

4. As a basis for consideration of an application for variance approval, the Board of Adjustment and Appeals and/or Town Commission must determine an application is consistent with the criteria listed below. After each criteria, state fully your reasons justifying the granting of this variance.

- (a) 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.

The applicant acquired the home with an outdoor dining area in the rear yard along the Intracoastal Waterway. The outdoor dining area has no weather or sun protection, a condition that exists because open-walled roofed structures such as gazebos, unlike other common yard accessory structures, are not permitted in the applicant's yard. In that regard, the conditions and circumstances are peculiar to both the applicant's property and proposed structure.

- (b) The special conditions and circumstances truly represent a hardship, and are not created by any actions of the applicant. Note that Section 30-40(e)(7) of the Town Code states that financial hardship is not to be considered as sufficient evidence of a hardship in granting a variance

The applicant is unable to utilize the rear yard dining area without a gazebo or other open walled roof structure.

The applicant acquired the property in its current condition and applicant is not responsible for the more recent code interpretation that prohibits gazebos in the rear yard without a variance.

- (c) Literal interpretation of the provisions of chapter 30 would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of chapter 30 and would work unnecessary and undue hardship on the applicant.

Literal interpretation of the code would not allow protection for applicant's outdoor dining area while other homes have covered outdoor areas.

- (d) The grant of a variance will not confer upon the applicant any special privilege denied to any other owner of land, buildings, or structures located in the same zoning district.

The variance will not confer a special benefit or privilege, but simply allow the applicant to have a covered outdoor area like other properties.

- (e) The variance granted is the minimum variance that will make possible the use of the land, building, or structure.

The applicant has requested the minimum variance necessary for the gazebo structure to comply with the recent interpretation of the Town's zoning regulations as they pertain to the placement of gazebos.

- (f) The grant of the variance will be in harmony with the general intent and purpose of this chapter.

The grant of this variance is in accordance with the purpose laid out in Section 30-40(a) of the Town Code.

(g) The grant of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

No injury will be caused by the grant of this variance.

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5. Has any previous application or appeal been filed within the last year in connection with these premises? (YES) X (NO) \_\_\_\_\_ If so, briefly state the nature of the application or appeal.

Owner's Agent appeared before the Town's Appeals Board on July 29, 2024 regarding the interpretation of the

Town Code, and specifically its classification of the structure as a "pergola" rather than a gazebo or a customary

yard accessory.

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MM (Initial) The names and addresses of each property owner located within five hundred (500) feet of the affected property, excluding property owned by the applicant has been provided. (*Notification distances shall be measured on an arc from the corners of the property.*) (YES) X (NO) \_\_\_\_\_

MM (Initial) I, the petitioner, acknowledge that there will be additional expenses incurred for the first class mailing of the public notices and the cost to publish the legal advertisement, which is separate from the Board of Adjustment & Appeals application fee. (YES) X (NO) \_\_\_\_\_

MM (Initial) I, the petitioner, has read the Town of Highland Beach Code of Ordinances, Section 30-40: Variances & Interpretations for code requirements. (YES) X (NO) \_\_\_\_\_

I give permission to the members of the Town Commission and the Board of Adjustment & Appeals and staff to inspect the property for the purpose of this application. I declare that all statements made herein are true, based upon the best available information, and I understand that willful false statements and the like are misdemeanors of the second degree under Section 837.06, Florida Statutes. Such willful false statements may jeopardize the validity of my application or any decision issued thereon. I have fully read the information outlining the Board procedures and application requirements. With this application, I am submitting the necessary supporting materials listed.

\*\*\*Owner must supply authorized agent notarized letter attesting to same\*\*\*

Property Owner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Authorized Agent Signature: Michael Marshall Date: 8-20-24

Condo Assoc. Rep. Signature: \_\_\_\_\_ Date: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF BROWARD

On this 20 day of August, 2024 before me personally appeared Michael Marshall to me known to be the owner of the foregoing instruments, and acknowledged that he executed the same as his free act and deed.

(SEAL)



Barbara J. Rogman  
Notary Public Signature

Received by the Town Clerk's Office:

Received By: \_\_\_\_\_ Date: \_\_\_\_\_

Date Public Notices Mailed: \_\_\_\_\_

Date Legal Advertisement Published: \_\_\_\_\_