

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

Wednesday, August 16, 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 and Public Hearing was called to order by Chair George Lancaster at 9:30 am in the morning followed by the Pledge of Allegiance and Rollcall. **Present:** Chair George Lancaster, Vice-Chair Tom DiFransico, Lin Walsh, Bob Glassman, Mike Yunker. **Also present:** City Administrator Dave Turner, Building Assistant Karl Bursa, City Attorney Dirk Smits, Code Board Attorney Jim Dori, Administrative Assistant Tammie Anderson, City Clerk Silvia Gransee.

**Public Attendance:** 6

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

**3. Citizen Comments & Correspondence:** City Clerk Gransee informed on the following citizen correspondence:

07-09-2023, Steven Wenger, 100 13<sup>th</sup> Street, wrote in opposition to the issuance of a building permit for the property located at 1295 Coury Drive.

07-18-2023, Pam Nada-Caley, no address given, wrote in opposition to the issuance of a building permit for the property located at 1295 Coury Drive.

07-18-2023, Sandra Humphrey, 230 14<sup>th</sup> Street, wrote in opposition to the issuance of a building permit for the property located at 1295 Coury Drive.

There were no citizen comments.

**4. Approval of Minutes:** Chair Lancaster accepted the minutes as written with no objections from the Board.

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

**6. Disclosure of Ex-Parte Communication:** Board member Mike Yunker informed under agenda item 8c. to have had discussions with those involved and having visited the site but this would not affect his vote. There were no other disclosures.

**7. Appeal of Building Permit Denial Permit Application #B23-000027 1295 Coury Drive:** Applicant appeals the decision of the Key Colony Beach's Building Official pursuant to Sec. 2-2, Sec. 6-14, and Sec. 101-170, for the denial of a building permit for the property located at 1295 Coury Drive, Key Colony Beach, Florida 33051.

Chair Lancaster introduced the agenda item. City Attorney Smits presented to the Board.

**a. Proof of Legal Publications:** City Attorney Smits asked for the proof of publications on pages 8 to 12 and the staff report on page 18 to be made part of the record. There were no objections. City Attorney Smits summarized the staff report to the Board. City Attorney Smits explained the determination of a cloud of title and the competing interests which might compromise other property owner rights if a building permit were issued. City Attorney Smits further asked for the lawsuit filed by Mr. Bauer to be entered into evidence. Chair Lancaster noted that the document was just received. City Attorney Smits stated this document to be for the record for establishment of facts, legal fees, and so forth.

**b. Presentation of Building Permit Denial:** City Attorney Smits asked for testimony from City Administrator Turner. City Administrator Turner testified to the address of the subject property and being aware of competing interests.

City Attorney Smits asked for the Proof of Publications to be called Exhibit A and the Staff Report Exhibit B. City Attorney Smits asked, based upon the submitted evidence, for the building permit to be denied.

**c. Statement by Applicant/Representative:** Attorney Michael Lyons introduced himself as the representative for Mr. Bauer. Attorney Lyons further introduced Amber Schmidt as a representative from the Home Designer Builder. Attorney Lyons asked for Attorney Bohannon's letter to be entered as Exhibit C. There were no objections from the City Attorney. Attorney Lyons called for testimony from Building Official (Assistant) Bursa. Building Assistant Bursa informed that the events transpired before his employment with the City of Key Colony Beach and stated no knowledge on the subject. Building Assistant Bursa testified on having no knowledge of any technical deficiency's nor knowledge of any other deficiencies.

Attorney Lyons called Amber Schmidt as his next witness. Ms. Amber Schmidt testified to her place of employment, job description, and having submitted the permitting submission for 1295 Coury Drive. Ms. Schmidt testified to the permitting and approval process, including the submission of a species evaluation form, which all were approved by the State. Ms. Amber Schmidt continued testifying on the permit application to the city and her impression on compliance and not receiving any feedback on deficiencies on the permit application or design of the home. Ms. Schmidt testified that she had no knowledge of code restrictions preventing the issuance of a building permit.

Attorney Lyons had no further questions.

City Attorney Smits asked for testimony. Ms. Schmidt testified to her place and time of employment with the company, having received not special training nor license, and the permit having been denied by staff.

City Attorney Smits had no further questions.

Attorney Lyons asked if negative feedback was received from the permit submission which Ms. Amber Lyons denied.

Attorney Lyons had no further witnesses and gave his closing argument. Attorney Lyons spoke about the consideration of the building permit and the evidence that was provided. Attorney Lyons gave arguments on why the permit should be issued and cited the City of Key Colony Beach's Code in support of his argument. Attorney Lyons spoke on the stated statute for reason of denial and informed of a possible scrivener's error for the statute to be non-existing. Attorney Lyons continued giving arguments on private rights and history on the property, and his interpretation of the plat language. Attorney Lyons asked for recommendation for approval to the City Commission consistent with the city's own code and prior actions.

City Attorney Smits corrected the previously mentioned scrivener's error by Attorney Lyons and gave the corrected statute as 553.79 as the basis for denial. There were no objections to the correction.

City Attorney Smits continued explaining that the lawsuit against the city alleges ownership interest and a motion to dismiss is pending in court. City Attorney Smits continued his argument on ownership interests which have to be cleared first.

Chair Lancaster asked for confirmation that the corporation that owns the easement is owned by Mr. Bauer and Mr. Bauer being the owner of the property. Attorney Lyons confirmed both and explained the original plat restriction.

#### **d. Board Member Discussion/Questions**

Vice-Chair DiFransico asked for clarification on Tract A in correlation to Lot 1295. Attorney Lyons confirmed for Tract A to be the only tract for 1295 Coury Drive and for the city not to own any property in the plat rights.

Vice-Chair DiFransico asked for clarification on the city's ordinances and the requirement of a clear title prior to the issuance of a building permit. City Attorney Smits explained the underlying basis of legit ownership interests, the original purpose of the lot, and the appurtenant right he believes cannot be extinguished. City Attorney Smits explained the alleged ownership interest by the applicant and cloud on the title. Vice-Chair DiFransico reiterated his question on the requirements of a clear title prior to the issuance of a building permit. City Attorney continued explaining ownership rights. Vice-Chair DiFransico stated his understanding of ownership to be a private issue and not to be injected into the building permit process and no awareness of such document being in existence. Vice-Chair DiFransico further commented on not having read the lawsuit document and his understanding of exercising government authority where it is not needed.

Board Member Lin Walsh asked if the city checks for clear titles before issuing a building permit. City Attorney Smits stated that the city is provided with evidence of ownership which is verified by staff. City Attorney Smits explained the situation was not standard but rather unique.

Attorney Lyons informed of showing only one deed of ownership and for it to be to the applicant. Chair Lancaster gave his understanding that when the permit was denied the lawsuit did not exist. City Attorney Smits stated to have been aware of the issue of competing interests and for denial to be the appropriate course of action for the city until the lawsuit is resolved.

Vice-Chair DiFransico asked if a permit would be issued if the applicant removed the city from the lawsuit. City Attorney Smits stated to have asked the question before and he believes it is being considered. City Attorney Smits gave further thoughts and comparison to the Inch Beach property. Vice-Chair DiFransico asked on property owner rights for permit appeals with similar deeds if issued by the city. City Attorney Smits gave his opinion of being able to do so.

Attorney Michael Lyons explained the wording of the deed document and the original plot that created the lot.

Board member Mike Yunker asked City Attorney Smits on correspondence received from a 13<sup>th</sup> Street resident stating 120 persons with interests in the property and if each person has the same right in applying for a building permit. City Attorney Smits explained that many of the people that were sued signed quit claim deeds and gave further thoughts on deed rights and plat exemptions on title insurance. Mike Yunker asked about the building permit rights of property owners at Inch Beach which City Attorney Smits stated to be tangled. Mike Yunker further asked on a response regarding the attorney's letter of May 22<sup>nd</sup> which City Attorney Smits did not have a specific reply but stated the focus to be the cloud of title and city's position to be the issue of competing interests.

Board member Bob Glassman asked on the purpose of quit-claim deeds for the property. City Attorney Smits explained the purpose of a quit-claim deed and how the signing of a quit-claim deed can result in the dismissal from the lawsuit. Attorney Michael Lyons explained the quit-claim deed process has been ongoing for years to attempt to clear the issue in the plat due to exemptions in the title insurance.

Board Member Glassman asked on the original owners that created the plat and their rights to any ownership. City Attorney Smits stated for the plat to have been created a long time ago and a corporation was supposed to be formed by the developer. Attorney Lyons stated for his clients to have received the property from the original developer which is the reason for the corporation that was formed.

#### **e. Planning & Zoning Board Recommendation**

Chair Lancaster asked for a motion of a recommendation to the City Commission.

**MOTION:** Motion made by Mike Yunker to deny the appeal and uphold the decision of the Key Colony Beach Building Department to deny the building permit. Chair Lancaster asked for a second. Lin Walsh seconded the motion.

**DISCUSSION:** Tom DiFransico disagreed with Mike Yunker and gave his opinion on city government causing interference and stated that the city should not hold a building permit before clear title is given. Mike Yunker disagreed with Vice-Chair DiFransico. Chair Lancaster agreed with Vice-Chair DiFransico and stated for a cloud on the title not being a city issue. Vice-Chair DiFransico gave further thoughts on possible responsibilities of the city.

Board Member Lin Walsh gave her disagreement with not listening to the City Attorney.

Chair Lancaster informed the Board's attorney for this matter to be Attorney Jim Dorl.

Attorney Jim Dorl explained his representation for the Board and further explained not being able to give an opinion on the issue but only recommendations on procedural rule.

There was no further discussion. Board member Mike Yunker restated his motion.

**ON THE MOTION:** Rollcall vote. Mike Yunker – Yes. George Lancaster – No. Lin Walsh – Yes. Tom DiFransico – No. Bob Glassman – Yes. The motion passed.

#### **8. VARIANCE REQUEST(s):**

**A. 521 9<sup>th</sup> Street – Owners: Jane & Jim Walther:** 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' on one side of the lot. 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:** Chair Lancaster introduced the agenda item. City Administrator Dave Turner explained the matter of side setback requests to be currently under city review and staff recommending the approval of the requested variance.

Board Member Yunker asked if this request falls under previous granted requests which City Administrator Turner confirmed.

**c. Statement by Applicant:** No additional statement was given.

**d. Applicant Questions & Responses:** Included in agenda packet.

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

**MOTION:** Motion made by Mike Yunker to approve the variance request for 521 9<sup>th</sup> Street. Bob Glassman seconded the motion.

**DISCUSSION:** None.

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

Chair Lancaster informed of having overlooked the Post Hearing Questions which City Clerk Gransee confirmed. Chair Lancaster proceeded to read the Post Hearing questions.

**f (e) Post Hearing Questions:**

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

Mike Yunker	YES
George Lancaster	YES
Lin Walsh	YES
Tom DiFransico	YES
Bob Glassman	YES

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

Bog Glassman	YES
George Lancaster	YES
Lin Walsh	YES
Tom DiFransico	YES
Mike Yunker	YES

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

Lin Walsh	YES
Bob Glassman	YES
Tim DiFransico	YES
Mike Yunker	YES
George Lancaster	YES

**4. The property has unique or peculiar conditions or circumstances 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 YES

**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  
Lin Walsh YES  
Bob Glassman YES  
Tom DiFransico YES

Chair Lancaster asked for a repeat of the motion.

**MOTION:** Motion made by Mike Yunker to approve. Bob Glassman seconded the motion.

**DISCUSSION:** None.

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

City Clerk Gransee informed the applicants on the upcoming City Commission meeting on September 21<sup>st</sup>.

**B. 160 13<sup>th</sup> Street – Owner: Jennifer Goldstein:** Applicant requests a variance to the City of Key Colony Beach Land Development Regulations Article IV. Sec. 101-26 (2), to allow the installation of a tiki hut with a maximum floor area of 192 square feet. Current maxim floor area: 80 square feet with maximum roof overhang of 18 inches.

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

**b. (d) Applicant Questions & Responses:** City Clerk Gransee read the applicants statement.

**c. (b) Presentation of Variance Request:** Building Assistant Bursa spoke on behalf of Building Official Leggett and gave a report on his review of the variance request and recommended approval.

**d (c). Statement by Applicant:** Charlie Peterson, representative for the owner of the property, explained the available green space and no one being able to see the Tiki Hut unless from the water.

Mike Yunker stated for the Tiki Hut to be double the size than the current code allows and asked if similar approvals have taken place in past. Building Assistant Bursa could not answer to the question. Mike Yunker further asked if this approval would mean automatic approvals in the future. Building Assistant Bursa did not believe so and for this to be a side specific consideration with no automatic approval.

Tom DiFransico asked for the basis of the size limitation in the city’s code and the question on unnecessary hardship and rational. Building Assistant Karl could not answer on the question of rational and for the decision of hardship to fall to the Board. Building Assistant Bursa confirmed no correspondence from the neighbors. Member Bob Glassman stated the Tiki could be attached to the house and could be made much larger. Building Assistant Bursa confirmed the fact. Bob Glassman expressed his concern on building something bigger than what the city has regulations for.

**e. Post Hearing Questions**

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

Mike Yunker YES  
George Lancaster YES  
Lin Walsh YES  
Tom DiFransico YES  
Bob Glassman NO

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

Bob Glassman	NO
George Lancaster	YES
Lin Walsh	YES
Tom DiFransico	NO
Mike Yunker	NO

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

Lin Walsh	YES
Bob Glassman	NO
Tim DiFransico	YES
Mike Yunker	YES
George Lancaster	YES

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

Tom DiFransico	YES
Mike Yunker	YES
Bob Glassman	NO
George Lancaster	YES
Lin Walsh	YES

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
Lin Walsh	YES
Bob Glassman	NO
Tom DiFransico	YES

**f. Planning & Zoning Board Recommendation:** Chair Lancaster asked for clarification on how to proceed. City Attorney Smits explained the necessity of establishing all five criteria by majority vote. City Clerk Gransee confirmed question No. 2 not having established criteria. City Attorney Smits cited the city's code and the need for good and sufficient cause. Chair Lancaster stated to inform the Commission that only four out five criteria have been met which City Attorney Smits confirmed. Mike Yunker noted that the applicant noted in Question No. 2 that no hardship exists.

City Clerk Gransee confirmed on composing a letter of recommendation and for the matter to be heard by the City Commission in September.

The Commission discussed whether a motion for a recommendation is necessary.

**MOTION:** Motion made by Mike Yunker to deny the applicants variance request based upon failure to establish unnecessary hardship in Post Hearing Question No. 2. Chair Lancaster asked for a second. Vice-Chair Tom DiFransico seconded the motion.

**DISCUSSION:** City Clerk Gransee confirmed the motion.

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

**C. Sunset Park Tiki Hut – Owner: City of Key Colony Beach:** Applicant requests a review and confirmation of no variance requirements to the City of Key Colony Beach Land Development Regulations Article III, Section 101-19, for the replacement of the current Tiki Hut with dimensions of 9' x 9', to a Tiki Hut with the dimensions of 15' x 20' at Sunset Park, Key Colony Beach, Florida 33051

Chair Lancaster introduced the agenda item.

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

**b. Presentation of Variance Request:** City Administrator Turner presented the variance request and reported that the Key Colony Beach Community Association made a donation to upgrade the Tiki Hut. City Administrator Turner informed having found no restrictions in the city's code and asked, for transparency reasons, for directions from the Planning & Zoning Board on how to move forward. City Administrator Turner explained no downside for the city and highwater mark requirements are being met. City Administrator Turner confirmed the older Tiki Hut to be relocated next to the bathroom which will not require a variance. City Administrator Turner informed the property being on the endangered species lists for tree snails and the tree cactus which are predominantly found in the tree or hedge line. City Administrator Turner confirmed for the property being surveyed prior to the work.

**c. Statement by Applicant**

**d. Applicant Questions & Responses:** Vice-Chair DiFransico asked of the necessity of a variance. City Administrator Turner explained there is none required to his knowledge and the purpose for the hearing is for conformation and transparency. City Administrator Turner informed on Building Assistant's Bursa's findings of no variance required. Mike Yunker asked about the need for approval from the Board. City Attorney Smits gave his opinion on recommendations to the City Commission and after discussion the Board decided that no Post Hearing questions are required.

**e. Post Hearing Questions:** Not required.

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

**MOTION:** Motion made by Mike Yunker to make a recommendation of approval on the basis of being exempt and no variance requirements are needed. Chair Lancaster asked for second. Bob Glassman seconded the motion.

**DISCUSSION:** None.

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

**9. Discussion/Recommendation:** Review on Pool Side Setback Requirements to apply to all Zones of Key Colony Beach Ordinance No. 2023-483 Pool Side Setback Amendment May 8, 2023.

Chair Lancaster introduced the agenda item. Building Assistant Bursa explained that during a review of the adopted pool side setback requirements additional language was discovered which granted the 5-foot setback requirements to all zones. Chair Lancaster stated that this was not the intention of the Board. City Attorney Smits explained for this to be a scrivener's error and the intended restriction still apply to the R2B zone. City Attorney Smits acknowledged for the scrivener's error to be corrected.

City Attorney Bryan recalled the original intent of the adopted ordinance and explained that the legislative intent will be clarified with an amendment in the following month.

Mike Yunker asked for clarification why the item is on the agenda in front of the Board.

City Clerk Gransee explained the original placement of the item on the agenda and the scriveners error discovered in the process.

The Board decided to table the discussion until the corrections in the ordinance have been made. City Attorney Smits agreed and stated that no permits will be granted outside of the R2B zone and owners will still need to go through a variance request.

Vice-Chair DiFransico asked for the Building Department to identify the reasons for rules on setbacks and criteria for establishment. Vice-Chair DiFransico further spoke on the ability for emergency vehicles to park between houses. City Administrator Turner explained that fire trucks will not go between structures and explained the purpose of the ordinance as originally intended.

**10. Discussion/Recommendation on attendance requirements of Alternate Planning & Zoning Board members.**

Board Member Mike Yunker spoke on the agenda item and asked for the process on attendance. City Clerk Gransee informed of contacting the alternates if no quorum is established. Chair Lancaster expressed that he would like alternates attending for any meeting if an opening is available. Mike Yunker agreed for if there is an opening an alternate should attend. Chair Lancaster spoke on his responsibility of approving absentees. City Clerk Gransee agreed and asked for the City Attorney to clarify any questions. Board member Lin Walsh spoke on the ability to receive permission to attend and vote via Zoom. City Attorney Smits explained the Attorney General’s opinion on a physical quorum and attendance via zoom. City Clerk Gransee clarified the question. City Attorney Smits explained the Sunshine Law and stated to understand the problem and working on a solution. City Attorney Smits recalled an event of Sunshine Law Violations some years ago and the ramification it presented. City Attorney Smits explained the possibility of an entire meeting being void with a break in Sunshine Law prior. City Clerk Gransee explained the process of establishing a quorum and clarified the desired protocol.

Mike Yunker asked on the physical and zoom requirements and asked for alternates to be available to fill any open positions. Lin Walsh agreed with Mike Yunker and the importance of attending and participating. Bob Glassman spoke on the attendance of alternates. Chair Lancaster stated better communications going forward. City Clerk Gransee stated that the alternates are always copied on all meeting communications and explained going forward to establish availability with the alternates for every meeting. Lin Walsh recalled attendance as an alternate on the Utility Board. City Clerk Gransee stated that there has not been a prior issue. The Board agreed to replace any in-person absence of a regular board member with an alternate member in an attempt to have five in-person members at each meeting, prior to allowing any member to attend via Zoom. The Board had no further discussions.

**11. Other Business**

**12. Adjourn:** the meeting adjourned at 11:09 am.

Respectfully submitted,

*Silvia Gransee*

City Clerk

**ADOPTED: December 20, 2023**

*Silvia Gransee*

City Clerk