



SPECIAL MAGISTRATE – VARIANCE REQUEST

VAR 2023-05

Staff Report and Recommendation Special Magistrate Meeting – October 23, 2023

Application: VAR 2023-05
Applicant: Paul Kuiken
Property Owner(s): Green Meadow Farms Inv LLC
Property Address: 352 145th Ave E, Madeira Beach, FL 33708
Parcel ID: 10-31-15-54324-000-0330
Legal Description: MADEIRA SHORES 1ST ADD SW^{ERLY} 25FT of LOT 33
& NE^{ERLY} 35FT of LOT 34
Zoning/Future Land Use: R-2, Low density multifamily residential/Residential Medium

Request: 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%.

Specific 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.*

I. Background

A permit was issued on October 19, 2018, Permit #3080, for construction of a new single-family home. The site plan indicated the west side of the residential structure would be 7 feet from the property line and the east side of the structure would be 10 feet from the property line. Exterior stairs were shown on the site plan indicating the stairs on the west side would be 3.5 feet from the property line and the proposed spiral staircase on the east side would be 4 feet from the property line. As drawn, the stairs met the allowable encroachment of 50% into the required side yard setback and were approved. The city received a complaint on August 1, 2022, from a neighboring resident, stating they were concerned the stairs encroached beyond the allowable 50%. On August 2, 2022, the city received the as built survey for review. The survey indicated the exterior most, outer edge of the spiral staircase on the east side of the residence was 3.70 feet from the property line versus the required 4 feet. The survey also indicated the staircase on the west side was 3.2 feet from the property line versus the required 3.5 feet. Both staircases are pre-fabricated metal. The stairs on the west side have been removed and are

being retrofitted to comply with the setbacks, however given the complexity of the spiral staircase the homeowner has opted to pursue a variance.

II. Variance Criteria (Sec. 2-507(b)) and Analysis

(1) Special conditions and circumstances exist which are peculiar to the land, building, or other structures for which the variance is sought and which do not apply generally to the lands, building, or other structures in the same district. Special conditions to be considered shall include, but are not limited to, the following circumstances:

a. Substandard or irregular-shaped lot. If the site involves the utilization of an existing lot that has unique physical circumstances or conditions, including irregularity of shape, narrowness, shallowness, or the size of the lot is less than the minimum required in the district regulations;

b. Significant vegetation or natural features. If the site contains significant native vegetation or other natural features;

c. Residential neighborhood character. If the proposed project promotes the established historic or traditional development pattern of a block face, including setbacks, building height, and other dimensional requirements;

d. Public facilities. If the proposed project involves the development of public parks, public facilities, schools, or public utilities;

e. Architectural and/or engineering considerations. If the proposed project utilizes architectural and/or engineering features that would render the project more disaster resistant.

Findings: *e. Architectural and/or engineering considerations.* The work and materials used meet current building code standards and will provide an exit path from the elevated balcony that doesn't require passage through the home.

(2) The special conditions and circumstances do not result from the actions of the applicant. A self-created hardship shall not justify a variance.

Findings: The 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 worked being performed.

(3) Granting the variance will not confer on the applicant any special privilege that is denied to other lands, buildings, or structures in the same zoning district.

Findings: 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.

(4) Literal interpretation would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the land development regulations, subpart B of this Code and would work unnecessary and undue hardship on the applicant.

Finding: 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.

(5) The variance granted is the minimum variance that will make possible the reasonable use of the land.

Findings: 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 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, the house is less intrusive than it could have been by right.

(6) The granting of the variance will be in harmony with the general intent and purpose of the city land development regulations, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Findings: 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. 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.

III. Staff Recommendation:

Staff recommends approval of this variance with the following condition and acknowledgement:

- 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.
- 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.

Submitted by: Marci L. Forbes, PE, CFM

Attachments: 1) Application
2) Permitted Site Plan
3) As Built Survey
4) Survey with Easement depicted
5) Public Notice mailing and posting