



SPECIAL MAGISTRATE – VARIANCE REQUEST

VAR 2023-07

Staff Report and Recommendation

Special Magistrate Meeting – November 27, 2023

Application: VAR 2023-07
Applicant: Timothy Szumigala, Jr.
Property Owner(s): Timothy Szumigala, Jr.
Property Address: 816 Bay Point Drive, Madeira Beach, FL 33708
Parcel ID: 10-31-15-04500-001-0350
Legal Description: BAY POINT ESTATES 2ND ADD BLK 1, LOT 35
Zoning/Future Land Use: R-1, Single-Family Residential/Residential Urban

Request: The applicant is requesting to reduce the front yard setback requirement from 20 feet to 15 feet 10 inches. The rear yard setback from 30 feet to 28’ 6” and a side yard reduction from 8 feet to 7.8 feet.

Specific Code Provisions: Sec. 110-181. – (1) *Front yard: 20 feet measured from the right-of-way line to the structure,* (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.*

I. Background

A permit was issued on June 14, 2021, Permit# 20210568, with the scope of work described as, “Move home on-site for foundation repair and add master bedroom/bath” in addition to elevating the existing structure a rear balcony was added. Below is a brief summary of events, *please note all dimensions referenced are taken from the drawing and/or survey in which they came from and therefore sometimes vary from inches to tenths.*

REAR YARD SETBACK

During the site plan review process, city staff did not comment on nor notice that the rear columns for the second floor balcony encroached into the allowable rear yard setback and as such they were permitted in conflict with the city Land Development Regulations (LDRs). The columns, as designed and permitted, were 26 feet 4 inches from the waters’ edge of seawall to the exterior edge of the column, and per LDR the distance should have been 30 feet. The issue was identified during a scheduled site inspection by the building official on August 22, 2022, when the distance was measured at 28 feet 6 inches, a “Stop Work Order” was issued and the Planning and Zoning staff was notified. After review, city staff agreed to allow the encroachment and made an internal note regarding the issue with no further action required. According to staff, this decision was based on Sec. 110-427(a)(2) *Yard Regulations – Open sky Every part of a required yard (see appropriate section of schedule of use, lot, yard and bulk regulations) must be open to the sky unobstructed, except as otherwise permitted in this Code. The following may encroach into the minimum yard requirements of each lot, provided the required permits have been*

obtained: Rear yard second floor and above balconies not exceeding four feet;. The variance request is to memorialize this decision.

FRONT YARD SETBACK

The site plan submitted for review and permitting depicted the 20-foot setback with a reference line, but the line was shown in error as it was measured from the back of curb and not the property line. In addition to the reference line though, the distance from the property line to the front of the primary structure was dimensioned at 18 feet 1 inch, this is in conflict the city LDRs previously noted, requiring a front yard setback of 20’. This was not caught during plan review and as such went into construction with these setbacks. On February 15, 2023, the building inspector failed an inspection at the residence, in part due to construction of an unpermitted driveway. After a significant amount of correspondence with the designer and contractor over the driveway, a driveway drawing submitted for review revealed the front staircase and primary structure were non-compliant with the required front yard setback and deviated from the dimensions in the permitted plans. A subsequent tie in survey (as built) verified the encroachment as well.

SIDE YARD SETBACK

As permitted the side yard setbacks are not compliant. The original structure was within the required setback but as permitted the side which would have required a minimum 8 foot setback was shown and permitted with a range from 7 feet 8.5 inches & 7 feet 5.5 inches and as constructed this side is 7.8 feet from the property line.

Below is a table summarizing setback information.

SETBACKS			
	REQUIRED	AS PERMITTED	AS CONSTRUCTED
*Front Yard	20 ft.	18 ft. 1 in.	15 ft. 11 in.
**Rear Yard	30 ft.	25 ft. 8 in.	28 ft. 6 in.
Side Yard	7 ft. min. total of 15 ft.	7 ft. & 7 ft. 5.5 in. (W), 7 ft. 8.5 in. (E)	7 ft. (W) & 7.8 ft. (E)

* As measured from property line to stairs

**As measured from waters’ face of seawall to exterior edge of balcony column

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 elevated home will be more resilient from flood waters and the area below the first living floor as well as additions utilized materials meeting current building code standards.

(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 homeowner contracted with licensed design professionals and contractors to help ensure proper design and construction of the residence. The plans were submitted and reviewed through the proper municipal channels. Due to the previously described errors and oversights, it would not have been the responsibility of the homeowner to catch and/or recognize the issues which have occurred. No design or construction decisions appear to have been conducted in an attempt to intentionally ignore requirements.

(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 residence 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 would create considerable hardship to the applicant and the corrective measures would

(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 rear balcony columns and front structure with stairs to remain as built and are the least amount necessary.

(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. The harmony of the neighborhood and general scheme of development of the neighborhood will be unchanged.

III. Staff Recommendation and Condition:

Staff recognizes the series of events that has led to the need for a variance and as much as all parties involved, would like to reach a resolution. It is important to note that City staff has spent a significant amount of time on this project, trying to work with the design team, contractor and homeowner for resolutions to all the hurdles that have been encountered. Staff fully understand the homeowner engaged professionals from the beginning to properly design and construct the project but a series of oversights, misunderstanding and errors on behalf of the applicant and the city has led us to the point of requiring a variance for a certificate of occupancy to be issued. In the best interest of the resident, city staff recommends approval of these variances but cannot stress emphatically enough that in no way is this intended to be construed as approval of the “after the fact” approach to out of tolerance construction.

One condition for the issuance of this variance and subsequent certificate of occupancy is for the applicant to bring the constructed driveway into compliance with the city LDRs. There has been significant conversation with the contractor and homeowner as to the means by which this can be accomplished and they are prepared to correct this issue once the variance is processed.

Submitted by: Marci L. Forbes, PE, CFM

Attachments: 1) Application
2) Permitted site plan
3) Survey of Property – Prior to and After Elevation of Structure
4) Email correspondence from staff for rear yard setback encroachment
5) Public Notice mailing and posting