

CODE ENFORCEMENT SPECIAL MAGISTRATE
CITY OF MADEIRA BEACH

CITY OF MADEIRA BEACH,

CASE NUMBER: 2023.3603

Petitioner,

vs.

SMITH, THOMAS A.
13423 Gulf Ln.
Madeira Beach, FL 33708,

Respondent.

_____ /

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER IMPOSING FINE

THIS CAUSE came on to be heard for public hearing before the undersigned Special Magistrate on October 23, 2023, after due notice to the Respondent, and the Special Magistrate having heard testimony under oath, received evidence, and otherwise being fully advised in the premises, hereby finds as follows:

Findings of Fact:

1. The City was represented by the City Attorney, and Grace Mills provided testimony on behalf of the City.
2. No one appeared on behalf of the Respondent.
3. No one provided public comment.
4. The property in question is located at 13423 Gulf Ln., Madeira Beach, Florida 33708 ("Property"). The legal description for the Property is as follows:

MITCHELL'S BEACH REVISED BLK 8, LOT 3

5. Proper notice was served upon the Respondent via certified mail, regular mail, posting or hand delivery in accordance with Chapters 162 and 166, Florida Statutes.
6. The Respondent was notified that Respondent was in violation of the following section of the Code of Ordinances of the City of Madeira Beach by replacing an air conditioning unit without a permit to wit:

Sec. 86-52.- Same- When Required.

A person, firm or corporation shall not construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or erect, or construct a sign, or install or alter fire extinguishing apparatus, elevators, engines, steam boiler, furnace, incinerator, or other heat producing apparatus, plumbing, mechanical or electrical equipment or any appurtenances, the installation of which is regulated by the land development regulations or other sections of the Code until a permit has been issued by the building official. When the cost of repair or modification does not exceed \$500.00, does not result in a structural change, and does not require an inspection, a permit need not be issued by the building official. No permit is required for uncovered flat slabs of no greater than 50 square feet, for work of a strictly cosmetic nature (painting, wallpapering, carpeting, kitchen cabinets, etc.) or roof work less than \$100.00 in value.

7. The violation set forth above existed as of the date of the Notice of Violation herein and at all times subsequent thereto up to the date of the Hearing.

8. A reasonable period of time for correcting the above violation and bringing the Property into compliance is thirty (30) days from the date of the Hearing.

BASED UPON THE FOREGOING FINDINGS OF FACT, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:


9. The Respondent, and the Property at the above mentioned location, are found to be in violation of Sections 86-52 of the Code of Ordinances of the City of Madeira Beach.

10. The Respondent shall correct the above stated violation within 30 days, by taking the remedial action as set forth in the Notice of Violation, and stated on the record at the hearing, which is to apply for and obtain and after-the-fact building permit.

11. If the Respondent fails to timely comply with the remedial action set forth above, a fine shall be imposed in the amount of \$100.00 per day for the violation set forth in Paragraph 6 above for each day the Respondent has failed to correct the violation after 30 days, and the fine shall continue to accrue until such time as the Property is brought into compliance.

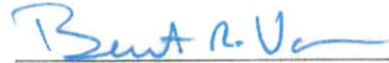
12. The Special Magistrate does hereby retain jurisdiction over this matter to enter such other and further orders as may be just and proper.

DONE AND ORDERED this 31st day of October, 2023.


Bart R. Valdes
Special Magistrate

A true and correct copy of this Order was delivered by certified mail, regular mail and electronic mail to: **Thomas A. Smith, 13423 Gulf Ln., Madeira Beach, FL 33708**; by electronic mail to

Thomas Trask, Esq. (tom@cityattorneys.legal); and by U.S. Mail and e-mail transmission to the City of Madeira Beach, Clara VanBlargan, 300 Municipal Dr., Madeira Beach, Florida 33708, on this 31st day of October, 2023.



Bart R. Valdes

APPEALS

An aggrieved party, including the local governing body, may appeal a final administrative order of a Special Magistrate to the circuit court. Such an appeal shall not be a hearing de nova but shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within 30 days of the execution of the order to be appealed. Ss. 162-11.

CODE ENFORCEMENT SPECIAL MAGISTRATE
CITY OF MADEIRA BEACH

CITY OF MADEIRA BEACH,

CASE NUMBER: 2023.3608

Petitioner,

vs.

HOLCOMB, JOHN SCOTT
HOLCOMB, JENNIFER LYNN
572 Johns Pass Ave.
Madeira Beach, FL 33708,

Respondents.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER IMPOSING FINE

THIS CAUSE came on to be heard for public hearing before the undersigned Special Magistrate on October 23, 2023, after due notice to the Respondents, and the Special Magistrate having heard testimony under oath, received evidence, and otherwise being fully advised in the premises, hereby finds as follows:

Findings of Fact:

1. The City was represented by the City Attorney, and Grace Mills provided testimony on behalf of the City.
2. The contractor, Antonce Bociiek, appeared on behalf of the Respondents and admitted to the violations.
3. Jean Farnan provided public comment indicating a violation occurred.
4. The property in question is located at 572 Johns Pass Ave., Madeira Beach, Florida 33708 ("Property"). The legal description for the Property is as follows:

CRYSTAL ISLAND 2ND ADD LOT 86
5. Proper notice was served upon the Respondents via certified mail, regular mail, posting or hand delivery in accordance with Chapters 162 and 166, Florida Statutes.
6. The Respondents were notified that Respondents were in violation of the following section of the Code of Ordinances of the City of Madeira Beach to wit:

Sec. 86-52.- Same- When Required.

A person, firm or corporation shall not construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or erect, or construct a sign, or install or alter fire extinguishing apparatus, elevators, engines, steam boiler, furnace, incinerator, or other heat producing apparatus, plumbing, mechanical or electrical equipment or any appurtenances, the installation of which is regulated by the land development regulations or other sections of the Code until a permit has been issued by the building official. When the cost of repair or modification does not exceed \$500.00, does not result in a structural change, and does not require an inspection, a permit need not be issued by the building official. No permit is required for uncovered flat slabs of no greater than 50 square feet, for work of a strictly cosmetic nature (painting, wallpapering, carpeting, kitchen cabinets, etc.) or roof work less than \$100.00 in value.

Sec. 110-471. - Building permits required.

Building permits are required for the construction or placement of all accessory structures.

Sec. 110-719. - Fencing.

All swimming pools shall be enclosed with a screen enclosure or a fence or wall having a minimum height of four feet and in compliance with the provisions of article VI, division 3 of this chapter. The fence, wall or door to the screen enclosure shall be equipped with a self-closing and self-latching gate which operates from the interior of the swimming pool area only.

7. The violation set forth above existed as of the date of the Notice of Violation herein and at all times subsequent thereto up to the date of the Hearing.

8. A reasonable period of time for correcting the above violation and bringing the Property into compliance is thirty (30) days from the date of the Hearing.

BASED UPON THE FOREGOING FINDINGS OF FACT, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

9. The Respondents, and the Property at the above mentioned location, are found to be in violation of Sections 86-52, 110-471, and 110-719 of the Code of Ordinances of the City of Madeira Beach.

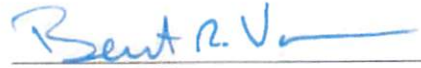
10. The Respondents shall correct the above stated violation within 30 days, by taking the remedial action as set forth in the Notice of Violation, and stated on the record at the hearing, which is to apply for and obtain and after-the-fact building permit and comply with City Code. If the permit cannot be obtained, the structure must be removed. Also, proper fencing will need to be constructed in regard to the pool in compliance with Florida Statutes and City Code.

11. If the Respondents fail to timely comply with the remedial action set forth above, a fine shall be imposed in the amount of \$250.00 per day for the violation set forth in Paragraph 6 above for each day the Respondents have failed to correct the violation after 30 days, and the fine

shall continue to accrue until such time as the Property is brought into compliance.

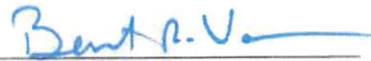
12. The Special Magistrate does hereby retain jurisdiction over this matter to enter such other and further orders as may be just and proper.

DONE AND ORDERED this 31st day of October, 2023.



Bart R. Valdes
Special Magistrate

A true and correct copy of this Order was delivered by certified mail, regular mail and electronic mail to: **John Scott Holcomb and Jennifer Lynn Holcomb, 572 Johns Pass Ave., Madeira Beach, FL 33708**; by electronic mail to **Thomas Trask, Esq. (tom@cityattorneys.legal)**; and by U.S. Mail and e-mail transmission to the **City of Madeira Beach, Clara VanBlargan, 300 Municipal Dr., Madeira Beach, Florida 33708**, on this 31st day of October, 2023.



Bart R. Valdes

APPEALS

An aggrieved party, including the local governing body, may appeal a final administrative order of a Special Magistrate to the circuit court. Such an appeal shall not be a hearing de nova but shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within 30 days of the execution of the order to be appealed. Ss. 162-11.

LOCAL GOVERNMENT VARIANCES, SPECIAL EXCEPTION USES
AND APPEALS OF ADMINISTRATIVE DECISIONS
CITY OF MADEIRA BEACH, FLORIDA
Application No. 2023-06

Phillip K. Ragan on behalf of
himself and Mary Barker,
for the property located at
14097 E. Parsley Dr.
Madeira Beach, Florida 33708,

Applicant.

ORDER GRANTING VARIANCE

Variance to reduce the front yard setback requirement from 20' to 18.5.'

Special Code Provisions: Sec. 110-181. – (1) Front yard: 20 feet measured from the right-of-way line to the structure. The property address is 14097 E. Parsley Dr., Madeira Beach, FL 33708, and is identified as:

PARCEL IDENTIFICATION NUMBER: 10-31-15-54324-000-0330

Special Magistrate, Bart R. Valdes, heard testimony and reviewed all evidence received at the Special Magistrate hearing held on October 23, 2023, and, based on the evidence, the testimony of Marci Forbes, Community Development Engineer, the testimony of Phillip Ragan and Mary Barker, and recommendations of City Staff, enters the following findings of fact, conclusion of law and order.

FINDINGS OF FACT

1. The application of Phillip K. Ragan (the “applicant”) presents the issue involving a variance from the requirements of the above stated Madeira Beach Code of Ordinances, requesting a variance to reduce the front yard setback requirement from 20' to 18.5' due to a slight rotation of the home when it was elevated.
2. The applicant needs a variance to match the actual location of the home based on the tie-in survey and to allow for the stairs to comply with the requirements of the Code of Ordinances of the City of Madeira Beach (the “Code”).
3. Special conditions and circumstances exist, as stated on the record, and in the Staff report to justify the variance.
4. The elevated home and all construction features will be more resilient from flood waters.

5. The homeowner contracted with licensed design professionals and contractors and followed the City requirements for permitting and as such the homeowner did not self-inflict the need for a variance.

6. Approval of the variance will not grant any special privilege to the property and is the minimum necessary to provide reasonable access. The neighboring property at 14099 E Parsley was granted a variance, Application 04.02, in January of 2004 reducing their front yard setback from 20 feet to 13 feet.

7. Literal interpretation of the Code would deny the homeowner a reasonably sized and located front entry way.

8. The request is for the minimum amount necessary to construct stairs that would allow general residential access and also takes into consideration the width necessary to deliver appliances, furniture, etc.

9. The proposed variance is in harmony with the general intent and purpose of the City Land Development Regulations and will not negatively affect the character or the neighborhood. The harmony of the neighborhood and general scheme of development of the neighborhood will be unchanged.

CONCLUSION OF LAW

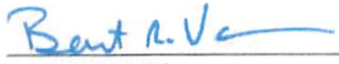
1. Section 2-507 of the Madeira Beach Code of Ordinances authorizes variances from the terms of the City Land Development Regulations as not being contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the land development regulations will result in unnecessary and undue hardship.

2. The applicant has the burden to establish the requirements for the variance. Here, the applicant meets the criteria for the variance as set forth in Section 2-507 of the Madeira Beach Code of Ordinances.

ORDER

It is ADJUDGED that the application is GRANTED, allowing a variance from the zoning requirements of the Madeira Beach Land Development Regulations, to reduce the front yard setback requirement from 20' to 18.5.'

DONE AND ORDERED on October 31, 2023.



Bart R. Valdes
Special Magistrate

Copies furnished to:

Tom Trask, City Attorney

Clara VanBlargan, City of Madeira Beach

Phillip K. Ragan & Mary M. Barker
14097 E. Parsley Dr.
Madeira Beach, FL 33708

LOCAL GOVERNMENT VARIANCES, SPECIAL EXCEPTION USES
AND APPEALS OF ADMINISTRATIVE DECISIONS
CITY OF MADEIRA BEACH, FLORIDA
Application No. 2023-05

Paul Kuiken on behalf of
Green Meadow Farms, LLC,
for the property located at
352 145th Ave. E.
Madeira Beach, Florida 33708,

Applicant.

ORDER GRANTING VARIANCE

Variance to allow the constructed exterior spiral staircase to remain in place by extending the allowable encroachment 3.5” (0.3 feet) into the required 4 foot setback, reducing the setback to 3.7 feet. The request increases the allowable percentage of encroachment along the side yard from 50% (one-half) of the required setback to approximately 54%.

Special Code Provisions: Sec. 110-206. – Setback requirements (3)(b) the total side setback shall be 15 feet with a minimum of seven feet on either side and (4) For only those dwelling units with the lowest habitable space elevated at or above the elevation designated on the flood insurance rate map (FIRM); exterior stairs, platforms for mechanical equipment, and chimneys shall be allowed to extend into the side-yard setback, but only to a depth of no more than one-half of the required setback. Such equipment shall be located in the middle one-third of the structure. The property address is 352 145th Ave. E., Madeira Beach, FL 33708, and is identified as:

PARCEL IDENTIFICATION NUMBER: 10-31-15-54324-000-0330

Special Magistrate, Bart R. Valdes, heard testimony and reviewed all evidence received at the Special Magistrate hearing held on October 23, 2023, and, based on the evidence, the testimony of Marci Forbes, Community Development Engineer, the testimony of Paul Kuiken, as well as the favorable public comment in letters, and recommendations of City Staff, enters the following findings of fact, conclusion of law and order.

FINDINGS OF FACT

1. The application of Paul Kuiken (the “applicant”) presents the issue involving a variance from the requirements of the above stated Madeira Beach Code of Ordinances, requesting a variance to allow the constructed exterior spiral staircase to remain in place by extending the allowable encroachment 3.5” (0.3 feet) into the required 4 foot setback, reducing the setback to 3.7 feet.

2. The applicant needs a variance to allow for the construction of an exterior spiral staircase to comply with the setbacks in order to comply with the requirements of the Code of Ordinances of the City of Madeira Beach (the "Code").

3. Special conditions and circumstances exist, as stated on the record, and in the Staff report to justify the variance.

4. The work and materials used meet current building code standards and will provide an exit path from the elevated balcony that does not require passage through the home.

5. The original building permit was issued on October 19, 2018, and given the lack of progress by the contractor, the property owner took legal action and terminated the construction agreement on September 27, 2021, and a change of contractor application was submitted to the City on January 12, 2022. Given the change in contractors and "stop/start" construction workflow, the property owner had little control over construction delays, quality and accuracy of the work being performed.

6. Approval of the variance will not grant any special privilege to the property and is the minimum necessary to keep the spiral stairs as constructed.

7. Literal interpretation of the Code results in side yard setbacks for the primary structure that vary, with one side being a minimum of 7 feet and the other, by default, a minimum of 8 feet, therefore allowable encroachment would be 3.5 feet and 4 feet as measured from the property line. There is no requirement on which side must be 7 feet therefore either side of this property could have had stairs at only 3.5 feet from the property line.

8. Granting the variance would allow for the stairs, as constructed, to remain in place with an excess encroachment of 3.5 inches into the side yard. Per the Code, Sec. 110-206, the primary structure must have side yard setbacks where "*the total side setback shall be 15 feet with a minimum of seven feet on either side*". As constructed, the west side of the primary structure is setback from the property line 7.1 feet and the east side is setback is 9.9 feet, as such the design did not max out the allowable setback on the east side and as a whole, and the house is less intrusive than it could have been by right.

9. The proposed variance is in harmony with the general intent and purpose of the City's Land Development Regulations and will not negatively affect the character or the neighborhood. No noticeable changes would be readily visible from the street. Furthermore, none of the proposed work will impact water flow, water runoff, or other matters of public interest. The harmony of the neighborhood and general scheme of development of the neighborhood will be unchanged.

10. The variance is appropriate under the following condition(s):

A. The stairs, when reinstalled on the west side, must be compliant with the setback regulations, and as such, cannot encroach into 3.5 foot setback as measured from the property line.

B. There is a 5-foot-wide drainage easement along the easterly property line due to the existence of an outfall structure. The homeowner has been made aware that the city intends to make upgrades/repairs to the drainage pipe in the coming years and in perpetuity need access to this pipe and outfall, granting this variance will not make the city liable for any damage to the staircase and it will be the homeowners responsibility to secure the stairs as they exist. It is important to note the stairs are constructed on a deep helical pile located at the center of the staircase, and beyond 5 feet from the property line with minimal overhang.

CONCLUSION OF LAW

1. Section 2-507 of the Madeira Beach Code of Ordinances authorizes variances from the terms of the City Land Development Regulations as not being contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the land development regulations will result in unnecessary and undue hardship.

2. The applicant has the burden to establish the requirements for the variance. Here, the applicant meets the criteria for the variance as set forth in Section 2-507 of the Madeira Beach Code of Ordinances.


ORDER

It is ADJUDGED that the application is GRANTED, allowing a variance from the zoning requirements of the Madeira Beach Land Development Regulations, to allow the constructed exterior spiral staircase to remain in place by extending the allowable encroachment 3.5" (0.3 feet) into the required 4 foot setback, reducing the setback to 3.7 feet, within the following conditions:

A. The stairs, when reinstalled on the west side, must be compliant with the setback regulations, and as such, cannot encroach into 3.5 foot setback as measured from the property line.

B. There is a 5-foot-wide drainage easement along the easterly property line due to the existence of an outfall structure. The homeowner has been made aware that the city intends to make upgrades/repairs to the drainage pipe in the coming years and in perpetuity need access to this pipe and outfall, granting this variance will not make the city liable for any damage to the staircase and it will be the homeowners responsibility to secure the stairs as they exist. It is important to note the stairs are constructed on a deep helical pile located at the center of the staircase, and beyond 5 feet from the property line with minimal overhang.

DONE AND ORDERED on October 31, 2023.


Bart R. Valdes

Special Magistrate

Copies furnished to:

Tom Trask, City Attorney

Clara VanBlargan, City of Madeira Beach

**Paul Kuiken
352 145th Ave. E.
Madeira Beach, Florida 33708**

**Green Meadow Farms, LLC
432 Buttonwood Ln.
Largo, FL 33770**

LOCAL GOVERNMENT VARIANCES, SPECIAL EXCEPTION USES
AND APPEALS OF ADMINISTRATIVE DECISIONS
CITY OF MADEIRA BEACH, FLORIDA
Application No. 2023-04

Jason K. Holloway and Elizabeth Holloway
for the property located at
14830 N. Bayshore Dr.
Madeira Beach, Florida 33708,

Applicants.

_____ /

ORDER GRANTING VARIANCE

Variance to reduce rear setback from 25' to 15' to allow for an addition of a second bathroom in the existing master bedroom.

Special Code Provisions: Sec. 110-206. – Setback requirements (2) Rear yard: 25 feet. The property address is 14830 N. Bayshore Dr., Madeira Beach, FL 33708, and is identified as:

PARCEL IDENTIFICATION NUMBER: 09-31-15-60858-000-0940

Special Magistrate, Bart R. Valdes, heard testimony and reviewed all evidence received at the Special Magistrate hearing held on October 23, 2023, and, based on the evidence, the testimony of Joe Pertraglia, the testimony of Elizabeth Holloway, and recommendations of City Staff, enters the following findings of fact, conclusion of law and order.

FINDINGS OF FACT

1. The application of Jason K. Holloway and Elizabeth Holloway (“collectively the “applicant”) presents the issue involving a variance from the requirements of the above stated Madeira Beach Code of Ordinances, requesting a variance to reduce the rear setback from 25' to 15'.

2. The applicant needs a variance to allow for the addition of a second bathroom in the existing master bedroom in order to comply with the requirements of the Code of Ordinances of the City of Madeira Beach (the “Code”).

3. Special conditions and circumstances exist, as stated on the record, and in the Staff report to justify the variance.

4. The lot has a depth of 75 feet which is 5 feet less than the minimum building site area required in the R-2 zoning district. The land area of 3,128 sq ft provided by the Pinellas County Property appraiser is also 872 sq feet and 21.8% smaller than the minimum required for a single family home in this zoning district.

5. The hardship of the substandard property was not created by the property owner. The property was platted in 1949.

6. Approval of the variance will not grant any special privilege to the property. Similar properties in this zoning district received comparable variances. For example, 14901 and 14903 N. Bayshore Dr. were granted a variance to reduce their front setback to 15.1 feet and rear setback to 19 feet on April 28, 2022 (VAR 2022-01) due to a lot depth of 75 feet (same as 14830 N. Bayshore Dr). Also, 14910 N. Bayshore Dr. was granted a variance (SMVAR 2016-08) on July 12, 2016, to reduce the rear setback to ten feet and side yard setback to five feet on either side. This property, located down the block from 14830 N Bayshore Dr., has a larger land area of about 3,376 sf and similar land dimensions of 45x75.

7. Literal interpretation of the Code would reduce the buildable footprint of the lot since the lot depth is less than the now required 80'. Many other and newer properties in this neighborhood have been able to expand their livable footprint.

8. Granting the variance allows for an expansion of 6 feet x 11 feet to the rear of the existing single-family home, in line with the current perimeter of the house. This is a reasonable use of the land.

9. The proposed renovations and extension are harmonious with the general intent and purpose of the City's Land Development Regulations and will not negatively affect the character or the neighborhood. No noticeable changes would be readily visible from the street. Furthermore, none of the proposed work should impact water flow, water runoff, or other matters of public interest. The harmony of the neighborhood and general scheme of development of the neighborhood will be unchanged.

CONCLUSION OF LAW

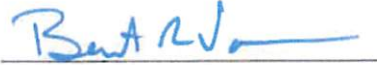
1. Section 2-507 of the Madeira Beach Code of Ordinances authorizes variances from the terms of the City Land Development Regulations as not being contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the land development regulations will result in unnecessary and undue hardship.

2. The applicant has the burden to establish the requirements for the variance. Here, the applicant meets the criteria for the variance as set forth in Section 2-507 of the Madeira Beach Code of Ordinances.

ORDER

It is ADJUDGED that the application is GRANTED, allowing a variance from the zoning requirements of the Madeira Beach Land Development Regulations, to reduce rear setback from 25' to 15' to allow for an addition of a second bathroom in the existing master bedroom.

DONE AND ORDERED on October 31, 2023.



Bart R. Valdes
Special Magistrate

Copies furnished to:

Tom Trask, City Attorney

Clara VanBlargan, City of Madeira Beach

Jason Holloway and Elizabeth Holloway
14830 N. Bayshore Dr.
Madeira Beach, FL 33708