

## **JUSTIFICATION STATEMENT**

- 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 district:**

The subject property is located in The Soundings Homeowner's Association (the "Soundings") in Hobe Sound. The existing house was originally built in 1984. Aerial imagery from 2004 indicates a covered patio has encroached into the thirty-five foot (35') waterfront setback since at least this time. Because the Property was developed in this manner in 1984, the existing encroachments on the Property are essentially "already out of the bag." My client merely wishes to add a small, uncovered plunge pool and associated patio, similar to many other properties in the Soundings. The remaining request is to "legitimize" the existing four feet one inch (4' 1") encroaching covered and screened porch.

The residences built in the Soundings are peculiar from other homes in the HR-1 zoning district. Many of the residences in this neighborhood have structures, screen enclosures, pools, and decks that encroach into the 35' waterfront setbacks. A large number of these encroaching structures are screened patios – like the neighbor west of my client's Property. Some of these structures that encroach into the waterfront setback are actual enclosed structures – not merely covered or screened. Additionally, homes built on Hawksbill Way are further disadvantaged due to the smaller lot depth. The Soundings granted properties on Hawksbill a special exception from the association's setback requirements due to the smaller lot sizes.<sup>1</sup>

The frequency of these encroachments, the existing developed lot, and the narrower lots on Hawksbill Way creates a special condition for this community and the Bach family's Property.

- 2. Literal interpretation of the provisions of article 3 or article 4 would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district:**

Literal interpretation of article 3 would deprive the Bach family of rights commonly enjoyed by other properties in this zoning district. Properties east and west of the Bach's Property encroach into the rear yard setback. The property just west of my clients' has a large, encroaching screen enclosure. Across the canal from the Property, many homes or their accessory structures encroach into the waterfront setbacks. In fact, the majority of waterfront properties in The Soundings have homes, screen enclosures, or patios that encroach into the 35' waterfront setback. Denying the Bach's family of these rights would create an unnecessary and undue hardship by not denying them the ability to maximize the use and functionality of their Property. The Bachs should be permitted an outdoor living area similar to their neighbors throughout the Soundings.

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<sup>1</sup> See Art. III, Sec. V(A), Setback Lines, THE SOUNDINGS YACHT AND TENNIS CLUB, AMENDED AND RESTATED COVENANTS (2018), recorded in OR BK 3012, PG 142, Martin County Public Records.

**3. The special conditions and circumstances do not result from the actions or inactions of the applicant:**

The current conditions of the Property do not result from the actions or inactions of the applicant. The existing house was constructed prior to when the Bach family owned the Property. Their existing building envelope, encroachments, and lot depth are the result of previous owners, not the applicant. The neighboring waterfront setback encroachments, common in the Soundings, are not the result of the actions or inactions of the Bachs.

**4. Granting the variance requested will not confer on the applicant any special privilege that is denied to owners of other lands, structures, or buildings in the same district:**

The variance requested will not confer any special privilege that is denied to other lands in the same zoning district. At least ten properties in The Soundings have been granted variances for setback encroachments by the BOZA. Additionally, many properties in the Soundings currently encroach into the 35' waterfront setback. As previously stated, some of these encroachments include screen enclosures and enclosed, covered, living space. The proposed outdoor pool area and associated patio are characteristic of other properties in the neighborhood and will not negatively impact the surrounding community.

**5. The variance is the minimum variance that will make possible the reasonable use of land, building or structure:**

The variances requested are the minimum variances that will make possible the reasonable use of the land and building. The existing covered patio already encroaches in the Property's rear yard setback. Adding a small pool and pool patio will not cause any additional harm to this area, especially considering the view corridor and existing amenities of neighboring properties. Finally, the applicants wish to legitimize four feet one inch (4' 1") of their existing encroachments in the rear yard waterfront setback. Doing so will protect the Bachs and future owners if this area is destroyed or demolished.

The applicants requested variances for an outdoor pool and living space are found throughout the Soundings. The proposed encroachment will not be enclosed, air-conditioned space, but rather an uncovered outdoor living area. This neighborhood in the HR-1 zoning district characteristically has structures, decks, and screen enclosures that encroach into the 35' waterfront setbacks. The applicants are asking only for that which is consistent with and previously approved in the surrounding neighborhood.

- 6. The granting of the variance will be in harmony with the general purpose and intent of the LDR and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare:**

The requested variances are harmonious with the general purpose and intent of the Land Development Regulations. Granting these variances will enhance the value of the Property, result in development consistent with the neighborhood, and will not produce injurious impacts to the public or adjacent properties.