

# **AGENDA**

## **KEY COLONY BEACH CITY COMMISSION PUBLIC HEARING**

Thursday, June 15, 2023 – 9:30 a.m.

Located at the Temporary Meeting Place for the City of Key Colony Beach,  
at the Key Colony Inn Banquet Room, 700 W. Ocean Drive, Key Colony Beach  
& Virtually via Zoom

**[Zoom Login Information on Page 2 on the Agenda](#)**

- 1. *Call to Order, Pledge of Allegiance, Prayer, Roll Call***
- 2. *Agenda Additions, Changes & Deletions***
- 3. *Approval of Minutes from the 05-18-2023 City Commission Public Hearing – Pgs. 1-4***
- 4. *Administration of Oath to Witnesses***
- 5. *Citizen Comments and Correspondence***

### ***Sec. 2-90. - Public participation***

***(1) Public participation on agenda items:*** Members of the public may speak for three minutes on any agenda items; and may only speak once unless waived by a majority vote of the commission.

***(2) Decorum.*** Members of the public shall not make inappropriate or offensive comments at a city commission meeting and are expected to comply with the rules of decorum that are established for commissioners. Individuals who violate any rules of the city commission may be ruled out of order by the mayor or on a point of order made by a commissioner. A majority vote of the city commission will rule on the point of order. An individual who violates the rules of decorum may be removed from the meeting at the direction of the mayor.

### **6. *Disclosure of Ex-Parte Communications – Pg. 5***

### **7. *VARIANCE REQUEST: 651 9<sup>th</sup> Street, Long Family Trust 03/14/2023 C/O Palmer Reid Long Jr. CO Trustee***

***Applicant requests a variance to the City of Key Colony Beach Code of Ordinances Chapter 101, Section 26 (11), to allow the installation of a pool within the 10' setback to 5', only on the left side of the lot. Current setback requirements are 10' feet.***

- a. Proof of Legal Publications & Affidavits of Mailing/Posting – Pgs. 6-9***
- b. Presentation of Variance Request – Building Department - Pgs. 10-15***
- c. Planning & Zoning Board Recommendation – Chair George Lancaster – Pg. 16***
- d. Planning & Zoning Board Minutes May 17, 2023 – Pgs. 17-21***
- e. Statement by Applicant***
- f. Commissioner Comments/Questions***
- g. Approve, Deny, or Approve with Conditions***

### **8. *Other Business***

### **9. *Adjournment***

***You are invited to a Zoom webinar.***  
***When: Jun 15, 2023, 09:30 AM Eastern Time (US and Canada)***  
***Topic: 06-15-2023 City Commission Public Hearing & Regular Meeting***

*Please click the link below to join the webinar:*  
<https://us02web.zoom.us/j/87507078465?pwd=T0pBNVgrSzAweWVUMCt2QW1QeEE4Zz09>

***Passcode: 894536***

***Or One tap mobile:***

***+13052241968,87507078465#, \*894536# US***

***+13017158592,87507078465#, \*894536# US (Washington DC)***

***Or Telephone:***

***Dial (for higher quality, dial a number based on your current location):***

***+1 305 224 1968 US***

***+1 301 715 8592 US (Washington DC)***

***+1 309 205 3325 US***

***+1 312 626 6799 US (Chicago)***

***+1 646 931 3860 US***

***+1 929 205 6099 US (New York)***

***+1 669 444 9171 US***

***+1 669 900 6833 US (San Jose)***

***+1 689 278 1000 US***

***+1 719 359 4580 US***

***+1 253 205 0468 US***

***+1 253 215 8782 US (Tacoma)***

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***+1 360 209 5623 US***

***+1 386 347 5053 US***

***+1 507 473 4847 US***

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***Webinar ID: 875 0707 8465***

***Passcode: 894536***

***International numbers available: <https://us02web.zoom.us/j/87507078465?pwd=T0pBNVgrSzAweWVUMCt2QW1QeEE4Zz09>***

# **MINUTES**

## **KEY COLONY BEACH CITY COMMISSION PUBLIC HEARING**

**Thursday, May 18, 2023 – 9:30 a.m.**

**Key Colony Inn Banquet Room, 700 W. Ocean Drive, Key Colony Beach  
& Virtually via Zoom Conferencing**

**1. *Call to Order, Pledge of Allegiance, Prayer, Roll Call:*** The Key Colony Beach Public Hearing was called to order by Mayor Trefry at 9:30 a.m. followed by the Pledge of Allegiance, Prayer, and Rollcall. **Present:** Vice-Mayor Beth Ramsay-Vickrey, Commissioner Tom Harding, Commissioner Freddie Foster, Commissioner Joey Raspe, Mayor Patricia Trefry. **Also present:** City Administrator Dave Turner, Fire Chief Mike Card, Building Official Lenny Leggett, Police Chief Kris DiGiovanni, City Attorney Dirk Smits, City Attorney Roget Bryan (virtual), City Clerk Silvia Gransee, Code Enforcement Officer Barry Goldman, Public Works Department Head Mike Guarino, Administrative Assistant Tammie Anderson.

Public Attendance: 16

**2. *Agenda Additions, Changes & Deletions:*** None.

**3. *Approval of Minutes from the 04-20-2023 City Commission Public Hearing:*** Mayor Trefry accepted the minutes as written with no objections from the Commission

**4. *Administration of Oath to Witnesses:*** City Clerk Gransee administered the Oath of Witness to all planning to testify.

**5. *Citizen Comments and Correspondence:*** There were no citizen comments nor correspondence pertaining to the Public Hearing.

**6. *Disclosure of Ex-Parte Communications:*** None.

**7. *VARIANCE REQUEST: 260 9th Street, Shawn M. & Donna Saban Ogni:*** Applicant requests a variance to the City of Key Colony Beach Code of Ordinances Chapter 101, Section 26 (11), to allow the installation of a pool within the 10' setback to 5'. Current setback requirements are 10' feet.

**a. *Proof of Legal Publications & Affidavits of Mailing/Posting:*** Included in the agenda packet.

**b. *Presentation of Variance Request:*** Building Official Leggett spoke on the variance request to the Commission.

**c. *Statement by Applicant:*** None.

**d. Planning & Zoning Board Recommendation:** Mayor Trefry informed that Planning & Zoning Board Chair George Lancaster was available via Zoom for questions.

Commissioner Harding questioned George Lancaster if a review on setback changes should be held. George Lancaster agreed with the suggestion.  
City Administrator Turner stated that duplex lots should be looked at.

**e. Planning & Zoning Board Meeting Minutes from 04-19-2023:** Included in the agenda packet.

**f. Motion to Approve, Deny, or Approve with Conditions:** Mayor Trefry asked for a motion to approve, deny, or approve with conditions, the variance for 260 9<sup>th</sup> Street.

**MOTION:** Motion made by Vice-Mayor Ramsay-Vickrey to approve the variance.  
Commissioner Foster seconded the motion.

**DISCUSSION:** None.

**ON THE MOTION:** Rollcall vote. Unanimous approval.

**8. SECOND/FINAL PUBLIC HEARING on the Discussion & Approval of a Development Agreement with Garrison Bight Marina Inc, 300/400 Sadowski Causeway, Key Colony Beach:**

Applicant requests approval of a Development Agreement pursuant to Chapter 101 of Land Development Regulations Article XII, Section 101-176, seeking approval for redevelopment of an existing marina property. The project combines the two (2) properties located at 400 Sadowski Causeway and adjacent 300 Sadowski Causeway, Key Colony Beach into one property (the "Property") that will continue to operate a marina facility as its principal use. The proposed marina facility would comprise (a) a marina and ship store, (b) live-aboard vessel slips and other temporary docking facilities, (c) redevelopment of one (1) ~~3,894~~ **3581** sq. foot restaurant and (d) renovation of existing commercial 6,465 sq. ft building on the Property. New Restaurant will be tiki style construction and new finished floor will meet current flood zone regulations. The maximum height of structures on the property shall be ~~40~~ **43** feet in accordance with building plans and permits issued by the City. The unified Property is zoned B-1 Neighborhood Business District and comprises approximately 1.75 acres with a maximum allowable density of 8 units per acre. The request was submitted by Greg Oropeza, Esq., Oropeza, Stones & Cardenas, 221 Simonton Street, Key West, Florida 33040.

**a. Proof of Legal Publications & Affidavits of Mailing/Posting:** Included in the agenda packet.

**b. Presentation of the Development Agreement:** City Attorneys Roget Bryan and Dirk Smits spoke on the development agreement and agreed upon changes that were made, including the additional proffer on occupancy on liveaboard vessels.

**c. Statement by Applicant/Applicant's Representative:** The Developer, Jim Figuerado, spoke to the Commission on concerns with occupancy requirements for workforce housing. Mayor Trefry explained vacation rental occupancy requirements and gave concerns on

workforce housing and vacation rentals, and asked the developer to agree to provide the houseboat plans to verify the occupancy. Mayor Trefry stated to believe that these requirements were included in the proffer. The Developer gave some concerns about the workforce housing but stated not to want to make any changes. Mayor Trefry further spoke on the agreement to adhere to the City's Code of Ordinances. City Attorney Bryan addressed concerns.

Commissioner Raspe spoke on manufacturers' numbers and the City's requirements on occupancy. City Attorney Smits confirmed for the Developer to agree with the Cities Ordinances. Mayor Trefry voiced concern on not able to see the houseboat plans. Commissioner Raspe agreed and stated the importance of measuring the square footage.

***d. Review of Planning & Zoning Recommendation and First Public City Commission Hearing:*** Included in agenda packet.

***e. Commissioner Comments:***

Commissioner Raspe asked for confirmation that the vacation rental and affordable workforce housing houseboats will not be in place for a 12 month period until the CO for the restaurant is given. The Developer confirmed the statement.

Commissioner Foster had no comment.

Commissioner Harding had no comment.

Vice-Mayor Ramsay-Vickrey had no comments.

***f. Motion to Approve, Deny, or Approve with Conditions:*** Mayor Trefry asked for a motion to approve, deny, or approve with conditions the Development Agreement with Garrison Bight Marina.

**MOTION:** Motion made by Vice-Mayor Ramsay-Vickrey to approve the agreement with the conditions as stated by the Attorney. Commissioner Raspe seconded the motion.

**DISCUSSION:** None.

**ON THE MOTION:** Rollcall vote. Unanimous approval.

***9. Resolution No. 2023-05:*** A Resolution Of The City Commission Of Key Colony Beach, Florida Approving A Development Agreement Pursuant To Chapter 163, Florida Statutes, Between The City And Garrison Bight Marina, Inc., For The Property Located At 300/400 Sadowski Causeway, Key Colony Beach With Real Estate Numbers 00079371-000200 And 00079371-000100; Authorizing The Appropriate City Officials To Implement The Terms And Conditions Of The Agreement; Authorizing The Mayor To Execute The Agreement And Any Other Required Documents; And Providing For An Effective Date.

Mayor Trefry provided the reading of Resolution No. 2023-05 and asked for a motion to approve.

**MOTION:** Motion made by Commissioner Foster to approve the Resolution. Vice-Mayor Ramsay-Vickrey seconded the motion.

**DISCUSSION:** None.

**ON THE MOTION:** Rollcall vote. Unanimous approval.

**10. Other Business:** None.

**11. Adjournment:** The meeting adjourned at 9:48 am.

*Respectfully submitted,*

***Silvia Gransee***

*City Clerk*

## **EX-PARTE COMMUNICATIONS**

An ex-parte communication is defined as:

any contact, conversation, communication, writing, correspondence, memorandum or any other verbal or written communication that takes place outside a public hearing between a member of the public and a member of a quasi-judicial board, regarding matters which are to be heard and decided by said quasi-judicial board.

Site visits and expert opinions are also considered ex-parte communications.

In the event that someone contacts a Board Member about a quasi-judicial matter outside of a public meeting, at such time that particular issue is brought before the Board, the Board Member should state on the record:

- the existence of any ex-parte communication,
- the nature of the communication,
- the party who originated the ex-parte communication, and
- whether or not the ex-parte communication affects your ability to impartially consider the evidence presented.

Similarly, any correspondence received by a Board Member must be forwarded to the Board Clerk.

Note: The term “Board Member” would include all members of the Code Enforcement Board, the Planning & Zoning Committee, and the City Commission when they are acting in a quasi-judicial capacity (for example, but not limited to, code violation hearings and variance hearings).



## AFFIDAVIT OF MAILING

STATE OF FLORIDA  
COUNTY OF MONROE

Before me, the undersigned authority, personally appeared Cheryl Baker, who, having been first duly sworn according to law, deposes and says:

1. I am the Administrative Assistant to the City Clerk for the City of Key Colony Beach.
2. I hereby confirm that on the 11<sup>th</sup> day of April, 2023 (no less than 30 days prior to the Planning & Zoning Public Hearing on May 17, 2023, and the City Commission Public Hearing on June 15, 2023) I mailed the Notice of Hearing by first class U.S. mail to the address on file with the Monroe County Property Appraiser's Office for all property owners within 300 feet of the property at 651 9th Street, Key Colony Beach, Florida, 33051.

Cheryl Baker  
Signature

Sworn and subscribed before me this  
12<sup>th</sup> day of April, 2023.

Christine Marie McLeod  
Notary Public, State of Florida  
My commission expires: 6/5/2026



☒ Personally known

☐ Produced \_\_\_\_\_ as identification



# City of Key Colony Beach

PO Box 510141 Key Colony Beach, Florida • Phone # 305-289-1212 • Fax# 305-289-1767



To: Property Owners within 300 feet of 651 9th Street  
From: The City of Key Colony Beach  
Planning & Zoning Board **and** City Commission for a Variance Request

**NOTICE IS HEREBY GIVEN,  
THAT THE CITY OF KEY COLONY BEACH WILL BE HOLDING  
PUBLIC HEARINGS ON:**

Planning & Zoning Hearing: Wednesday, May 17, 2023, 9:30 A.M.  
City Commission Public Hearing: Thursday, June 15, 2023, 9:30 A.M.

**LOCATION:**

**City of Key Colony Beach Temporary Meeting Place  
at the Key Colony Inn Banquet Room,  
700 W. Ocean Drive, Key Colony Beach, Florida 33051,**

to hear a Variance Request from the Long Family Trust 03/14/2023 C/O Palmer Reid Long Jr. CO Trustee, owner of the property located at 651 9<sup>th</sup> Street, Key Colony Beach, Florida 33051. This meeting will be available virtually via Zoom Meetings. Members of the public who wish to attend virtually may email [cityclerk@keycolonybeach.net](mailto:cityclerk@keycolonybeach.net) or call 305-289-1212, Ext. 2 for further instructions on attending via Zoom Meetings.

Applicant requests a variance to the City of Key Colony Beach Code of Ordinances Chapter 101, Section 26 (11), to allow the installation of a pool within the 10' setback to 5', only in the left side of the lot. Current setback requirements are 10' feet.

Interested parties may attend the Hearing and be heard with respect to the requested variance. If any person decides to appeal any decision made by the City Commission of the City of Key Colony Beach with respect to any matter considered at the Variance Hearing, that person will need a record of the proceedings and for such purpose 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.

If you are unable to attend the Hearings on Wednesday, May 17, 2023, or Thursday, June 15, 2023, but wish to comment, please direct correspondence to P.O. Box 510141, Key Colony Beach, FL 33051, or [cityclerk@keycolonybeach.net](mailto:cityclerk@keycolonybeach.net) and your comments will be entered into the record.

**Mailed:** On or before Monday, April 17, 2023  
City Clerk, City of Key Colony Beach

## AFFIDAVIT OF POSTING

STATE OF FLORIDA  
COUNTY OF MONROE

Before me, the undersigned authority, personally appeared Cheryl Baker, who, having been first duly sworn according to law, deposes and says:

1. I am the Administrative Assistant to the City Clerk for the City of Key Colony Beach.
2. I hereby confirm that on the 1 day of may, 2023 (no less than 14 days prior to the Planning & Zoning Public Hearing on May 17th, 2023, and the City Commission Public Hearing on June 15th, 2023) I posted the Notice of Hearing for the property at 651 9<sup>th</sup> Street, Key Colony Beach, Florida, at the United States Postal Office and at City Hall.

Cheryl Baker

Signature

Sworn and subscribed before me this  
1<sup>st</sup> day of May, 2023

Christine Marie McLeod  
Notary Public, State of Florida  
My commission expires: 6/5/2026

☒ Personally known

☐ Produced \_\_\_\_\_ as identification





Published Weekly  
Marathon, Monroe County, Florida

## **PROOF OF PUBLICATION**

### **STATE OF FLORIDA COUNTY OF MONROE**

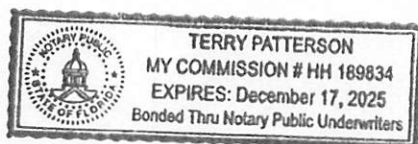
Before the undersigned authority personally appeared JASON KOLER who on oath, says that he is PUBLISHER of the WEEKLY NEWSPAPERS, a weekly newspaper published in Marathon, in Monroe County, Florida; that the attached copy of advertisement was published in said newspaper in the issues of: (date(s) of publication)

May 4, 2023

Affiant further says that the said WEEKLY NEWSPAPERS is a newspaper published at Marathon, in said Monroe County, Florida, and that the said newspaper has heretofore been continuously published in said Monroe County, Florida, once each week (on Thursday) and has been qualified as a second class mail matter at the post office in Marathon, in Monroe County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement. The affiant further says that he has neither paid nor promised any person, firm, or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper(s) and that The Weekly Newspapers is in full compliance with Chapter 50 of the Florida State Statutes on Legal and Official Advertisements.

Sworn to and subscribed before  
me this day of May 4, 2023  
(SEAL)

Terry Patterson  
Notary



PUBLIC HEARING NOTICE  
NOTICE IS HEREBY GIVEN, THAT  
THE CITY OF KEY COLONY BEACH  
WILL BE HOLDING PUBLIC  
HEARINGS ON:  
Planning & Zoning Hearing:  
Wednesday, May 17, 2023, 9:30  
A.M.  
City Commission Public Hearing:  
Thursday, June 15, 2023, 9:30  
A.M.  
LOCATION:  
City of Key Colony Beach  
Temporary Meeting Place at the  
Key Colony Inn Banquet Room,  
700 W. Ocean Drive, Key Colony  
Beach, Florida 33051, to hear a  
Variance Request from the Long  
Family Trust 03/14/2023 C/O  
Palmer Reid Long Jr. CO Trustee,  
owner of the property located at  
651 9th Street, Key Colony Beach,  
Florida 33051. This meeting will

be available virtually via Zoom  
Meetings. Members of the public  
who wish to attend virtually may  
email cityclerk@keycolonybeach.  
net or call 305-289-1212, Ext.  
2 for further instructions on  
attending via Zoom Meetings.  
Applicant requests a variance  
to the City of Key Colony Beach  
Code of Ordinances Chapter  
101, Section 26 (11), to allow the  
installation of a pool within the  
10' setback to 5', only in the left  
side of the lot. Current setback  
requirements are 10' feet.  
Interested parties may attend  
the Hearing and be heard  
with respect to the requested  
variance.

If any person decides to appeal  
any decision made by the City  
Commission of the City of Key  
Colony Beach with respect  
to any matter considered at  
the Variance Hearing, that  
person will need a record of  
the proceedings and for such  
purpose 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.

If you are unable to attend the  
Hearings on Wednesday, May  
17, 2023, or Thursday, June 15,  
2023, but wish to comment,  
please direct correspondence  
to P.O. Box 510141, Key Colony  
Beach, FL 33051, or cityclerk@  
keycolonybeach.net and your  
comments will be entered into  
the record.

City Clerk, City of Key Colony  
Beach  
Publish:  
May 4, 2023  
The Weekly Newspapers



CITY OF KEY COLONY BEACH  
P.O. BOX 510141  
KEY COLONY BEACH, FL 33051-0141  
305-289-1212 FAX: 305-289-1767



**APPLICATION FOR VARIANCE**

**APPLICANT:** Long Family Trust 03/14/2013 C/O Palmer read long Jr. CO Trustee / 941-740-4254

Property Owner Name

Phone Number

**651 9th Street Key Colony Beach**

**28 10 N 1/2 Key Colony Beach 1st Add**

Street Address of Variance

Lot Block Subdivision

**10320 Lands End Circle # 46 Placida FL 33946**

Mailing Address of Property Owner

Owners may have an agent complete this application and represent them at the hearings. In this case, owners must attach to this application a written, signed statement stating the name of the individual or business that may represent them in this matter.

**Lisette Llago Guerrero (Amazing Pools of the Keys) 305-440-3282**

Agent Name

Agent Phone Number

**VARIANCE REQUESTED** to: Land Development Regulations Chapter \_\_\_\_\_, Section \_\_\_\_\_  
Code of Ordinances Chapter \_\_\_\_\_, Section \_\_\_\_\_

**DESCRIPTION OF VARIANCE:** Please describe the variance request in regard to type of structure, location on lot, distance from side, rear or front lot lines, or details of the variance, including the current rule in effect and the reason for the variance (for example, building would encroach into the setback by \_\_\_\_\_ feet). Also state if this is for future construction or existing conditions.

**Swimming pool would encroach in the setback by 5 feet, only in the left side of the lot.**

**Please attach the following to this application:**

- A sketch or site plan of the property showing the variance requested.
- Written responses to the five criteria (questions attached).
- Fee of \$700.00

Signature of Applicant

*Palmer R Long*



**Office Use Only**

Date Filed 4-4-2023

Date Paid 3-27-23 Check # 1684

Variance granted / denied on (date) \_\_\_\_\_

*Deposited 4-11-23*  
*Sara J. Gower*  
Signature of City Official

## **Applicant Questions and Responses-**

Summarizing Land Development Code 101-171 (5)(a): Variances shall be approved only if the applicant can demonstrate a good and sufficient cause, that denial would result in unnecessary hardship, it will not be contrary to the public interest, that special conditions exist, and that it will not confer any special privilege on the applicant. Please see the attached pages for the entire city codes relating to Variances.

To assist the Planning & Zoning Committee and City Commission in evaluating this variance request, please answer the following questions:

1. What is the "good and sufficient cause" that explains why this variance should be granted?

**Need to build a pool, but having 10' setbacks on each side, it is impossible to have it done.  
We understand that other residences from KCB have been approved.**

2. What are the unnecessary hardships that would result if the variance is not granted?

**We will not be able to build our pool due to the small area.**

3. If this variance is granted, would there be any increase to public expense that would not otherwise occur? Would it create a threat to public health and safety? Would it create a nuisance? Or cause fraud or victimization of the public?

**No, there would not be any increase to public expenses. No, it would not create a threat to public health and safety. No, it would not create a nuisance. And it will not cause fraud or victimization to the public.**

4. What are the unique or peculiar physical/geographical circumstances or conditions that apply to this property, but do not apply to other properties in the same zoning district?

**Space, many other duplex have obtained the approval with the extra 5' setbacks.**

5. If the variance is granted, would it confer upon the applicant any special privilege that is denied to other properties in the immediate neighborhood in terms of the established development pattern?

**We feel that every homeowner should be treated equal, we all live in the same community and we all pay taxes.**

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### **Office Use Only**

#### **Comments and Recommendation of the Building Official**

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## **Applicant Questions and Responses-**

### **LAND DEVELOPMENT REGULATIONS - Section 101-171. Variances.**

(1) Initiation. Any owner, agent, lessee or occupant of land or a structure may apply in writing to the city clerk for a variance, on that land, from the requirements of this chapter, except that no request for a use variance will be considered. Details must be included with the request and be filed with the city clerk together with the established fee for a variance. If the applicant is other than the owner of the property, the written consent of the owner for the variance requested must be submitted with the application. When the petitioner is a public agency, the city commission may authorize the waiver or reduction of the fee.

(2) Planning and zoning committee procedure.

- (a) Upon receipt of a written request, the city clerk will deliver the request to the planning and zoning committee.
- (b) The planning and zoning committee shall make an investigation of the conditions pertaining to the requested variance in advance of the public hearing by the city commission. This investigation shall be at a duly noticed meeting. Mailing of notice of the meeting shall be made by the city to all property owners within three hundred (300) feet of the boundaries of the property which is the subject of the variance request.
- (c) The planning and zoning committee, shall make their recommendation to the city commission in writing, based upon the standards in (5) below. They may recommend approval or disapproval of the variance or may recommend approval of the same subject to such specified conditions as it may deem to be necessary or advisable in furtherance of the provisions of this chapter. Reasons for the recommendation shall be stated.

(3) City commission procedure.

- (a) After receipt of the planning and zoning committee report, the city commission shall give notice in a newspaper stating the date, time and place of a city commission public hearing as provided for in section 101-173.
- (b) After their public hearing the city commission may approve or disapprove the requested variance or may approve the same subject to specified conditions as it may deem to be necessary or advisable in furtherance of the provisions of the zoning ordinance. If the applicant desires to present evidence not presented to the planning and zoning committee, the matter shall be returned to the planning and zoning committee for further deliberation and recommendation unless the city commission finds by majority vote that the new evidence is insignificant or unsubstantial.
- (c) The commission shall state reasons for their decision, based on the standards detailed in (5) below.
- (d) The decision of the city commission shall be final. No new request for similar action concerning the same property may be made to the city commission or planning and zoning committee for a period of not less than six (6) months after the date of said decision by the city commission.

(4) Effective period.

A building permit application must be submitted within twelve (12) months of variance approval otherwise the approval expires. Any extension of up to twelve (12) months may be granted by the city commission for good cause.



## **Applicant Questions and Responses-**

### **(5) Standards for granting variances.**

#### **(a) Specific criteria:**

- (1) The applicant shall demonstrate a showing of good and sufficient cause;**
- (2) Failure to grant the variance would result in unnecessary hardship to the applicant;**
- (3) Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;**
- (4) Property has unique or peculiar circumstances, which apply to this property, but which do not apply to other properties in the same zoning district;**
- (5) Granting the variance will not give the applicant any special privilege denied other properties in the immediate neighborhood in terms of established development patterns.**

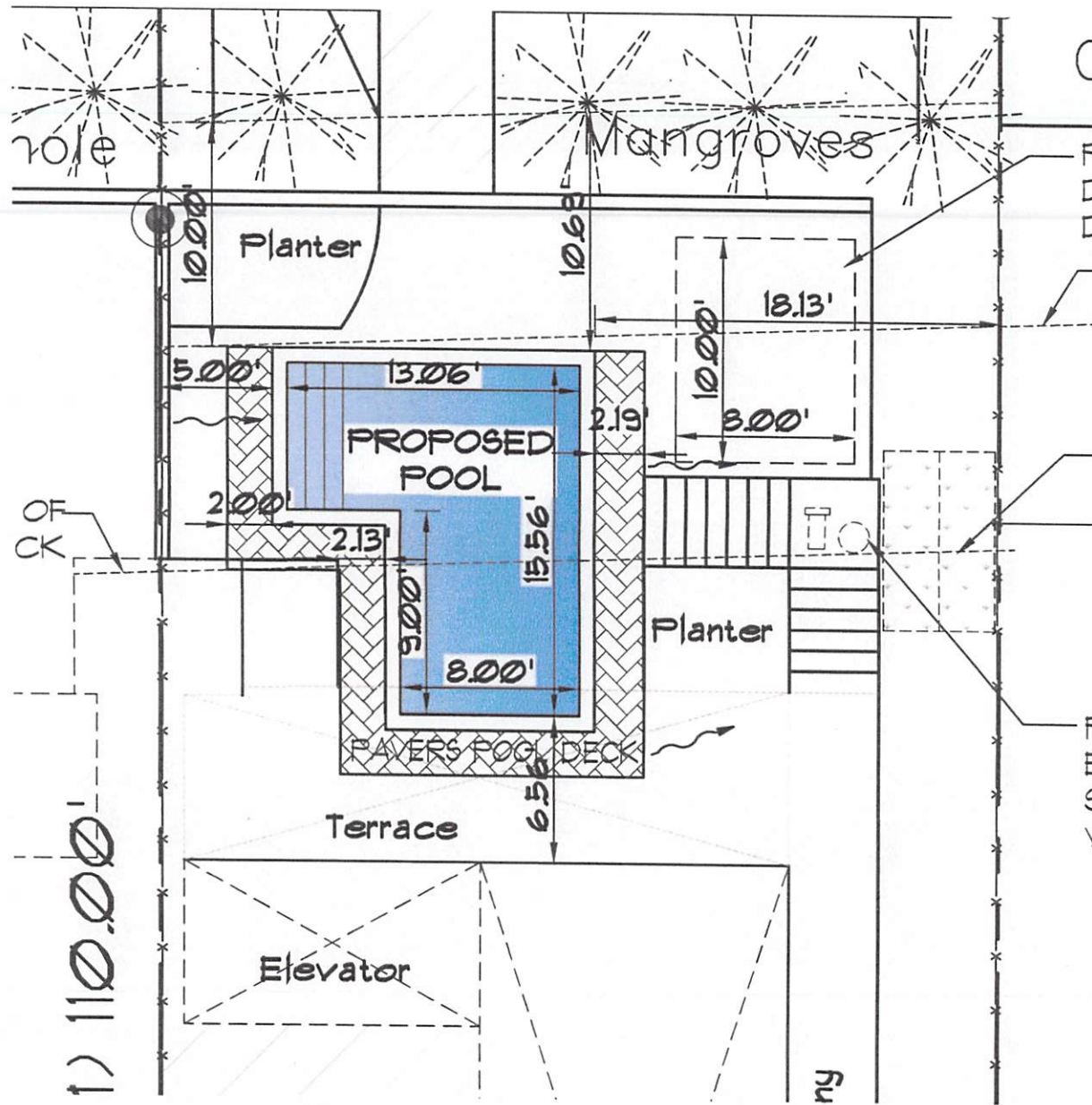
#### **(b) Recommendations to the city commission.**

- (1) If all 5 specific criteria are met, then the planning & zoning committee shall recommend approval to the city commission. Approval by the city commission would be by majority vote of the city commission.**

**If the planning & zoning committee finds the five (5) specific criteria are not met, they shall recommend disapproval of the variance unless they specifically find that the granting of the variance will have minimal adverse effect on other citizens of the city or on the city. Approval of a variance where all five (5) specific criteria are not met shall require a favorable vote of four-fifths (4/5) of the city commission.**

- (2) Conditions: The planning and zoning committee may recommend, and the city commission may prescribe, appropriate conditions and safeguards in conformity with this chapter. 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 chapter.**
- (3) Use Variance: Under no circumstances shall the city commission grant a variance to permit a use not generally permitted in the zoning district. No nonconforming use of neighboring lands, structures or buildings in the zoning district and no permitted use of lands, structures or buildings in other zoning districts shall be considered grounds for the authorization of a variance.**





# City of Key Colony Beach

P.O. Box 510141, Key Colony Beach, FL 33051-0141 • Phone: 305-289-1212  
Fax: 305-289-0247  
www.keycolonybeach.net



May 17, 2023

To: The City of Key Colony Beach Board of Commissioners

From: The Key Colony Beach Planning & Zoning Board

Re: 651 9th Street, Long Family Trust 03/14/2023 C/O Palmer Reid Long Jr. CO Trustee

The Planning & Zoning Board heard the applicant's request for a variance to the City of Key Colony Beach Code of Ordinances Chapter 101, Section 26 (11), to allow the installation of a pool within the 10' setback to 5', only on the left side of the lot. Current setback requirements are 10' feet.

## **Post Hearing Questions Results:**

- |                              |  |
|------------------------------|--|
| 1) Chair George Lancaster    | Yes on all 5 (five) Post Hearing Questions |
| 2) Vice-Chair Tom DiFransico | Yes on all 5 (five) Post Hearing Questions |
| 3) Board Member Mike Yunker  | Yes on all 5 (five) Post Hearing Questions |
| 4) Board Member Bob Glassman | Yes on all 5 (five) Post Hearing Questions |
| 5) Board Member Lin Walsh    | Absent                                     |

**MOTION:** Motion made by Mike Yunker to recommend to the City Commission to approve the variance based on the testimony and information that was presented during the hearing. Chair Lancaster asked for a second. Bob Glassman seconded the motion.

**DISCUSSION:** None.

**ON THE MOTION:** Rollcall vote. Unanimous approval.

**Final Recommendation:** The Planning & Zoning Board recommends to the City of Key Colony Beach Board of Commissioners for the requested variance for the property at 651 9<sup>th</sup> Street to be approved.

George Lancaster, Chair



**MINUTES**  
**PLANNING & ZONING BOARD**  
**REGULAR MEETING & PUBLIC HEARING**

Wednesday, May 17, 2023 - 9:30 a.m.

Key Colony Inn Banquet Room, located at 700 W. Ocean Drive, Key Colony Beach, Florida 33051  
& Virtually via Zoom Conferencing

**1. Call to Order, Pledge of Allegiance & Roll Call:** *The Planning & Zoning Regular Meeting & Public Hearing was called to order by Chair George Lancaster at 9:30 am, followed by the Pledge of Allegiance and Rollcall. Present: Mike Yunker, Chair George Lancaster, Vice-Chair Tom DiFransico, Bob Glassman. Absent: Lin Walsh. Also present: City Administrator Dave Turner, Building Official Lenny Leggett, City Attorney Dirk Smits, Administrative Assistant Tammie Anderson, City Clerk Silvia Gransee.*

**Public Attendance:** 5

*City Attorney Smits informed that Board Members have to be present at the beginning of the meeting to be able to attend the meeting virtually.*

**2. Agenda Additions, Deletions, or Changes:** *None.*

**3. Citizen Comments & Correspondence:** *None.*

**4. Approval of Minutes: Planning & Zoning Board Meeting Minutes – April 19, 2023:** *Chair Lancaster accepted the minutes as published with no objections from the Board.*

**5. Administration of Oath of Witnesses:** *City Clerk Gransee administered the Oath of Witness to all planning to testify.*

**6. Disclosure of Ex-Parte Communication:** *None.*

**7. VARIANCE REQUEST:** *651 9<sup>th</sup> Street, Long Family Trust 03/14/2023 C/O Palmer Reid Long Jr. CO Trustee*

*Applicant requests a variance to the City of Key Colony Beach Code of Ordinances Chapter 101, Section 26 (11), to allow the installation of a pool within the 10' setback to 5', only on the left side of the lot. Current setback requirements are 10' feet.*

**a. Proof of Legal Publications & Affidavits of Mailing/Posting:** *See under 7b.*

**b. Presentation of Variance Request:** *Building Official Leggett spoke to the Board on the requested variance and the application having been received with erroneous documents. Building Official Leggett explained it was not until the permit was issued that he was informed that the pool was being built within setbacks. Building Official Leggett informed that he addressed the issue with the contractor whom he informed that at variance was required. Building Official Leggett further informed that the pool was completed and he has no knowledge of inspections having been performed.*

*Chair George Lancaster asked Building Official Leggett on the submitted documents and who to apply fault to. Building Official Leggett stated the process on how he received the document and could not state whether it was contractor or clerical error. The Building Official stated that once he was aware of the error, he informed the contractor of the need for a variance. Building Official Leggett stated he had directed the contractor to cease construction on several occasions.*

*City Attorney Smits asked for the adoption of proof of publications and the presentation as presented in the agenda packet and by Building Official Leggett.*

**MOTION:** Motion made by Mike Yunker to accept agenda items 7a. 'Proof of Legal Publications and Affidavits of Mailings' and 7b. 'Presentation of the Variance Request by the Building Department'. Tom DiFransico seconded the motion.

**DISCUSSION:** City Attorney Smits explained the purpose of the agenda items and adoption.

**ON THE MOTION:** Rollcall vote. Unanimous approval.

**c. Statement by Applicant:** Chair Lancaster asked to hear testimony from the contractor or owner.

Roger Guerrero, owner of Amazing Pools of the Keys, spoke to the Board on the requested variance. Mr. Guerrero stated that a mistake was made by one of his staff in submitting a wrong document. Mr. Guerrero continued explaining the events that followed, including the issuance of the permit, conversations with the Building Official, and typical time frame of a pool being built. Mr. Guerrero stated on having not received communications to stop work nor a red tag order was issued. Mr. Guerrero continued explaining his understanding of an issued permit meaning approval to work and having paid the variance fee. Mr. Guerrero reiterated that he was not told to stop work and stated miscommunications on all sides. Mr. Guerrero gave his thoughts on allowing equal side setbacks for all properties in the city and gave comparisons to other municipalities in the county.

Tom DiFransico spoke on Code Enforcement being responsible for looking into working without an active permit which Building Official Leggett confirmed. Tom DiFransico continued talking on city rules and regulations on setbacks to be enforced, the purpose of a variance, and justification of unusual hardship. Mr. Guerrero gave further thoughts on setbacks, new regulations, and the signed permit, and not receiving correct information from staff. Tom DiFransico clarified that the setback requirements are not new for the property in question and zoning requirements can be looked up on the City's website. Mr. Guerrero informed having built several pools in the city and of procedures by other municipalities on being issued a stop-work-order when in non-compliance with setbacks.

City Attorney Smits reminded on rules of order.

Tom DiFransico commented on the architect drawings mentioning the City of Marathon's standards. Mr. Guerrero spoke on working with two former Building Officials in the past with no issues. Tom DiFransico continued talking on the violation of the Land Development Regulations and the purpose of the hearing to find justification for a variance. Mr. Guerrero talked on the features of the property and corresponding pool sizes. Mr. Guerrero reiterated on having received the issued permit and no red tag for the work.

Attorney Rich Malafy spoke on behalf of the owners, Mr. and Mrs. Palmer, and stated that the owners were unaware of a variance application being made on their behalf. Mr. Malafy explained that a contractor was hired for the building of the pool which had informed the owners of the variance being taken care of. Mr. Malafy informed of the owner of having been hospitalized over the last few months and having made the effort to appear at the hearing despite health problems. Mr. Malafy continued talking about the issued permit, the pool having been built, and the hardship for the owner if the variance was not granted. Mr. Malafy further talked about the given facts, variance procedures, and asked the Board to grant the variance.

Tom DiFransico asked about possible modifications to the stairs in the pool to which Mr. Guerrero explained that the removal of the stairs would have no impact on the size of the pool. Mr. Guerrero further stated that the issued permit should have contained comments and that multiple persons made mistakes including miscommunications and lack of knowledge.

Tom DiFransico reiterated the contractor's responsibility for knowing the rules and it not being the city's responsibility nor the Building Officials fault. Mr. Guerrero reiterated that he is not blaming anyone and for this not to happen again, and his wish to have a good relationship with the city. Chair George Lancaster asked City Attorney Smits for clarification on after-the-fact permits and criteria to issue the variance. City Attorney Smits explained the questions to the Chair's satisfaction.

Mike Yunker asked Building Official Leggett on the process and procedure of reviewing a variance request.

Building Official Leggett stated that a variance request submitted to the City comes to the City Clerk for review of all required documents, is further reviewed by City Administrator Turner, and submitted to the Building Official with no site visits performed. Mike Yunker asked on code requirements for any of the documents that are provided. Building Official Leggett explained the minimum requirements and pool drawings. Building Official Leggett stated that he would have recommended a variance application if the site plan had been submitted prior to construction and he would not oppose the granting of the variance. Building Official Leggett advised for the Board to consider looking at all duplex lots on setback



requirements. Bob Glassman spoke on the question of making a 5-foot setback the standard and the Board having approved the three prior variance setbacks since he joined the Board. Bob Glassman further commented on a failure of communication and the Boards responsibility to make a decision.

Tom DiFransico asked about the need to build a pool as stated in the application. Mr. Guerrero explained the weather and the owner's health issues for the need for a pool. Mr. Guerrero further explained the difficulties in building a pool on a duplex lot and the owner's health affecting his decision to build the pool despite known difficulties. Mr. Guerrero informed on the building of a pool on the same street to help with the health of those owners.

Mr. Rich Malafy spoke on the owner's physicians advise on hydrotherapy for health reasons. Mr. Malafy informed that the applicant had no knowledge of the variance application. Mr. Palmer, the owner of the property, explained that he signed a paper without knowledge what he was signing and he had been battling serious health issues over the last few months. Mr. Palmer gave further details on the severity of his health issues and hospitalization. Mr. Malafy explained that he was only retained the night before and hoped all questions were answered. Mr. Malafy described the hardship to the owner if the 5-foot section of the pool had to be removed due do to relying on the contractor. Tom DiFransico stated his dissatisfaction with the answers on the variance application. Mr. Guerrero agreed to address issues with his staff.

Tom DiFransico further commented on the Boards responsibility for the enforcement of the Land Development Regulations and the non-adequacy of answers provided in the variance application. Mr. Guerrero apologized for his comments and clarified them to be personal opinions and further spoke on his homeownership in Key Colony Beach and apologized for his comments. Chair Lancaster thanked Mr. Guerrero.

**d. Applicant Questions & Responses:** The Board agreed that the testimony that was provided satisfied the applicants questions & responses.

Building Official Leggett stated for the record that the contractor was aware that a variance was required for 260 9<sup>th</sup> Street which the Board had heard and approved in the prior month. Building Official Leggett further added that the pool was built without any inspections and questioned of it having been built in good faith. Chair Lancaster stated for the issues to be addressed in the appropriate format by Code Enforcement. City Attorney Smits suggested for the Board adopting the application packet for evidence. The Board had no objections. Chair Lancaster asked for a motion to accept the application packet into the record.

**MOTION:** Motion made Mike Yunker to accept the application packet. Tom DiFransico seconded the motion.

**DISCUSSION:** Tom DiFransico stated his opinion that the answers to the questions on the document do not justify a variance but the testimony provided during the hearing does. City Attorney Smits stated the purpose of the hearing to be on the record for reasons and testimony, and the Board members ability to give their opinions on the record.

**ON THE MOTION:** Rollcall vote. Unanimous approval.

**e. Post Hearing Questions:** City Clerk Gransee read the post hearing questions.

**1. Has the applicant shown good and sufficient cause to grant the variance?**

Mike Yunker	Based on the information and testimony - Yes
George Lancaster	Yes
Tom DiFransico	Yes
Bob Glassman	Yes
Lin Walsh	Absent

**2. Will denial of the variance result in unnecessary hardship to the applicant?**

Bob Glassman	Yes
George Lancaster	Yes
Tom DiFransico	Yes
Mike Yunker	Yes
Lin Walsh	Absent

**3. Granting this variance will not result in public expense, a threat to public health & safety, and it will not create a threat to or nuisance, or cause fraud or victimization of the public?**

Bob Glassman	Yes
Tom DiFransico	Yes
Mike Yunker	Yes
George Lancaster	Yes
Lin Walsh	Absent

**4. The property has unique or peculiar conditions or circumstance to this property that do not apply to other properties in the same zoning district.**

Tom DiFransico	Yes
Mike Yunker	Yes
Bob Glassman	Yes
George Lancaster	Yes
Lin Walsh	Absent

**5. Granting this variance would not confer any special privileges in terms of established development in the immediate neighborhood?**

Mike Yunker	Yes
George Lancaster	Yes
Bob Glassman	Yes
Tom DiFransico	Yes
Lin Walsh	Absent

**f. Planning & Zoning Board Recommendation:** Chair Lancaster asked for a motion.

**MOTION:** Motion made by Mike Yunker to recommend to the City Commission to approve the variance based on the testimony and information that was presented during the hearing. Chair Lancaster asked for a second. Bob Glassman seconded the motion.

**DISCUSSION:** None.

**ON THE MOTION:** Rollcall vote. Unanimous approval.

City Clerk Gransee stated that the requested variance will be presented to the City Commission on June 15<sup>th</sup>.

**8. Review of Comprehensive Plan Amendment adopted via Ordinance No. 2021-468 on June 9<sup>th</sup>, 2022.**

**a. Ordinance 2021-468**

**b. Comprehensive Plan Amendment**

Chair Lancaster spoke on Vice-Chair DiFransico's request for the review of the Comprehensive Plan. Tom DiFransico questioned the objectives of preservation of public access along Shelter Bay and Vaca Cut and the posted private property and no trespassing signs. Tom DiFransico clarified his question to pertain to page 49 and Vaca Cut access to the end of 13<sup>th</sup> Street. City Administrator Turner stated no knowledge other than that the property was purchased and privately owned. Tom DiFransico asked about continued public access and questioned the owners ability to build on the property. City Administrator Turner stated the city's zoning is written for conservation which has not changed.

**9. Other Business:** City Administrator Turner explained the arrows on the street pertaining to a program to measure road elevation for future grant applications. City Administrator gave further details on the program, grants, and the benefits of knowledge obtained.

City Attorney Smits explained the requirements for participation to attend remotely via Zoom to be determined by the Chair for good cause. City Attorney Smits further explained the Attorney General's opinion and gave details on good cause and

*requirements of a physical quorum.*

*Bob Glassman had further comments on the Comprehensive Plan and commented on a scrivener's error in paragraph 2 on page 32 "The City shall periodically update the it's emergency" with the word 'the' to be struck. City Attorney Smits stated the possibility of correction without the DEO. Bob Glassman further commented on water consumption and the South Florida Water Management.*

**10. Adjourn:** *The meeting adjourned at 10:44 am.*

**11. Re-Opened:** *The meeting was re-opened at 10:45 am to address questions on meeting virtually in Monroe County. City Attorney Smits explained the virtual meeting law to be exclusively for Monroe County. City Attorney Smits confirmed the ability for recommending boards to meet virtually but gave concerns on evidentiary hearings and testimony being taken via Zoom. Attending guest Commissioner Foster asked about the ability to establish a quorum with a mix of attendees. City Attorney Smits expressed his hesitations on holding evidentiary hearings via zoom but confirmed the Board to be able to make the decision against the City Attorney's advice. City Attorney Smits confirmed the Boards ability but requested for the Chair to ask him for an opinion prior. City Attorney Smits stated to provide the information on remote attendance and asked for notice before the hearing if requested. Discussion continued on possible scenarios on remote attendance. Commissioner Foster agreed with City Attorney Smits on the importance of physical presence but the benefits of the opportunity of having a member attend virtually. City Attorney Smits gave further information on the waiting time to reapply if the variance would have been denied.*

**12. Re-Adjourn:** *The meeting re-adjourned at 10:52 am.*

*Respectfully submitted,*

***Silvia Gransee***

*City Clerk*