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TO: Ms. Paula Cohen, AICP, Director
Community Development Department

FROM: Michael Sherman, AICP

DATE: October 20, 2009

SUBJ: Application 09.04 – Special Exception modification request; “*Christ*” at the Sea Foundation, Inc.

BACKGROUND

The applicant, *Christ* at the Sea Foundation is requesting a modification of the previously adopted Special Exception Use No. 04.50, granted February 7, 2005, modified June 3, 2005 and November 20, 2008. As noted in the Special Magistrate Agenda, the applicant is specifically seeking to change the outward appearance to permit installation of a decorative cupola. This change in outward appearance includes the installation of a 51” by 45” decorative cupola with a 1” by 2” by 38” ornamental cross on the roof.

STANDARD FOR REVIEW

The standard for review for granting special exceptions is contained in Section 110-124 of the City’s land development regulations.

Sec. 110-124. Standards and requirements.

(a) In consideration of granting any special exception use, the special magistrate shall find that such grant will not adversely affect the public interest. The local planning agency shall issue a written report within 30 days after consideration by the local planning agency. In granting any special exception use, the special magistrate in addition to the standards enumerated in this article may prescribe appropriate conditions and safeguards in conformity with the land development regulations. Violation of such conditions and safeguards, when made a part of the terms under which the special exception use is granted, shall be deemed a violation of the land development regulations. The special magistrate may prescribe a reasonable time limit within which the action for which the special exception use is required shall commence, be completed or both.

(b) Such uses shall be found by the special magistrate to comply with the following requirements and other applicable requirements:

(1) That the use is a permitted special use.

(2) That the use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected.

(3) That the use will not cause substantial injury to the value of other property in the neighborhood where it is to be located.

(4) That the use will be compatible with adjoining development and the proposed character of the district where it is to be located.

(5) That adequate landscaping and screening is provided as required in the land development regulations, or otherwise required.

(6) That adequate off-street parking and loading is provided and ingress and egress is so designed as to cause minimum interference with traffic on abutting streets.

(7) That the use conforms with all applicable regulations governing the district where located, except as may otherwise be allowable for planned unit developments.

(8) If a variance is also desired, and/or required, a separate application shall be submitted concurrently with the special exception application.

(9) 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.

(10) No application for special exception use shall be considered by the special magistrate 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.

STANDARD FOR DENIAL BY SPECIAL MAGISTRATE

Section 110-112, of the City's land development code establishes the standard by which special exception requests will be reviewed against. The review standard directs the Special Magistrate to deny any special exception when not "in harmony" with the purpose and intent of the land development regulations. The specific language is found below:

Sec. 110-122. Denial.

Section 110-122 of the land development code provides that the special magistrate may deny special exception uses when not in harmony with the purpose and intent of the city land development regulations as outlined in this article.

PLANNING COMMISSION MEETING REVIEW

The Planning Commission reviewed the petition and recommended to the Magistrate that the petition be DENIED. This recommendation for denial was based that by allowing for the modification of Section 17 of the Special Exception Use Application 04.50, the property no longer maintains its compatibility and outward appearance of a residential dwelling unit. Section 17 further states that there shall be no expansion of the building itself, or the use.

INCONSISTENCIES OF PROPOSAL WITH CONCLUSIONS OF LAW

The request by the applicant for modification of the special exception use application, Section 17 should be denied. Section 17 states: 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 the application is a return to the property

previous 1998 status, the status quo ante. The property's then and now permitted use is a multipurpose recreation/community room, including a private chapel. ***There can be no expansion of the building itself***, nor its use, and the special exception 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. (emphasis added)***.

CONCLUSION

Allowing for the modification of the Special Exception Use Application 04.50 would render the cupola and cross inconsistent with the land development code and by default, the City of Madeira Beach Comprehensive Plan. Expansion of the existing use by allowing the cupola and cross violates Section 17 of the Special Exception Use application conditions for approval.

The request for modification of Section 17 of the Special Exception Use Application 04.50 should be denied.