

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 9th 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 with 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 seize construction on several occasions.

City Attorney Smits asked for the adaptation 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 adaptation.

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 cities 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. Palmers, 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 9th 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 15th.

8. Review of Comprehensive Plan Amendment adopted via Ordinance No. 2021-468 on June 9th, 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 13th 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-Adjourned: The meeting was re-adjourned 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. Adjourn: The meeting adjourned at 10:52 am.

Respectfully submitted,

Silvia Gransee

City Clerk

ADOPTED: August 16, 2023

Silvia Gransee

City Clerk