

1.13.3 Decision Criteria – Request for Relief From GBSL standards

A. The Commission shall, based upon substantial and competent evidence, make an affirmative finding on each of the following in granting a variance application or find that the variance will correct a bona fide staff error that has led to design or construction that does not comply with the LDR:

1. The particular physical surroundings, shape, topographical condition, or other physical or environmental condition of the specific property involved would result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;

The particular physical surroundings and other physical and environmental condition of the Property result in particular hardship upon the owner as the harm to the beach and beachfront habitat the GBSL regulations are intended to prevent does not apply to proposed variance and the condominium property to the north has a walkway that runs along the shared property boundary. This condominium property also has a beachfront lawn and pool area enclosed by a wall running along the beach, all which extend farther seaward than the proposed fence which is needed to provide security via enclosing the Property. The strict letter of the GBSL regulations as applied to the Property would prevent the enclosure of the Property, including the swimming pool located in the back yard, from the adjacent walkway to the beach to the north where people have trespassed.

2. The conditions upon which the request for a variance is based are unique to the parcel and would not be applicable, generally, to other property within the vicinity;

The conditions upon which the request for the variance are based are unique to the Property and would not be applicable, generally, to other property within the vicinity. The Property is unique as it shares a boundary with the condominium property to the north where a walkway to the beach for the condominium is located. The Property is the only improved single-family lot in the vicinity that shares a boundary with a condominium property, and one of a handful of improved single-family lots on the island that share such as boundary.

3. The variance is not based on any conditions, including financial, occupational, or ability, which are personal to the applicant as applied to the property involved in the application;

The proposed variance is not based on any conditions which are personal to the applicant as applied the Property. The proposed variance is attributable to the unique location of the Property in relation to the condominium property to the north and their existing walkway to the beach.

4. The alleged hardship has not been created by any person presently having an interest in the property or, if it was, it was created as a result of a bona fide error;

The hardship created by the GBSL on the Property was not created by the owner.

5. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the vicinity;

The proposed variance will not be detrimental to the public welfare or injurious to other property or improvements in the vicinity. The proposed enclosure of the Property via the fence will secure the Property which will increase safety for the owner and members of the public along the beach.

6. The variance granted is the minimum variance that will make possible the reasonable use of the property; and

The proposed variance is the minimum variance to make possible the complete enclosure of the Property from the walkway to the north, and it is further landward of the GBSL than the existing walkway, wall, and beachfront lawn and pool area to the north.

7. The property cannot be put to a reasonable use which complies fully with the requirements of the Code unless the variance is granted.

The Property cannot be put to a reasonable use which complies fully with the requirements of the Code unless the variance is granted as the owner would not be able to enclose the Property in a manner that provides security from the walkway to the north and the beach area to the west. Additionally, the beach and beachfront habitat sought to be protected via the GBSL regulations do not apply in this instance, and the proposed enclosure is consistent with the beachfront improvements to the north and compatible with the surrounding area.