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**VARIANCE NO. VA-22-02**  
**Riverside Preserve Lot 14 - PLN2201-0069**

**FINAL ORDER OF MANATEE COUNTY HEARING OFFICER KELLY FERNANDEZ ON BEHALF OF MANATEE COUNTY GRANTING VARIANCE NO. VA-22-02 TO ALLOW A VARIANCE TO THE SETBACK REQUIREMENTS ESTABLISHED IN THE PDR (PLANNED DEVELOPMENT RESIDENTIAL) ZONING DISTRICT BY ORDINANCE PDR-17-02(Z)(P) – MORGAN/RIVERSIDE PRESERVE REDUCING THE MINIMUM FRONT YARD SETBACK FROM 25 FEET TO 20.7 FEET FOR A SITE LOCATED AT 931 WHIMBREL RUN, BRADENTON (MANATEE COUNTY) ON APPROXIMATELY 0.18 ACRES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Board of County Commissioners of Manatee County adopted the Manatee County Land Development Code (LDC), Manatee County Ordinance 15-17, as amended; and

**WHEREAS**, pursuant to the LDC, Manatee County Ordinance 15-17, as amended, the Hearing Officer has the authority to grant variances; and

**WHEREAS**, M/I Homes of Sarasota, LLC is requesting a variance to the front yard setback requirements established in the PDR (Planned Development Residential) zoning district by Zoning Ordinance PDR-17-02(Z)(P) – Morgan/Riverside Preserve – to reduce the minimum front setback for Lot 14 of Riverside Preserve from 25 feet to 20.7 feet due to a bona fide staff error; and

**WHEREAS**, on April 20, 2022, the aforementioned Hearing Officer held a public hearing to receive the staff report, applicant, and public comment, and argument regarding the proposed Variance.

**NOW, THEREFORE**, after consideration of the application for Variance 22-02 requested by M/I Homes of Sarasota, LLC, the Hearing Officer makes the following Findings of Fact and Conclusions of Law and issues the Final Order as follows:

**Section 1. Findings of Fact.** The aforementioned Hearing Officer, after considering comment, argument, evidence, documentation and staff report presented, as well as all other matters presented at the Public Hearing above referenced, hereby makes the following Findings of Fact:

- A. The subject property is in the UF-3 (Urban Fringe – 3 Dwelling Units / Acre) Future Land Use Category.

- B. The subject property is in the PD-R (Planned Development - Residential) subject to PDR-17-02(Z)(P).
- C. The request is to approve a variance to the front yard setback requirements to reduce the minimum front setback for Lot 14 of Riverside Preserve from 25 feet to 20.7 feet.
- D. The overall site lies within Zone X, per FIRM panel 12081C0195F revised 08/10/2021.
- E. The building permit application submitted for the subject property included a boundary survey showing a proposed front yard setback of 20.7 feet. However, a front yard setback of 25 feet is required for the Riverside Preserve Phase I Subdivision.
- F. Manatee County did not notice the error and issued a building permit.
- G. The error was not identified until the final inspection for the Certificate of Occupancy.
- H. The now owner and occupier of the subject property testified that they are occupying the house with a Temporary Certificate of Occupancy and requested that the Variance be approved.
- I. A vehicle will be able to be parked on the driveway without blocking the sidewalk. Due in part to the curve of the street, the position of the house on the subject property will not create a significant visual inconsistency with the position of adjacent and nearby houses.
- J. Manatee County staff recommends approval of the Variance due to the bona fide staff error of issuing the building permit with an incorrect front yard setback.

**Section 2. Conclusions of Law.** Based upon the prior Findings of Fact and considering the testimony, evidence, documentation and the staff report presented, and a review of the applicable provisions of the Manatee County Comprehensive Plan and Manatee County LDC, the above referenced Hearing Officer hereby makes the following Conclusions of Law:

- A. This Hearing Officer has jurisdiction over the parties and subject matter in this proceeding pursuant to the LDC.
- B. The applicant has the burden of proving entitlement to the Variance sought. *See Gomez vs. City of St. Petersburg*, 550 So. 2<sup>nd</sup>. 7 (Fla 2<sup>nd</sup> DCA 1989).
- C. The variance is not the type prohibited by Section 367.2 of the LDC.
- D. The variance meets the applicable criteria set forth in Section 367.5 of the

LDC.

- E. A bona fide staff error led to the construction of a single-family unit that does not comply with the County's front yard setback requirements in the LDC.
- F. The conditions upon which the request for a variance is based are unique to the parcel, and do not appear to be applicable to other properties within the vicinity.
- G. 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.
- H. The alleged hardship was created, in part, as a result of a bona fide staff error.
- I. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the vicinity.
- J. The variance will not substantially increase the congestion in the public streets, or increase the danger of fire, or endanger public safety.
- K. The variance is the minimum variance that will make possible the reasonable use of the property given the bona fide error.

**Section 3. Order.** Based upon the foregoing, a Variance is hereby approved and issued to M/I Homes of Sarasota, LLC for property located at 931 Whimbrel Run, Bradenton, as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, reducing the minimum front yard setback established in the PDR (Planned Development Residential) zoning district by Ordinance PDR-17-02(Z)(P) – Morgan/Riverside Preserve from 25 feet to 20.7 feet, subject to the following conditions:

1. This Variance shall not be effective until it has been recorded in the Public Records of Manatee County, Florida, by the applicant and a copy of the recorded Order is received by Development Services.

**Section 4. Severability.** In the event that any portion or section of this Order is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decisions shall in no manner affect the remaining portions or sections of the Special Permit which shall remain in full force and effect.

**Section 5. Effective Date.** The effective date of this Special Permit shall be upon execution of this Order and its recordation in the Official Records by the applicant with the Office of the Clerk of the Circuit Court and receipt of a copy of the recorded Order by Development Services Department.

ORDERED ON BEHALF OF MANATEE COUNTY this 18th day of May, 2022.

MANATEE COUNTY, FLORIDA

BY: [Signature], as  
Hearing Officer for Manatee County

ATTEST: ANGELINA COLONNESO,  
Clerk of the Circuit Court

BY: [Signature]  
Deputy Clerk



**EXHIBIT “A”**  
**Legal Description**

LOT 14, RIVERSIDE PRESERVE PHASE I A SUBDIVISION AS RECORDED IN THE  
PUBLIC RECORDS OF MANATEE COUNTY IN PLAT BOOK 64, PAGES 30-39



Angelina "Angel" Colonnese  
Clerk of the Circuit Court of Manatee County Florida  
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Instrument(s): 202241069022-EASEMENT

Receipt Total:	\$44.00
Amount Tendered:	\$44.00
Overage:	\$0.00
Service Fee	\$0.00
<b>Total PAID</b>	<b>\$44.00</b>

Check	\$44.00	CHECK #	704
<b>Amount Paid</b>	<b>\$44.00</b>		

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Instrument: 202241069022 EASEMENT

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199000000341150	PRMTF \$1/\$.50	\$3.00
001000000208911	PRMTF FACC \$.10	\$0.50
199000000341160	PRMTF CLERK \$1.90	\$9.50
001000000208912	PRMTF BCC \$2	\$10.00
<b>Instrument Total:</b>		<b>\$44.00</b>