

10-22-2026 Citizen Correspondence – Regular Meeting

The City Commission received the following correspondence:

- **September 20, 2026** – Lynne Benton wrote about various safety and legal concerns. – **Pgs. 1-102**
- **October 20, 2026** – Richard Pflueger submitted comments regarding the proposed Sunset Park Gazebo and recommended seeking public input on the matter. – **Pg. 103**
- **October 21, 2026** – Sue Bartkus submitted questions regarding changes to the Florida Building Code. – **Pg. 104**
- **October 21, 2026** – Cynthia Catto submitted comments regarding the proposed veranda at Sunset Park and requested input from the public and the Recreation Committee. – **Pg. 105**
- **October 21, 2026** – David Evangelista expressed concerns regarding decisions affecting recreational properties without prior consultation with the Recreation Committee. He encouraged involving the Committee in the decision-making process to ensure community residents are adequately represented. – **Pg. 106**

All correspondence has been distributed to the City Commission and will be included in the official minutes of today's meeting.

Sincerely,

Silvia Roussin

City Clerk

September 20, 2026

RE: *Safety and legal concerns*

Dear City Manager, Mayor, and Commissioners,

I again respectfully ask you to review the record and meet with me, or place this item on an agenda and allow me to participate in a public discussion, to ensure that City decisions are grounded in the *law, competent evidence, and public safety*.

Over the past six months, I have repeatedly raised legal, procedural, and safety concerns that have not been addressed. I recognize that Commissioners must rely on the City Attorney for legal guidance. But when that guidance is questioned and contrary legal authority is presented, I believe the prudent course is to *verify the law, review the evidence, and resolve the issue before proceeding*.

My concern is not a single variance, boat lift, or fish-cleaning table. It is what I believe has become a pattern of making decisions without adequate legal, factual, or safety basis in the record, which exposes our City and its' citizens to lawsuit and harm. Examples include:

My concerns to date:

- Variance - approving variances that do not meet the legal and evidentiary standards (# 2 and # 3, below).
- Safety - Installed a fish cleaning table over the ocean and changed our ordinance to allow wading in the ocean adjacent to the fish cleaning table (#1), approved a 7-foot yard ornament when the code is 4 feet, without any discussion of the safety issues with a 7 foot projectile with spears in a hurricane zone (#3), approved a boat lift where no other boat lift exists without addressing the P&Z board safety concerns and without approval by the Army Corps of engineers (# 4).
- Ordinance changes – the City is contemplating changing ordinances without considering the reason for the ordinance and knowing the change does not comply with our Comprehensive plan (#2).

Impartiality

An additional concern is the appearance of impartiality. The Mayor encouraged property owners to seek variances from the City's 10-foot *shoreline* setback and then participated in deciding those same variance applications. Questions arise as to whether he had already formed a position on the requested relief before hearing the evidence and applying the variance criteria. This concern becomes particularly important in a quasi-judicial proceeding, where decisions should be based on the applicable criteria and the evidence presented in the record – which they were not.

I am not asking the Commission to agree with me. I am asking you to independently examine these concerns, the applicable law, and the evidence. When legitimate questions involving legality or public safety are raised, they deserve a substantive response before the City proceeds.

One of the reasons I'm running for Commissioner is that I believe with my legal background, I could help the City establish processes to save on legal expenses and ensure legal and evidentiary rules are documented and followed. Our legal expenses total about \$ 200,000 a year or \$ 1,000,000 over 5 years. With upcoming infrastructure and other large expenses, it would seem prudent to save money where we can.

It would be most helpful if I could meet with someone from the City so I can explain my concerns and have them addressed. My understanding is I have a right to have my concerns addressed.² Please let me know if my understanding is incorrect. I hope my concerns are unfounded, and respectfully request a meeting with the City to clarify and address my concerns. Not only as a citizen, but also as a member of the planning and zoning board, it is important members clearly understand the rules they are to follow when making land use recommendations that affect citizens' property rights.

Sincerely,
Lynne Benton, 621 10th Street, Key Colony Beach, FL

1. **Sunset Park Fish-Cleaning Table.** The City constructed a fish-cleaning station at the edge of the Sunset Park pier, directly over the open ocean water. In September 2025, the City also changed the Sunset Park ordinance to allow fishing from the pier and removed prior restrictions on entering the water and wading, while acknowledging that crocodiles inhabit the surrounding coastal waters, *making the waters unsafe*. The research overwhelmingly advises against this. This concern is particularly real to me as a guest of ours was bitten by a barracuda when he was wading adjacent to fish remains.
2. **Shoreline setback - swimming-pool variances.** For the first time in the City's history, two pools were approved within the City's 10-foot *shoreline* setback - even though the required variance hardship criteria was not met. I provided a copy to the Commission of a lawsuit the Monroe County planning board lost with similar facts [1]. After questioning those approvals and providing an independent legal opinion that the hardship criteria must be met [xxx], the City is now considering permanently reducing the *shoreline* setback from 10 feet to 5 feet for pools and hot tubs—without first addressing the purpose of the existing setback or analyzing potential safety, environmental, drainage, resiliency, viewshed, and other consequences. This reduction is contrary to our Comprehensive Plan's requirement of 10 feet. Florida Keys are a specially designated area requiring special environmental protections for its' shorelines. No other city in the Florida Keys allows pools in the 10 foot *shoreline* setback.
3. **Seven-foot "spear" yard ornament.** A variance was approved for an already-installed 7-foot yard ornament with sharp, spear-like points, despite the Code's 4-foot limit and acknowledging that the variance criteria had not been met. There was no discussion of the potential hurricane safety risk or the purpose of the 4-foot limit. The City later received an independent legal opinion concluding that the variance criteria it relied upon is "contrary to prevailing law." [2]
4. **Ocean-side boat lift.** A boat lift was approved on the ocean side without the Army Corps of Engineers approval, without the safety evaluation requested by the Planning & Zoning Board to determine whether it could pose a hazard to nearby swimmers, and without addressing the concerns of fourteen (14) neighbors'. There are no other boat lifts installed on this shoreline. While the City's ordinance requires approval by the Commission, the city attorney claimed that the ordinance is not enforceable because the City has no criteria for approval or disapproval. The City has taken no action to provide any criteria. The City ignored that safety issues are always a reason to deny an application.

5. Variance Criteria

My understanding is that Florida law provides that a variance can only be approved when the applicant provides appropriate evidence that a unique hardship exists for their particular lot. That understanding comes in part from a lawsuit which the county of Monroe lost in 2023 under similar circumstances [1].³ The City approved a variance without any evidence provided by the applicant that the hardship criteria was met. The applicant provided only self-serving conclusory statements, similar to the lawsuit the county of Monroe lost. After notifying the City of my concern and receiving no response, I hired an attorney and received a legal opinion confirming my understanding [2].

In addition to the hardship criteria, our code includes an unusual, additional variance ordinance that allows approval based on “minimal adverse effect” even if the variance hardship criteria is *not* met. A variance was subsequently approved based on this ordinance.⁴ See # 4 below. I questioned whether this ordinance was legal [3]. Having received no response from the City, I hired an attorney and received a legal opinion confirming my understanding that this ordinance is not in compliance with Florida law and unlawful [2].

References: (need to add more)

1. Lawsuit - Larsen vs. Monroe County Planning Commission (March 2, 2023)
2. Legal opinion (September 3, 2026).
3. Letter from Benton to Commissioners (July 14, 2026).
4. Fish cleaning station and Attachments 1-4.
5. Yard ornaments

² *Key Colony Beach Resolution No. 2024-04*. The City Commission, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints and suggestions called to their attention to the Mayor/City Administrator for study and/or appropriate action. *Florida State Constitution, Declaration of Rights. Article I, Section*. Persons have a right to bring a complaint (“The people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances.”)

³ Copy of the lawsuit, Larsen vs. Monroe County Planning Commission (March 2, 2023), provided to the Commission on July 14, 2026.

⁴ On June 16, 2026, the P&Z board found the applicant *did not* meet the requirements for a variance, but nonetheless approved the variance based on another ordinance which allows approval if the variance will have “minimal adverse effect.” Ordinance Sec. 101-171(5)(b)(1): If the planning and 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.

①

SUNSET PARK

MEMO - Fish Cleaning Station and Wading at Sunset Park

Did the City increase an avoidable wildlife and public-safety risk by constructing a fish-cleaning station over the open ocean water and changing the ordinance to allow fishing from the public pier and wading in nearby waters that it deems unsafe?

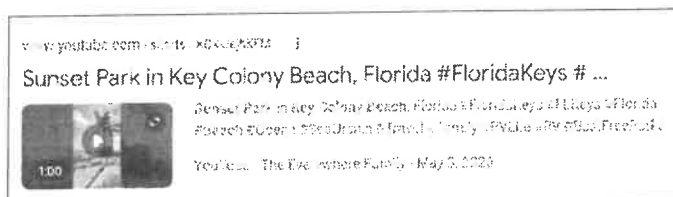
Background

The City constructed a fish-cleaning station at the edge of the Sunset Park pier, directly over the water. It also changed the park rules to allow fishing from the pier and removed prior prohibitions on entering the water and wading. The city now promotes public events where food is served at the park. Yet FWC warns that crocodiles can learn to associate people with food, including through indirect feeding and improperly discarded fish scraps, and the City's ordinance states that the waters are unsafe because crocodiles live in this area [4]. FWC and NOAA guidance indicates that fishing activity and fish waste can attract sharks and crocodiles and may cause them to associate human activity with food. [1][2][3]

Concern

Why would we simultaneously encourage fishing and fish cleaning where fish, blood, bait and scraps may enter the water at a public park, and allow people to enter into those same waters that are deemed unsafe?

YouTube Video – people wading at Sunset Park



<https://www.youtube.com/shorts/XGX-JejhKFM>



- [1] Attachment 1. *Crocodile Sightings.*
- [2] Attachment 2. *Fish Cleaning in a Public Park_crocodiles.*
- [3] Attachment 3. *Fish Cleaning in a Public Park_sharks.*
- [4] Attachment 4. *Key Colony Beach Sunset Park Regulations, Sec. 12-9(b).*

1. Crocodile Sightings in the Middle Keys

American Crocodiles in the Middle Florida Keys Documented Sightings, Habitat, and Nesting

Reliable sources document American crocodiles in the Middle Keys and specifically in Marathon, including residential canals and near the Sombrero Beach fishing pier. Scientific research also documents nesting in the Middle Keys, and Monroe County environmental mapping identifies American crocodile habitat in the Middle Keys area that includes Key Colony Beach and Marathon.

1. Marathon - Documented Crocodile Sightings

Keys Weekly reported on December 9, 2012 that a Marathon resident observed two different American crocodiles in the **Sombrero Beach** neighborhood over three days, November 30 through December 2. The article reported one at approximately six feet and another at approximately five feet.

“Residents have reported seeing them on the golf course, near the country club, in the canal behind Manor Lane and also near the fishing pier at Sombrero Beach.”

The article also quoted Lindsey Hord, then FWC's crocodile response coordinator, stating that crocodiles had long been present in the Keys and had been observed well beyond the Upper Keys.

Source: Keys Weekly, Sara Matthis, “Co-existing with the crocodile,” December 9, 2012.

Website: <https://keysweekly.com/42/co-existing-with-the-crocodile/>

2. Scientific Evidence - Crocodile Nesting in the Middle Keys

A 2022 peer-reviewed study by researchers affiliated with the University of Florida, U.S. Fish and Wildlife Service, and U.S. Geological Survey analyzed 50 years of American crocodile nesting data from 1970 through 2020.

*The study recorded 12 American crocodile nests in the **Middle Keys**: seven during the 2000s and five during the 2010s.*

The study also found that anthropogenic habitats, including canals, can provide important American crocodile nesting habitat. This evidence establishes that crocodiles in the Middle Keys are not limited to occasional transient sightings; reproductively active crocodiles have been documented there.

Source: Mazzotti, F.J., et al., “Natural and Anthropogenic Factors Influencing Nesting Ecology of the American Crocodile in Florida, United States,” *Frontiers in Ecology and Evolution*, Vol. 10 (June 8, 2022), Article 904576.

Website: <https://www.frontiersin.org/journals/ecology-and-evolution/articles/10.3389/fevo.2022.904576/full>

3. Monroe County Mapping - Middle Keys Crocodile Habitat

The Monroe County Marina Siting Plan contains an environmental suitability map for Mile Markers 80 to 40 (Middle Keys). The map includes both Key Colony Beach and Marathon and identifies “**American Crocodile Habitat**” as an environmental resource within the **Middle Keys** mapping area. The map cites the Florida Fish and Wildlife Research Institute (FWRI), U.S. Fish and Wildlife Service (FWS), Monroe County, and South Florida Regional Planning Council as sources.

Source: Monroe County Marina Siting Plan, Appendix E-1, Suitability Maps: Group A, Mile Marker 80 to 40 (Middle Keys).

Website: [https://www.monroecounty-](https://www.monroecounty-fl.gov/DocumentCenter/View/11722/MonroeCountyMarinaSitingPlan_Final12May2014?bidId=)

[fl.gov/DocumentCenter/View/11722/MonroeCountyMarinaSitingPlan_Final12May2014?bidId=](https://www.monroecounty-fl.gov/DocumentCenter/View/11722/MonroeCountyMarinaSitingPlan_Final12May2014?bidId=)

4. FWC - Florida Keys Are Within the American Crocodile's Range

FWC states that American crocodiles “occur at the northern end of their range in south Florida and the Keys.”

FWC explains that crocodiles occur in brackish and **saltwater areas** and can inhabit ponds, coves, creeks, mangrove areas, and **canal systems**. FWC currently estimates the Florida population at as many as approximately 2,000 adult crocodiles.

Source: Florida Fish and Wildlife Conservation Commission, “American Crocodiles.”

Website: <https://myfwc.com/wildlifehabitats/wildlife/american-crocodile/>

5. FWC Safety Guidance Relevant to Fishing and Fish Cleaning

FWC specifically cautions against practices that can cause crocodiles to associate people with food.

“Never feed a crocodile - it is illegal and dangerous. When fed, crocodiles can lose their natural wariness of people and instead learn to associate people with the availability of food. This includes indirect feeding, which can happen when feeding other wildlife or when improperly disposing of fish scraps.”

Source: Florida Fish and Wildlife Conservation Commission, “Learn how to be croc-wise,” March 10, 2025.

Website: <https://myfwc.com/news/all-news/crocodiles-425/>

Relevance to a Public Waterfront Park

The available evidence supports the conclusion that American crocodiles occur in the Middle Keys, have been reported in Marathon canals and near a public fishing pier, and have nested in the Middle Keys. FWC also recognizes the Florida Keys as part of the species' range and warns that improperly disposing of fish scraps can cause crocodiles to associate people with food.

Accordingly, a prudent public-safety question is: Should a public waterfront park encourage fish-cleaning or similar activity at the water's edge when American crocodiles are documented in the surrounding Middle Keys and FWC specifically warns that fish scraps can attract or condition crocodiles to associate people with food?

2. Fish Cleaning in a Public Park - Crocodiles

Fishing and Fish-Cleaning in a Public Park Where American Crocodiles May Be Present

Authoritative Florida and federal wildlife guidance identifies a specific safety concern when fishing, bait, fresh catches, or fish scraps occur close to people at the water's edge. These activities can attract crocodiles or condition them to associate people with food. That concern is stronger where a public facility encourages repeated fish cleaning or disposal of fish remains at the shoreline. Some Florida coastal parks prohibit fishing in public parks near waters' edge.

Florida Fish and Wildlife Conservation Commission (FWC)

FWC crocodile-safety guidance states:

"Never feed a crocodile – it is illegal and dangerous. When fed, crocodiles can lose their natural wariness of people and instead learn to associate people with the availability of food. This includes indirect feeding, which can happen when feeding other wildlife or when improperly disposing of fish scraps."

Source: Florida Fish and Wildlife Conservation Commission, "Learn how to be croc-wise," April 2025.

FWC has also specifically advised:

"Dispose of fish scraps in designated waste containers because discarding scraps in the water may attract crocodiles."

Source: Florida Fish and Wildlife Conservation Commission, "New FWC video provides advice about co-existing with crocodiles," April 2021.

National Park Service - Biscayne National Park

The National Park Service warns that fishing-related activity can attract predators, including crocodiles:

"The scent of bait or fresh catches or the sound of splashing water can be enticing especially to predators such as sharks and crocodiles."

Source: National Park Service, Biscayne National Park, "Safety," last updated August 5, 2024.

National Park Service - Everglades National Park

Everglades National Park goes further and closes certain marina areas to fishing because of the crocodile/alligator attraction and habituation risk. Its current Superintendent's Compendium explains:

"Flamingo Marina and the Gulf Coast (Everglades City) Marina are closed to fishing because of the attractant effect on alligators and crocodiles; they become habituated to human presence, and the association with food in the form of bait."

Source: National Park Service, Everglades National Park, Superintendent's Compendium, current 2026 edition.

Crocodile Encounters

In **October 2025**, an American crocodile was found swimming near **Key Largo** with a fishing spear lodged in its head and a gunshot injury. <https://people.com/crocodile-named-britney-recovering-after-speared-in-the-head-shot-in-florida-11837985>

Human bite occurred on **March 10, 2024**, at Flamingo Marina in **Everglades National Park**. A 68-year-old man capsized a sailboat and was bitten on the leg while trying to swim to shore. <https://apnews.com/article/crocodile-bite-man-florida-everglades-696c3b5c9791292b91f902638184ed27>

A **2014 human attack** occurred in a canal in **Coral Gables**. Two people swimming at about 2 a.m. were bitten by a roughly 12-foot crocodile. https://en.wikipedia.org/wiki/American_crocodile

Public-Safety Significance

These sources establish a recognized safety concern: bait, fresh catches, discarded fish, and fish-cleaning activity can attract crocodiles and can contribute to crocodiles associating people with food. A public fish-cleaning or bait facility at the water's edge may therefore warrant greater scrutiny than ordinary fishing because it can repeatedly concentrate people, fish, bait, odors, and potentially fish scraps in the same shoreline location.

Question for a local government to consider

Is it prudent to encourage fishing or fish-cleaning activity at the water's edge in a public park where crocodiles may be present, when FWC warns that fish scraps may attract crocodiles and the National Park Service recognizes that bait and fresh catches can attract crocodiles and cause them to associate human presence with food?

References

Florida Fish and Wildlife Conservation Commission (FWC), "Learn how to be croc-wise," April 2025.

<https://myfwc.com/news/all-news/crocodiles-425/>

Florida Fish and Wildlife Conservation Commission (FWC), "New FWC video provides advice about co-existing with crocodiles," April 2021.

<https://myfwc.com/news/all-news/crocodile-video-421/>

National Park Service, Biscayne National Park, "Safety," updated August 5, 2024.

<https://www.nps.gov/bisc/planyourvisit/safety.htm>

National Park Service, Everglades National Park, "Superintendent's Compendium," 2026.

<https://www.nps.gov/ever/learn/management/compendium.htm>

3. Fish Cleaning in a Public Park - Sharks

Key Issue: Does a fish-cleaning station at the water's edge create an unnecessary shark-attraction risk by repeatedly introducing fish, blood, odors, and scraps into an area used by the public?

What Florida Wildlife Officials Say

Florida Fish and Wildlife Conservation Commission (FWC) recognizes that introducing fish or fish parts into the water can attract marine organisms. FWC defines chum as fish, fish parts, or similar products placed in the water for the purpose of attracting marine organisms. Chumming is prohibited when fishing from a beach or while wade fishing adjacent to a beach.

FWC also explains that its fish-feeding regulations were developed because of concerns about public safety and concentrating or training sharks to associate humans with food.

FWC's shark-safety guidance advises people to avoid waters used for any type of fishing, particularly where baitfish or feeding activity is present. FWC emphasizes that shark bites are extremely uncommon, but identifies these precautions as ways to reduce risk.

What NOAA Research Shows

NOAA Fisheries reports increasing concern about shark depredation—the taking of hooked or released fish by sharks. NOAA identifies several possible causes, including released and discarded fish and potentially learned shark behavior.

NOAA states that emerging evidence indicates individual sharks may learn from repeated encounters with fishing activity and associate fishing-related sounds and discarded fish with feeding opportunities. NOAA is actively studying this behavior.

Research summarized by NOAA found a consistently high probability of shark depredation in the Florida Keys across all seasons. Sandbar and bull sharks were among the species most frequently identified as taking anglers' catch in the Southeast.

What the Evidence Establishes

Fish, fish scraps, discarded catch, and fishing activity can provide feeding cues for sharks and repeated exposure may condition some sharks to associate fishing activity with food.

Conclusion for a Public Waterfront Park

A fish-cleaning station at the water's edge can create an avoidable wildlife-attraction concern. The relevant public-safety question is not whether a shark attack is certain—or even likely. The question is whether a public facility should intentionally concentrate fish cleaning, blood, odors, bait, and potentially discarded fish parts at one shoreline location when wildlife agencies recognize that fishing and food-related activity can attract sharks and that sharks may learn to associate fishing activity with feeding opportunities.

Prudent approach: If a fish-cleaning facility is provided, fish waste should be contained and disposed of on land in secure receptacles rather than discharged into the water. Location should also be considered in relation to swimming, wading, launching, and other public water access.

Sources

Florida Fish and Wildlife Conservation Commission (FWC), “Feeding sharks and other fish.”

<https://myfwc.com/fishing/saltwater/recreational/fish-feeding/>

Florida Fish and Wildlife Conservation Commission (FWC), “Reducing the Odds of a Shark Bite.”

<https://myfwc.com/research/saltwater/sharks-rays/interaction/reducing-odds/>

Florida Fish and Wildlife Conservation Commission (FWC), “Sharks” – recreational regulations and shore-based shark-fishing guidance.

<https://myfwc.com/fishing/saltwater/recreational/sharks/>

NOAA Fisheries, “NOAA’s Strategy for Understanding Shark Depredation,” updated July 16, 2026.

<https://www.fisheries.noaa.gov/national/recreational-fishing/noaas-strategy-understanding-shark-depredation>

NOAA Fisheries, “Shark Depredation: A Frustrating Experience for Fishermen in the Atlantic,” June 4, 2024.

<https://www.fisheries.noaa.gov/feature-story/shark-depredation-frustrating-experience-fishermen-atlantic>

NOAA Fisheries, “New Scientific Study Tracks the Trends in 100 Years of Shark Depredation in Recreational Fisheries,” June 11, 2026.

<https://www.fisheries.noaa.gov/feature-story/new-scientific-study-tracks-trends-100-years-shark-depredation-recreational-fisheries>

4. Sunset Park Regulations

Key Colony Beach Ordinance Change, Sec. 12-9(b) (September 2025)

Last year, Key Colony Beach changed its rules for fishing and entering the water at Sunset Park. No explanation for these changes were given except that the changes were “in the best interest of the public health, safety, and welfare of the residents ...”

WHEREAS, the City Commission has reviewed the proposed ordinance and determined that its adoption is in the best interests of the public health, safety, and welfare of the residents of Key Colony Beach, Florida.

Changes included:

- Deleted the provision, “no persons are allowed into the water at any time” while acknowledging in the same ordinance that crocodiles live in the coastal waters. Sec. 12-9(b)(4).
- Deleted the provision restricting wading, while acknowledging in the same ordinance that crocodiles live in the coastal waters making them unsafe. Sec. 12-9(b)(4).
- Eliminated the prohibition against entering the water from the observation deck. Sec. 12-9(b)(7).
- Eliminated the prohibition against fishing, now allowing fishing from the public pier. Sec. 12-9(b)(5).

Sunset Park Regulations – Sec. 12-9(b)(5)

(b) Sunset Park rules and regulations:

- (1) Sunset Park shall be open from 6:00 a.m. to one-half hour after sunset. The time of sunset is defined as the moment when the trailing edge of the sun's disk disappears below the horizon.
- (2) Special events must be pre-registered at City Hall forty-eight (48) hours in advance, and permits are subject to availability.
- (3) Dog waste is a threat to public health and can transmit disease, therefore persons must leash and clean up after their dogs.
- (4) Swimming ~~and snorkeling~~, ~~snorkeling~~, or wading in the park is prohibited. ~~No persons are allowed into the water at any time.~~ Crocodiles live in the coastal water of South Florida, and swift currents exist in the area immediately surrounding the park area, making the water unsafe.
- (5) ~~No fishing is permitted from or in the water's edge or observation deck.~~ **Fishing is permitted only in the designated areas of the pier.**
- (6) No shrimp, crab or lobster trapping/netting is permitted from the water's edge or the observation deck.
- (7) ~~Entry into the water from the observation deck is prohibited.~~ **Jumping off the observation deck is prohibited.**
- (8) Docking is prohibited.
- (9) No floating vessels shall launch or port from the water's edge, including but not limited to, boats of any kind, kayak, jet-ski, paddleboard, surfboard or windsurfing board.

Sec. 12-9. - Limitations on use of certain city park property.



- (a) Use of the park property of the City of Key Colony Beach as described in [section 12-1](#) shall be limited to the time from 6:00 a.m. to 10:00 p.m. each day unless otherwise posted. Persons on the subject properties during the prohibited hours shall be subject to penalties as set forth in [section 12-1](#) of the Key Colony Beach Code.
- (b) Sunset Park rules and regulations:
1. Sunset Park shall be open from 6:00 a.m. to one-half hour after sunset. The time of sunset is defined as the moment when the trailing edge of the sun's disk disappears below the horizon.
 2. Special events must be pre-registered at City Hall forty-eight (48) hours in advance, and permits are subject to availability.
 3. Dog waste is a threat to public health and can transmit disease, therefore persons must leash and clean up after their dogs.
 4. Swimming and snorkeling is prohibited. Crocodiles live in the coastal water of South Florida, and swift currents exist in the area immediately surrounding the park area, making the water unsafe.
 5. Fishing is permitted only in the designated areas of the park.
 6. No shrimp, crab or lobster trapping/netting is permitted from the water's edge or the observation deck.
 7. Jumping off the observation deck is prohibited.
 8. Docking is prohibited.
 9. No floating vessels shall launch or port from the water's edge, including, but not limited to, boats of any kind, kayak, jet-ski, paddleboard, surfboard or windsurfing board.

2

**Opposition to Variance of 10' setback from MHWL for swimming pools
May 12, 2026**

SUMMARY:

Based on the following, the current variance request, to encroach 3' into the 10' setback to construct a 11'3" X 12'6" pool, should be denied because strict compliance with the 10' set back requirement is feasible, applicant has not met the 5 conditions necessary for a variance, approval would signal selective enforcement, and it is important that citizens trust and rely on the government to implement rules, i. e., the 10' foot setback, that are well researched, necessary, and not arbitrary or capricious.

FACTS:

Setback requirement in KCB is 10 foot from the MHWL (or the landward edge of the seawall, as applicable).

Applicant requested a variance for relief to allow their placement of a pool to encroach into the setback by 3'. Applicant's proposed pool dimensions are 11'3" X 12'6."

This is the first time a variance from the 10' setback to install a pool has been requested in KCB.

REASON FOR VARIANCE REQUEST:

1. Good and sufficient cause

Applicant: Inability to construct a modestly sized pool **limits the property's reasonable and competitive use**; the subject property is constrained by limited lot depth, leaving "insufficient buildable area for a reasonably sized pool ..." These conditions are inherent to the platted lots and original home placement, not the result of any action by the owner.

2. Unnecessary hardships

Applicant: Increasing numbers of pools are being permitted within KCB, establishing a clear pattern of neighborhood character and market expectation. Without relief, the property is placed at a **competitive disadvantage** compared to similarly situated properties.

3. Would it create a threat to public health and safety? nuisance?

Applicant: Will not encroach into navigable waters. The requested relief represents the **minimum variance necessary** to allow a "**modestly sized**" code-compliant adequate circulation space for safe ingress and egress. The variance upholds the spirit and intent of the Land Development Regulations while addressing unique site hardship.

4. Unique physical circumstances that apply to this property but not others in the same zoning district?

Applicant: Strict application of the setback requirement effectively **precludes construction of a "functional pool"** thereby **denying the property a right commonly enjoyed by similarly situated properties** within the same zoning

5. Confer upon the applicant any special privilege denied to other properties.

CONCERNS:

A. **Applicants knew of the lot characteristics when they purchased their lot;** conditions have not changed since their purchase and instead are inherent to the platted lots and original home placement (Reason for variance request #1, #4 above). Purchasers of real property, applicants, are deemed to have constructive notice of existing municipal ordinances affecting the use of property (Florida law).

C. Applicants are not denied a property right commonly enjoyed by similarly situated properties. Similarly situated properties comply with the 10' setback. There are no pools in KCB that encroach on the 10' setback. Exhibits 2-4 (pp. 4-9); City building official.

E. Applicants are not at a competitive disadvantage compared to similar lots. All similar lots with swimming pools in KCB adhere to the 10' setback. Exhibits 2, 4 (pp. 4, 6-9).

F. Granting this variance would confer upon the applicant a special privilege denied to other similarly situated properties, thereby providing a competitive advantage to applicants

compared to all other similarly situated lots with swimming pools, including applicant's neighbor since, if the variance is granted, applicants property would be the only swimming pool in KCB that is less than 10' from the seawall and would provide a larger pool than the comparative lots. Exhibits 3-4 (pp. 5-9).

A public governing body's decisions cannot be arbitrary or capricious; they must be grounded in law and provide an expectation by citizens that the laws (statutes) have a reasonable basis.

The 10' setback is not only a requirement in KCB, but also in the adjacent city of Marathon. The rationale for the 10' setback is a combination of many factors. Exhibit 1.

Importantly, many citizens have relied on the 10' setback as a legal requirement and complied. It is not prudent to change this setback requirement without significant justification. Lastly, another citizen mentioned the visual impact of allowing structures to encroach on the 10' setback. Our canals are like streets and, similar to our rules prohibiting leaving garbage cans on the street, the City has a responsibility to regulate the aesthetics; setback requirements provide a degree of regulation in this respect.

EXHIBIT 1

The rationale for Marathon's 10-foot shoreline setback for pools near seawalls/MHWL is primarily a combination of:

1. coastal environmental protection,
2. seawall and shoreline stability,
3. storm/flood resilience, and
4. maintaining a buffer for drainage, maintenance, and future shoreline adaptation.

While the ordinances do not contain a single express "purpose statement" specifically for pools, the rationale is evident from Marathon's shoreline regulations, Florida coastal management law, FEMA floodplain principles, and standard coastal engineering practice.

1. Protection of shoreline stability and seawalls

A pool excavation too close to a seawall can undermine:

- seawall footings,
- tie-backs/deadmen,
- soil bearing capacity,
- and canal bank stability.

This is particularly important in the Florida Keys because:

- many seawalls are older,
- many were not engineered to modern standards,
- canal edge soils are porous limestone and fill,
- groundwater and tidal fluctuations can migrate beneath pool excavations.

The 10-foot setback creates a structural "buffer zone" between:

- the excavated pool shell,
- and the seawall/canal edge.

This is a standard coastal engineering concern.

2. Flood and storm resilience

Marathon is in a hurricane-prone coastal flood zone.

The setback helps reduce:

- scour during storm surge,
- hydrostatic pressure concentration,
- undermining during tidal events,
- collapse risk during canal overtopping.

If a pool is too close to the shoreline:

- storm surge can erode soils between the pool and seawall,
- leading to cracking, settlement, or seawall failure.

This rationale aligns with FEMA coastal construction principles.

Relevant FEMA guidance

FEMA Coastal Construction Manual:

- recommends setbacks from erosion-prone shorelines,
- discourages structures immediately adjacent to shoreline stabilization systems.

FEMA Coastal Construction Manual

3. Environmental and water-quality protection

The setback also helps protect:

- adjacent canals,
- tidal waters,
- mangroves,
- and nearshore marine habitat.

Pools near canal edges increase risks from:

- chlorinated water discharge,
- runoff,
- construction sediment,
- chemical contamination.

The shoreline buffer provides space for:

- drainage,
- filtration,
- grading,
- and stormwater management.

This is consistent with Florida coastal resource regulation generally.

4. Preservation of shoreline access and maintenance

The setback leaves room for:

- seawall inspection,
- repairs,
- utility access,
- drainage infrastructure,
- future shoreline reinforcement.

Without a setback:

- pool shells and decks can physically obstruct seawall replacement or reconstruction.

This becomes a major issue because Keys seawalls often require:

- cap replacement,
- tieback repair,
- or full reconstruction after storms.

5. Adaptation and sea-level-rise planning

Modern coastal setback rules increasingly serve a long-term resilience purpose.

Marathon's Comprehensive Plan and coastal management framework emphasize:

- minimizing coastal hazards,
- protecting shorelines,
- adapting to flooding and sea level rise.

A setback leaves flexibility for:

- future seawall raising,
- drainage modifications,
- shoreline adaptation infrastructure.

6. Why the setback is only 10 feet on altered canal shorelines

The city already reduced the setback substantially for:

- "lawfully altered shorelines."

That is effectively a compromise recognizing:

- canals are already hardened,
- many lots are shallow,
- waterfront residential use is expected,
- strict natural-shoreline setbacks would make many lots unusable.

Thus:

- natural shorelines may require 20–50 feet,
- but altered canal seawalls are permitted at 10 feet.

That reflects the city balancing:

- property use rights,
- against coastal safety and environmental concerns.

7. Why Marathon measures from MHWL instead of seawall

Legally, coastal regulation focuses on:

- sovereign submerged lands,
- tidal jurisdiction,
- shoreline processes.

The MHWL is the legally recognized shoreline boundary under Florida law, not the seawall face.

Relevant statute:

[Florida Statutes § 177.27](#)

Thus the city regulates from the legal tidal boundary rather than from a manmade structure that may shift over time.

8. Practical reality in Marathon

In practice, many canal lots are constrained enough that:

- the 10-foot rule can severely limit pool size/location,
- especially where homes were built decades ago before modern shoreline regulations.

That is why:

- compact pool designs are relatively common in the Florida Keys.

Primary source documents

- [Marathon Ordinance 2001-07-07](#)
- [Marathon Ordinance 2002-01-06](#)
- FEMA Coastal Construction Manual
- [Florida Statutes § 177.27 \(definition of MHWL\)](#)

EXHIBIT 2

Subject Property

Adjacent neighbor's pool (10' set back)

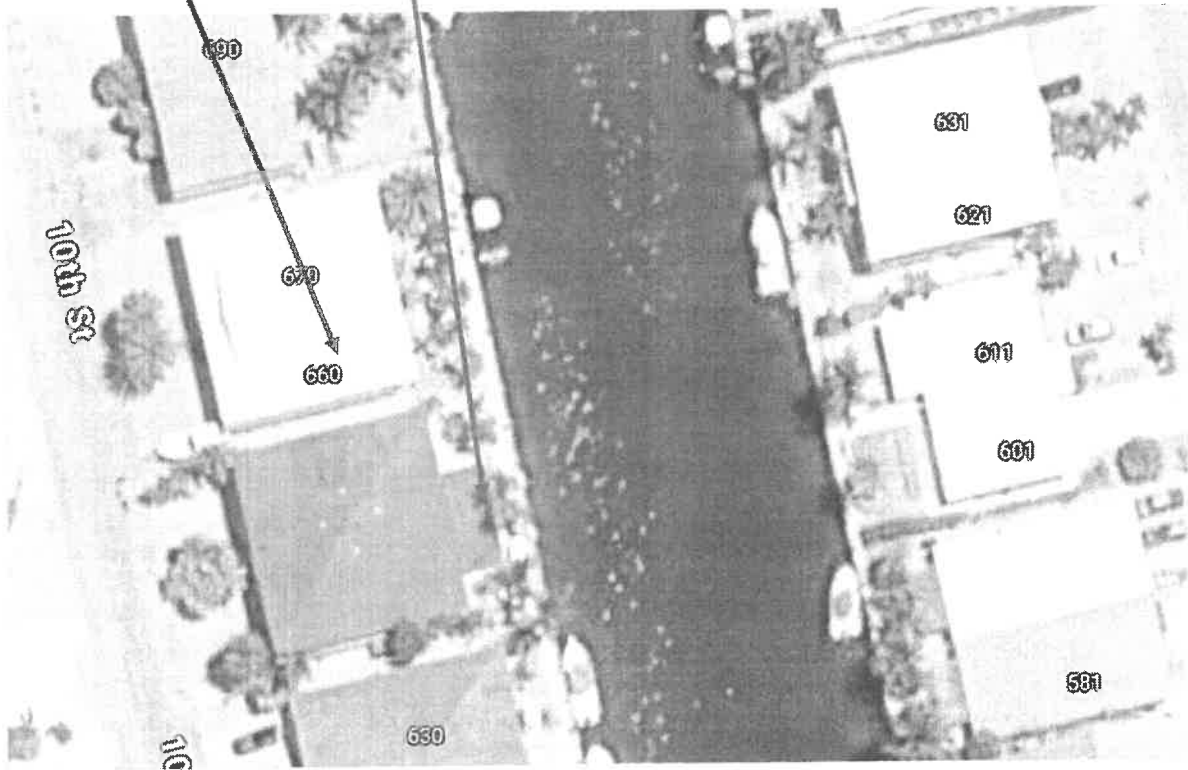


EXHIBIT 3

- (1) Applicants proposed pool.
- (2) Neighbor's pool with 10' setback.

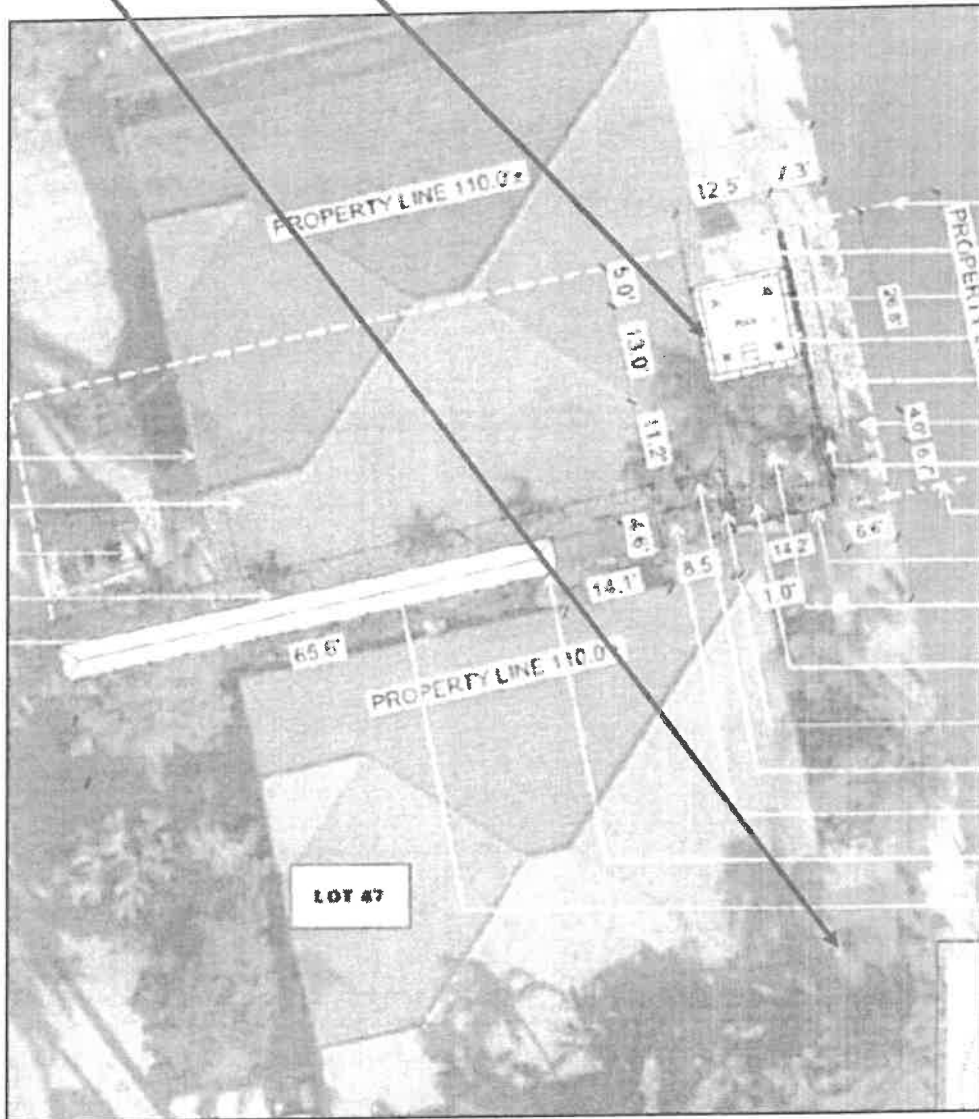
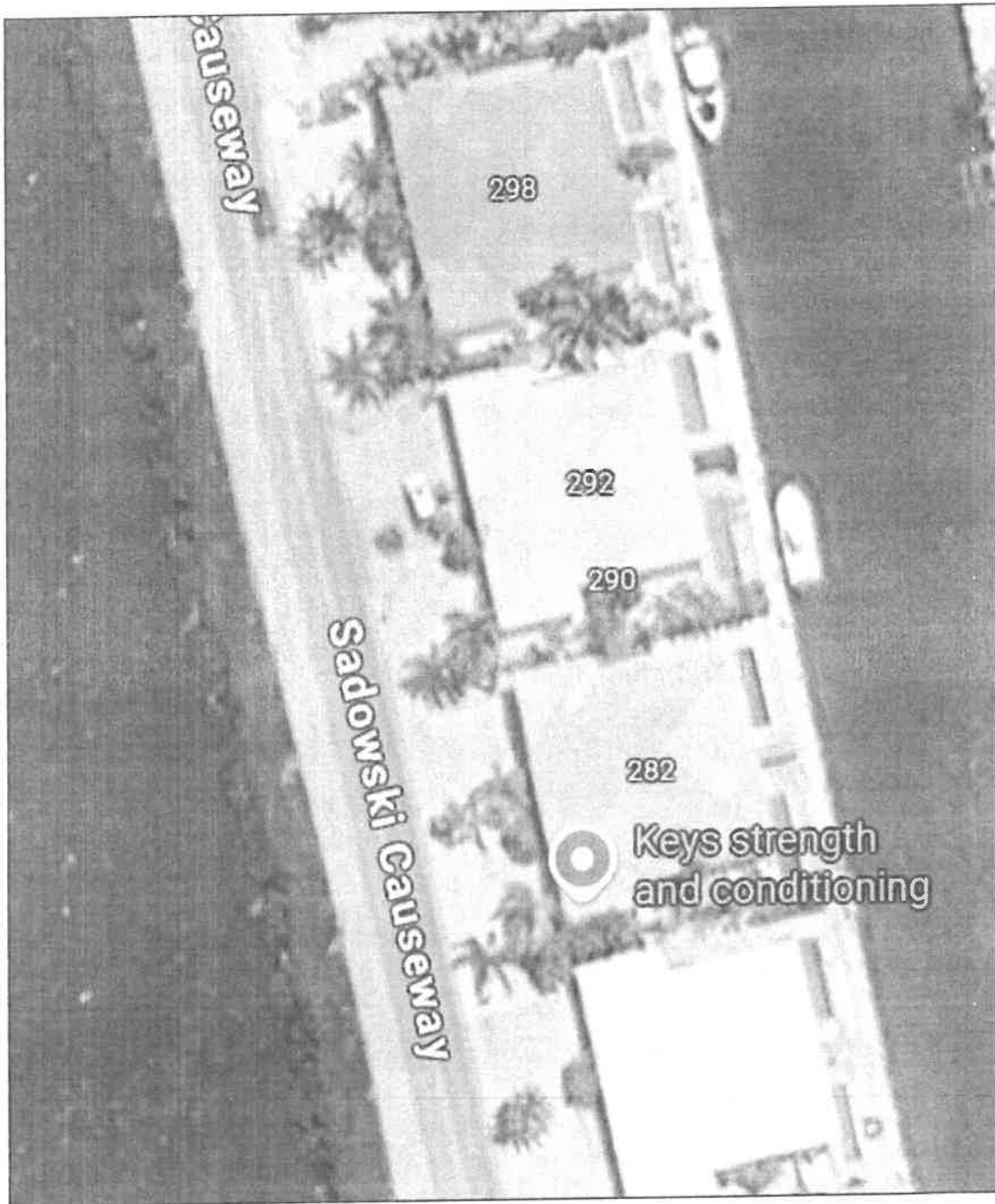


EXHIBIT 4

Sadowski Causeway



9th Street



10th Street

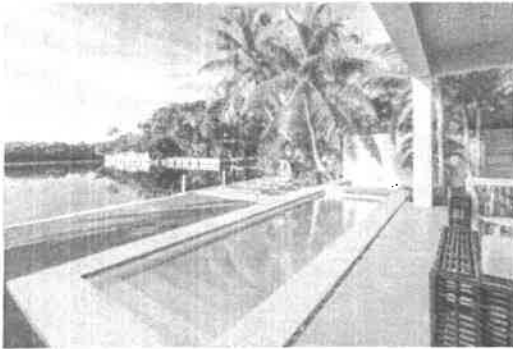
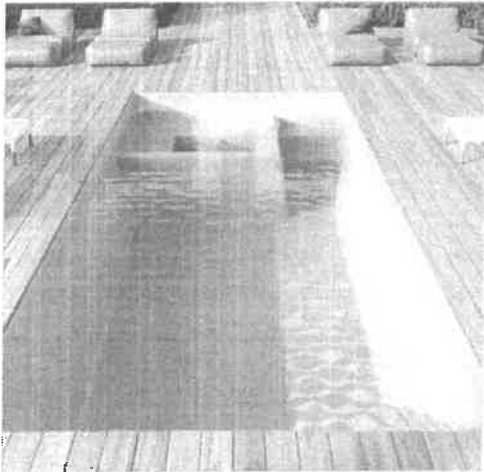
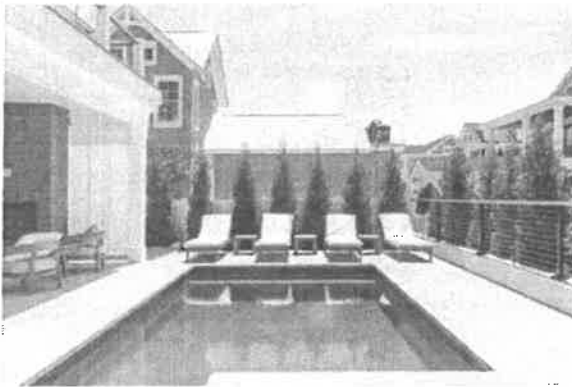


14th Street



EXHIBIT 5

Pictures of functional pools with narrow widths.



May 13, 2026

RE: Variance Request to 10' setback from MHWL for swimming pool.

Dear Planning and Zoning Committee Members,

As you know, as a member of the P&Z committee at our last meeting I made a motion to conditionally approve a variance request to install a swimming pool which encroached 3 feet into the 10' MHWL setback. My focus at the time was trying to understand the structural issues related to installing a swimming pool less than 10' from the MHWL, as I was informed this had never been done in KCB. My position was based on research I conducted regarding pools near seawalls in other coastal areas where several concerns were noted, including instances where it was later discovered that due to the construction method, the seawall structure was compromised when the pool was installed. It seemed if the structural issues could be addressed, a variance was warranted; but I now know that is not correct.

After the last P&Z meeting, I again reviewed the variance application, isolating and analyzing each question to determine its' validity and subsequently concluded that even if installing a swimming pool in the setback area is structurally sound, the request does not provide a reasonable basis for granting the variance.

My analysis and concerns are attached, including my concern that public trust will be undermined if the P&Z committee, of which I am a member, approves a variance that, according to my analysis, does not meet the criteria for granting a variance.

The last year I have been a member of the P&Z committee; from my perspective there have been no substantial variance issues requiring research; this is a first for me. We may not always "get it right" according to others, but I am compelled to share my research with my fellow committee members. I appreciate your consideration of this matter.

Respectfully,

Lynne Conkling

Further opposition to variance requests to install a swimming pool to encroach into the 10' setback requirement from the MHW

May 14, 2026

In addition to prior research, two of KCB's own regulatory documents read together require a 10' setback from the MHW for new, permissible "accessory structures" on canals, and swimming pools are defined as an "accessory structure."

Swimming Pools fall within the definition of an "accessory structure".

KCB's Code of Ordinances define a swimming pool as an "accessory structure."

"For the purposes of this article, certain words and terms are defined as follows:

Accessory structure or use: A garage, carport, tool shed, bathhouse, tennis court, **swimming pool**, spa, hot tub, dock facility or other structure of a similar nature on a lot or parcel that is subordinate to the main or principal building or use." [1]

A setback of 10' from MHW is required on canals for new, permissible accessory structures.

KCB's Comprehensive plan requires a setback of 10' from the MHW for new, permissible "accessory structures" on canals.

"New, permissible accessory structures within the shoreline setback other than docks, utility pilings, seawalls, retaining walls, riprap, walkways, and water observation platforms must maintain: A minimum of 20' as measured from the mean high water (MHW) line on Vaca Cut, 100' from MHW on the Ocean and 10' from MHW on canals, except dockside shelters maximum set back 3 feet from rear property line." [2]

Respectfully submitted by Lynne Conkling (Benton), Planning and Zoning Committee Member

REFERENCES:

[1] Code of Ordinances. Supplement 35. Online content updated on December 4, 2025. CODE OF ORDINANCES City of KEY COLONY BEACH, FLORIDA Codified through Ordinance No. 2025-506, enacted September 18, 2025. (Supp. No. 35). Sec. 6-58 – Definitions, p. 434. Source: KCB website: https://library.municode.com/fl/key_colony_beach/codes/code_of_ordinances?nodeId=PTIIICORR_CH6BU_ARTIVPRMACO_S6-58DE

[2] City of Key Colony Beach Comprehensive Plan (2024-26 Edit). Objective 1.6 Shoreline Setbacks. Policy 1.6.1, p. 17. Source: KCB City Clerk.

June 8, 2026

RE: Variance Criteria Review, Due Process for Volunteers, P&Z Handbook,

Dear George, Planning and Zoning Board Chairman,

I am struggling to understand the recent decision granting a variance from the pool setback requirements. From my perspective, the evidence presented did not establish the findings necessary to satisfy the variance criteria or other relevant provisions of the Code, and the record does not reflect a meaningful analysis of the evidence supporting those findings.

My understanding is that, as members of a quasi-judicial board, our decisions should be supported by competent, substantial evidence in the record. Please let me know if my understanding is incorrect.

Regardless of the legal standard, it seems our recommendations should be grounded in facts, evidence, and the criteria established in our Code. In the interest of transparency and continuous improvement, I would appreciate the opportunity to discuss this matter at the next Board meeting to better understand how the Board concluded that the variance criteria were met, or alternatively, the reasoning supporting the variance.

Unlike private organizations, we serve in a public, quasi-judicial role and are accountable to our citizens. For that reason, I believe it is important that our decisions and reasoning be transparent and clearly tied to the applicable standards.

My questions regarding the variance process and my vote against the variance have resulted in my integrity being questioned by both citizens and a Commissioner. To help maintain a collaborative and respectful environment, I respectfully request that the Board consider adopting a process that provides volunteer board members a fair opportunity to respond when their integrity or conduct is publicly challenged, and a process to educate and inform new volunteers to help them navigate their role as a public servant, making decisions effecting their neighbors.

Finally, in my service on other boards, I have found member handbooks to be valuable tools for understanding responsibilities, procedures, and governing standards. As a relatively new member, I am still learning and conducting research to better understand my role and duties. The attached materials reflect that effort. They have not been reviewed or vetted by anyone and are offered only as a starting point. My hope is that, over time, the Board might consider developing a comprehensive handbook to assist current and future members in carrying out their responsibilities effectively and consistently.

Respectfully,

Lynne Benton
Planning & Zoning Board Member

Cc: Planning and Zoning Board Members

Attachments:

Subject to Laws Governing Local Public Officials
Types of Proceedings
Decision Making

Subject to Laws Governing Local Public Officials

Planning and Zoning Board members are considered “local public officials” and subject to laws governing local public officials.

Local public officials are not separately defined in the KCB ordinance and instead the ordinance references Florida Statute, F.S. § 286.0115(1)(b) which provides:

As used in this subsection, the term “local public official” means any elected or appointed public official holding a county or municipal office who recommends or takes quasi-judicial action as a member of a board or commission. The term does not include a member of the board or commission of any state agency or authority.

In most Florida contexts, a member of the Planning & Zoning Board who is appointed by the City, serves on a municipal board, conducts quasi-judicial hearings, and makes recommendations or decisions affecting property rights, would very likely be considered a local public official under § 286.0115 when acting in that capacity. The fact that the position is voluntary or unpaid does not usually change the analysis. The focus is on whether the person is exercising governmental authority, not whether they are compensated. The ex parte communication statute specifically defines a “local public official” to include “an elected or appointed public official holding a county or municipal office who recommends or takes quasi-judicial action...” F.S. § 286.0115(1)(b).

Florida courts generally treat members of local boards exercising governmental authority as public officials for purposes of Sunshine Law requirements, public records requirements, ethics and conflict-of-interest rules, and quasi-judicial due process requirements.

Types of Proceedings

Quasi-Judicial Proceeding

One of the most frequently cited definitions comes from the Florida Supreme Court in *Board of County Commissioners of Brevard County v. Snyder*. The Court explained that a quasi-judicial decision involves “the application of general rules or policies to specific individuals, interests, or situations.” A quasi-judicial action is one in which a governmental body applies existing laws, ordinances, or regulations to a specific set of facts and a particular person or property, rather than creating new policy. If the Board is deciding whether a particular property owner gets an exception to existing rules, the proceeding is usually quasi-judicial.

Characteristics of a quasi-judicial proceeding: a hearing is held, evidence and testimony are presented, specific facts about a particular property or applicant are considered, existing ordinances or regulations are applied. A decision is made affecting the rights of a specific person or property owner. Examples include Variances, Special exceptions, Conditional use permits, Appeals from administrative decisions, Site-specific development approvals.

Legislative Proceeding

In contrast, a legislative action involves the formulation of policy applicable to the public generally. If the Board is deciding what the rules should be for everyone in the future, the proceeding is usually legislative. Examples include adopting a zoning ordinance, amending land development regulations, comprehensive plan amendments, and establishing city-wide policy.

Decision Making

Decisions must be supported by substantial, competent evidence in the record pertinent to the proceeding.

Under Florida law, F.S. § 286.0115(2)(c), “all decisions of the decisionmaking body in a quasi-judicial proceeding on local government land use matters must be supported by substantial, competent evidence in the record pertinent to the proceeding.”

3

YARD ORNAMENTS

City approved 7 foot Yard Ornament with multiple spear-like points when the code is 4 feet.

A variance was approved for an already-installed 7-foot yard ornament with sharp, spear-like points, despite the Code's 4-foot limit and acknowledgment that the variance criteria had not been met. There was no discussion of the potential hurricane safety risk or the purpose of the 4-foot limit. The City later received an independent legal opinion concluding that the variance criteria it relied upon does not comply with Florida law. *Variance [2]*.

Planning Considerations:

- **Neighborhood character and scale:** prevents large statues, structures, or decorative objects from dominating small residential lots.
- **Views and openness:** helps preserve sight lines, especially in a low-scale coastal community.
- **Safety:** reduces the size of objects that could become hazardous in high winds.
- **Setback integrity:** prevents large "ornaments" from effectively becoming structures placed where buildings would not be allowed.
- **Consistency and enforceability:** gives the City an objective standard instead of deciding case-by-case whether something is "too large."

If the City raises or removes the 4-foot limit, the main consequence is that substantially larger objects could be placed in yards as of right, potentially affecting views, neighborhood appearance, and adjoining properties. It could also make it harder to distinguish a yard ornament from a structure.

The question is not whether one particular ornament is attractive or objectionable, but whether allowing yard adornments taller than four feet throughout the City is consistent with the community's desired scale, views, safety, and neighborhood character.

7 foot Yard Ornament with multiple spear-like points





4

CRADLE LIFT

841 W. Ocean Drive – 40,000-Pound Cradle-Style Boat Lift

Key Issue and Record Support

Key Issue. The City approved a 40,000-pound cradle-style boat lift despite significant unresolved safety and procedural concerns and without objective criteria in the ordinance governing cradle lifts. Section 5-44 requires Commission approval for cradle lifts but provides no weight limits or approval criteria. The criteria presented to the Planning & Zoning Board — neighbor consent, visual impact, and hazards to navigation — appear instead in the separate ordinance governing ELEVATOR LIFTS, § 5-43(10). The record also reflects substantial opposition and concerns regarding swimmers, navigation, environmental impacts, and storm hazards; non-site-specific engineering where the engineer had not visited the site; an incomplete FDEP letter that did not identify the type, size, capacity, make, or model of the lift authorized, and the absence of approval by the Army Corps of Engineers. P&Z therefore recommended approval only with conditions addressing whether a hazard existed and the need for further site-specific evaluation. At the Commission hearing, however, the City Attorney advised that because § 5-44 contains no objective standards for denial, denying the application could expose the City to litigation, and the Commission approved the lift without addressing the safety concerns, and without addressing citizens concerns.

Record Citations and Supporting Text

1. Cradle-lift ordinance – Sec. 5-44

Record: Summary, p. 2; source lines 25–29. “The only ordinance I could find relating to the installation of a CRADLE lift is Sec. 5-44. This ordinance states that the installation of a cradle lift requires approval of the city commission. There are no provisions limiting the weight, and no approval criteria provided for CRADLE lifts.”

2. Wrong approval criteria presented to P&Z

Record: Research, p. 10; source lines 151–164. “Ordinance – wrong criteria given; at the P&Z hearing, members were provided with criteria for approval, but the ordinance was for Elevator Lifts, not CRADLE lifts.” The criteria in Sec. 5-43(10) are: “a. Neighbor consent or lack thereof. b. Visual impact on neighboring properties. c. Hazards to navigation resulting from the proposed installation.” The summary further states: “Cradle lifts are governed by a separate ordinance and are subject to different requirements.”

3. FDEP authorization was incomplete and did not establish local approval

Record: Summary, pp. 3–4; source lines 43–58. The FDEP copy “appears incomplete” because it refers to three approvals or authorizations but only the regulatory exemption is included. FDEP expressly states that the exemption “does not eliminate the need for other required federal, state, or local approvals,” and a material change could invalidate the authorization. The letter “does not identify the specific boat lift approved, including its type, size, capacity, make, or model.”

4. Engineering was not site-specific

Record: Summary, p. 4; source lines 60–67. The engineering specifications state: “Engineers have not visited the job site” and describe the detail as a “general non-site specific master plan sheet detail.” The engineering seal “validates structural design as shown only.”

5. Neighbor opposition and safety/environmental concerns

Record: Summary, p. 4; source lines 68–71; Attachment 1. Five parties signed opposition noting “safety hazards, environmental concerns, and visual obstruction concerns.” The opposition identified recreational/swimming safety, electrical safety, environmental impacts to seagrass, view obstruction, and increased storm and hurricane risk.

6. P&Z conditional recommendation

Record: June 18 Commission materials / P&Z recommendation, pp. 6 and 14–16; source lines 100–110 and 183–193. P&Z discussed “the proximity of the boat lift to a swimming area and potential liability, the adequacy of the Army Corps of Engineers Site Review, and the need for further evaluation of the site-specific issues.” The recommendation was approved “with conditions as stated in the motion,” including legal review to determine that no hazard was being approved.

7. City Attorney: no objective criteria for denial

Record: June 18, 2026 transcript, p. 9; source lines 121–149. The City Attorney stated that for cradle lifts “there are no standards, no factors, no guidance. It simply says to seek approval,” and that “the code does not provide you factors to stand on for purposes of a denial.” He concluded that because there were “no criteria, objective criteria, or factors,” a denial would expose the City to litigation in which it would probably not be successful.

Source: “0_40K Ocean boat lift_Lynnes Summary.docx,” including the summarized hearing record and attached City materials.

AGENDA
PLANNING & ZONING BOARD
REGULAR MEETING & PUBLIC HEARING

Wednesday, April 15, 2026 – 3:30 PM
Marble Hall, 600 W. Ocean Drive, Key Colony Beach, Florida 33051 & via Zoom Conferencing
Zoom Conferencing information at the end of the Agenda

1. **Call to Order, Pledge of Allegiance & Roll Call**
2. **Approval of the Agenda** (Additions, changes, and deletions can be made via one motion and a second to approve by majority vote)
3. **Citizen Comments & Correspondence**
4. **Approval of Minutes:** Planning & Zoning Board Minutes February 18th, 2026 - Pgs. 1-2
5. **Administration of the Oath of Witness**
6. **Disclosure of Ex-Parte Communications - Pg. 3**
7. **Discussion/Approval for installation of a 40,000 lb. Cradle-Style Boat Lift for the property at 841 W. Ocean Drive**
 - a. Engineering Plans - Pgs. 4-10
 - b. FDEP Qualification Letter - Pg. 11
 - c. Owner Letter- Pgs. 12-14
 - d. Neighbor Letter of Approval - Pg. 15
 - e. Neighbor Letter of Opposition - Pgs. 16-17
8. **Items for Discussion/Recommendation of Approval**
 - A. **A Variance Request from Kenneth and Ellen Jones, owners of the property at 620 10th Street, Key Colony Beach, for the construction of a residential swimming pool that would encroach into the setback by 3 feet.**
 1. Proof of Legal Publications & Affidavits of Mailing/Posting - Pgs. 18-22
 2. Variance Application - Pgs. 23-33
 3. Applicant Questions & Responses - Pgs. 34-35
 4. Recommendation by the Building Official - Pg. 36
 5. Post-Hearing Questions - Pgs. 37-38
 6. Recommendation to approve, deny, or approve with conditions
 - B. **A Variance Request from Brian Vliem of Vliem Vacation Rentals, LLC, owner of the property at 630 10th Street, Key Colony Beach, for constructing a residential swimming pool that would encroach into the setback by 3 feet.**
 1. Proof of Legal Publications & Affidavits of Mailing/Posting - Pgs. 39-43
 2. Variance Application - Pgs. 44-54
 3. Applicant Questions & Responses - Pgs. 55-56
 4. Recommendation by the Building Official - Pg. 57
 5. Post-Hearing Questions - Pgs. 58-59
 6. Recommendation to approve, deny, or approve with conditions

"Members of the Public may speak for three minutes and may only speak once unless waived by a majority vote of the commission."
Letters submitted to the City Clerk to be read at the Commission Meeting will be made part of the record but not read into record. Persons who need accommodations in order to attend or participate in this meeting should contact the City Clerk at 305-289-1212 at least 48 hours prior to this meeting in order to request such assistance. If a person decides to appeal any decision made with respect to any matter considered at any meeting, 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.



INSTALL 40K 8 POST CRADLE LIFT

841 W OCEAN DR, KEY COLONY BEACH



SITE DATA / PROJECT LOCATION:

SITE ADDRESS: 841 W OCEAN DR, KEY COLONY BEACH
PARCEL NO.: 00078730-000000
LEGAL DESC.: LOT 17 AND BAY BTM 5 ADJ LOT 17 AND PLAT OF AND EXT PLAT OF STEVENS SUB P&S-106 SHELTER KEY OR24-173 OR246-151 OR576-652 OR576-653 OR576-657 OR878-750 OR769-1506 OR769-1009 OR800-227 OR902-355356 OR802-1307 OR823-2130 OR827-2021 OR1060-1198 OR1060-1197 OR1060-1200 OR1060-1201 OR1060-1202 OR1060-1319 OR1381-71 OR1684-30 OR1684-28 OR1684-32 OR1967-1317 OR2005-049 CR2232-1E04
OWNER / S: SCHMIDT, JESSE, HANNON JODI
ZONING: SINGLE FAMILY RESID (S100)

PROJECT LOCATION



DRAWING INDEX:

- C - 01 PROJECT INFORMATION
- C - 02 GENERAL NOTES
- C - 03 SITE PLAN
- C - 04 BLOW UP SITE PLAN
- C - 05 DETAILED SECTIONS

DESIGN DATA :

DESIGN LOADS (MINIMUM):

- A. DEAD LOAD FOR UPLIFT CALCULATION 7PSF
- B. FLOOR DEAD LOAD (WOOD FRAMING) 20 PSF
- C. GUARD RAILS / HANDRAILS 220 LBS

SCOPE OF WORK:

NEW CONSTRUCTION

INSTALLATION OF 40K 8-POST CRADLE LIFT
SUBJECT PROPERTY CONTAINS 0.1 SF OF ACODE JUD AREA

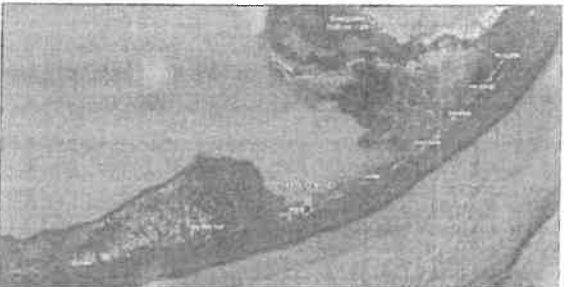
DESIGN CODE:

- 2023 FLORIDA BUILDING CODE, BUREAU OF EDITION
- 2023 FLORIDA BUILDING CODE, RESIDENTIAL, 8th EDITION
- 2023 FLORIDA BUILDING CODE, PLUMBING, 8th EDITION
- 2023 FLORIDA BUILDING CODE, MECHANICAL, 8th EDITION
- 2017 NATIONAL ELECTRICAL CODE, NEC 2017
- 2023 FLORIDA BUILDING CODE, FUEL GAS, 8th EDITION
- FLORIDA FIRE PREVENTION CODE, FPC-40
- NATIONAL FIRE PROTECTION ASSOCIATION, NFPA 701, 2017
- AMERICAN SOCIETY OF CRANE ENGINEERS, ASCE 172

WIND DESIGN SPECIFICATIONS:

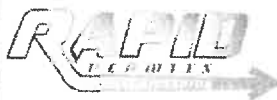
- A. BUILDING OCCUPANCY CATEGORY II
- B. CONSTRUCTION TYPE V-B
- C. OCCUPANCY CLASSIFICATION RESIDENTIAL
- D. WIND SPEED 180 MPH
- E. WIND EXPOSURE CATEGORY II
- F. ENCLOSURE CLASSIFICATION ENCLOSURED
- G. INTERNAL PRESSURE COEFFICIENT +0.18
- H. WIND-BORNE OBJECTS AREA YES
- I. REFER TO DRAWING FOR STRUCTURE HEIGHT AND AREA
- J. STRUCTURAL LOADS AND DESIGN PRESSURES LISTED IN THESE PLANS ARE ALLOWABLE (ASD) UNLESS NOTED OTHERWISE

A LOCATION MAP
SCALE: NTS



B VICINITY MAP
SCALE: NTS

PROJECT LOCATION



RAPID PERMITS AND ENGINEERING

ADDRESS: P.O. Box 510072, Key Colony Beach, FL 33451
CONTACT: 305-415-1400
EMAIL: info@rapidpermits.com

03/30/2026

PROJECT TITLE:

INSTALL 40K 8 POST CRADLE LIFT
841 W OCEAN DR, KEY COLONY BEACH

LOCATION: 841 W OCEAN DR, KEY COLONY BEACH
Parcel ID: 00078730-000000

NO.	DESCRIPTION	REV. DATE	SHEET CONTENT:	SHEET NO.:
01	Cover Sheet	02/06/24	PROJECT INFORMATION	01 05
			DATE: 2/7/24	

GENERAL NOTES

GENERAL REQUIREMENTS

1. Prior to commencing work, the Contractor shall review the plans and site conditions, reporting any discrepancies or conflicts with these plans that could impact construction or safety to the Engineer.
2. These plans are intended solely for construction at the specified location. For additional construction information, contact the Engineer at the start of work.
3. The Contractor is not allowed to make changes to the plans without the written approval of the Engineer of Record.
4. The Contractor is responsible for contacting Southern Bell Gas Service before beginning any construction in areas where underground utilities might be present.
5. The Engineer of Record will not provide utility locations.
6. The Engineer of Record does not guarantee the Contractor for these conditions during construction.
7. The Contractor is responsible for all construction methods and practices, ensuring adherence to the 2023 Florida Building Code, manufacturer recommendations, local county and city codes, and the specifications within these plans.
8. Construction should comply with the Building Energy Requirements of the Florida Model Energy Code.
9. The work shall meet or exceed standard industry practices.
10. Any deviations from these plans require review and approval by the Engineer of Record.
11. Shoring shall be installed as needed to support all structural members of the existing structure.
12. The Contractor is responsible for all means and methods necessary to improve or maintain the structural integrity and safety of the structure, including the design and installation of structural shoring or bracing, and proper placement of loads. The contractor is also responsible for the safety of all personnel in the work area.
13. The Contractor must coordinate with other trades to avoid conflicting activities.
14. The Engineer of Record certifies the document is not liable for any structural or non-structural damages, including damages to the structure, personnel, non-structurally related, and equipment, resulting from construction in accordance with the specifications of this certified document. The Contractor must notify the Engineer of Record of any conditions or issues that do not adhere to the specified details.
15. All piping to be driven or related with it shall, regardless of its size, capacity or pressure, be installed in accordance with the specifications of this certified document.
16. Engineer of Record to review and approve project file, but prior to the commencement of any work following the installation of pipe.



RAPID PERMITS AND ENGINEERING

ADDRESS: PO Box 515173, Key Colony Beach, FL 33051
CONTACT: 754-915-1400
EMAIL: info@rapidpermits.com

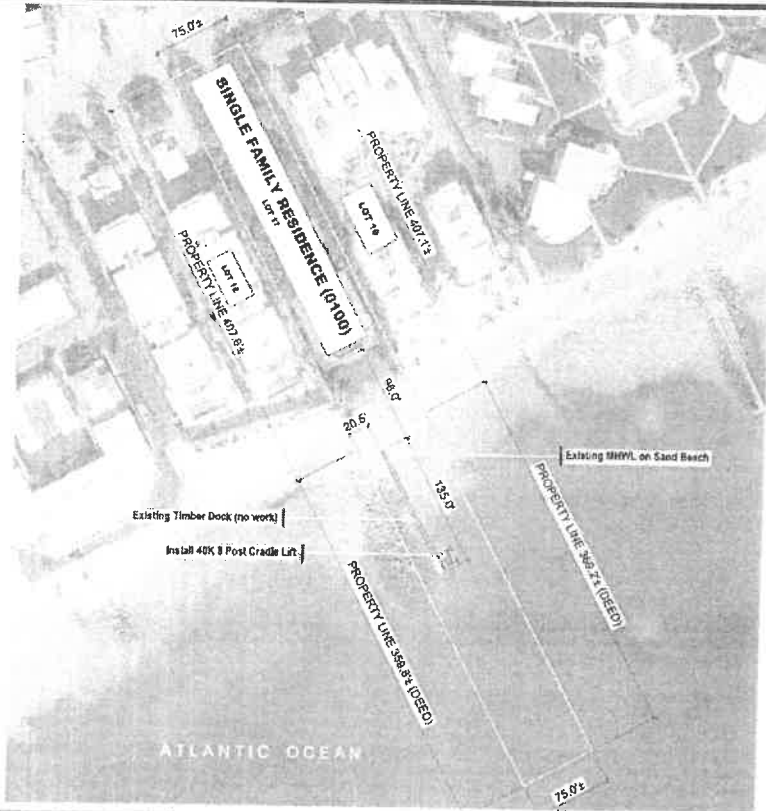
03/30/3036

PROJECT TITLE:

INSTALL 40K 8 POST CRADLE LIFT
841 W OCEAN DR, KEY COLONY BEACH

LOCATION: 841 W OCEAN DR, KEY COLONY BEACH
Parcel ID: 88078766-004000

NO.	DESCRIPTION	REV. DATE	SHEET CONTENT	SHEET NO.
01	General Notes	02/05/24	GENERAL NOTES	02 05
			DATE: 2/7/24	



PROPOSED SCOPE OF WORK

NEW CONSTRUCTION

- INSTALLATION OF 40K 8-POST CRADLE LIFT
- SUBJECT PROPERTY CONTAINS 0± SF OF ACOE J/D AREA

1

841 W Ocean Dr, Key Colony Beach

SITE PLAN

SCALE: 1-1/2" = 100'



RAPID PERMITS AND ENGINEERING

03/30/2026

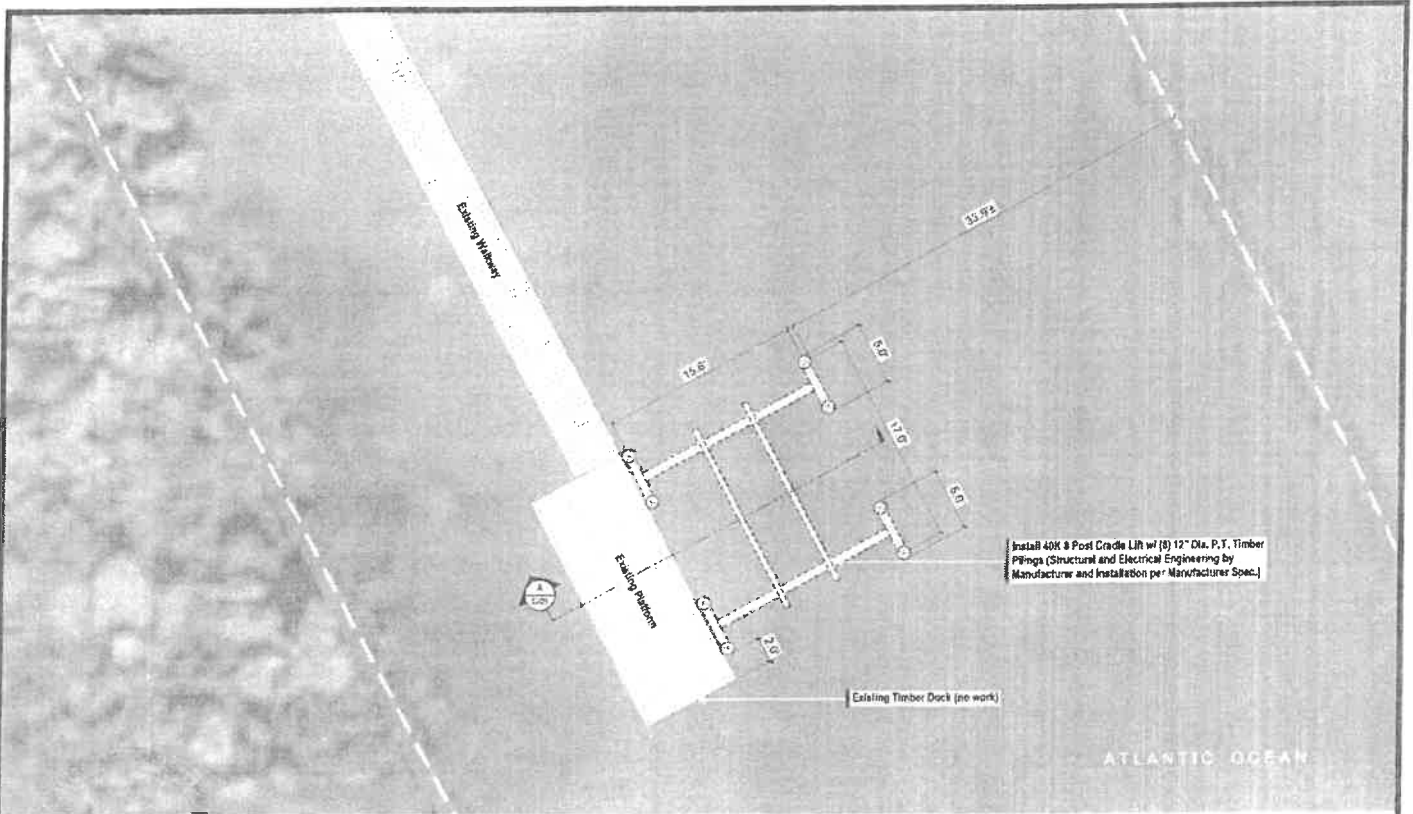
ADDRESS: 841 W Ocean Dr, Key Colony Beach
FL 33451
CONTACT: 304.965.1420
EMAIL: info@rapidpermits.com

PROJECT TITLE:

INSTALL 40K 8 POST CRADLE LIFT
841 W OCEAN DR, KEY COLONY BEACH

LOCATION: 841 W OCEAN DR, KEY COLONY BEACH
Parcel ID: 00078795-000000

NO.	DESCRIPTION	REV. DATE	SHEET CONTENT	SHEET NO.
01	Site Plan	02/06/24	SITE PLAN	C 03/05
			DATE: 2/7/24	



841 W Ocean Dr, Key Colony Beach
BLOW UP SITE PLAN
 SCALE: 3/16" = 1'



**RAPID PERMITS AND
 ENGINEERING**

ADDRESS: 170 Bca 516753 Key Colony Beach
 FL 33061
 CONTACT: 305-816-1400
 EMAIL: info@rapidperm-2-ng.com

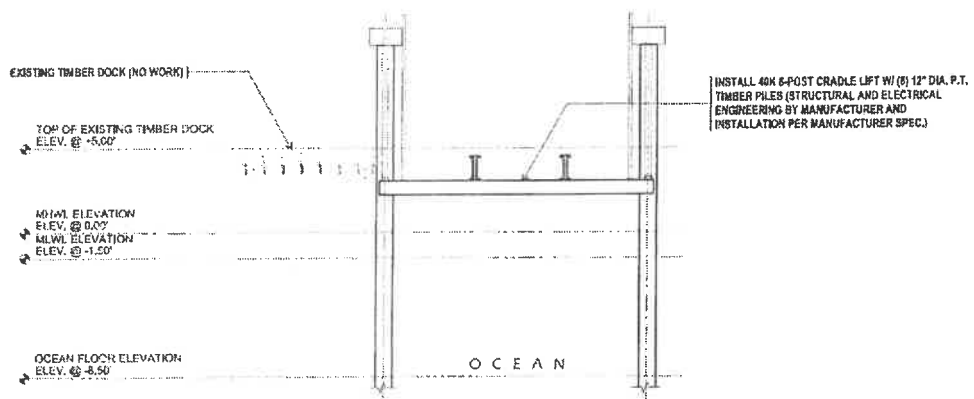
03/30/2026

PROJECT TITLE:

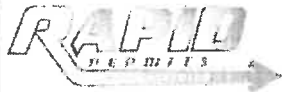
**INSTALL 40K 8 POST CRADLE LIFT
 841 W OCEAN DR, KEY COLONY BEACH**

LOCATION: 841 W OCEAN DR, KEY COLONY BEACH
 Parcel ID: 86072736-000000

NO.	DESCRIPTION	REV. DATE	SHEET CONTENT:	SHEET NO.:
01	Blow Up Site Plan	02/06/24	BLOW UP SITE PLAN	C 04 05
02	Blow Up Site Plan	02/07/24		
			DATE: 2/7/24	



A SECTION DETAIL A
 841 W Ocean Dr. Key Colony Beach
 SCALE: 1/4" = 1'



**RAPID PERMITS AND
ENGINEERING**

ADDRESS: PO Box 510572, Key Colony Beach, FL 33051
 CONTACT: 304-914-1430
 EMAIL: info@rapidpermits.com

03/30/2026

PROJECT TITLE:

INSTALL 40K 8 POST CRADLE LIFT
 841 W OCEAN DR, KEY COLONY BEACH

LOCATION: 841 W OCEAN DR, KEY COLONY BEACH
 Permit #: 2024-0000000

NO.	DESCRIPTION	REV. DATE
01	Detailed Sections	02/06/24
02	Detailed Sections	02/07/24

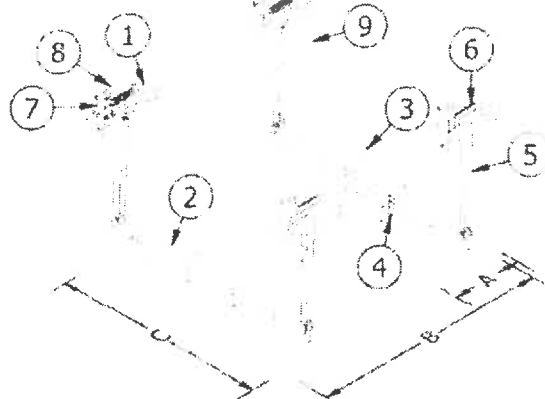
SHEET CONTENT:	SHEET NO.:
DETAILED SECTIONS	05
DATE: 2/7/24	05



HURRICANE BOAT LIFTS

8 POLE LIFT ENGINEERING SPECIFICATIONS

STAINLESS STEEL BRACKET
INTEGRAL BRACKET WITH
1/2" x 1/8" BOLTS CONNECTING
THE BRACKET TO THE
ASSEMBLY 1-1/8" x 1/2"
STAINLESS STEEL LAG BOLTS
INTO EACH SIDE OF THE
FRAMES



DETAIL
PILING PENETRATION
TO BE 10" INTO THE
SAND BOTTOM OR 5"
INTO THE ROCK STRATA
MINIMUM

	(A)	(B)	(C)
WIND SPEED (MPH)	60"	204"	187"
40,000	60"	204"	187"
50,000	60"	204"	216"

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
LIFT CAPACITY	TOP BEAM	LIFTER I-BEAM	BUNKS (STD)	BUNK BRACKET	CABLES	WINDERS	GEAR DRIVE UNIT	MOTOR H.P. V/A	REC. PILING SIZE
40,000	6" x 4" x 60" ALUM. I-BEAM	DBL 10" x 6" x .29/ 50 x 192" 6061-T6 ALUM.	5" x 10" x 16' DBL PT CARPETED	3" x 2" x .25" ADJUSTABLE 6061-T6 ALUM.	3/8" x 65' 304 SS 4 PART	5" x 22" SOLID ALUMINUM	DIRECT DRIVE 450:1	1 1/2 HP	11" - 12" DIAMETER
50,000	8" x 5" x 60" ALUM. I-BEAM	DBL 12" x 7" x .31/ 62 x 216" 6061-T6 ALUM.	5" x 10" x 16' DBL PT CARPETED	3" x 3" x .31/5" ADJUSTABLE 6061-T6 ALUM.	7/16" x 72' 304 SS 4 PART	5" x 22" SOLID ALUMINUM	DIRECT DRIVE 450:1	1 1/2 HP	12" DIAMETER

STRUCTURAL NOTES:

THE WORK SPECIFIED HEREIN HAS BEEN DESIGNED & ALL WORK SHALL BE IN ACCORDANCE WITH STRUCTURAL PROVISIONS OF THE 8TH EDITION 2023 FLORIDA BUILDING CODE. THIS LIFTING STRUCTURE HAS BEEN DESIGNED TO WITHSTAND WIND LOADS ASSOCIATED WITH WIND SPEEDS OF VULT=180 MPH, VASD= 139 MPH (3 SEC. GUST) EXPOSURE 'D' WITHOUT A BOAT ON THE LIFT PER ASCE 7-22 USING ABOVE GROUND SIGN/WALL METHOD, THE LIFTING STRUCTURE INCLUDING BOAT HAS BEEN DESIGNED TO WITHSTAND WIND SPEEDS OF VULT= 90 MPH IN EXPOSURE 'C' OR 80 MPH IN EXPOSURE 'D'.

OWNER RESPONSIBLE TO REMOVE BOAT FROM LIFT DURING WINDSTORM EVENT IN EXCESS VASD AS CALCULATED BELOW, PER FBC 3105.5.3 STRUCTURES DESIGNED TO BE READILY REMOVED OR REPOSITIONED DURING PERIODS OF HIGH WIND VELOCITY SHALL BE POSTED WITH A LEGIBLE AND READILY VISIBLE DECAL OR PAINTED INSTRUCTIONS TO BE THE OWNER OR TENANT TO REMOVE OR REPOSITION THE STRUCTURE OR PART THEREOF DURING SUCH PERIODS OF TIME AS ARE DESIGNATED BY THE U.S. WEATHER BUREAU AS BEING A HURRICANE WARNING OR ALERT. THE LIFT OWNER SHALL BE NOTIFIED OF THESE CONDITIONS BY THE PERMIT HOLDER. NO WARRANTY, EXPRESSED OR IMPLIED, IS CONTAINED HEREIN. VASD MAY BE CALCULATED BY THE FOLLOWING FORMULA. $VASD = v \cdot 0.6 \cdot VULT$. DESIGN OF BOAT WIND LOADING HAS BEEN PERFORMED WITH THE FOLLOWING RATIOS AS CONFIRMED BY OTHERS. $B/S=3$, $s/h = 0.75$, FOR A Cf of 1.6 MAXIMUM WHERE H IS THE HEIGHT TO TOP OF BOAT, B IS HORIZONTAL DIMENSION, AND S IS VERTICAL DIMENSION.

NAME: Hurricane Boat Lifts South
ADDRESS: 8865 Overseas Hwy
CITY: Indiantown STATE: FL ZIP: 33470

OSCAR M. BERMUDEZ, PE.
REG. FLORIDA NO. 55141

Digitally
signed by
Oscar M
Bermudez
Date:
2025.05.28
11:57:31
-04'00'

HURRICANE BOAT LIFTS
3301 SE SLATER STREET
STUART, FLORIDA 34997
(772) 781 2556
FAX (772)-781-4854

B&B ENGINEERS,
2237 WOODS EDGE CIRCLE
ORLANDO, FL 32817

PG 1 OF 2

REVISION HISTORY				
REV	DESCRIPTION	DATE	DESIGNED	APPROVED
1	INITIAL RELEASE	8/27/2021	EB	
2	BUILDING CODE WAS 2018 EDITION 2018	11/29/2024	EB	
3	ASCE 7-22 WAS 7.10	12/10/2024	EB	

HURRICANE BOAT LIFTS

8 POLE LIFT ENGINEERING SPECIFICATIONS

CERTIFICATION OF BOAT LIFT TO EXISTING STRUCTURE AND ALL ELECTRICAL OR MECHANICAL CERTIFICATIONS ARE BY OTHERS; ENGINEER SEAL CERTIFIES ASSEMBLY OF LIFT ONLY. THIS DETAIL IS PREPARED AS A GENERAL NON-SITE SPECIFIC MASTER PLAN SHEET DETAIL. TYPICAL FIELD CONDITIONS ARE ASSUMED IN THE DESIGN. WOOD PILES SHALL BE SEASONED WOOD WITH $G=0.55$ OR BETTER. SHOULD ANY SPECIFIC LOCATION DIFFER FROM THAT SPECIFIED HEREIN, OR STANDARD FIELD CONDITIONS, ADDITIONAL SPECIFIC ENGINEERING MAY BE REQUIRED AS DETERMINED BY THE BUILDING INSPECTOR AND PERMITTING CONTRACTOR. CARE SHALL BE TAKEN BY CONTRACTOR IN ALL APPLICATIONS OF THIS DETAIL. AS THIS IS NOT A SITE SPECIFIC DRAWING, IT IS THE RESPONSIBILITY OF OTHERS TO ENSURE THE INTEGRITY OF INSTALLATION TO THE HOST STRUCTURE.

ALUMINUM

MATERIAL: 6061 T6 ALUMINUM

ALL WELDS ARE MIN. 1/4" FULL FILLET WELD USING 5556 FILLER ALLOY. ALL WELDING MUST CONFORM TO AISC STEEL CONSTRUCTION MANUAL 13TH ED AS INSPECTED AND VERIFIED BY OTHERS. THE CONTRACTOR IS RESPONSIBLE TO INSULATE ALUMINUM MEMBERS FROM DISSIMILAR METALS TO PREVENT ELECTROLYSIS.

FASTENERS

ALL ANCHORS TO BE HILTI BRAND OR MFR EQUIVALENT. ALL BOLTS SHALL BE HOT DIPPED GALVANIZED, OR STAINLESS STEEL & MEET THE REQUIREMENTS OF ASTM A304 WITH HARDENED WASHERS AND HEX NUTS. WASHERS SHALL BE USED BETWEEN WOOD & BOLT HEAD & BETWEEN WOOD & NUT. WHERE GENERIC FASTENERS ARE LABELED IN DETAILS, CAPACITIES SHALL BE EQUAL TO OR GREATER THAN HILTI KWIK BOLT II OR RED HEAD THRU BOLTS. EMBEDMENT DEPTHS SPECIFIED HEREIN ARE DEPTHS INTO SOLID SUBSTRATE AND DO NOT INCLUDE THICKNESS OF STUCCO OR OTHER FINISHES.

ALUMINUM MEMBERS IN CONTACT WITH CONCRETE AND WOOD SHALL BE PROTECTED BY HDPE (HIGH DENSITY POLYETHYLENE) BARRIER WRAP OR POLYETHYLENE TAPE UHMW (ULTRA HIGH MOLECULAR WEIGHT) 11.7 mils (0.30 mm) MIN. TOTAL THICKNESS IN ACCORDANCE WITH CURRENT FLORIDA BUILDING CODE. ALL WELDS PER FLORIDA BUILDING CODE.

B&B ENGINEERS HAS NOT VISITED THIS JOBSITE. INFORMATION CONTAINED HEREIN IS BASED ON CONTRACTOR SUPPLIED DATA AND MEASUREMENTS. B&B ENGINEERS SHALL NOT BE HELD RESPONSIBLE OR LIABLE IN ANY WAY FOR ERRONEOUS OR INACCURATE DATA OR MEASUREMENTS. WORK SHALL BE VERIFIED PRIOR TO CONSTRUCTION. B&B ENGINEERS SHALL BE NOTIFIED AND GIVEN AN OPPORTUNITY TO REEVALUATE OUR WORK UPON DISCOVERY OF ANY INACCURATE INFORMATION PRIOR TO MODIFICATION OF EXISTING FIELD CONDITIONS AND FABRICATION AND INSTALLATION OF MATERIALS.

ENGINEERING SEAL AFFIXED HERETO VALIDATES STRUCTURAL DESIGN AS SHOWN ONLY. USE OF THIS SPECIFICATION BY CONTRACTOR, et. al. INDEMNIFIES & SAVES HARMLESS THIS ENGINEER FOR ALL COSTS & DAMAGES INCLUDING LEGAL FEES & APPELLATE FEES RESULTING FROM MATERIAL FABRICATION, SYSTEM ERECTION & CONSTRUCTION PRACTICES BEYOND THAT WHICH IS CALLED FOR BY LOCAL, STATE, & FEDERAL CODES & FORM DEVIATIONS OF THIS PLAN, EXCEPT AS EXPRESSLY PROVIDED IN HEREIN, NO CERTIFICATION OR AFFIRMATIONS ARE INTENDED.

MOTOR SPECIFICATIONS		
H/P	VOLTS	AMPS
3/4	115/230	9.8/4.9
1	115/230	13.6/6.8
1/2	115/230	19.2/9.8
2	115/230	24.8/12.4



FLORIDA DEPARTMENT OF Environmental Protection

Southeast District Office
3301 Gun Club Road, MSC 7210-1
West Palm Beach, FL 33406
561-681-6600

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

February 29, 2024

Jesse Schmid
841 W Ocean Dr.
Key Colony Beach, FL 33051
Sent via agent's email: Kristie@rapidpermitting.com

File No.: 44-0246372-003-EE, Monroe County

Dear Jesse Schmid:

On February 16, 2024, we received your request for verification of exemption to perform the following activities: to install a new boat lift at an existing single-family residence. The project is located in the Atlantic Ocean, Class III Waters, adjacent to 841 W Ocean Dr, Key Colony Beach (Section 08, Township 66 South, Range 33 East), in Monroe County (Latitude N 24° 43' 7.1929", Longitude W -81° 1' 16.2841").

Your request has been reviewed to determine whether it qualifies for (1) a regulatory exemption, (2) proprietary authorization (related to state-owned submerged lands), and (3) federal approval that may be necessary for work in wetlands or waters of the United States.

Your project qualifies for all three. However, this letter does not relieve you from the responsibility of obtaining other federal, state, or local authorizations that may be required for the activity.

If you change the project from what you submitted, the authorization(s) granted may no longer be valid at the time of commencement of the project. Please contact us prior to beginning your project if you wish to make any changes.

If you have any questions regarding this matter, please contact William Lange at 561-681-6609 or William.Lange@FloridaDEP.gov.

1. Regulatory Review – VERIFIED

Based on the information submitted, the Department has verified that the activity as proposed is exempt under Chapter 62-330.051(5)(h), Florida Administrative Code, from the need to obtain a regulatory permit under Part IV of Chapter 373 of the Florida Statutes.

www.floridadep.gov

JESSE SCHMID / 841 W OCEAN DRIVE / 40K BOAT LIFT

Statement from Mr. Schmid:

I own a 46 ft. Invincible center console fishing boat. I keep it at the Key Colony Marina full time, and I plan to continue to keep it there. I am not interested in keeping it at my house all the time. The main reason that we want to have a 40,000-pound boat lift approved is so that my two sons, Brody and Royce, who use wheelchairs due to their diagnosis of Duchenne Muscular Dystrophy, will be able to go out fishing with me. My boat has a crane to lift my children so they can get onto the boat, as the marina access is not handicapped accessible. I will not be keeping the boat at my house. It will only be there on occasions when I take my boys out on the water.

Below please find letters from Rare Disease Research confirming their participation in a clinical trial for this disease.



Rare Disease Research
1730 Northeast Expressway NE
Atlanta, GA 30329
470-574-5717



15 Jan 2025

Re: Brody Schmid

To Whom It May Concern,

I am writing on behalf of Brody Schmid, who is currently participating in a clinical trial at Rare Disease Research. The trial involves monthly infusions of an investigational product as part of his treatment for Duchenne Muscular Dystrophy (DMD).

As part of the treatment, it is not uncommon for patients to experience side effects following their monthly infusions. These side effects may include fevers, flu-like symptoms, vomiting, and general discomfort. The onset of these symptoms typically occurs between 3 to 7 days post-infusion and can impact the patient's ability to attend school or participate in regular activities during this time.

We kindly request that you take this information into consideration when reviewing Brody's attendance records. These absences are a direct result of his participation in the clinical trial, which is an important part in managing his condition. If any additional documentation or clarification is required, please do not hesitate to contact our office at 470-574-5717 or kallie.platt@rarediseaseresearch.com.

We greatly appreciate your understanding and support in accommodating Brody's medical needs.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kallie Platt", is written over a faint, circular blue ink stamp.

Kallie Platt, MSN, CPNP-AC
Nurse Practitioner, Sub-Investigator

Rare Disease Research
1730 Northeast Expressway NE
Atlanta, GA 30329
470-574-5717



15 Jan 2025

Re: Royce Schmid

To Whom It May Concern,

I am writing on behalf of Royce Schmid, who is currently participating in a clinical trial at Rare Disease Research. The trial involves monthly infusions of an investigational product as part of his treatment for Duchenne Muscular Dystrophy (DMD).

As part of the treatment, it is not uncommon for patients to experience side effects following their monthly infusions. These side effects may include fevers, flu-like symptoms, vomiting, and general discomfort. The onset of these symptoms typically occurs between 3 to 7 days post-infusion and can impact the patient's ability to attend school or participate in regular activities during this time.

We kindly request that you take this information into consideration when reviewing Royce's attendance records. These absences are a direct result of his participation in the clinical trial, which is an important part in managing his condition. If any additional documentation or clarification is required, please do not hesitate to contact our office at 470-574-5717 or kallie.platt@rarediseaseresearch.com.

We greatly appreciate your understanding and support in accommodating Royce's medical needs.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kallie Platt", is written over a faint, circular official stamp.

Kallie Platt, MSN, CPNP-AC
Nurse Practitioner, Sub-Investigator

LETTER OF CONCURRENCE FOR BOAT-LIFT INSTALLATION

TO: Jesse Schmid
841 W Ocean Drive
Key Colony Beach, FL 33051

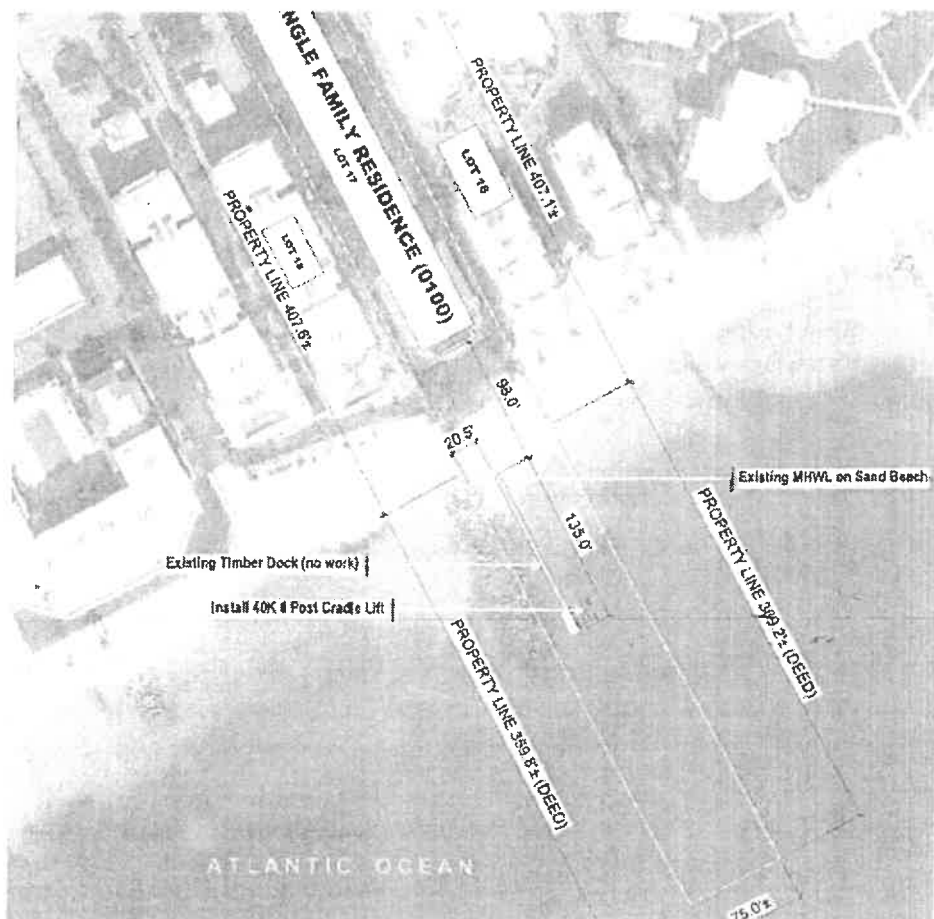
FR: Lionel & Cynthia Trebilcock
821 W Ocean Drive
Key Colony Beach, FL 33051

I hereby state that I am the owner of the adjacent property located next to 841 W Ocean Drive in Key Colony Beach and do not object to a boat lift being installed at this property. I understand that the boat lift will be installed according to the plan below.


Original signature of adjacent owner

1-16-2021
Date

Lionel TREBILCOCK
Printed name of adjacent owner



THE RESIDENCES AT WEST OCEAN DRIVE

FEBRUARY 26, 2026

Mr. Jesse Schmid
841 W Ocean Drive
Key Colony Beach, FL 33051

Mr. Schmid...

Dale Bruns (Bruns Family, LLP), one of five owners in our condominium association, recently received the "Letter of Concurrence for Boat Lift Installation" (below) you requested. Neither our association nor the other four owners received your letter, or any other communication regarding a boat lift.

For the record.. The Residences association board and all five owners reviewed and respectfully oppose installation of the proposed boat lift for reasons including the following...

1. Recreational Safety Concerns... Boat maneuvering operations would be in close proximity to recreational swimming, children playing in the water, paddleboarding, and kayaking that would present safety concerns that cannot be ignored.
2. Electrical Safety Concerns... The proposed lift will require electrical service. The presence of electrical infrastructure over or adjacent to waters in close proximity to recreational swimming, children playing at water's edge, paddleboarding, and kayaking presents safety concerns that cannot be ignored.
3. Environmental Impact ... The vicinity of the proposed installation contains seagrass habitat. Installation, shading, and vessel activity associated with a lift could negatively affect this protected marine environment.
4. Substantial View Obstruction... the proposed boat lift and boat would materially and substantially obstruct the ocean views from our condominium units. These view corridors represent a significant property value component.
5. Increased Storm and Hurricane Risk... Boat lifts and elevated vessels face a high risk of structural damage from high winds and storm surges. In the event of a tropical storm or hurricane, these structures may fail and cause secondary damage to our building, swimming pool, and surrounding grounds.

For these obvious reasons, there are presently no boatlifts located anywhere on Key Colony's Beach.

The Residences Board of Directors and each of the condo owners respectfully oppose construction of a boat lift on your 841 West Ocean Drive, Key Colony Beach property.

Respectfully,

THE RESIDENCES BOARD OF DIRECTORS and owners...

Bruns Family, LLP

Thomas R. Benck & Tracy Benck

James I. Howe & Betty K. Howe

Charles Martin Family, LLC

Stephen W. Cole Revocable Trust

THE RESIDENCES AT WEST OCEAN DRIVE

FEBRUARY 26, 2026

LETTER OF CONCURRENCE FOR BOAT-LIFT INSTALLATION

TO: Jesse Schmid
841 W Ocean Drive
Key Colony Beach, FL 33051

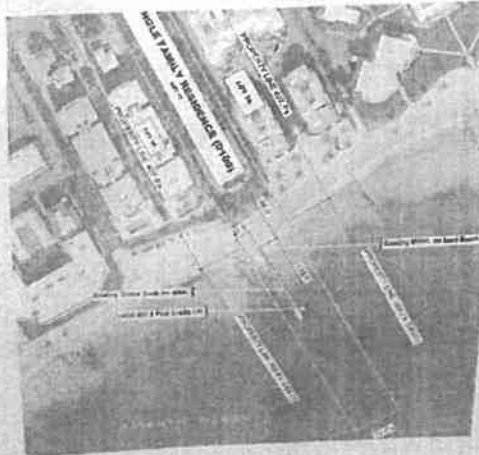
FR: Bruns Family LLP
901 W Ocean Drive
Key Colony Beach, FL 33051

I hereby state that I am the owner of the adjacent property located next to 841 W Ocean Drive in Key Colony Beach and do not object to a boat lift being installed at this property. I understand that the boat lift will be installed according to the plan below.

Original signature of adjacent owner:

Date:

Printed name of adjacent owner:



MINUTES
KEY COLONY BEACH CITY COMMISSION
PUBLIC HEARING
Thursday, May 21st, 2026, 3:30 PM
Marble Hall, 600 W. Ocean Drive, Key Colony Beach
& via Zoom Conferencing

1. **Call to Order, Pledge of Allegiance, Prayer & Roll Call:** The Key Colony City Commission Public Hearing was called to order at 3:30 PM by Mayor Freddie Foster, followed by the Pledge of Allegiance, Prayer, and Rollcall. **Present:** Mayor Freddie Foster, Vice-Mayor Doug Colonell, Commissioner Tom Harding, Commissioner Tom DiFransico, Commissioner Kirk Diehl (via Zoom). **Also present:** City Attorney Jim Hicks, City Administrator John Bartus, Building Official Tony Loreno, Public Works Department Head Mike Guarino, Acting Chief of Police Jamie Buxton, Acting Fire/EMS Chief Shawna Rogers, Planning & Zoning Board Chair George Lancaster.

Mayor Foster found cause for Commissioner Diehl to attend via Zoom.

Public Attendance: 11

2. **Approval of Agenda** (Additions, changes, and deletions can be made via one motion and a second to approve by majority vote)

Mayor Foster stated his intent to remove the agenda item for approval of the boatlift to enable follow-up on outstanding questions regarding the matter. There were no other changes to the agenda, and Mayor Foster asked for a motion to approve the agenda with changes.

MOTION: Motion made by Commissioner Harding to approve. Commissioner DiFransico seconded the motion.

DISCUSSION: None.

ON THE MOTION: Rollcall vote. Unanimous approval

3. **Citizen Comments & Correspondence**

City Clerk Roussin provided the following citizen correspondence:

May 2, 2026—Owners at Catillo del Sol Condominiums wrote to the City Commission, following up on their initial letter of opposition with additional concerns about the impact of the proposed boat lift at 841 W. Ocean Drive.

May 17, 2026—Jim Howe at 901 W. Ocean Drive wrote, expressing his opposition to the proposed boat lift at 841 W. Ocean Drive and raising concerns about a public safety hazard and setting a precedent for the coastline.

May 19, 2026—Stephen Cole and Nancy Talbott wrote to the City Commission with concerns and opposition to the proposed boat lift at 841 W. Ocean Drive.

4. **Administration of the Oath of Witness:** City Clerk Roussin administered the Oath of Witness to all planning to testify.
5. **Disclosure of Ex Parte Communication:** Mayor Foster informed the Board that he had spoken to one of the residents and the engineer on the record, and that these communications would not affect his vote.

Mayor Foster asked for citizen comments on the agenda items.

Clerk

05-21-2026 Citizen Correspondence – Public Hearing

The City Clerk's Office received the following correspondence:

May 2, 2026 – Owners at Catillo del Sol Condominiums wrote to the City Commission, following up on their initial letter of opposition with additional concerns about the impact of the proposed boat lift at 841 W. Ocean Drive.

May 17, 2026 – Jim Howe at 901 W. Ocean Drive wrote, expressing his opposition to the proposed boat lift at 841 W. Ocean Drive and raising concerns about a public safety hazard and setting a precedent for the coastline.

May 19, 2026 – Stephen Cole and Nancy Talbott wrote to the City Commission with concerns and opposition to the proposed boat lift at 841 W. Ocean Drive.

All correspondence has been distributed to the City Commission and will be included in the official minutes for today's meeting.

Thank you,

Silvia Roush

City Clerk

Owners at Castillo del Sol Condominiums

799 West Ocean Drive

Key Colony Beach, Florida 33051

May 2, 2026

City Commissioners

Key Colony Beach, Florida

Dear Commissioners:

We, the Owners at Castillo del Sol, have recently been in contact with the Planning and Zoning Board of our city regarding the proposed placement of a 40K, 8 post cradle boat lift located at 841 West Ocean Drive.

Pursuant to the April 15th Zoning Board meeting, it is our understanding that there may be a tentative approval for this project pending some further review. We are currently following up our initial letter of opposition with additional concerns regarding the impact of this proposal.

Since this process appears to be moving rather swiftly, we are taking the liberty of attaching a copy of our letters for your review. This is not intended to supersede the authority of the Zoning Board, but to ensure that the City Commissioners are at least made aware of our concerns before a final decision is rendered.

We appreciate your thoughtful attention to our situation.

Respectfully,

Owners at Castillo del Sol

Owners at Castillo del Sol Condominiums

799 West Ocean Drive

Key Colony Beach, Florida 33051

April 28, 2026

City Hall Auditorium

City of Key Colony Beach

600 West Ocean Drive

Key Colony Beach, Florida 33051

ATTN: Planning and Zoning Board

Dear Members of the Planning and Zoning Board:

This letter is a follow-up to a previous correspondence to the Planning and Zoning Board dated April 10, 2026 regarding a proposed placement of a 40K, 8 post cradle boat lift to be located at 841 West Ocean Drive.

It is our understanding that despite what appears to be tentative approval, that there remains open discussion regarding this proposal. Accordingly, we would like to put forth additional justifications to support our opposition to this plan.

- 1. Noted in the application is a letter from the Florida Department of Environmental Protection dated February 29, 2024 approving this project based on information submitted to the department. There is no indication that anyone from that agency made an "on-site" visit to evaluate first-hand the actual impact of this project on our fragile marine environment. Also, this approval was granted 2 years ago when the original proposal was for a much smaller structure.**
- 2. The petitioner states that it is his intention to only use this boat lift on a "part-time basis." However, when given the convenience of having his boat immediately available, it's hard to believe that this will not in fact, become a "full-time" indulgence.**

Furthermore, it has come to our attention that the petitioner owns 2 large boats raising the real possibility that both vessels may at some point be moored at the same location.

3. **"Safety."** It is well known that we have local residents, ourselves included, who regularly swim, paddle boat, wind surf and snorkel in the immediate area of this proposed dock and boat lift. Visibility of these participants when in the water is extremely poor. A large boat navigating this area raises serious safety issues and/or may discourage people from even going into the water to avoid this risk.
4. **"Liability."** Some of us at Castillo del Sol have been owners or residents for 35+ years. We have experienced first-hand the unimaginable destruction generated by severe weather, especially hurricane wind and ocean surges. And in spite of every reassurance and precaution there is risk that all, or parts of this dock/boat lift may become separated and cause catastrophic damage to structures on land. As adjacent property owners we have concerns as to who bears responsibility for any damages that may impact our land or buildings should this occur. Is it the petitioner who is liable, or is it the City of Key Colony Beach who approved the placement of this structure?
5. Lastly, we're back again to the fundamental concept of "established precedent." We are aware that the city of Key Colony Beach, like most of Marathon, is centered around boating and fishing. However, the ocean front is the only real beach area that Key Colony Beach can take pride in. Once there is formal approval for placing a boat lift along ocean front property there becomes an established precedent for additional lifts. This has the very real potential to dramatically disfigure the beautiful coastline that is ocean front to the City of Key Colony Beach. We urge you, our city leaders to give this ruling very serious consideration as it will have profound impact for future generations.

These, as well as the previously cited concerns in our letter from April 10 are why we respectfully, but strongly oppose placement of a boat lift at 841 West Ocean Drive. We believe there are other potential options short of building this structure, and once again encourage the applicant to consider pursuing alternative plans.

Since it appears that the proposal for this boat lift is proceeding, we would like the Zoning Board to know that we will be sending a copy of our letters to the City Commissioners of Key Colony Beach so that they are equally aware of our position in opposing this application.

Respectfully,

Gail and Dr. Robert Zimmerman (Unit 4)

Dr. and Mrs. Robert Zimmerman

John Rudolph (Unit 4)

Gail Zimmerman
on behalf of
John Rudolph

Betsy Egan (Unit 3)

Theresa Hughes
on behalf of
Betsy Egan

Dr. Jeff and Julie Kesler (Unit 103)

Dr. & Mrs. Jeff Kesler

Stephen and Phyllis Pastore (Unit 104)

Mr. & Mrs. S. Pastore

Richard and Terry Hughes (Unit 105)

Mr. & Mrs. Richard
Hughes

Alex and JoAnn Lieblong (Unit 2)

Alex Lieblong
JoAnn Lieblong

Owners at Castillo del Sol Condominiums

799 West Ocean Drive

Key Colony Beach, Florida 33051

April 10, 2026

City Hall Auditorium

City of Key Colony Beach

600 West Ocean Drive

Key Colony Beach, Florida 33051

ATTN: Planning and Zoning Board

Dear Sirs:

It has recently come to our attention that there is a pending proposal for placement of a 40K 8 post cradle boat lift to be located at 841 West Ocean Drive in our city of Key Colony Beach.

We currently reside in an adjacent property at 799 West Ocean Drive and while we understand and can fully empathize with the rationale for this proposal, we wish to respectfully voice our strong opposition to this plan.

For one, we understand that this to be a sizeable installation designed to accommodate a 46-foot boat.

Secondly, we are in full concurrence with the concerns cited by our neighbors located at The Residences at West Ocean Drive (see attached letter) who have expressed justified apprehension with regard to recreational safety factors, electrical safety concerns, environmental impact, substantial view obstruction, and increased storm and hurricane risk.

Finally, there is the all-important issue of "established precedent." The City of Key Colony Beach has prided itself in promoting a community of matchless beauty that includes an oceanfront that is uncluttered and as close to pristine as to be found anywhere in the Keys. By allowing this

installation, the city will be opening the door to future boat lifts being constructed resulting in irreparable disfigurement to our beautiful coastline.

For the above reasons, we request the Planning and Zoning Board deny the request to install the proposed boat lift, and recommend instead, that the applicant pursue other available options.

Respectfully,

Robert and Gail Zimmerman

John Rudolph

Unit 4D, Castillo del Sol Condominiums

Betsy Egan

Unit 3D, Castillo del Sol Condominiums

Stephen and Phyllis Pastore

Unit 104, Castillo del Sol Condominiums

Richard and Theresa Hughes

Unit 105, Castillo del Sol Condominiums

10:49

◀ Messages

THE RESIDENCES AT WEST OCEAN DRIVE

FEBRUARY 26, 2026

Mr. Jesse Schmid
841 W Ocean Drive
Key Colony Beach, FL 33051

Mr. Schmid...

Dale Bruns (Bruns Family, LLP), one of five owners in our condominium association, recently received the "Letter of Concurrence for Boat Lift Installation" (below) you requested. Neither our association nor the other four owners received your letter, or any other communication regarding a boat lift.

For the record.. The Residences association board and all five owners reviewed and respectfully oppose installation of the proposed boat lift for reasons including the following...

1. Recreational Safety Concerns... Boat maneuvering operations would be in close proximity to recreational swimming, children playing in the water, paddleboarding, and kayaking that would present safety concerns that cannot be ignored.
2. Electrical Safety Concerns... The proposed lift will require electrical service. The presence of electrical infrastructure over or adjacent to waters in close proximity to recreational swimming, children playing at water's edge, paddleboarding, and kayaking presents safety concerns that cannot be ignored.
3. Environmental Impact ... The vicinity of the proposed installation contains seagrass habitat. Installation, shading, and vessel activity associated with a lift could negatively affect this protected marine environment.
4. Substantial View Obstruction... the proposed boat lift and boat would materially and substantially obstruct the ocean views from our condominium units. These view corridors represent a significant property value component.
5. Increased Storm and Hurricane Risk... Boat lifts and elevated vessels face a high risk of structural damage from high winds and storm surges. In the event of a tropical storm or hurricane, these

structures may fall and cause secondary damage to our building, swimming pool, and surrounding grounds.

For these obvious reasons, there are presently no boatlifts located anywhere on Key Colony's Beach.

The Residences Board of Directors and each of the condo owners respectfully oppose construction of a boat lift on your 841 West Ocean Drive, Key Colony Beach property.

Respectfully,

THE RESIDENCES BOARD OF DIRECTORS and owners...

Bruns Family, LLP

Thomas R. Benck & Tracy Benck

James I. Howe & Betty K. Howe

Charles Martin Family, LLC

Stephen W. Cole Revocable Trust

5800 Overseas Highway, Ste 17 – Marathon, Florida 33050 – 305.743.4599

THE RESIDENCES AT WEST OCEAN DRIVE

FEBRUARY 26, 2026

files.constantcontact.com

Sent from my iPhone

Silvia Roussin

From: Jim Howe <jim.howe@belfairdev.com>
Sent: Sunday, May 17, 2026 8:57 AM
To: KCB Mayor
Cc: Doug Colonell; Tom Harding; Tom DiFransico; Kirk Diehl; John Bartus; Silvia Roussin; Tony Loreno; Betty Howe; Charles Martin R3e Owner; Cheryl Bruns; Dale Bruns; Joy Martin; Nancy Talbott; Steve Cole; Tom Benck; Tracy Benck
Subject: Formal Opposition to Proposed 40,000lb Boat Lift at 841 W Ocean Drive

Dear Mayor Foster:

I am writing to formally express my opposition to the proposed construction of a massive 40,000lb boat lift at the property at 841 West Ocean Drive and adjacent to my property at The Residences at 901 W Ocean Drive. As a long-term Key Colony property owner, I am deeply concerned that approving this structure would create a significant public safety hazard and set a precarious precedent for our coastline.

My opposition is based on three critical factors:

- **Environmental Volatility:** This stretch of W Ocean Drive faces direct southern exposure to the Atlantic Ocean. Unlike sheltered canals or bays, this location is subject to high-energy surf and significant storm surges. A structure of this scale is not designed for the mechanical stress of open-ocean conditions.
- **Public Safety & Liability:** In the event of a named storm, a 40,000lb lift—and 46 foot boat it supports—becomes a massive piece of potential "flying" debris. The risk of this equipment failing and causing catastrophic damage to neighboring structures, common areas, and municipal beach infrastructure is unacceptably high.
- **Lack of Precedent:** There are currently zero boat lifts with direct southern exposure on this stretch of beach. Granting this permit would be a radical departure from the established character and safety standards of our shoreline. It would set a dangerous "grandfathering" precedent for future, equally hazardous requests.

We believe this is not a matter of property rights, but a matter of public safety and responsible coastal management. I respectfully urge you to deny this application... to protect the integrity of the beach and private property, and for the safety of all who enjoy Key Colony's beach and coastal waters.

Thank you for your time and for your commitment to our community, and to our community's safety.

Sincerely,

Jim Howe
901 W Ocean Drive
254/541-3099

Cc: Doug Colonell, Vice Mayor
Tom Harding, Secretary/Treasurer
Tom DiFransico, Commissioner
Kirk Diehl, Commissioner

John Bartus, City Administrator
Silvia Roussin, City Clerk
Tony Loreno, Building Official

Silvia Roussin

From: Nancy Talbott <ntalbott2005@gmail.com>
Sent: Tuesday, May 19, 2026 1:35 PM
To: KCB Mayor
Cc: Tom Harding; Tom DiFransico; Tony Loreno; Silvia Roussin; John Bartus; Doug Colonell; Kirk Diehl
Subject: Opposition to boatlift at 841 West Ocean Drive

Dear Mayor Foster,

We are property owners and residents of Key Colony Beach, Florida, and are concerned about the permit for a boat lift at 841 West Ocean Drive, scheduled for discussion by the commissioners on Thursday, May 21.

We oppose this large boat lift. We understand the owner wants better access to load his two sons, who are wheelchair-bound, onto his boat. We are sensitive to this family's needs, but we are concerned that decisions may be made solely on that basis, while disregarding the safety issues and beach preservation issues that could arise from permanently attaching a boat lift to their pier.

During Hurricane Irma, amid wind, flooding, and storm surge, debris and boulders far heavier than a boat lift were forced onto properties on West Ocean Drive. Our building and our neighbors' buildings are targets for flying debris that can let loose in a storm.

At this time, there are no boat lifts on the ocean side of the island. Approval of this lift will open the way for other piers to have lifts. The beach on West Ocean Drive is still a natural beach where residents enjoy walking along the shore, hunting for shells, watching the sun rise each day, without boat lifts or boats blocking their view. The beach is uncluttered and picturesque. There are piers, but no boat lifts and no boats. West Ocean Drive is home to Key Colony's only beach.

We ask that you please consider opposing this request.

Respectfully,

Stephen Cole and Nancy Talbott
901 West Ocean Drive, Unit #3W
603.496.8217 (Steve)
603.724.4293 (Nancy)

--

May God grant you the grace never to sell yourself short.
Grace to risk something big for the sake of something good.
Grace to remember that the world is now too dangerous
for anything but truth and too small for anything but love.
William Sloane Coffin, Jr.

~~Attachment 3d. Hearing, City Commission (June 18, 2026) - Discussion and Approval~~

pp.4-5:

Mayor Foster introduced the agenda item and asked Building Official Loreno to elaborate. Building Official Loreno stated that the proposed boat lift met all engineering and capacity requirements and noted that it would have been administratively approved if its weight had been no more than 31,000 pounds. Building Official Loreno also confirmed that the Planning & Zoning Board had recommended approval. Mayor Foster then asked for a motion.

MOTION: Commissioner DiFransico made a motion to approve. Commissioner Diehl seconded the motion.

DISCUSSION: Mayor Foster noted that similar discussions and concerns about boat lifts in the 15th Street area had occurred over the years as development progressed throughout the city. He acknowledged residents' concerns in the area and stated that the item had been tabled at the previous meeting to allow Commissioners additional time to

4

review the matter and discuss its legal implications.

Building Official Loreno confirmed that a 31,000 elevator-style lift could be installed without the Commission's approval.

Mayor Foster asked City Attorney Hicks to address the City's potential legal exposure if the application were denied. City Attorney Hicks advised that denial could subject the City to litigation. He explained that the City Code does not set specific criteria for denying a cradle-style boat lift application and noted that the Planning & Zoning Board and staff had recommended approval. He further stated that all required permitting and review processes found the application acceptable. City Attorney Hicks also addressed concerns about ADA access and discussed recent legislation and court decisions emphasizing private property rights, explaining that courts generally scrutinize land use regulations that restrict lawful property use. He concluded that, in legal counsel's opinion, denial could expose the City to liability.

Vice-Mayor Colonell asked whether the Commission would deny the application if it conflicted with the City's Code or Ordinances. City Attorney Hicks stated that no direct conflict would occur; however, he had given reasons for concerns if a denial occurred.

Commissioner Harding stated that he understood and appreciated the concerns raised by nearby residents and agreed with many of them. He discussed the City's efforts to clean up after Hurricane Irma and expressed concerns about boat lifts in the ocean and canal environment, neighboring property rights, and environmental impacts. He stated that, in his opinion, the City's ordinances should provide greater environmental protection and noted that other communities have faced litigation over land-use regulations intended to protect community resources. Commissioner Harding also recalled a previous boat-lift application that had been denied and stated that he did not support approval of the current application.

Commissioner DiFransico stated that he recognized citizens' concerns and observed that people regularly swim in canals, a fact boat owners should be mindful of. He also noted that many condominium properties already have docks and piers, which can pose storm-related hazards. He characterized the additional risk associated with the proposed lift as incremental. Mayor Foster noted that boats already use the canal, including vessels traveling to fish, and referenced the existing no-wake zone. Staff also noted that navigation buoys in the area require periodic replacement. Vice Mayor Colonell suggested that additional navigational markers or maritime buoys could improve safety by more clearly identifying the area and discouraging swimmers from entering the vicinity of the boat lift. He acknowledged the concerns of neighboring residents but also noted the likelihood of litigation if the application were denied. Vice-Mayor Colonell suggested evaluating the installation of additional no-wake or navigational markers near the 15th Street Circle area to enhance safety. Mayor Foster commented that markers are already in place and that additional ones will be installed.

ON THE MOTION: Vice-Mayor Colonell – yes. Commissioner Harding – no. Commissioner Diehl – yes. Commissioner DiFransico – yes. Mayor Foster – yes. The motion was approved.

MINUTES
KEY COLONY BEACH CITY COMMISSION
REGULAR MEETING & PUBLIC HEARING
Thursday, June 18th, 2026 – 3:30 PM
Marble Hall, 600 W. Ocean Drive, Key Colony Beach
& via Zoom Conferencing

1. **Call to Order, Pledge of Allegiance, Prayer, and Rollcall:** The Key Colony Beach Regular Meeting & Public Hearing was called to order by Mayor Foster at 3:30 PM, followed by the Pledge of Allegiance, Prayer, and Rollcall. **Present:** Mayor Freddie Foster, Vice-Mayor Doug Colonell (via Zoom), Commissioner Tom Harding, Commissioner Tom DiFransico, Commissioner Kirk Diehl (via Zoom). **Also present:** City Attorney Jim Hicks, City Administrator John Bartus, Building Official Tony Loreno, Public Works Department Head Mike Guarino, Chief of Police Kris DiGiovanni, Acting Chief Jamie Buxton, Acting Fire/EMS Chief Shana Rogers.

Mayor Foster found good cause for Vice-Mayor Colonell and Commissioner Diehl to attend the meeting via Zoom.

Public Attendance: 30

2. **Approval of the Agenda** (*Additions, changes, and deletions can be made via one motion and a second to approve by a majority vote*)

City Clerk Roussin informed of the following proposed agenda changes:

- 5i. Addendum to the Recreation Chair Report
- 6f. Approval of the City Commission Special Meeting Minutes from April 1st and April 27th, Emergency Meeting Minutes from May 5th and May 21st, and Regular Meeting Minutes from May 21st.
- 7o. Discussion/Approval for CPH invoice No. 177905 for \$149,175.75
- 11a. Commissioner Harding: The addendum to the Wastewater Report

There were no further changes, and Mayor Foster asked for a motion to approve the agenda with changes.

MOTION: Motion made by Commissioner DiFransico to approve. Vice-Mayor Colonell seconded the motion.

DISCUSSION: None.

ON THE MOTION: Rollcall vote. Unanimous approval.

3. **Special Requests**

a. **Chief DiGiovanni Service Recognition**

Mayor Foster recognized Chief DiGiovanni for 20 years of service to the City and noted that he had advanced from officer to Chief of Police. Mayor Foster stated that Chief DiGiovanni would be missed, wished him good health, and read the service recognition into the record. Mayor Foster then presented Chief DiGiovanni with the signed recognition placard and a \$10,000.00 check in appreciation of his service. Mayor Foster also recognized Chief DiGiovanni for founding the Kids Fishing Derby 19 years ago with an initial budget of \$2,000.00.

Chief DiGiovanni thanked Mayor Foster and the Commission for the recognition and provided an update on his back surgery and ongoing physical therapy. He thanked the volunteers, Public Works Department, Police Department, Mayor, and the Sutton family for their support of the Kids Fishing Derby, noting that 45 children participated and that the following year would mark the event's 20th anniversary. Chief DiGiovanni reflected on his nearly 21 years of service, including 15 as Chief, describing the occasion as humbling and emotional. He spoke about serving the citizens and residents of Key Colony Beach, the friendships formed, working through holidays, and his commitment to public service. Chief DiGiovanni thanked Sgt. Buxton for serving as Acting Chief during his absence, as well as the Commission, City staff, the Monroe County Sheriff's Office, his family, and the community for their support. He acknowledged Mayor Foster, Vice-Mayor Colonell, and the Commission for significant advancements and projects,

and expressed confidence that progress would continue. Chief DiGiovanni concluded by thanking his family for their patience, sacrifice, and support, stating that Key Colony Beach would always hold a special place in his heart.

Mayor Foster thanked Chief DiGiovanni for his service and stated that he would be missed.

Commissioner Diehl apologized for not being able to attend in person and congratulated Chief DiGiovanni on his retirement. Commissioner Diehl wished him a speedy recovery and thanked Chief DiGiovanni for welcoming him to the City when he first started and for his service.

b. Promotion of Sergeant Jamie Buxton to Chief of Police

Mayor Foster stated that it was his pleasure to introduce Sergeant Jamie Buxton for promotion to Chief of Police and requested a motion for approval.

MOTION: Motion made by Commissioner Harding to approve the promotion of Sergeant Jamie Buxton to Chief of Police. Commissioner DiFransico seconded the motion.

DISCUSSION: None.

ON THE MOTION: Rollcall vote. Unanimous approval.

Mayor Foster congratulated Jamie Buxton on her promotion to Chief of Police. He noted the historic significance of her appointment as the City of Key Colony Beach's first female Chief of Police and stated that her promotion was based on merit, character, leadership, and dedicated service to the City and its officers.

Monroe County Sheriff's Office Captain Derek Paul administered the Oath of Office to Chief Jamie Buxton and then pinned the Chief of Police badge.

Chief Buxton addressed the Commission and expressed appreciation to Chief DiGiovanni, the Commission, City staff, her family, and the community for their support. She stated that she looked forward to the future and intended to lead with integrity. She also thanked her family for their patience, sacrifice, and continued support.

Mayor Foster thanked all attending for the special occasion.

c. Letter of Commendation to Scott Stanfield, Manager of the Key Colony Beach Marina

Mayor Foster asked Sgt. John Buckwalter to speak about the commendation for Scott Stanfield. Sgt. Buckwalter described an emergency in which a man was struggling to stay afloat in the water and noted that, with assistance from other agencies, the man was safely removed from the water. Sgt. Buckwalter stated that Scott Stanfield, Manager of the Key Colony Beach Marina, came to the rescue and that, without Mr. Stanfield's assistance, the outcome may have been very different.

Mayor Foster read the letter of commendation into the record and presented the plaque to Sgt. Buckwalter to present to Mr. Scott Stanfield.

4. Citizen Comments and Correspondence

City Clerk Roussin informed on the following citizen correspondence:

May 21, 2026 – Cindy Catto wrote to the City Commission, expressing concerns about the tourism grant for the sunshades at the pickleball courts and the City's matching funding obligation.

May 22, 2026 – Skip Helme wrote to the City Commission, commending Commissioner Diehl and Mayor Foster for their assistance with dumpster placement.

May 25, 2026 – Michelle Smoot wrote to the City Commission describing negative experiences with vacation rentals and related noise complaints.

May 27, 2026 – Lynne Benton wrote to the City Commission requesting an amendment to the ordinance governing restrictions on citizen comments.

May 28, 2026 – Michelle Smoot wrote to the City Commission with suggestions regarding House Rules for vacation rentals.

June 15, 2026 – David Evangelista wrote to the City Commission with comments regarding the Golf Course Clubhouse and requested that the City deny the Recreation Committee's request to apply for a TDC grant at this time.

June 15, 2026 – David Evangelista wrote with thoughts on the unsuccessful solicitation for the construction of the basketball court.

June 17, 2026 – Cindy Catto wrote with suggestions on the Pickleball Management Agreement.

In addition, the Commission received correspondence in opposition to the proposed boatlift at 841 W. Ocean Drive from the following citizens:

- Bryan Komblau, 921 W. Ocean Drive
- Linda Coggins, 921 W. Ocean Drive
- Dale Bruns, adjacent property owner to 841 W. Ocean Drive
- Rich Fairmeny, 1133 W. Ocean Drive
- Charles Martin, 901 W. Ocean Drive
- Janet Griffin, 799 W. Ocean Drive
- Gabriele Joba, 1133 W. Ocean Drive

Mayor Foster asked for citizen comments.

Lynne Benton (Conkling), 621 10th Street, spoke regarding item 7a of the boatlift application and stated that she would like to see a document that addresses the factors used to evaluate and determine decisions, including safety concerns, evaluation and analysis, and evidence-based recommendations. She also referenced viewshed concerns and impacts on residents.

Carlos Martinez, Manager of the Condominium Castillo del Sol, commented on the proposed boat lift and requested that the record be corrected to reflect the board's neutrality on the matter. He stated that a small number of owners had submitted letters opposing the lift, but the board itself remained neutral. Mr. Martinez noted that the proposed boat lift would benefit an owner with children with disabilities and improve the property's use.

Betty Howe, 901 W. Ocean Drive, thanked the Commission and said she loves living in Key Colony Beach. She said that after 15 years there, she values the few natural beaches remaining in the Florida Keys. Ms. Howe opposed the proposed boat lift, describing the structure as large and commercial, and said it would be comparable in size to a loaded tractor-trailer. She said that allowing the lift could set a precedent that would result in the loss of a pristine beach area. Ms. Howe expressed empathy for the Schmidt family and noted that she has family members who use wheelchairs, but stated that, in her opinion, the boat lift was a convenience rather than a necessity. She asked the Commission to deny the request.

Linda Coggins, 921 W. Ocean Drive, stated that she has been a registered Key Colony Beach resident for four years. She expressed concern that approving the boat lift would set a dangerous precedent and that the large lift could become a projectile in a future storm. Ms. Coggins referenced the impacts of Hurricane Irma and expressed concern that additional equipment or structures could create debris hazards during storms. She also raised concerns about swimmers and incoming boat traffic.

5. **Committee and Department Reports** (*written reports provided; Staff and Board Chairs available for questions*)
 - a. **Marathon Fire/EMS** – Acting Fire Chief Lt. Shana Rogers presented the statistical report for May and reviewed Fire/EMS calls for the month. Lt. Rogers also provided information about the upcoming 4th of July Parade and

stated that additional details would be shared as they become available.

- b. Police/Code Enforcement – Chief of Police Jamie Buxton informed the Commission that the Key Colony Beach Police Department would participate in the parade and asked whether the Commission had any questions. None were asked.

Mayor Foster asked the Commission for any questions on the subsequent Department Reports. There were none.

- c. City Administrator – John Bartus:
 - 1. Property Tax Reform
 - d. Public Works – Public Works Department Head Guarino
 - e. Building Department – Building Official Loreno
 - f. City Hall – City Clerk Roussin
 - g. Beautification Committee – Chair Bachman
 - h. Planning & Zoning Board – Chair Lancaster
 - i. Recreation Committee – Chair Catto
 - j. Utility Board – Chair Swanson
6. **Consent Action Items** *(Under the consent agenda, all action items will be voted on after one motion, and a second will be required to approve them without discussion. If a Commission member wants any action item discussed or voted on separately, the Commission member, at the beginning of the open session, must ask that the action be moved to the discussion action item section.)*
- a. Approval of the following City Commission Meeting Minutes
 - 1. 05-21-2026 City Commission Public Hearing Minutes
 - b. Approval of Warrant No. 0526 for \$1,142,362.19
 - c. Approval of an Interlocal Agreement between the Board of County Commissioners of Monroe County and the City of Key Colony Beach for State Boating Improvement Funds (BIF) for \$6,000.00
 - d. Approval of the renewal of Lobbyist Services with Ron Book
 - e. Approval of Vacation and Sick Time Payout for Chief DiGiovanni

There were no changes to the Consent Action Items, and Mayor Foster asked for a motion to approve.

MOTION: Motion made by Commissioner DiFransico to approve. Commissioner Harding seconded the motion.

DISCUSSION: None.

ON THE MOTION: Rollcall vote. Unanimous approval.

7. **Discussion Action Items**
- a. **Discussion/Approval of a 40,000-Pound Cradle-Style Boat Lift for the property at 841 W. Ocean Drive per the Recommendation of the Planning & Zoning Board **Tabled at the May 21st, 2026, Hearing**
 - 1. Engineering Plans
 - 2. FDEP Qualification Letter
 - 3. Owner Letter
 - 4. Neighbor Letter of Approval
 - 5. Neighbor Letter of Opposition
 - 6. Recommendation by the Planning & Zoning Board

Mayor Foster introduced the agenda item and asked Building Official Loreno to elaborate. Building Official Loreno stated that the proposed boat lift met all engineering and capacity requirements and noted that it would have been administratively approved if its weight had been no more than 31,000 pounds. Building Official Loreno also confirmed that the Planning & Zoning Board had recommended approval. Mayor Foster then asked for a motion.

MOTION: Commissioner DiFransico made a motion to approve. Commissioner Diehl seconded the motion.

DISCUSSION: Mayor Foster noted that similar discussions and concerns about boat lifts in the 15th Street area had occurred over the years as development progressed throughout the city. He acknowledged residents' concerns in the area and stated that the item had been tabled at the previous meeting to allow Commissioners additional time to

review the matter and discuss its legal implications.

Building Official Lorenzo confirmed that a 31,000 elevator-style lift could be installed without the Commission's approval.

Mayor Foster asked City Attorney Hicks to address the City's potential legal exposure if the application were denied. City Attorney Hicks advised that denial could subject the City to litigation. He explained that the City Code does not set specific criteria for denying a cradle-style boat lift application and noted that the Planning & Zoning Board and staff had recommended approval. He further stated that all required permitting and review processes found the application acceptable. City Attorney Hicks also addressed concerns about ADA access and discussed recent legislation and court decisions emphasizing private property rights, explaining that courts generally scrutinize land use regulations that restrict lawful property use. He concluded that, in legal counsel's opinion, denial could expose the City to liability.

Vice-Mayor Colonell asked whether the Commission would deny the application if it conflicted with the City's Code or Ordinances. City Attorney Hicks stated that no direct conflict would occur; however, he had given reasons for concerns if a denial occurred.

Commissioner Harding stated that he understood and appreciated the concerns raised by nearby residents and agreed with many of them. He discussed the City's efforts to clean up after Hurricane Irma and expressed concerns about boat lifts in the ocean and canal environment, neighboring property rights, and environmental impacts. He stated that, in his opinion, the City's ordinances should provide greater environmental protection and noted that other communities have faced litigation over land-use regulations intended to protect community resources. Commissioner Harding also recalled a previous boat-lift application that had been denied and stated that he did not support approval of the current application.

Commissioner DiFransico stated that he recognized citizens' concerns and observed that people regularly swim in canals, a fact boat owners should be mindful of. He also noted that many condominium properties already have docks and piers, which can pose storm-related hazards. He characterized the additional risk associated with the proposed lift as incremental. Mayor Foster noted that boats already use the canal, including vessels traveling to fish, and referenced the existing no-wake zone. Staff also noted that navigation buoys in the area require periodic replacement. Vice Mayor Colonell suggested that additional navigational markers or maritime buoys could improve safety by more clearly identifying the area and discouraging swimmers from entering the vicinity of the boat lift. He acknowledged the concerns of neighboring residents but also noted the likelihood of litigation if the application were denied. Vice-Mayor Colonell suggested evaluating the installation of additional no-wake or navigational markers near the 15th Street Circle area to enhance safety. Mayor Foster commented that markers are already in place and that additional ones will be installed.

ON THE MOTION: Vice-Mayor Colonell – yes. Commissioner Harding – no. Commissioner Diehl – yes. Commissioner DiFransico – yes. Mayor Foster – yes. The motion was approved.

b. Discussion/Approval of the Ocean Drive Water Quality Improvement Project Grant Agreement for \$2,277,610.00

Mayor Foster introduced the agenda item and asked for a motion to approve.

MOTION: Motion made by Vice-Mayor Colonell to approve. Commissioner DiFransico seconded the motion.

DISCUSSION: Mayor Foster stated that the grant will address flooding on West Ocean Drive. Commissioner Harding suggested communicating with West Ocean Drive property owners about potential driveway displacement and repairs. Mayor Foster stated that condominium groups are informed and that project communication will be provided. Commissioner Harding suggested providing project plans to illustrate potential impacts on traffic and parking areas. Commissioner DiFransico asked whether the City's flooding risk assessment would be applied consistently, which City Administrator Bartus confirmed. Mayor Foster stated that additional information was needed before providing specific details on displacement, but that the City will provide public information, including details on affected properties, once such information becomes available.

ON THE MOTION: Rollcall vote. Unanimous approval.

- c. Approval of the Award for RFQ 2026-01 for Professional Architecture and Engineering Services to CPH Consulting LLC, per the Review Committee's recommendation**
1. RFQ 2026-01
 2. Non-Exclusive Continuing Service Agreement

THE RESIDENCES AT WEST OCEAN DRIVE

FEBRUARY 26, 2026

Mr. Jesse Schmid
841 W Ocean Drive
Key Colony Beach, FL 33051

Mr. Schmid...

Dale Bruns (Bruns Family, LLP), one of five owners in our condominium association, recently received the "Letter of Concurrence for Boat Lift Installation" (below) you requested. Neither our association nor the other four owners received your letter, or any other communication regarding a boat lift.

For the record.. The Residences association board and all five owners reviewed and respectfully oppose installation of the proposed boat lift for reasons including the following...

1. Recreational Safety Concerns... Boat maneuvering operations would be in close proximity to recreational swimming, children playing in the water, paddleboarding, and kayaking that would present safety concerns that cannot be ignored.
2. Electrical Safety Concerns... The proposed lift will require electrical service. The presence of electrical infrastructure over or adjacent to waters in close proximity to recreational swimming, children playing at water's edge, paddleboarding, and kayaking presents safety concerns that cannot be ignored.
3. Environmental impact ... The vicinity of the proposed installation contains seagrass habitat. Installation, shading, and vessel activity associated with a lift could negatively affect this protected marine environment.
4. Substantial View Obstruction... the proposed boat lift and boat would materially and substantially obstruct the ocean views from our condominium units. These view corridors represent a significant property value component.
5. Increased Storm and Hurricane Risk... Boat lifts and elevated vessels face a high risk of structural damage from high winds and storm surges. In the event of a tropical storm or hurricane, these structures may fail and cause secondary damage to our building, swimming pool, and surrounding grounds.

For these obvious reasons, there are presently no boatlifts located anywhere on Key Colony's Beach.

The Residences Board of Directors and each of the condo owners respectfully oppose construction of a boat lift on your 841 West Ocean Drive, Key Colony Beach property.

Respectfully,

THE RESIDENCES BOARD OF DIRECTORS and owners...

Bruns Family, LLP

Thomas R. Benck & Tracy Benck

James I. Howe & Betty K. Howe

Charles Martin Family, LLC

Stephen W. Cole Revocable Trust

Owners at Castillo del Sol Condominiums

799 West Ocean Drive

Key Colony Beach, Florida 33051

April 10, 2026

City Hall Auditorium

City of Key Colony Beach

600 West Ocean Drive

Key Colony Beach, Florida 33051

ATTN: Planning and Zoning Board

Dear Sirs:

It has recently come to our attention that there is a pending proposal for placement of a 40K 8 post cradle boat lift to be located at 841 West Ocean Drive in our city of Key Colony Beach.

We currently reside in an adjacent property at 799 West Ocean Drive and while we understand and can fully empathize with the rationale for this proposal, we wish to respectfully voice our strong opposition to this plan.

For one, we understand that this to be a sizeable installation designed to accommodate a 46-foot boat.

Secondly, we are in full concurrence with the concerns cited by our neighbors located at The Residences at West Ocean Drive (see attached letter) who have expressed justified apprehension with regard to recreational safety factors, electrical safety concerns, environmental impact, substantial view obstruction, and increased storm and hurricane risk.

Finally, there is the all-important issue of "established precedent." The City of Key Colony Beach has prided itself in promoting a community of matchless beauty that includes an oceanfront that is uncluttered and as close to pristine as to be found anywhere in the Keys. By allowing this

installation, the city will be opening the door to future boat lifts being constructed resulting in irreparable disfigurement to our beautiful coastline.

For the above reasons, we request the Planning and Zoning Board deny the request to install the proposed boat lift, and recommend instead, that the applicant pursue other available options.

Respectfully,

Robert and Gail Zimmerman

John Rudolph

Unit 4D, Castillo del Sol Condominiums

Betsy Egan

Unit 3D, Castillo del Sol Condominiums

Stephen and Phyllis Pastore

Unit 104, Castillo del Sol Condominiums

Richard and Theresa Hughes

Unit 105, Castillo del Sol Condominiums

Owners at Castillo del Sol Condominiums

799 West Ocean Drive

Key Colony Beach, Florida 33051

April 28, 2026

City Hall Auditorium

City of Key Colony Beach

600 West Ocean Drive

Key Colony Beach, Florida 33051

ATTN: Planning and Zoning Board

Dear Members of the Planning and Zoning Board:

This letter is a follow-up to a previous correspondence to the Planning and Zoning Board dated April 10, 2026 regarding a proposed placement of a 40K, 8 post cradle boat lift to be located at 841 West Ocean Drive.

It is our understanding that despite what appears to be tentative approval, that there remains open discussion regarding this proposal. Accordingly, we would like to put forth additional justifications to support our opposition to this plan.

1. Noted in the application is a letter from the Florida Department of Environmental Protection dated February 29, 2024 approving this project based on information submitted to the department. There is no indication that anyone from that agency made an "on-site" visit to evaluate first-hand the actual impact of this project on our fragile marine environment. Also, this approval was granted 2 years ago when the original proposal was for a much smaller structure.
2. The petitioner states that it is his intention to only use this boat lift on a "part-time basis." However, when given the convenience of having his boat immediately available, it's hard to believe that this will not in fact, become a "full-time" indulgence.

Furthermore, it has come to our attention that the petitioner owns 2 large boats raising the real possibility that both vessels may at some point be moored at the same location.

3. "Safety." It is well known that we have local residents, ourselves included, who regularly swim, paddle boat, wind surf and snorkel in the immediate area of this proposed dock and boat lift. Visibility of these participants when in the water is extremely poor. A large boat navigating this area raises serious safety issues and/or may discourage people from even going into the water to avoid this risk.
4. "Liability." Some of us at Castillo del Sol have been owners or residents for 35+ years. We have experienced first-hand the unimaginable destruction generated by severe weather, especially hurricane wind and ocean surges. And in spite of every reassurance and precaution there is risk that all, or parts of this dock/boat lift may become separated and cause catastrophic damage to structures on land. As adjacent property owners we have concerns as to who bears responsibility for any damages that may impact our land or buildings should this occur. Is it the petitioner who is liable, or is it the City of Key Colony Beach who approved the placement of this structure?
5. Lastly, we're back again to the fundamental concept of "established precedent." We are aware that the city of Key Colony Beach, like most of Marathon, is centered around boating and fishing. However, the ocean front is the only real beach area that Key Colony Beach can take pride in. Once there is formal approval for placing a boat lift along ocean front property there becomes an established precedent for additional lifts. This has the very real potential to dramatically disfigure the beautiful coastline that is ocean front to the City of Key Colony Beach. We urge you, our city leaders to give this ruling very serious consideration as it will have profound impact for future generations.

These, as well as the previously cited concerns in our letter from April 10 are why we respectfully, but strongly oppose placement of a boat lift at 841 West Ocean Drive. We believe there are other potential options short of building this structure, and once again encourage the applicant to consider pursuing alternative plans.

Since it appears that the proposal for this boat lift is proceeding, we would like the Zoning Board to know that we will be sending a copy of our letters to the City Commissioners of Key Colony Beach so that they are equally aware of our position in opposing this application.

Respectfully,

Gail and Dr. Robert Zimmerman (Unit 4)

Dr. and Mrs. Robert Zimmerman

John Rudolph (Unit 4)

Alice Zimmerman
on behalf of
John Rudolph

Betsy Egan (Unit 3)

Teresa Hughes
on behalf of
Betsy Egan

Dr. Jeff and Julie Kesler (Unit 103)

Dr. & Mrs. Jeff Kesler

Stephen and Phyllis Pastore (Unit 104)

Mr. & Mrs. S. Pastore

Richard and Terry Hughes (Unit 105)

Mr. & Mrs. Richard
Hughes

Alex and JoAnn Lieblong (Unit 2)

Alex Lieblong

Owners at Castillo del Sol Condominiums

799 West Ocean Drive

Key Colony Beach, Florida 33051

May 2, 2026

City Commissioners

Key Colony Beach, Florida

Dear Commissioners:

We, the Owners at Castillo del Sol, have recently been in contact with the Planning and Zoning Board of our city regarding the proposed placement of a 40K, 8 post cradle boat lift located at 841 West Ocean Drive.

Pursuant to the April 15th Zoning Board meeting, it is our understanding that there may be a tentative approval for this project pending some further review. We are currently following up our initial letter of opposition with additional concerns regarding the impact of this proposal.

Since this process appears to be moving rather swiftly, we are taking the liberty of attaching a copy of our letters for your review. This is not intended to supersede the authority of the Zoning Board, but to ensure that the City Commissioners are at least made aware of our concerns before a final decision is rendered.

We appreciate your thoughtful attention to our situation.

Respectfully,

Owners at Castillo del Sol

Silvia Roussin

From: Jim Howe <jim.howe@belfairdev.com>
Sent: Sunday, May 17, 2026 8:57 AM
To: KCB Mayor
Cc: Doug Colonell; Tom Harding; Tom DiFransico; Kirk Diehl; John Bartus; Silvia Roussin; Tony Loreno; Betty Howe; Charles Martin R3e Owner; Cheryl Bruns; Dale Bruns; Joy Martin; Nancy Talbott; Steve Cole; Tom Benck; Tracy Benck
Subject: Formal Opposition to Proposed 40,000lb Boat Lift at 841 W Ocean Drive

Dear Mayor Foster:

I am writing to formally express my opposition to the proposed construction of a massive 40,000lb boat lift at the property at 841 West Ocean Drive and adjacent to my property at The Residences at 901 W Ocean Drive. As a long-term Key Colony property owner, I am deeply concerned that approving this structure would create a significant public safety hazard and set a precarious precedent for our coastline.

My opposition is based on three critical factors:

- **Environmental Volatility:** This stretch of W Ocean Drive faces direct southern exposure to the Atlantic Ocean. Unlike sheltered canals or bays, this location is subject to high-energy surf and significant storm surges. A structure of this scale is not designed for the mechanical stress of open-ocean conditions.
- **Public Safety & Liability:** In the event of a named storm, a 40,000lb lift—and 46 foot boat it supports—becomes a massive piece of potential "flying" debris. The risk of this equipment failing and causing catastrophic damage to neighboring structures, common areas, and municipal beach infrastructure is unacceptably high.
- **Lack of Precedent:** There are currently zero boat lifts with direct southern exposure on this stretch of beach. Granting this permit would be a radical departure from the established character and safety standards of our shoreline. It would set a dangerous "grandfathering" precedent for future, equally hazardous requests.

We believe this is not a matter of property rights, but a matter of public safety and responsible coastal management. I respectfully urge you to deny this application... to protect the integrity of the beach and private property, and for the safety of all who enjoy Key Colony's beach and coastal waters.

Thank you for your time and for your commitment to our community, and to our community's safety.

Sincerely,

Jim Howe
901 W Ocean Drive
254/541-3099

Cc: Doug Colonell, Vice Mayor
Tom Harding, Secretary/Treasurer
Tom DiFransico, Commissioner
Kirk Diehl, Commissioner

John Bartus, City Administrator
Silvia Roussin, City Clerk
Tony Loreno, Building Official

Silvia Roussin

From: Nancy Talbott <ntalbott2005@gmail.com>
Sent: Tuesday, May 19, 2026 1:35 PM
To: KCB Mayor
Cc: Tom Harding; Tom DiFransico; Tony Loreno; Silvia Roussin; John Bartus; Doug Colonell; Kirk Diehl
Subject: Opposition to boatlift at 841 West Ocean Drive

Dear Mayor Foster,

We are property owners and residents of Key Colony Beach, Florida, and are concerned about the permit for a boat lift at 841 West Ocean Drive, scheduled for discussion by the commissioners on Thursday, May 21.

We oppose this large boat lift. We understand the owner wants better access to load his two sons, who are wheelchair-bound, onto his boat. We are sensitive to this family's needs, but we are concerned that decisions may be made solely on that basis, while disregarding the safety issues and beach preservation issues that could arise from permanently attaching a boat lift to their pier.

During Hurricane Irma, amid wind, flooding, and storm surge, debris and boulders far heavier than a boat lift were forced onto properties on West Ocean Drive. Our building and our neighbors' buildings are targets for flying debris that can let loose in a storm.

At this time, there are no boat lifts on the ocean side of the island. Approval of this lift will open the way for other piers to have lifts. The beach on West Ocean Drive is still a natural beach where residents enjoy walking along the shore, hunting for shells, watching the sun rise each day, without boat lifts or boats blocking their view. The beach is uncluttered and picturesque. There are piers, but no boat lifts and no boats. West Ocean Drive is home to Key Colony's only beach.

We ask that you please consider opposing this request.

Respectfully,

Stephen Cole and Nancy Talbott
901 West Ocean Drive, Unit #3W
603.496.8217 (Steve)
603.724.4293 (Nancy)

--

May God grant you the grace never to sell yourself short.
Grace to risk something big for the sake of something good.
Grace to remember that the world is now too dangerous
for anything but truth and too small for anything but love.
William Sloane Coffin, Jr.

Robert and Gail Zimmerman
799 West Ocean Drive
Key Colony Beach, Florida 33051

June 19, 2026

City Commissioners of KCB
600 West Ocean Drive
P.O. Box 510141
City of Key Colony Beach, Florida 33051

ATTN: Mr. Freddie Foster, Mayor and Chair

Dear KCB City Commissioners:

Our family is one of the original owners at Castillo del Sol Condominiums. As such, we have been proud members of the Key Colony Beach community for close to forty years. During this time, we have grown to cherish the beauty and affability that defines the culture of this city. Consequently, words cannot begin to describe the disappointment and disillusionment bordering on disgust, that we experienced witnessing the processing that took place relative to City Commissioners decision to approve construction of the 40,000 lb. boat lift by our neighbor at 841 West Ocean Drive.

What we witnessed was a charade. A Commission that downplayed or ignored the concerns of numerous citizens, and bent over backwards to accommodate the wishes of one individual. The explanations given to support this decision were spineless and underwhelming. To say that this was simply a redo of a previously expired approval, ignores the fact that the prior approval was based on information provided to the Army Corps of Engineers for a smaller scale project that did not include an on-site evaluation. It is also arguable whether this evaluation at the time even included provisions for a boat lift.

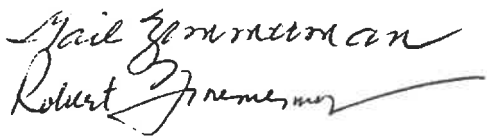
A second explanation centered around the fact that there was "nothing in the City Codes to prohibit its (boat lift) construction." Well, why is that? Why is it that we do not having zoning

regulations to protect the beauty and integrity of our ocean front beach? Is that not the function of a planning and zoning board and/or our city leaders? Maybe this is something that should be looked at before we lose what little precious beach we have left. At the same time something should be said for those of us who enjoy the ocean front, whether it be for swimming, snorkeling, paddle boarding, or wind surfing. There are legitimate safety concerns here that were downplayed during the meeting. The justification for this was a legal opinion that the City could, or would not be held liable, should this decision to approve result in any damage or personal injury. Thank you, City Commissioners, for your underwhelming regard for our wellbeing.

The third, and final explanation that we could glean for approving this shameless debacle was a fear of litigation. Of all the above, this is perhaps the most defensible excuse for this judgement. But, does this mean that anyone of affluence can get anything they want simply by intimidating a potential law suit against the city? If we don't have a legal defense in these situations, I challenge our city leaders to initiate or revise our local ordinances so that the KCB does not need to cave to these threats.

Having said our piece, what's done is done, and we will now live with it. Hopefully, you, our city leaders will accept these criticisms in a constructive light, and that we can all learn from this experience. In so doing, maybe some good may eventually come from these proceedings.

Respectfully,

The block contains two handwritten signatures in black ink. The first signature, 'Gail Zimmerman', is written in a cursive, flowing style. The second signature, 'Robert Zimmerman', is also in cursive and appears to be written below the first one, with some overlapping.

Dr. Robert and Gail Zimmerman

Unit D4, Castillo del Sol Condominiums

Cc: KCB Planning and Zoning Board

Cradle Lift – KCB Ordinance

Cradle board lifts are defined in KCB ordinance Sec. 5-41. Sec. 5-44 states that the installation of a cradle life requires approval of the city commission – but does not provide any criteria to approve or deny.

Sec. 5-41. - Boat lifts. Definitions.

Cradle or hoist lift. A lifting device consisting of two (2) horizontal metal beams with vee-shaped chocks attached to hold a boat. The beams are supported between four (4) pilings, driven into the canal or bay bottom. The boat is raised or lowered by means of cables and cable drums. Two (2) pilings on one (1) side of the boat have the cables rigidly attached and the two (2) pilings on the other side of the boat have the cable drums attached for raising or lowering the boat.

Elevator lifts. A lifting device with two (2) horizontal prongs or forks, perpendicular to the seawall which ride in two (2) vertical or slightly slanted metal tracks attached to the seawall or dock and extended down into the canal and bay bottom. The forks are raised or lowered via a cable drum. A boat is lifted while resting on vee-shaped chocks attached to the metal forks. The forks are lowered far enough into the water to allow the boat to float free.

(Ord. No. 295-1995, 3-22-95; Ord. No. 306-1997, 5-8-97)

Sec. 5-43. - Elevator lifts.

Elevator lifts may be installed and used in and adjacent to canals or waterways of the city subject to the following conditions: ...

(10) In cases where approval of the city commission is required, approval shall be based on the following criteria:

- a. Neighbor consent or lack thereof.
- b. Visual impact on neighboring properties.
- c. Hazards to navigation resulting from the proposed installation.

(Ord. No. 306-1997, 5-8-97; Ord. No. 375-2004, 9-23-04; Ord. No. 415-2010, 5-13-10; Ord. No. 416-2010, 6-24-10; Ord. No. 464-2020, 7-23-20; Ord. No. 2023-484, § 2, 6-15-23)

Sec. 5-44. - All other boat lifting devices.

The installation of all other boat lifts in the city waterways, including cradle lifts, shall require approval of the city commission. Hydro or pontoon lifts are prohibited within the city.

(Ord. No. 306-1997, 5-8-97; Ord. No. 394-2007, 6-28-07)

City of Key Colony Beach

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



April 15, 2026

To: The City of Key Colony Beach Board of Commissioners

From: The Key Colony Beach Planning & Zoning Board

Re: Discussion/Recommendation for Approval for the installation of a 40,000 lb. Cradle-Style Boat Lift for the property at 841 W. Ocean Drive

The Planning & Zoning Board reviewed the applicant's request to install a 40,000 Elevator-Style Boatlift on the property at 841 W. Ocean Drive on April 15th, 2025. The Board discussed the proximity of the boat lift to a swimming area and potential liability, the adequacy of the Army Corps of Engineers Site Review, and the need for further evaluation of the site-specific issues. After discussion, the Board voted on the request as follows:

MOTION: Motion made by Lynne Conkling to accept the application for a boatlift at 841 W. Ocean Drive, based on the following findings: The Subject property is located on the open-ocean side of Key Colony Beach, where nearshore waters are shallow and commonly used for wading and swimming. The applicant will provide site-specific evidence demonstrating that the proposal will not create unsafe interactions between vessels and swimmers, and the City Attorney will review and make a recommendation on compliance with legal provisions for permitting. Chair Lancaster seconded the motion.

FURTHER DISCUSSION: Building Official Loreno commented on the DEP verbiage of an existing mooring area and his understanding that the proposed lift meets environmental standards that minimize impact on seagrass, mangroves, and navigation. Lenny Geronemus asked for a possible grandfathering clause of the original permit. Building Official Loreno stated that he had not been present at the time of the original permit approval, but that the original permit had expired and was no longer relevant, and commented on not being able to grandfather in potential hazardous conditions once known. Skip Helme commented that if the boatlift were installed, there would be less activity with boats coming in and out of the ocean to the dock area, where the lift would pose less risk than coming to the dock. Lenny Geronemus agreed with the statement. Lynne Conkling stated that she had to base her decision on perceived rules, opposition's stated potential swimming issues, and considerations of responsibility. Vice-Chair Walsh commented on existing boat traffic, boatlifts along the water's edge, and beaches. Lynne Conkling stated to have specifically

City of Key Colony Beach

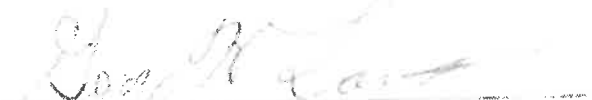
PO. Box 510141 Key Colony Beach, Florida • Phone# 305-289-1212 • Fax# 305-289-1767



looked at beachfront properties, and it was reasonable to approve the request after legal review for the city not subjecting itself to liability, knowing there is a swimming area adjacent. Lynne Conkling repeated her motion to conditionally approve the application once legal review determined that no hazard was being approved.

ON THE MOTION: Rollcall vote. Unanimous approval.

Final Recommendation: The Planning & Zoning Board recommends that the City of Key Colony Beach Board of Commissioners approve the request for the installation of the lift for the property located at 841 W. Ocean, with conditions as stated in the motion.


George Lancaster, Planning & Zoning Board Chair

VARIANCE CRITERIA NOT MET
(5)

July 14, 2026

TO: The Honorable Mayor and Members of the City Commission, with copy to Planning Board

FROM: Lynne Benton, Citizen, 621 10th Street, Key Colony Beach

SUBJECT: Variance request (Public Hearing, July 16, 2026, Agenda Item 8), variance ordinance, and prior variance decisions.

Although this document includes legal information and I am an attorney, this document is intended only to convey my concerns as a citizen of Key Colony Beach and is not intended to constitute legal advice or a legal opinion, but hopefully to provide information to help the City determine whether it would be prudent to reconsider its' *variance ordinance* and recent decisions that are not supported by *substantial competent evidence* in the record (i.e. swimming pool setback).

The City's upcoming Agenda for July 16, 2026, Item 8, lists the variance request heard by the Planning Board on June 17, 2026. The Planning Board found that the variance criteria had not been met. Nonetheless, a majority (3/5) of Planning Board members recommended approval (Comm. Board packet, pp. 71-72) relying on the City's novel ordinance that allows variances if the Board finds "*minimal adverse effect on the citizens of the City or on the City*" (Comm. Board packet, pp. 72-73), in reliance on Ordinance Sec. 101-171(5)(b)(1) (Comm. Board packet, p. 74).

Sec. 101-171(5)(b)(1). If the planning and 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.

The City's ordinance allows approval of variances even though the required criteria has not been met; i.e. hardship has not been established. Ordinance Sec. 101-171(5)(b)(1) (Commission Board packet, p. 74) which provides:

Based on my research below, this ordinance does not appear to comply with Florida law. In addition, my ongoing concerns regarding the City's improper approval of variances absent a finding of *substantial competent evidence* have been documented, including providing the City with a copy of a lawsuit in 2023 that the County of Marathon lost because there was *not substantial competent evidence* in the record to support the County's finding of a hardship, provided again as Attachment A. In that case, the County's approval was quashed. I am concerned our City might experience a similar fate.

1. Executive Summary

This memorandum provides a legal question regarding this variance approval in reliance on the City's local ordinance which permits a four-fifths (4/5) supermajority vote to grant a variance when the five (5) core criteria are explicitly *not* met. KCB Ordinance Sec. 101-171(5)(a)-(b)(1). Under established Florida land-use law, it seems this specific provision and the subsequent variance approval are highly legally vulnerable and subject to being quashed upon judicial review.

Because the ordinance allows the Commission to bypass the strict statutory requirement of unique property "hardship" in favor of a vague "minimal adverse effect" standard, it seems any approved variance under this mechanism leaves the City exposed to litigation that it is unlikely to win.

2. Core Legal Flaws Under Florida Jurisprudence

A. Violation of Florida's Strict "Hardship" Mandate

Florida has exceptionally strict, long-standing common law governing how local governments grant zoning variances.

- **The Rule of Law:** As established by the Florida Supreme Court in *Josephson v. Autrey* (96 So. 2d 784), a variance cannot legally exist unless the applicant proves that literal enforcement of the zoning code creates an **"unnecessary or undue hardship"** unique to the physical land itself (e.g., irregular topography or unique shape). Economic hardships or self-created hardships do not qualify.
- **The Ordinance Flaw:** By allowing a variance to be granted simply because there is a "minimal adverse effect on other citizens," the ordinance entirely abandons Florida's bedrock requirement for proving unique property hardship. Under Florida law, the absence of public harm does *not* equal the presence of legal hardship.

B. Unauthorized Legislative Action (De Facto Rezoning)

When reviewing a variance application, the Planning and Zoning Board, and the City Commission does not act in its legislative capacity; it acts in a **quasi-judicial capacity**.

- **The Rule of Law:** In a quasi-judicial hearing, the Board and Commission's sole authority is to apply the existing law to the facts presented. It does not possess the authority to ignore, waive, or suspend its own statutory criteria during an individual application hearing.
- **The Ordinance Flaw:** Granting a variance where the record explicitly shows the five criteria "are not met" constitutes a legislative amendment to the zoning code for a single piece of property. Florida courts routinely strike this down as **unlawful "spot zoning."** A supermajority vote (4/5) cannot legally sanitize or authorize an action that fundamentally violates state zoning enabling principles.

C. Complete Failure of Competent Substantial Evidence (CSE)

If an aggrieved neighbor or affected party challenges this approval, a Florida Circuit Court would review the City's decision under a Petition for Writ of Certiorari (see attached lawsuit).

- **The Rule of Law:** A reviewing court applies a "strict scrutiny" standard to verify whether the City's decision is supported by "Competent Substantial Evidence" (CSE) in the official record.

- **The Ordinance Flaw:** Because the Planning Board found the five (5) specific criteria were not met, the City's own official record inherently proves that the legal requirements for a variance were absent. A Florida court will most likely view a vote approving a variance under these conditions as inherently arbitrary, capricious, and legally unauthorized.

3. Recommended Course of Action – Ordinance Amendment and Reconsideration of Prior Approvals

To protect the City from future potential liability, costly litigation, the setting of precarious land-use precedents, and an erosion of public trust, it is respectfully recommended that the City Commission take the following steps:

1. **Draft an Immediate Code Amendment:** Initiate a text amendment to repeal the 4/5 loophole and the "minimal adverse effect" language from the ordinance, ensuring all future variances are bound strictly to unique property hardship as mandated by Florida law.
2. **Consider a Voluntary Stay or Reconsideration:** Evaluate options to mitigate the current approvals so the City is not subjected to a potential quashing of an approval as happened in Monroe County. See attachment A.

4. Recommended Course of Action – Process to Benefit the Community

Create an educational process to create a high degree of probability that Planning and Zoning members, who are citizen volunteers, have the training and knowledge to faithfully execute their duties in accordance with the law. To promote neighborhood harmony, have the City provide educational materials on the City's website to inform citizens of the responsibilities and standards of Planning and Zoning members regarding variances, in the event a Planning and Zoning member denies a neighbor's variance request.

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

MICHAEL LARSON and SUSAN
LARSON,

Case No.: 21-AP-9-P

Petitioners,

vs.

THE MONROE COUNTY PLANNING
COMMISSION and GREY PROPERTIES, LLC,

Respondents.

_____ /

ORDER ON PETITION FOR WRIT OF CERTIORARI

THIS CAUSE is before the Court on a Petition for Writ of Certiorari (the "Petition"), challenging Monroe County, Florida Planning Commission Resolutions No. P22-21 and P23-21 approving variances for two separate lots to allow construction of a house on each lot. After fully briefing the matter, the parties, through counsel, appeared before the Court for oral argument on December 1, 2022.

I. Factual and Procedural Background

Respondent Grey Properties (the "applicant") owns two properties, Lot 12 and Lot 13 ("subject property"), located in Key Largo, Florida. Each subject property consists of a single platted lot that is approximately 2,500

square feet. (Petitioners' Exhibits F and G- Staff Report at P. 4). For each property the applicant requested a setback variance from Monroe County to build a separate house on each lot. On September 29, 2021, the Monroe County Planning Commission conducted a hearing on both applications. Petitioners, the Larsons, live at a house adjacent to the subject properties and appeared at the hearing to voice their objection to the requested variances. At the conclusion of the hearing, the Planning Commission approved both variance requests.

On October 1, 2021, the Monroe County Planning Commission adopted Resolution No. P22-21 granting a variance to Lot 13, and Resolution No. P23-21 granting a variance to Lot 12. On January 18, 2022, Petitioners filed their Petition for Writ of Certiorari seeking to have the court quash Planning Commission Resolutions No. P22-21 and P23-21.

II. Standard of Review

First-tier certiorari review is limited to reviewing whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

III. Discussion

As set forth in the Monroe County Land Development Code ("LDC") Section 131-1, in the subdivision where the subject property is located, the required primary front yard setback is 25 feet and the required rear yard

setback is 20 feet. The applicant requested approval for a variance of 9 feet from the required 25-foot primary front yard setback and a variance of 10 feet from the required 20-foot rear yard setback. LDC Section 102-187(d) provides the following eight (8) standards that must be met for variance approval by the Monroe County Planning Commission:

Standards. The Planning Commission has the authority to grant a variance to the standards described in (b)(1) through (6), with or without conditions, if and only if the applicant demonstrates that all of the following standards are met:

- (1) The applicant shall demonstrate a showing of good and sufficient cause;
- (2) Failure to grant the variance would result in exceptional 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;
- (5) Granting the variance will not give the applicant any special privilege denied to another property owner in the immediate vicinity;
- (6) Granting the variance is not based on disabilities, handicaps or health of the applicant or members of his or her family;
- (7) Granting the variance is not based on the domestic difficulties of the applicant or his or her family; and
- (8) The variance is the minimum necessary to provide relief to the applicant.

In this case, the Planning Department staff report found the variance application to be “in compliance” with all eight of these standards.

(Petitioners’ Exhibits F and G-Staff Report). After reviewing the staff reports, the variance applications, and hearing from the applicant and members of the public, the Planning Commission concluded the applicant demonstrated that all the required standards set forth in the LDC had been met. (Petitioners’ Exhibits A and B-Resolutions P22-21 and P23-21).

Petitioners argue that Resolutions P22-21 and P23-21 are not supported by competent substantial evidence and that the Planning Commission misapplied LDC Section 102-187(d) which is a departure from the essential requirements of law. Petitioners also argue that the “Objectors” (the witnesses that testified in opposition to the application) were denied due process at the Planning Commission hearing.

A. Competent Substantial Evidence

Competent substantial evidence has been defined as “evidence that will establish a substantial basis of fact from which the fact at issue can be reasonably inferred, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Duval Utility Co. v. Fla. Pub. Serv. Comm’n*, 380 So. 2d 1028, 1031 (Fla. 1980). Here, Petitioners contend that the record does not contain legally sufficient evidence to support a finding that the applicant satisfied each of the eight standards required by LDC Section 102-187(d), and thus, Resolutions P22-21 and P23-21 are not supported by competent substantial evidence. The Court agrees. There is insufficient evidence to support the following standards: standard (2) failure to grant the variance would result in exceptional hardship to the applicant; standard (4) property has unique or peculiar circumstances; and standard (8) the variance is the minimum necessary to provide relief to the applicant.

The applicant has the burden of proof to introduce competent substantial evidence to prove all of the variance standards. *City of Satellite*

Beach v. Goersch, 217 So. 3d 1143, 1145 (Fla. 5th DCA 2017) (citing *Bd. of Cty. Cmm'rs of Dade Cty. v. First Free Will Baptist Church*, 374 So. 2d 1055 (Fla. 3d DCA 1979)). In this case, the applicant attached a site plan to the application depicting an 840 square foot “footprint” of a proposed structure for each lot. When the applicant was asked in the application to describe how the variance standards in LDC Section 102-187 will be met, the applicant answered for the first standard: “without this variance lot will not have space for a SFR.” (Petitioners’ Exhibits C and D-application). For the remaining standards, the applicant simply wrote, “correct.” *Id.*

At the September 29, 2021 hearing on the application, the Planning Commission was presented with evidence including the variance application, the site plan, boundary surveys, the planning department’s staff reports, the oral presentations, and public comments.

i. Exceptional hardship/unique circumstances

In order to grant a variance, the applicant must demonstrate that failure to grant the variance would result in exceptional hardship to the applicant. LDC section 102-187(d)(2). The Monroe County Code defines “exceptional hardship” as a “burden on a property owner that substantially differs in kind or magnitude from the burden imposed on other similarly situated property owners. Financial difficulty does not qualify as exceptional hardship.” LDC section 101-1. In this case, the applicant did not establish that its “burden” “substantially differs in kind or magnitude”

from the other ninety owners of 50x50 ft. lots in the Lazy Lagoon Subdivision.

When asked in the application to describe how the failure to grant the variance would result in exceptional hardship to the applicant, the applicant simply stated, "correct." In the report submitted to the Monroe County Planning Commission ("Staff Report"), Devin Tolpin, Principal Planner, through Emily Schemper, Senior Director of Planning & Environmental Resources states that "[s]taff agrees that failure to grant the variance would result in an exceptional hardship to the applicant." (Petitioners' Exhibits F and G-Staff Report at P. 4.) Specifically, they note, "compliance with the required primary front yard setback would result in an available building depth of 5 feet." *Id.* This is not the test for determining exceptional hardship nor is it evidence of exceptional hardship.

However, section (1) of the Staff Report also notes the following:

"The subject property consists of a single platted lot that is approximately 2,500 square feet. Many of the platted lots within the Lazy Lagoon Subdivision are similar in size. A large portion of single family residences constructed on only a single lot within this subdivision are situated within the setbacks as required pursuant to LDC Section 131-1..." (Petitioners' Exhibits F and G-Staff Report at P. 4)

This statement does inform the test for exceptional hardship and it directly contradicts the staff's finding of an exceptional hardship because it establishes the burden of constructing a home on a small lot is shared by many other property owners in the subdivision. Thus, the applicant's burden

does not “substantially differ in kind or magnitude” from the other nearby lot owners as required to find a hardship under LDC Section 102-187(d)(2).

For the same reasons the hardship finding is not supported by competent substantial evidence, the Court finds that the Planning Commission’s finding that the property has unique or peculiar circumstances, is not supported by competent substantial evidence. For LDC section 102-187(d), standard (4), the planning staff determined that “the subject property has a unique or peculiar circumstance that applies to this property but does not apply *to all other properties* within the IS zoning district.” (Petitioners’ Exhibits F and G-Staff Report at P. 5). However, the test is not whether the unique or peculiar circumstances apply to *all other properties* within the zoning district. Here, the size of the subject property is the same as or similar to other properties in the zoning district. The Staff Report admits that many other platted lots in the subdivision are similar in size but have accommodated single family residences on a single lot within the required setbacks thus disproving the contention that the subject property has unique or peculiar circumstances. There is no evidence in the record of unique or peculiar circumstances upon which a variance could be granted.

ii. Minimum necessary to provide relief

LDC section 102-187(d), standard (8) requires the variance to be the minimum necessary to provide relief to the applicant. In the application, when asked if the variance is the minimum necessary to provide relief to the

applicant, the applicant states, "correct." (Petitioners' Exhibits C and D-application). As noted, the applicant also attached a site plan depicting an 840 square foot footprint of a proposed structure for each lot. However, the site plan did not identify the size/placement of the house, including the number of levels or the square footage of the structure the applicant actually intends to build on each lot.

In reference to criteria (8), the Staff Report states, "staff confirms that the variance is the minimum necessary to provide relief to the applicant." (Petitioners' Exhibits F and G-Staff Report at P. 6). The Staff Report also notes that the variance "is necessary in order for the property owner to construct a single-family residence of the proposed footprint and size." (Petitioners' Exhibits F and G-Staff Report at P. 4).

At the hearing, Commissioner Wiatt asked Ms. Schemper if staff could "provide justification of approving 840 square feet of buildable area" stating, "I mean, was there any thought given to whether or not that was more than necessary, less than necessary?" (Tr. 41-42). Ms. Schemper responds that the proposed setback is based on the requested variance submitted by the applicant, and "considering the footprint of the area" it is a "reasonable setback." (Tr. 42). She states, "minimum necessary, it is a little subjective. We look and we try to see if it seems like a reasonable approach by the person who's proposing it." (Tr. 43). Ms. Schemper goes on to state, "[t]his seems to be pretty in line, typical with what people are

trying to build as a modest-size house, you know, a typical-size house.” (Tr. 43-44).

Concerned neighbors submitted a Power Point Presentation showing that a smaller variance would result in a 700 square foot “minimum footprint” and allow the applicant to build a 1-bedroom/1-bath house or a 2-bedroom/2-bath house on grade. (Petitioners’ Exhibit H).

At the conclusion of the hearing, Commissioner Wiatt states the following: “So, again, my way of thinking, and trying to cut to the quick here a little bit would be, you know, we approve the variance based on the fact that it’s a buildable lot and cannot be built on without a variance, but the question then becomes how much of a variance. And without anything else to hang my hat on with respect to the size of the variance, I would yield to the staff and whether that’s a reasonable number.” (Tr. 51).

It is precisely the point that there is nothing on which to “hang a hat” which leads the Court to conclude there is no competent substantial evidence that the variance is the minimum necessary to provide relief to the applicant. There is no evidence in the record to establish that the variance is the minimum necessary to provide relief to the applicant, and there is evidence that it is not the minimum necessary.

B. Essential requirements of the law

“A ruling constitutes a departure from the essential requirements of law when it amounts to a violation of a clearly established principle of law resulting in a miscarriage of justice.” *Miami-Dade County v. Omnipoint*

Holdings, Inc., 863 So. 2d 195, 199 (Fla. 2003) (internal quotation and citation omitted). Thus, a circuit court reviewing an agency action looks to whether the agency “applied the correct law,” which is synonymous with “observing the essential requirements of law.” *Haines City Community Development v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

Petitioners argue that the Planning Commission departed from the essential requirements of law by failing to apply the correct legal standard of “minimum relief” contained in LDC section 102-187(d)(8). As described *supra*, the planning staff and the Planning Commission focused on what they believed was “typical” “modest” and “reasonable” as opposed to the “minimum necessary to provide relief.” The Planning Commission departed from the essential requirements of law when it relied on these standards without a factual foundation to support the finding that the variance proposed was the minimum necessary. It appears that the Planning Commission simply adopted the Staff Report recommendation which was based on the applicant’s proposal without giving any consideration to the Objector’s presentation that provided evidence that the variance was not the minimum necessary to provide relief to the applicant. The planning staff and the Planning Commission adopted the variance proposed by the applicant which represents the amount necessary “in order for the property owner to construct a single-family residence for the proposed footprint and size” as opposed to the “minimum necessary to provide relief to the

applicant.” This is an incorrect application of the law which constitutes a departure from the essential requirements of the law.

C. Due Process

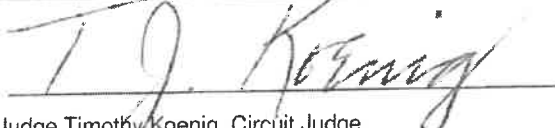
As adjacent landowners, Petitioners have standing to participate in the quasi-judicial Planning Commission hearing and have a constitutional right to present their case. *See Carillon v. Seminole County*, 45 So. 3d 7, 10 (Fla. 5th DCA 2010). “Generally, due process requirements are met in a quasi-judicial proceeding if the parties are provided notice of the hearing and an opportunity to be heard.” *A & S Entertainment, LLC v. Florida Department of Revenue*, 282 So. 3d 905, 909 (Fla. 3d DCA 2019). “The extent of procedural due process protection varies with the character of the interest and nature of the proceeding involved.” *Carillon*, 45 So. 3d at 9. Therefore, there is no single unchanging test which may be applied to determine whether the requirements of procedural due process have been met. *Id.* In this case, since the Court finds there is not substantial competent evidence in the record to support the Planning Commission’s Resolutions and that the Planning Commission departed from the essential requirements of the law, the Court need not undertake this analysis to address the Petitioner’s contention that they were denied due process in the hearing before the Planning Commission.

IV. Conclusion

Since the Court finds there is not substantial competent evidence in the record to support the Planning Commission’s decision to grant the

variances and that the Planning Commission departed from the essential requirements of the law, the Petition for Writ of Certiorari is **GRANTED**, and the Resolutions granting the variances (P22-21 and P23-21) are **QUASHED**.

DONE AND ORDERED at Key West, Monroe County, Florida this Thursday, March 2, 2023

44-2021-AP-000009-A0-01PK 03/02/2023 10:34:58 AM

Judge Timothy Koenig, Circuit Judge
44-2021-AP-000009-A0-01PK 03/02/2023 10:34:58 AM

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MEMORANDUM

DATE: September 3, 2026

TO: Lynne Benton, KCB Planning and Zoning Board member

FROM: Nicholas W. Mulick, Esq.

RE: Legal Criteria Applied to the Evaluation of Hardship Variance Applications

You have requested my opinion whether the criteria for granting a hardship variance contained in Sec. 101-171 of the Key Colony Beach Land Development Regulations, entitled *Variances*, is consistent with Florida law. For the reasons set forth below, it is my opinion that the inclusion of subsections (5)(b)1 and 2 renders the ordinance arbitrary, capricious, and contrary to prevailing law.

Florida courts have consistently held that local governments possess limited authority to permit property owners to construct improvements on their property which are not permitted by applicable zoning laws. *Askew v. Gables-by-the-Sea, Inc.*, 333 So. 2d 56 (Fla. 1st DCA 1976).

In order to avoid strict compliance with zoning laws regulating the use of a parcel of land, the property owner must obtain a variance by proving that it is impossible to put their property to a reasonable use due to circumstances unique to the property, thus resulting in a hardship. For example, a property owner may be unable to build a house of reasonable size on an odd-shaped lot and comply with required setbacks. The claimed hardship, however, must not have been created by the property owner. For example, a property owner cannot transfer ownership of a portion of a lot rendering it too small to meet setback requirements, then seek relief from the self-created hardship.

City of Coral Gables v. Geary, 383 So. 2d 1127 (Fla. 3d DCA 1980).

The City's ordinance allows variances from setbacks and height restrictions, but (bulk regulations) does not authorize uses not specifically allowed in the assigned zoning category. The City cannot grant a variance to permit a lot zoned for residential use to be used as a school, for example, if it is not permitted in that zoning category.

Hardship variance ordinances must include clear, objective criteria for determining whether a variance may be granted. *Drexel v. City of Miami Beach*, 64 So. 2d 317 (Fla. 1953). In my opinion, the criteria set forth in Section 101-171(5) are sufficiently clear and objective. However, the inclusion of subsections (5)(b)1 and 2 unlawfully allows the City Council to circumvent the variance criteria.

The Planning Commission's role in the variance application process is to determine whether an application satisfies the five criteria contained in Section 101-171(5). Based on its determination, the Planning Commission will recommend to the City Council approval or denial of the variance application. The City Council may reject the recommendation only if it specifically finds that the Planning Commission's recommendation is not supported by the evidence or that its interpretation of the criteria is erroneous.

In light of subsections (5)(b)1 and 2, the Planning Commission is given three options:

1. Recommend approval of the variance application based on a finding that the applicant satisfied the hardship variance criteria.
2. Recommend that the variance be denied because the applicant did not satisfy the hardship variance criteria.
3. Make no recommendation, even if one or more criteria have not been satisfied, if it separately finds "that granting of the variance will have minimal adverse effect on other citizens of the city or on the city."

Sitting in its quasi-judicial capacity, the Planning Commission is required to enforce the ordinance as it is written. It is not free to ignore or interpose its own subjective opinion of the ordinance's validity. Once it has considered the evidence presented at the hearing on the variance application, it must apply the evidence to the ordinance criteria. Having found that an applicant failed to satisfy the hardship criteria, it is counterintuitive to conclude that granting the variance application has a minimal adverse effect on the City or its residents. More importantly, the Planning Commission has no criteria based upon which it can objectively conclude that a variance will have a minimal adverse effect.

In conclusion, the City's criteria for granting a hardship variance ordinance is sufficiently clear, objective and mandatory to overcome a legal challenge. By adding Sections 101-171(5)(b)1 and 2, the City Council rendered the ordinance arbitrary, capricious and unreasonable. Those sections unlawfully authorize the City Council to issue variances based on conjecture or subjective opinion, rather than in compliance with the specific hardship criteria enumerated in Section 101-171(5).

Silvia Roussin

From: Richard Pflueger <rlpflueger@bellsouth.net>
Sent: Tuesday, October 20, 2026 11:10 AM
To: Silvia Roussin
Subject: Proposed Sunset Park Gazebo

Greetings commissioners.

This is to express my opposition to the subject project. There is already too much development in this park. An additional structure is totally unnecessary and conflicts with enjoyment of activities in the park.

Additionally, I have found no record that the Commission expressly approved this particular project. I have seen no record that it was ever discussed by either Recreation or Beautification Committees, much less approved by them.

Please put a stop to this before final approval by the Tourism Development Council or Board of County Commission and let the public have a say in this matter.

Thanks,
Richard Pflueger
240 8th Street

Sent from my iPad

Silvia Roussin

From: suebartkus@gmail.com
Sent: Wednesday, October 21, 2026 8:56 AM
To: KCB Mayor; Doug Colonell; Kirk Diehl; Tom DiFransico; Tom Harding; John Bartus; Silvia Roussin; letters@peopleareasking.org
Subject: Change to Florida Building code

Could you explain to me what exactly the change to the Florida building code is all about? what does it actually mean with regards to non-conversion of enclosures below flood level? What does this mean? In Lehman's language I would appreciate knowing this. Thank you so much Sue bartkus@gmail.com.
Sent from my iPhone

Silvia Roussin

From: cynthia catto <ctcatto@aol.com>
Sent: Wednesday, October 21, 2026 9:54 AM
To: Silvia Roussin
Subject: Veranda at sunset

Silvia, please forward this letter to the Commissioners.
See you Soon

Cindy

October 21, 2026

Dear City Commissioners,

You have approved the submission of a grant application for a "Veranda at Sunset Park". At the recreation committee's August meeting, a "Veranda at Sunset Park" was not on our TDC grant list. All TDC grant applications that affected the city parks were on the Recreation committee's approved Improvements List.

We feel that: The "Veranda at Sunset Park" needs to be discussed by the citizens of Key Colony Beach at a workshop. Then the recreation committee needs to hold a meeting and make a recommendation to the city commission on the "Veranda at Sunset Park"

Sincerely,
Cynthia Catto
Recreation. committee
Chair

Sent from my iPhone

**David P. Evangelista
838 West Ocean Drive
Key Colony Beach, FL 33051**

October 21, 2026

Key Colony Beach City Commission
Via email
600 West Ocean Drive
Key Colony Beach, FL 33051

Re: Recreation Committee Inclusion

Dear Commissioners:

I am writing this letter as a resident of Key Colony Beach. My opinions are not necessarily those of the Recreation Committee.

I am concerned with some of the decisions that have recently been made by the representatives of the City relative to recreation areas in Key Colony Beach.

In accordance with the Key Colony Beach Code of Ordinance, the Recreation Committee is responsible for making recommendations to the City Commission with regards to activities and facilities involving recreation and municipal areas. Presumably, the purpose of the Recreation Committee is to represent the community in matters related to recreation and provide the opportunity for community input. Accordingly, it is appropriate that the Recreation Committee be consulted on any modifications that are made on properties that fall within their jurisdiction.

There have been a number of instances in the recent past in which representatives of the City have undertaken changes to recreation area properties without consulting with the Recreation Committee, nor advising them of their intent to do so. These include the recent Grant application for the Gazebo at Sunset Park, removal of vegetation at the golf course and installation of sunscreens at both Sunset Park and the pickleball courts.

While the city commission is not obligated to follow the recommendations set forth by the Recreation Committee, excluding them from the process denies them of the opportunity to provide constructive input. It also eliminates the opportunity for community members to voice their opinions during Recreation Committee meetings and workshops and ignores the intent of the Code of Ordinance to have the Recreation Committee provide recommendations on changes to recreation and municipal areas. Instead, decisions are being made by one, or several representatives of the city, and may not necessarily reflect the wishes of community.

I encourage the representatives of this City to include the Recreation Committee in their decision-making process to ensure that the residents of this community are properly represented.

Thank you,

David Evangelista

David Evangelista