

LOCAL GOVERNMENT VARIANCES, SPECIAL EXCEPTION USES
AND APPEALS OF ADMINISTRATIVE DECISIONS
CITY OF MADEIRA BEACH, FLORIDA
Application No. 2024-03

Bodziak/Hayes Architects
for the property located at
13495 Gulf Blvd.
Madeira Beach, Florida 33708,

Applicant.

ORDER GRANTING VARIANCE

Variance to allow six (6) feet side yard setback along 135th Way, allow six and one-half (6.5) feet rear setback at the northern half of the rear property line, and allow the elimination of the five (5) foot perimeter landscape buffering requirement along two sections of the rear property line: one starting from 45.5 feet south of the northern corner of the parcel spanning 33 feet, and the other starting from the eastern corner of the parcel spanning 23 feet.

Special Code Provisions: **Section 110-321(2, 3b)**: that the minimum rear setback of ten feet shall apply in the C-3, retail commercial district, and that the minimum side yard setback for a lots less than 120 feet in width within the C-3, retail commercial district be no less than ten feet on one side; and **Section 106-35(1-2)**: that the exterior of all vehicular use areas shall be landscaped with a buffer strip which is at least five feet in width, that when paved ground surfaces are adjacent to properties zoned exclusively for residential use, all land between the paved surface and the property line shall be landscaped, and that the landscaping shall include a buffer strip of at least five feet in width adjacent to the abutting property, containing a hedge or other durable screen of landscaping at least five feet in height. The property address is 13495 Gulf Blvd., Madeira Beach, FL 33708, and is identified as:

PARCEL IDENTIFICATION NUMBER: 15-31-15-58320-010-0080

Special Magistrate, Bart R. Valdes, heard testimony and reviewed all evidence received at the Special Magistrate hearing held on April 22, 2024, and, based on the evidence, the testimony of Jay Stearman, and recommendations of City Staff in the Staff Report and Recommendations (the "Staff Report") that was admitted into evidence, testimony of Jack Boziak, Architect, and having considered all public comment, enters the following findings of fact, conclusion of law and order.

FINDINGS OF FACT

1. The application of Bodziak/Hayes Architects (the "applicant") presents the issue involving a variance from the requirements of the above stated Madeira Beach Code of Ordinances.

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

3. The lot is irregularly shaped, which adds difficulty to the creation of a developable site compliant to setback, screening, and parking standards. The widening of Gulf Boulevard in the 1970s and subsequent roadway improvements also shortened lots fronting Gulf Boulevard including the Mitchell's Beach plat block on which the subject site is located, as described in the background section in this report.

4. The project, if approved, would provide a greener, better screened mixed-use layout which more closely matches the surrounding character and seeks to accommodate the irregular angles of property lines and adjacent right of ways.

5. The new structure must be compliant with all current floodplain, fire protection, and Florida Building Code requirements.

6. The hardships encountered are not self-created by the applicant. The lot was originally larger when the plat was first approved. The widening of Gulf Boulevard reduced the length of the lot.

7. The variance requested is contextual to the site and narrow in scope. The proposed side and rear setback requests in the variance are less nonconforming than the existing structure's setbacks.

8. The landscape requirement and best practices for safe driveway and access design are at times incompatible with the irregular lot shape. The requested setback reductions, from 10 feet to 6 feet at the side along 135th Ave, and from 10 feet to 6.5 feet at the northern half of the rear property line, appear to be the minimum required in order to satisfy other applicable requirements for the site's development program. Adjacent structures within the same platted block as the subject property such as the Tide the Knot Beach Weddings and The West Events buildings have had their lots impacted by right of way widening and have narrower setbacks than what is currently permitted, rendering these buildings legally nonconforming as well.

9. The variance is narrow in scope and suited to the specific dimensions and circumstances of the proposed site plan, namely, the irregular lot shape. The current building does not meet the current setbacks and this request is a reduction of nonconformity. The reduction of the landscape buffer requirements is minimal and due to the small area of the lot is difficult or impossible to achieve with the new parking standards that were not in place at the time of the construction of the current building. The adjacent buildings within the same platted block, mentioned above, currently have little to no landscaped area around the parking area and have much narrower front, side, and rear setbacks than what is currently permitted.

10. The granting of the variance is in harmony with the general intent and purpose of the land development regulations and is not injurious to the area involved or otherwise detrimental to public welfare. The subject property will have a similar character to adjacent commercial structures regarding lot coverage, setbacks, and orientation. The development of the

new building will also create more landscaped buffer area between the commercial and residential areas than currently on the site. The side setback will also increase the amount of open space between pedestrians and the building's side along 135th Ave as compared to the existing structure. The rear setback for the principal exterior structure wall will be 10 feet, the minimum permitted in the C-3 zoning district.

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 required side setback from 10 feet to 6 feet from the property line along 135th Ave., to reduce the required rear setback from 10 feet to 6.5 feet at the northern half of the rear property line, and to eliminate the five (5) foot perimeter landscape buffering requirement along two sections of the rear property line: one starting from 45.5 feet south of the northern corner of the parcel spanning 33 feet, and the other starting from the eastern corner of the parcel spanning 23 feet.

DONE AND ORDERED on May 1, 2024.



Bart R. Valdes
Special Magistrate

Copies furnished to:

Tom Trask, City Attorney

Clara VanBlargan, City of Madeira Beach

Tampa Home Pro, Inc.
13495 Gulf Blvd.
Madeira Beach, Florida 33708

Tampa Home Pro, Inc.
110 Crenshaw Lake Rd., Ste. 200
Lutz, FL 33548

Bodziak/Hayes Architects
5665 Central Ave.
St. Petersburg, FL 33710

CODE ENFORCEMENT SPECIAL MAGISTRATE
CITY OF MADEIRA BEACH

CITY OF MADEIRA BEACH,

CASE NUMBER: CE-24-0021

Petitioner,

vs.

SNJ MANAGEMENT, LLC
113 145th Ave. E.
Madeira Beach, FL 33708,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER IMPOSING FINE AND CERTIFYING LIEN**

THIS CAUSE came on to be heard for public hearing before the undersigned Special Magistrate on April 22, 2024, 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 Deputy Snyder provided testimony evidencing that code violations occurred, and also played body camera footage of multiple short-term rental occupants.

2. No one appeared on behalf of the Respondent.

3. No one provided public comment.

4. The property in question is located at 113 145th Ave. E., Madeira Beach, Florida 33708 ("Property"). The legal description for the Property is as follows:

MADEIRA SHORES SUB LOT 23

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 sections of the Code of Ordinances of the City of Madeira Beach to wit:

Sec. 110-201.- Definition; purpose and intent.

The R-2, low density multifamily residential district provides for low density

multifamily residential correlates with the residential medium (RM) category of the countywide plan and, which does allow for a variety of dwelling types. Any use which is not specifically identified as a permitted use, accessory use or special exception use is a prohibited use. Prohibited uses shall include, but are not limited to, short term rentals of a housing unit. As used in this division, the term "short term rental" shall mean any rental of a dwelling unit, or portion thereof, for less than a three-month period. (Code 1983, § 20-404; Ord. No. 1069, § 2, 2-28-06; Ord. No. 1138, § 3, 12-9-08; Ord. No. 2018-07 , § 1, 7-11-18)

Sec. 34-503.- Registration Required.

(a) It is unlawful for any person to allow another person to occupy any residential property as a vacation rental within the city or offer such rental services within the city, unless the person has registered the vacation rental property with the city and the vacation rental property has been issued a certificate of compliance in accordance with the provisions of this division.

(b) A person may not allow another person to occupy any residential property as a vacation rental without the issuance of a certificate of compliance if;

(1) The residential property has an effective and valid license as a vacation rental classification of public lodging establishment issued by the state department of business and professional regulations prior to February 28, 2006; and

(2) The residential property is not in violation of any section of the Code of Ordinances; and

(3) An application for registration of the residential property as a vacation rental has been filed pursuant to section 34-504 and all applicable fees have been paid; and

(4) That said occupancy was scheduled prior to November 10, 2015 as evidenced by a written and valid executed rental agreement or contract provided to city code enforcement no later than December 10, 2015. (Ord. No. 2015-13, § 1, 11-10-15)

Sec. 62-33.-Compliance Required.

It shall be unlawful for any person, either directly or indirectly, to conduct any business, profession or nonprofit enterprise, or to use in connection therewith any vehicle, premises, machine, or device, in whole or part, for which a local business tax receipt or permit is required by any law or ordinance of this city, without a local business tax receipt or permit therefor being first procured and kept in effect at all such times as required by this article. (Code 1983, § 11-101(B); Ord. No. 1111, § 3, 5-8-07)

7. The violations 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 violations and bringing the Property into compliance is on or before May 22, 2024.

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

1. The Respondent, and the Property at the above mentioned location, are found to

be in violation of Section 110-201, 62-33, and 34-503 of the Code of Ordinances of the City of Madeira Beach.


2. The Respondent shall correct the above stated violations on or before May 22, 2024, by taking the remedial action as set forth in the Notice of Violation, and as stated on the record at the Hearing.

3. Upon complying, the Respondent shall notify the Code Compliance Officer, at the City of Madeira Beach, who shall then inspect the property to confirm compliance has been accomplished.


4. If the Respondent fails to timely comply with the remedial actions as 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 Respondent has failed to correct the violations after May 22, 2024, and the fine shall continue to accrue until such time as the Property is brought into compliance.

5. 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 1st day of May, 2024.


Bart R. Valdes
Special Magistrate

A true and correct copy of this Order Imposing Administrative Fine and Certifying Lien was delivered by certified mail and regular mail to: **SNJ Management, LLC, 113 145th Ave. E., Madeira Beach, Florida 33708; and 195-197 Governor St., Paterson, NJ 07501;** 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 1st day of May, 2024.


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. 2024-02

Gregg Gallagher
for the property located at
14062 West Parsley Dr.
Madeira Beach, Florida 33708,

Applicant.

AMENDED ORDER GRANTING VARIANCE

Variance to reduce the rear setback by 7 feet and the side setbacks by a total of 2.4 feet to match that of the current structure.

Special Code Provisions: Sec. 110-181. – (2) Rear yard: Waterfront lots: 30 feet. & (3) Side yard: Total side setback of 15 feet with a minimum of seven feet on either side. The property address is 14062 West Parsley Dr., Madeira Beach, FL 33708, and is identified as:

PARCEL IDENTIFICATION NUMBER: 10-31-15-34398-018-0180

Special Magistrate, Bart R. Valdes, heard testimony and reviewed all evidence received at the Special Magistrate hearing held on April 22, 2024, and, based on the evidence, the testimony of Joe Petraglia, and recommendations of City Staff in the Staff Report and Recommendations (the “Staff Report”) that was admitted into evidence, enters the following findings of fact, conclusion of law and order.

FINDINGS OF FACT

1. The application of Gregg Gallagher (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 for a new home to be built.
2. Special conditions and circumstances exist, as stated on the record, and in the Staff Report to justify the variance.
3. The lot is an irregular triangular shape due to its location at the end of a cul-de-sac. As a result, the front property line is only 24 feet wide rounding around the cul-de-sac.
4. Google Earth images show most of the other houses on this cul-de-sac encroach into the required side and rear setbacks.
5. The new home would be elevated and all construction features would be more resilient from flood waters.

6. The need for this variance results primarily from the irregularly shaped lot which is not a result of any actions from the applicant or homeowner. The plat for the property and the existing home were approved before the current R-1, Single-Family Residential Zoning District land development regulations were adopted.

7. Approval of the variance will not grant any special privilege to the property. Most properties in this zoning district do not have the irregular shape lot that 14062 W. Parsley Dr. does which significantly limits the buildable footprint. Similarly, 14060 W. Parsley Dr. directly next door on the same cul-de-sac was granted SMVAR 2015-02 on April 14, 2015. The approved variance reduced their rear yard setback to 16.42 feet, which is a further rear setback encroachment compared to what is being requested by this variance.

8. Due to the irregular lot shape, literal interpretation of the setbacks would deny the homeowner a new single-family home of similar size to many others in this zoning district.

9. The setbacks being proposed by the applicant in this variance are the minimum amount of variance required that will make possible the reasonable use of this lot. The current structure already encroaches into the required rear and side setbacks. The setbacks being proposed by this variance match the setbacks of the existing structure. The proposed variance would not lead to an increase in nonconformity. Additionally, it is worth noting that the applicant has revised their application and site plan on two separate occasions at the request of city staff to get to the currently proposed setback request as staff did not find the previous two requests to meet this criteria.

10. 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. Additionally, the new home proposed would be FEMA compliant, replacing the existing flood prone and non-conforming structure which would improve the area and public welfare.

CONCLUSION OF LAW

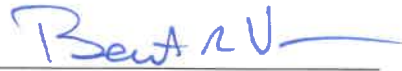
1. Section 2-507 of the Madeira Beach Code of Ordinances authorizes variances from the terms of the City Land Development Regulations as not being contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the land development regulations will result 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 rear setback by 7 feet and the side setbacks by a total of 2.4 feet to match that of the current structure.

DONE AND ORDERED on May 3, 2024.



Bart R. Valdes
Special Magistrate

Copies furnished to:

Tom Trask, City Attorney

Clara VanBlargan, City of Madeira Beach

Gregg Gallagher
304 S. Prospect Ave.
Clearwater, FL 33756

Patrick and Denise Winn
14062 W. Parsley Dr.
Madeira Beach, FL 33708

LOCAL GOVERNMENT VARIANCES, SPECIAL EXCEPTION USES
AND APPEALS OF ADMINISTRATIVE DECISIONS
CITY OF MADEIRA BEACH, FLORIDA
Application No. 2024-04

David Greene and Cecelia Donovan
for the property located at
13510 1st St. E.
Madeira Beach, Florida 33708,

Applicant.

AMENDED ORDER GRANTING VARIANCE

Variance to reduce side yard setback by 0.5' to allow for 3' wide utility deck.

Special Code Provisions: Sec. 110-206. – (3) Side yard: a. Single-family lots less than 50 feet wide may reduce the total side setback to ten feet with a minimum of five feet on either side. & Sec. 110-206. – (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. All mechanical equipment must be appropriately shielded from public view with materials including, but not limited to, louvers, lattice and the like. The property address is 13510 1st St. E., Madeira Beach, FL 33708, and is identified as:

PARCEL IDENTIFICATION NUMBER: 15-31-15-58320-009-0070

Special Magistrate, Bart R. Valdes, heard testimony and reviewed all evidence received at the Special Magistrate hearing held on April 22, 2024, and, based on the evidence, the testimony of Joe Petragala, and recommendations of City Staff in the Staff Report and Recommendations (the “Staff Report”) that was admitted into evidence, the testimony of Joe Lyons on behalf of the applicant, and having considered all public comment, enters the following findings of fact, conclusion of law and order.

FINDINGS OF FACT

1. The application of David Greene and Cecelia Donovan (the “applicant”) presents the issue involving a variance from the requirements of the above stated Madeira Beach Code of Ordinances.
2. Special conditions and circumstances exist, as stated on the record, and in the Staff Report to justify the variance.
3. Many houses in eco-village (including 13510 1st St. E.) already have utility decks that encroach into the side yard setback by more than 50%.

4. The purpose of the proposed utility deck is to install modern energy storage units and related equipment elevated above Base Flood Elevation (“BFE”) to support additional solar panels to power the home without a generator during a power outage.

5. This is not a self-created hardship because the applicant does not have enough existing side yard space to add a compliant platform without encroaching more than 50%. The applicant has not yet begun work and has been researching how to complete this project while complying with all applicable codes.

6. Other properties located in the eco-village were granted the same variance in 2016 and would also be able to install the same power walls being proposed by this applicant.

7. Literal interpretation of the setbacks would deny the homeowner the ability to extend their utility deck while other property owners located in the R-2 Zoning District would be able to build one by right.

8. Three feet is the minimum width of such utility decks allowed by duke on other codes, therefore the additional 0.5 feet being requested by the applicant is the minimum allowable to install such equipment which is a reasonable use of the land. Additionally, it is worth noting that the applicant has reviewed other options as to locations for such equipment before settling on the side yard.

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. As previously stated, many other homes located in the ecovillage including 13510 1st St. E. already have utility decks that encroach into the required side yard setback. The harmony of the neighborhood and the general scheme of development of the neighborhood will be unchanged.

CONCLUSION OF LAW

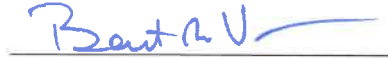
1. Section 2-507 of the Madeira Beach Code of Ordinances authorizes variances from the terms of the City Land Development Regulations as not being contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the land development regulations will result 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 side yard setback by 0.5' to allow for 3' wide utility deck.

DONE AND ORDERED on May 3, 2024.



Bart R. Valdes
Special Magistrate

Copies furnished to:

Tom Trask, City Attorney

Clara VanBlargan, City of Madeira Beach

David Greene and Cecelia Donovan
13510 1st St. E.
Madeira Beach, Florida 33708