

## **Pine Bay Homeowners Association**

### **Variance Request Consideration Procedure**

1. The Amended Declaration in Article V, Section 3, addresses who, how, and when a Variance to the restrictions of Article IV of the Declaration, to the applicable setbacks on the Owner's Lot and the minimum square footage of a Dwelling on the Owner's Lot, may be requested. If a Variance is to be granted, it shall be in perpetuity. To be in perpetuity, it must be recorded among the land records of the Sussex County Recorder of Deeds ("Land Records"). The Variance is limited to the specific conditions and limitations set forth in the granted Variance.
2. While the Pine Bay Board of Directors ("Board") has the sole authority to grant a Variance, the Board does not have authority under the Declaration to directly consider an Owner's request for a variance. A Variance Request Approval Application ("VRAA") must first be submitted to the Pine Bay Architectural Review Committee ("ARC") and ARC must first make a recommendation to the Board, with ARC's rationale as to whether variance relief should or should not be granted.
3. ARC shall apply the standards set forth in Article IV, Section 1(b) and Article V, Section 3(b) of the Declaration as it considers the VRAA and develops its recommendation to the Board.
4. An ARC recommendation that the Board grant the requested variance does not mean that ARC has approved the design features of the Owner's proposed Structure whose design features must be included in the appropriate application (i.e., MRCAA, MLPAA, MPAA, NDCAA, and TRRA are available here: <https://pinebay.net/architectual-review-committee/approval-applications/>) with the VRAA, and the Board's grant of Variance relief does not mean that

ARC will give its approval to the application for the Owner's proposed Structure.

5. If ARC does not recommend that the Board approve the Owner's request for a variance, the Board may afford the Owner the opportunity to provide to the Board additional information, not previously contained in the VRAA, in support of the Owner's request for a variance for the Board's consideration. The Board may request ARC to provide additional guidance to it should the Owner submit any additional information.
6. The Board will consider the Owner's additional information and ARC's recommendations on the disposition of the Owner's request for a variance, and shall do so, if reasonably possible, at its next regular meeting. The Board shall memorialize its action on the Owner's request for a variance via a Board Resolution and record it in its approved meeting minutes.
7. The Board shall apply the standards set forth in Article IV, Section 1(b) and Article V, Section 3(b) of the Declaration as it considers whether to grant the Owner's request for a variance.
8. After the Board makes its determination on the Owner's request for variance, it shall notify ARC of its decision so that ARC can proceed with consideration of the Owner's application for the proposed Structure on the Lot that first necessitated obtaining variance relief.
9. If the Board determines that the requested variance relief should be granted, the Board shall:
  - o Advise the Owner of the granted Variance and communicate to the Owner that its granting of the Variance does not obviate the need to obtain any County approvals, including County variance relief, that otherwise might be required;
  - o Provide the Owner with its Resolution on the granted Variance;

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- o Provide the Owner with the Association's form of the Delaware HOA Variance Agreement ("Agreement") that the Owner will complete and return to the Board;
  - o Review the Owner prepared Agreement to confirm it contains the necessary property description, a recitation of the Variance relief granted by the Board, including all conditions and limitations, and the relevant Exhibits;
  - o Advise the Owner that they are required to submit the \$225 deposit fee specified in the Variance Request Approval Application prior to the Board's execution of the Agreement;
  - o Execute and acknowledge, if the deposit has been received, the Agreement through its duly authorized officers; and
  - o Deliver the executed Variance Agreement that the Owner shall record among the Land Records.
10. After the recordation of the fully executed Agreement among the Land Records, the Owner shall provide a copy of the recorded Agreement to ARC and the Board.
11. After the Owner provides a copy of the recorded Agreement to ARC and the Board, the Board shall return to the Owner the deposit posted.
12. The Owner shall be responsible for all fees and costs associated with recording the Agreement among the Land Records, including fees charged by the Board's counsel, should the Board believe that such review is necessary in the particular circumstances. If the Owner believes the Agreement should be reviewed by its own counsel, this shall be done at the Owner's expense.