



CITY OF MADEIRA BEACH

PLANNING & ZONING DEPARTMENT

300 MUNICIPAL DRIVE ♦ MADEIRA BEACH FLORIDA 33708

(727) 391-9951 EXT. 255 ♦ FAX (727) 399-1131



SPECIAL MAGISTRATE – VARIANCE APPLICATION

\*Applicant: Name and Address

Paul Kuiken

432 Buttonwood Ln

Largo FL 33770

Telephone: (407) 925-9753

Email: Jibarm@aol.com

\*Property Owner: Name and Address

Green Meadow Farms Inv

432 Buttonwood Ln

Largo, FL 33770

Telephone: (407) 925-9753

Email: Jibarm@aol.com

Application for the property located at: (Street Address or Location of the Vacant Lot)

352 145th Ave E Madeira Beach FL

Legal Description: Madeira Shores 1st ADD

SW'ERLY 25 FT OF LOT 33 &

NE'ERLY 35 FT OF LOT 34

Lot Area: \_\_\_\_\_

Width: 60 ft.

Depth: 100 ft.

Zoning District: R-2

Present Structures on Property: Framed Home

Present Use of Property: Residential Single Family Home

Date Building Permit Request denied: N/A

Variance(s) needed from the zoning requirements: 3.5 inches Side Yard

Set Back

PLEASE ATTACH REQUIRED SUPPORTING MATERIALS: SITE PLAN, PICTURES, DEED, SURVEYOR'S SKETCH, DRAWINGS, EXPLANATION, ETC.

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Special Magistrate Case #: \_\_\_\_\_

**\*\* For City of Madeira Beach Use Only\*\***

Fee: \_\_\_\_\_  Check # \_\_\_\_\_  Cash  Receipt # \_\_\_\_\_

Date Received: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ Received by: \_\_\_\_\_

Special Magistrate Case # Assigned: \_\_\_\_\_

Special Magistrate Hearing Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_  Approved  Denied

- \_\_\_\_ Zoning Variance for Residential Dwelling Units (One, Two or Three Units) \$1,800.00 per Variance
- \_\_\_\_ Zoning Variance for Multi-Family, Tourist Dwellings or Commercial \$2,000.00 per Variance
- \_\_\_\_ After-the-fact Variance \$3,600.00 per Variance

X \_\_\_\_\_  
Jenny Rowan, Community Development Director

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

X \_\_\_\_\_  
Robin Gomez, City Manager

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

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**APPLICATION (Must submit the following analysis)**

This application to the Special Magistrate is requesting permission to: \_\_\_\_\_

Receive a Variance which will allow a round spiral staircase to extend 3.5 inches into a four foot designated side yard set back

The special magistrate shall authorize, upon application to appeal, after public notice has been given and public hearing held, such variance 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, subpart B of this Code will result in unnecessary and undue hardship. In order to authorize any variance from the terms of the city land development regulations, the special magistrate shall consider the following criteria and shall find that the criteria has been satisfied in full and that a hardship exists.

**On a separate attached page, explain in detail how your request meets City Code Sec. 2-507 by complying with the following rules. Please note that your explanation demonstrate that your request meets one or more of the conditions listed under criteria #1 below and that it also meets in full criteria 2 through 6 below:**

1. Demonstrate that special conditions and circumstances exist which are particular to the land, building, or other structures in the same district. Special conditions to be considered shall include but are not limited to:
  - 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.

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2. Demonstrate that special condition (s) and circumstance (s) do not result from the actions of the applicant. A self-created hardship shall not justify a variance.
3. Demonstrate that the granting of 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.
4. Demonstrate that the 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 the code and would work unnecessary and undue hardship on the applicant.
5. Demonstrate that the variance granted is the minimum variance that will make possible the reasonable use of the land.
6. Demonstrate that 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.

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**OWNER CERTIFICATION**

I hereby authorize permission for the Special Magistrate, Building Official and Planning & Zoning Director to enter upon the above referenced premises for purposes of inspection related to this petition.

I hereby certify that I have read and understand the contents of this application, and that this application, together with all supplemental data and information, is a true representation of the facts concerning this request; that this application is made with my approval, as owner and applicant, as evidenced by my signature below.

It is hereby acknowledged that the filing of the application does not constitute automatic approval of the request; and further, if the request is approved, I will obtain all the necessary permits and comply with all applicable orders, codes, conditions, rules and regulations pertaining to the subject property.

***I have received a copy of the Special Magistrate Requirements and Procedures (attached), read and understand the reasons necessary for granting a variance and the procedure, which will take place at the Public Hearing.***

**Appeals.** (City Code, Sec. 2-109) An aggrieved party, including the local governing authority, may appeal a final administrative order of the Special Magistrate to the circuit court. Such an appeal shall not be a hearing *de novo* 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.

X Paul D. Kuiken Date: 09 / 15 / 2023  
Property Owner's Signature

STATE OF Florida

COUNTY OF Pinellas

Before me this 15th day of September, 2023, Paul D. Kuiken appeared in person who, being sworn, deposes and says that the foregoing is true and correct certification and is  personally known to me or  has produced FLDL as identification.

[SEAL]



Deborah A. Parrish  
State of Florida  
My Commission Expires 10/18/2024  
Commission No. HH 47438

Deborah A Parrish  
Public Notary Signature

**NOTICE:** Persons are advised that, if they decide to appeal any decision made at this hearing, they will need a record of the proceedings, and for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

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**NON-OWNER (AGENT) CERTIFICATION**

I hereby authorize permission for the Special Magistrate, Building Official and Planning & Zoning Director to enter upon the above referenced premises for purposes of inspection related to this petition.

I hereby certify that I have read and understand the contents of this application, and that this application, together with all supplemental data and information, is a true representation of the facts concerning this request; that this application is made with my approval, as owner and applicant, as evidenced by my signature below.

It is hereby acknowledged that the filing of the application does not constitute automatic approval of the request; and further, if the request is approved, I will obtain all the necessary permits and comply with all applicable orders, codes, conditions, rules and regulations pertaining to the subject property.

***I have received a copy of the Special Magistrate Requirements and Procedures (attached), read and understand the reasons necessary for granting a variance and the procedure, which will take place at the Public Hearing.***

**Appeals.** (City Code, Sec. 2-109) An aggrieved party, including the local governing authority, may appeal a final administrative order of the Special Magistrate to the circuit court. Such an appeal shall not be a hearing *de novo* 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.

X \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_  
*Property Owner's Signature (If other than the property owner)*

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, \_\_\_\_\_  
 appeared in person who, being sworn, deposes and says that the foregoing is true and correct certification and is  personally known to me or  has produced \_\_\_\_\_ as identification.

[SEAL]

\_\_\_\_\_  
 Public Notary Signature

**NOTICE:** Persons are advised that, if they decide to appeal any decision made at this hearing, they will need a record of the proceedings, and for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

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## FOR YOUR RECORDS

### SPECIAL MAGISTRATE: REQUIREMENTS AND PROCEDURES (City Code Sec. 2-507)

- 1) Demonstrate that special conditions and circumstances exist which are particular to the land, building, or other structures in the same district. Special conditions to be considered shall include but are not limited to:
  - 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.
- 2) The special conditions and circumstances do not result from the actions of the applicant. A self-created hardship shall not justify a variance.
- 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.
- 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.
- 5) The variance granted is the minimum variance that will make possible the reasonable use of the land.
- 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.

In granting any variance, the Special Magistrate may prescribe appropriate conditions and safeguards in conformity with the city land development regulations. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted shall be deemed a violation of this Code. The Special Magistrate may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both. Under no circumstances except as permitted in the applicable zoning district of the city land development regulations. A nonconforming use of neighborhood lands, structures or buildings in the same zoning district shall not be considered grounds for the authorization of a variance. **Financial loss** standing alone is not sufficient justification for a variance.

The hearing will be conducted in the following manner:

1. Public notice will be read along with correspondence received.
2. City presents its case, and the applicant may cross-examine.
3. The Applicant presents his or her case supported by witnesses and evidence; and the City has the right to cross-examine each witness.
4. Public comment will only be solicited or received from parties directly affected by the variance. Individuals testifying do not have the right to cross-examine the parties.
5. Public participation will be closed, the Special Magistrate deliberates and makes a decision to grant or deny each variance requested in the application.

All variances granted by the Special Magistrate and not acted on within on (1) year of being granted will automatically expire.

The granting of a variance does not relieve the applicant from obtaining a building permit. The Special Magistrate does not have the authority to grant variances from the 100 Year Flood Level for Residential or Commercial Property.

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Special Magistrate Case #: \_\_\_\_\_

APPLICATION (tust submit the fiollowng anatysb)

This application to the Special Magistrate is requesting permission to:

Extend the outer curved edge of an existing spiral staircase .03' (3.6") more than the City allotted set back allowance.

Special Magistrate Case #: \_\_\_\_\_

1. Demonstrate that special conditions and circumstances exist which are particular to the land, building, or other structures in the same district. Special conditions to be considered shall include **but are not limited to:**

This case \_\_\_\_\_ falls under guideline # 1's **"Not Limited to"**.

AND:

This case \_\_\_\_\_ may also fall under category e:

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

**"render the project more disaster resistant"** by providing trapped residents an emergency fire exit from the second and third floor.

Special Magistrate Case #: \_\_\_\_\_

2. Demonstrate that special condition (s) and circumstance (s) do not result from the actions of the applicant. A self-created hardship shall not justify a variance.

352 145<sup>th</sup> Ave.

Madeira Beach, FL

My home's rear spiral staircase was designed to provide additional patio access to all floors and also serve as an emergency rear exit to both the second and third floor in the event of a fire or emergency.

The home and spiral stair design was drawn up by a licensed architect and approved and permitted by the City of Madeira Building Department.

Hired in January 2018 to construct the new home at 352 145<sup>th</sup> Ave the General Contractor (GHD) almost immediately slowed construction for three years and abandoned the property in August 2021. GHD's work only included the pouring of the foundation, blocking and framing of the home. This same General Contractor also slowed and stopped construction on several other homes in the Pinellas County area



due to faulty construction workmanship. After years of legal battles with this contractor I was able to fire GHD and find a professional contractor to finish the home in 2023.

The home construction was in its last stage of construction which included the installation of the back three story spiral staircase. The stairs were lifted over the three story home and carefully inserted by crane. It was only a week later that it was brought to our attention by a neighbor that the spiral staircase was 3.6 inches (.03') wider than what the City code setbacks would allow. Upon further review it was discovered that the original General Contractor (GHD) poured the footers and foundation over 1.2" inches off plans. The addition of a stucco and a decorative trim band caused these stairs to fall further into the allotted set back by 0.3' (3.6 inches).

Due to the home foundation being poured incorrectly and the concrete framing built further more to one side the stairs cannot be cut or refabricated by 3.6 inches (0.3') which is needed to fit within code.

It is due to these circumstances and as a recommendation of the City of Madeira engineers that I request that the City of Madeira Magistrate review for approval my home at 352 145<sup>th</sup> Ave. a 3.6 inch (0.3') variance which will allow for the existing spiral staircase to remain as they are seen now. (See photos below)

**3. Demonstrate that the granting of 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.**

At this time there are no other three story spiral staircases in the same zoning district which have been denied a 3.6 inch extension in the City code side set back restriction.

**4. Demonstrate that the 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 the code and would work unnecessary and undue hardship on the applicant.**

The removal of the stairs will deprive the residents of common rear access to and from the balconies as many multi story homes do provide in the zoning district. This would also deprive the residents the feeling of security and safety of an emergency second and third floor exit in the event of a fire.

**5. Demonstrate that the variance granted is the minimum variance that will make possible the reasonable use of the land.**

The photos below and the survey attached show the clearance of the stairs to the neighboring property line to be 3.7' or 3.8 inches with more than enough room for ease of access and reasonable use of the land.

**6. Demonstrate that 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.**

The photos below show the harmony of the professionally constructed brown powder coated spiral staircase which are designed to meet state building code. The stairs will not be injurious or have any detriment to the public welfare. On the contrary the stairs could provide a safe haven of refuge in the event of a storm surge.









