

LOCAL GOVERNMENT VARIANCES, SPECIAL EXCEPTION USES  
AND APPEALS OF ADMINISTRATIVE DECISIONS  
CITY OF MADEIRA BEACH, FLORIDA  
Application No. 04.50

Christ at the Sea Foundation, Inc.  
for the property located at  
13280 4th Street East,

Applicant.

---

**ORDER GRANTING SPECIAL EXCEPTION USE**

Madeira Beach Land Development Regulations, Chapter 110 (Zoning), Article V (Districts), Division 3, (R-2, Low Density Multifamily Residential), Section 110-204 (Special exception uses), item (1) (Churches, synagogues, and other houses of worship)

LEGAL DESCRIPTION: Page's Replat of Mitchell's Beach, Block J,  
Lots 12 and 13

PARCEL IDENTIFICATION NUMBER: 15/31/15/65304/010/0120

Special Master, Herbert E. Langford, Jr., heard testimony and reviewed all evidence received at the Special Master hearing held on January 24, 2005 and, based on the evidence, enters the following findings of fact, conclusions of law and order.

**FINDINGS OF FACT**

1. This application presents the issue involving a special exception use from the zoning requirements of the above Madeira Beach Land Development Regulations, requesting to permit a church in the R-2 Zoning District.
2. The Special Master has received the written report from the planning commission and the public hearing. Special Master has also reviewed the correspondence (City's Composite Exhibit 1), and the documentary evidence (City's Composite Exhibit 2).
3. The applicant, Christ at the Sea Foundation, Inc. ("Applicant" or "Foundation")'s property does not conform to the requirements of the Code of Ordinances of the City of Madeira Beach, because Section 110-204 requires permission for a special exception use.
4. The use is a permitted special use in the R-2, Low Density Multifamily Residential Zoning District, as provided in Section 110-204 of the Code of Ordinances. See Section 110-204 (Special exception uses), item (1) (Churches, synagogues, and other houses of worship).

Application 04.50

5. The use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected. The Applicant proposes that the special exception use will occur solely and only in the recreation room/private chapel, which is internal to the lot. The building is centrally located on the two-lot property.
6. The use will not cause substantial injury to the value of other property in the neighborhood where it is to be located. According to the Pinellas County Property Appraiser, the subject property's (Lots 12 and 13) value is \$297,200, the highest value in the block. Other property in the same block range in value from \$86,400 (Lot 15, a vacant lot) and \$121,000 (Lot 5) to \$246,600 (Lots 9 & 10). Applicant also owns Lot 14, valued at \$207,100.
7. The use will be compatible with adjoining development and the proposed character of the district where it is to be located. Land development regulations for the R-2 District require a minimum lot size for a duplex of 60 feet wide X 80 deep (3000 square feet per dwelling, for a total of 6000 square feet). The subject property's size is 80 feet x 104 feet (8320 square feet). The subject property also favorably measures and well meets the requirements for maximum lot coverage, maximum building height, and impervious surface ratio. The site plan shows that the room is 18 feet X 24 feet. The building measures nine feet from the finished floor to the eave. The property's historical use (and compatibility applicable to this factor) is discussed below in paragraph 10.
8. Adequate landscaping and screening are provided as required in the land development regulations, or otherwise required. The Applicant proposes to place as a condition on the special exception use request a requirement of a 6-foot fence, wall or hedge along the side and rear property lines to buffer the special exception use from adjacent residential units. The property has, at least, four trees, and hedges internal to the property, in addition to those on the perimeter. Hedges shall be planted and maintained so as to form a continuous, unbroken, solid visual screen.
9. Adequate off-street parking and loading are provided, and ingress and egress are so designed as to cause minimum interference with traffic on abutting streets. The Applicant proposes to place as a condition on the use request a limit of 30 seats. The property has parking in front for four to six vehicles, and up to 20 vehicles on the Foundation-owned site next door. Under the Land Development Regulations, the number of parking spaces associated with a "place of assembly" is one parking space per six seats, whether fixed or not fixed, or five parking spaces. The site under consideration is located on two lots. Fourth Street is a local street.
10. That the use conforms with all applicable regulations governing the district where located, except as may otherwise be allowable for planned unit developments. The special exception use would be established in an existing building permitted (in approximately 1998) by the City of Madeira Beach as a recreation building.

Application 04.50

Historically, the Applicant's principal, Dr. Miller Newton has referred to the 18-foot X 24-foot room, or building, as a "common space for a recreation room like many condo and apartment facilities have." Board of Commissioners Minutes, New Business, 98.40, June 16, 1998. He has expressed that its use is a "common room that the people there [at the duplexes] could use." Pages 1 and 4, Excerpt of transcript of minutes, June 16, 1998 BC Meeting, Item 98.40. Dr. Newton has long held that the room is a "multipurpose recreation/community room, . . . a private chapel, . . . no different than someone using an extra bedroom or study in the house as a chapel." Letter date-stamped October 26, 1998 in upper right-hand corner from Dr. Newton to then City Manager Leinbach. Except for a brief, temporary use as a church in 1999, the stated use, at least in part as a private chapel, (known to the City and citizens alike) has continued without incident since 1998 until approximately mid-2004. Even after the 2004 addition of the cupola and cross, the asserted use is as a private chapel. Even as the City began to aggressively pursue the ultimate resolution of the issues surrounding this property and final determination of its permitted use, the Applicant rebuffs the designation of the private chapel as a church, but reluctantly filed this application upon consideration of its options.

11. If a variance is also desired, and/or required, a separate application shall be submitted concurrently with the special exception application. No variance is requested for this property nor associated with the special exception use request.
12. Special exception use will not grant to the land more privilege than the best use available in a zone where that special exception use would be a principal permitted use. There is no zoning district in the City of Madeira Beach where a church, synagogue, or house of worship is a principal permitted use. A church, synagogue or house of worship is listed as a special exception use in the R-2, C-1, C-3 and C-4 zoning districts only. The R-2 zoning district permits single family, duplex, triplex and townhouse residential units depending on the size of the property. The land use assignment for the property is Residential Medium Density, which permits up to 15 units per acre. The parcel is 0.19 acres in size, which permits two dwelling units.
13. No application for special exception use shall be considered by the board of adjustment until the applicant has paid in full any outstanding charges, fees, interest, fines or penalties owed to the city by the applicant or the owner or possessor of the property under any section of the Code. The Applicant or owner of the property owes no known charges, fees, interest, fines or penalties to the City of Madeira Beach where this Special Exception Use is requested.
14. The Applicant has requested certain self-imposed conditions for the special exception use. 14.01 through 14.11, inclusive, are those self-imposed conditions, including Special Master's modification or clarification. Special Master has added additional conditions 14.12 through 14.20, inclusive. The special exception use is appropriate

Application 04.50

under the following condition(s):

- 14.01 This use shall be for a limited-purpose church, specifically, a private chapel.
- 14.02 There shall be no public advertisement of religious services in publications or external to the building.
- 14.03 There shall be no Sunday school, men's or women's club activities on the premises.
- 14.04 The entrance to the private chapel shall be internal to the site.
- 14.05 There shall be no more than twenty-five (25) chairs (seats) in the private chapel.
- 14.06 This use must maintain a six-foot fence, wall or landscape boundary along the side and rear property lines.
- 14.07 This use must maintain sufficient off-street parking spaces, consisting of 4 parking spaces in the front and 20 parking spaces at the Foundation's property next door.
- 14.08 There shall be no choir, chorus, or organ on the property. No musical instruments shall be used on the site, except a hand-held bell.
- 14.09 All buildings on the site shall comply with all zoning, building and fire codes.
- 14.10 The property shall be limited to only two dwelling units. Specifically, there shall be only one dwelling unit per building.
- 14.11 This property shall be the address used for the Foundation. There shall be only one office on the property. The sole purpose of the office shall be related to the Foundation or the religious activities itself. The office may not be leased out or rented for any other purpose.
- 14.12 There shall be no sound amplification equipment on the property.
- 14.13 All four lots (Lots 12 through 15, inclusive, Parcel Identification Numbers 15/31/15/65304/010/0120, 15/31/15/65304/010/0140, and 15/31/15/65304/010/0150, respectively) that the Applicant owns must remain with this current owner, the Foundation. If the ownership of the land or the underlying Foundation changes (whether by deed, stock, or any other transfer of the legal or equitable right, title, or beneficial interest) for any of the four lots, this special exception use expires.

## Application 04.50

- 14.14 No building permit shall be sought nor issued to expand the size (or footprint) of the 18 feet X 24 feet building of approximately 432 square feet.
- 14.15 Any and all outdoor religious activities shall be prohibited. Any and all religious activities shall be restricted to the interior of the 18 feet X 24 feet building of approximately 432 square feet. That building shall be for the Applicant's sole and exclusive use, and shall not be leased, rented, nor licensed to another, with or without rent or fee.
- 14.16 There shall be no more than four private services per day, where up to, but not more than, ten (10) persons may attend.
- 14.17 That, on February 28 (on February 29 in a leap year) and on July 22, there may be one service on each day where up to, but not more than, twenty-five (25) persons may attend. On those dates, Applicant shall contract for outside, professional traffic control, e.g., off-duty, private detail arranged with the Pinellas County Sheriff's Office.
- 14.18 There shall be no outward appearance of religious symbols, markings nor indicia of religious symbols or use, including, but not limited to, a dome, cupola, cross, signage, or bulletin board.
- 14.19 Applicant shall forthwith begin to remove, or cause the removal of any markings or indicia set forth above in paragraph 14.18, and shall complete the removal on or before March 15, 2005.
- 14.20 If the special exception use halts or lapses for thirty (30) days, this special exception use expires.

#### CONCLUSIONS OF LAW

15. Section 2-506 of the Madeira Beach Code of Ordinances authorizes special exception uses, with appropriate conditions and safeguards, when the special use will not adversely affect the public interest, or the denial of special exception uses when not in harmony with the purpose and intent of the city land development regulations.
16. The City cannot favor, or pick or choose one particular property user (owner) over another. In other words, the issue is the property's use, not the user. The sole issue presented, considered, and treated is the property's use.
17. The city's land development regulations do not differentiate between a church and a private chapel, but the subject property's permitted use needed to be identified and defined. The end result of this application is a return to the property's previous 1998 status, the *status quo ante*. The property's then and now permitted use is a



Application 04.50

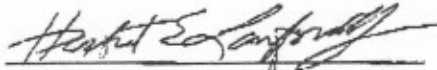
multipurpose recreation/community room, including a private chapel). There can be no expansion of the building itself nor its use, and the special exception use does not run with the land. By all outward appearances, the property is residential to maintain its compatibility with the neighborhood and character of the area.

18. The Applicant's desire for a private chapel is preserved, but with definitive, specific conditions and limitations. Concurrently, all interested persons and the public interest have a definitive regulation and conclusion.
19. The applicant has the burden to establish the requirements for a special exception use. Here, the applicant meets the criteria for a special exception use as set forth in Section 2-506 of the Madeira Beach Code of Ordinances.

**ORDER**

It is ADJUDGED that the application is GRANTED, specifically, allowing a special exception use from the zoning requirements of the Madeira Beach Land Development Regulations, Chapter 110 (Zoning), Article V (Districts), Division 3, (R-2, Low Density Multifamily Residential), Section 110-204 (Special exception uses), item (1) (Churches, synagogues, and other houses of worship), to permit a private chapel in the R-2 Zoning District, subject to the herein enumerated conditions.

DONE AND ORDERED on February 07, 2004.



Herbert E. Langford, Jr.  
Special Master

Copies furnished to:

City  
Christ at the Sea Foundation, Inc.