

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

Wednesday, March 16, 2022 - 9:30 a.m.  
Marble Hall & Virtually via Zoom Conferencing

**1. Call to Order/Pledge of Allegiance/Roll Call:** Chairperson Joey Raspe called the meeting to order at 9:30 a.m. in the morning followed by the Pledge of Allegiance and Roll Call.

**Present:** Chair Joey Raspe, Mike Yunker, Lin Walsh, Tom DiFransico. **Excused:** George Lancaster. **Also Present:** City Administrator Dave Turner, City Clerk Silvia Gransee, City Attorney Dirk Smits, City Attorney Ryan Benninger, Building Official Gerard Roussin, Executive Assistant Saara Staten.

**Public Attending:** 25 Marble Hall, 13 Virtual

**2. Approval of Minutes:** The Planning Zoning Board accepted the minutes from December 15, 2021, as written.

**3. Administration of Oath to Witnesses:** City Clerk Silvia Gransee administered the Oath of Witness to all wishing to give testimony in today's hearing.

**4. Citizen Comments and Correspondence:** City Clerk Silvia Gransee reported on having received two citizen correspondences prior to the meeting which were shared with the Board. In addition, the City Clerk stated that several citizens in the audience would like to speak to the Board. The City Clerk clarified that letters submitted to the City Clerk will be made part of the record, but not will not be read into record.

A. 46 7<sup>th</sup> Street - Michael Church. Mr. Michael Church reported that he and his wife have been coming to the Keys since 1971 and have owned their duplex for about 20 years. Mr. Church explained that being in the Keys in the winter is extremely important to them and that 7<sup>th</sup> Street represents a neighborhood to them and not just a street. The neighborhood is enjoyed by all living there, and the open walkway along the water and the views across the wide canal. Mr. Church further stated that every few years the neighborhood has to defend themselves against development and bringing more people into the community. Mr. Church stated that there is nothing wrong with making money, but the Keys are a vulnerable ecosystem. Mr. Church further stated that there are many places in the Keys, as well as in Key Colony Beach, where a 46-foot-tall structure would not be prohibited, but that 7<sup>th</sup> Street is not that place. Mr. Church stated that if the structure was neglected, it would be because that the owner had neglected it. Mr. Church questioned if the owner had purchased the property with the intent of not adhering to the building code. Mr. Church further stated that the owner is still able to build the duplex, rent it out, make money and live in it and enjoy the neighborhood, or wait for the code to change, or to sell it and make a profit, and move on to a more appropriate neighborhood. This would not present a hardship to the owner. Mr. Church said that the owner had stated that what the current code deprives him off is the privilege to maximize his opportunities. Meanwhile the neighbors would be deprived of the lives, air circulation, and the ability to see the sky they had seen for several years. Mr. Church further acknowledged that they all know that their homes will be eventually replaced, but that that time is not yet. Mr. Church continued saying that there still should be homes for people that are not multi-millionaires to be enjoyed by everyone to live by the water. In closing, Mr. Church stated the question on what good a code is, if asked for it, if it does not apply for everyone.

B. 160 1<sup>st</sup> Street – Tom Tucker. Mr. Tucker stated his reason for attendance as a protest to an inappropriate variance request. Mr. Tucker stated that a variance is a tool in the code to allow construction in violation of code to specific circumstances. Mr. Tucker stated that a variance is not intended to change or redefine the building code. Mr. Tucker in addition stated that under the Key Colony Beach Building Code all five specific criteria must be met.

*Mr. Tucker said that the requested variance is not only in violation of current code but the proposed new LDR's in process. Mr. Tucker said that Mr. Blackwood's responses to the five questions does not demonstrate good cause and unnecessary hardship. Mr. Tucker went on to say that the subject property was purchased after Irma and that virtually every home on the East side of 7<sup>th</sup> Street suffered damage and needed repairs with Mr. Blackwood's home being no different. Mr. Tucker expressed that the owner had every right to renovate or rebuilt like every other owner on 7<sup>th</sup> Street had. Furthermore, Mr. Tucker stated that the owner can build new to the current code however that does not seem good enough for the owner. Mr. Tucker went on to say that the owner apparently wants to build one of the largest residential structures in the city in a neighborhood zoned R2B, the actual smallest permitted lots in the city. Mr. Tucker further reported that this will be a single dwelling with 8 bedrooms with an above ground height of 46.5 feet which is roughly 2.5 times the current code limit. Mr. Tucker further stated that the building is also 6.5 feet taller than the lot is wide. Mr. Tucker further explained that this is in a neighborhood with an average building height of less than 15 feet with 40-foot-wide lots in an area of the city with current stormwater runoff, density, and terrible parking issues. Mr. Tucker stated that this application is an attempt to run over the existing code and that future zoning of the City should be accomplished by constituted boards and elected officials not at the whim of developers. In closing, Mr. Tucker asked the Committee to summarily reject the application.*

*C. 2 7th Street – Dave McKeegan. Mr. McKeegan reported that he is not in the 300-foot range of having a direct comment on the issue, but he stated that this is a water-shed question for KCB particularly for 7<sup>th</sup> Street. Mr. McKeegan further stated his support for the previous two speakers. Mr. McKeegan stated that KCB is the Gem of the Florida Keys due to its community, neighbors, a shared purpose, and no walls between their 15-foot houses. Walls that would block the sun and that some people would not even see the sun part of the day. Mr. McKeegan stated that gardens will suffer and that this will present a daylight issue and a sky issue, and this will not be good for KCB. Mr. McKeegan stated that "we" are the gem and that they have volunteerism and no walls. Mr. McKeegan stated that he is against it and with the proposed size it will look like a domino on its side. Mr. McKeegan stated that if you like that look to drive up the Garden State area to see what that looks like. Mr. McKeegan further stated the residents do not want that look in KCB but that is what will happen because it will force everyone that lives at 15 or 20 feet to build up and sell out and to get their rooftop garden because nothing will grow on the ground. Mr. McKeegan stated that this is an awful idea. Mr. McKeegan gave an example of Unit 68 a few years ago and that the architect made it work. Mr. McKeegan stated that in the long run this would lead to row houses on 7<sup>th</sup> Street because the owners would have no choice. Mr. McKeegan stated that for that reason this is the water-shed decision that needs to be made now and that he encourages the Board to say no.*

*D. 80 7<sup>th</sup> Street – Judi Virust. Mrs. Virust reported that her parents bought the house on 80 7<sup>th</sup> Street in 1975 with the thought that buying a house in an incorporated city would be a significant benefit. The investment in the property would be protected through zoning regulations and restrictions. Mrs. Virust further stated that she believes that the Planning and Zoning Board should protect them from properties from being out of character with the neighborhood as well as properties that do not comply with current zoning policies. Mrs. Virust stated that this committee was very concerned of what it would look like if one side of the duplex build up and the other side not. Mrs. Virust stated that she attended some of those meetings. Mrs. Virust asked the Commission of what it would look like with a 46-foot-tall building surrounded by buildings that are only one fourth of its height and fingertip close to each other. Mrs. Virust stated that she disagrees with Mr. Blackwood's statement of there being no threat to public health and safety. Mrs. Virust stated that twelve proposed toilets present a compromise to the sewer and water system and if not by this building than by the others to follow. Mrs. Virust further stated that the size of the house would restrict the sunlight reaching the neighboring houses and would have an adverse effect on their well-being and that potentially dangerous mold could grow due to the climate in the keys. Mrs. Virust disagreed with the statement by Mr. Blackwood that there are already stacked duplexes on 7<sup>th</sup> Street. Mrs. Virust further stated the question how the other residents of 7<sup>th</sup> Street were able to remodel after Irma and live happily in their homes. Mrs. Virust quoted Mr. Blackwood saying that due to the 50 % rule this house cannot be remodeled or repaired for functional usage. Mrs. Virust closed by saying that just because you can do something doesn't mean you should and*

*recommended for the variance request to be denied.*

*E. 54 7<sup>th</sup> Street – Ron Foster. Mr. Ron Foster reported on living at his address since 2006 as his permanent residence. Mr. Foster stated that he submitted some pictures and sketches in support of what he is referring to. Mr. Foster stated that they chose to live on 7<sup>th</sup> Street for its uniqueness, and the open boardwalk lends itself to meetings and socializing. Mr. Foster stated that many of his friends here have become their best friends over the years and that 7<sup>th</sup> Street is the only true neighborhood in all of KCB. Mr. Foster asked the question on many can say they know 50-75 percent of the people on their street. Mr. Foster further stated that at the time when Key Colony Beach was founded, 7<sup>th</sup> Street and the Causeway were zoned differently because of its physical differences from other areas in the City. The lots are narrow, and the houses are close together. Mr. Foster continued by saying that the owner had answered one of the questions in the application, that the houses were old and needed to be redeveloped. Mr. Foster referred to pictures for reference for neighbors within the immediate area to 57 7<sup>th</sup> Street and within the 300-foot proposed variance property. Mr. Foster asked if these properties looked like properties that needed to be redeveloped. Mr. Foster further questioned the owner's answer to aesthetics in question one. Mr. Foster stated that all properties had been renovated and updated, with the exception of 57, maintaining the original style of 7<sup>th</sup> street and that it is obvious that that is what the owners of 7<sup>th</sup> Street want. Mr. Foster stated that rather than to admonish 7<sup>th</sup> Street as an area that is old and needs to be redeveloped it should be praised for maintaining its unique character. Mr. Foster referred to question 2 and 4 of the owner's application that the property is a non-functioning poorly maintained structure. Mr. Foster said that prior to Hurricane Irma the property was one of the nicest properties on the street and properly maintained. Mr. Foster stated that it was Mr. Blackwood's choice to leave the property poorly maintained with no repairs after purchasing it in 2018 for four years. Mr. Foster stated that the structure could have been renovated and repaired by now like all the other properties on the street. Mr. Foster stated that the answer to question five does present a special privilege if this variance gets approved. Mr. Foster stated that in 2007 the owner of No. 67 and No. 68 (7<sup>th</sup> Street) were denied a height increase of 5 feet for a pitched roof. The height increase of 25 feet would represent a zoning change on 7<sup>th</sup> Street. Mr. Foster showed a comparison in pictures of what the building height would look like. In closing Mr. Foster stated that he hopes the city will see the value of 7<sup>th</sup> Street and is one of the unique gems of KCB.*

*F. 59 7<sup>th</sup> Street – James Bush. Mr. James Bush stated that his family's history started in 1974 at the Continental Inn and in 1976 his parents bought half a unit at 52 7<sup>th</sup> Street. Mr. Bush stated that in the early 90's they purchased number 59. Mr. Bush stated that his parents have since died, and the four children are holding the properties as successor trustees. Mr. Bush stated that he does not see the hardship in this and that this would considerably change the feeling of the street. Also, this would establish a new set of rules dismissing current zoning. Mr. Bush stated that the current zoning is in place for a reason and that the changes do not make sense at all. Mr. Bush further asked the question if the property will be owner occupied or a rental. Mr. Bush stated that he is worried about the structural integrity of his current home with the vast construction going to take place. Mr. Bush further stated that the fact that with the current roof pitch there will be water falling onto his house and he does not see how this will not impact his property. Mr. Bush further stated that the fact that he can also build out the canal side like his neighbor. Mr. Bush further stated that he will not fight for the view obstruction but noted that he will be impacted dramatically. Mr. Bush further stated that the shade the new structure will cast will change things forever for them. In closing, Mr. Bush said that he hopes that this open forum will let the Board know what the neighbors are really saying. They love Key Colony Beach and love 7<sup>th</sup> Street and that they are hoping the Board will reject the proposal.*

*G. 45 7<sup>th</sup> Street – Mary Cornford. Mrs. Cornford stated that she came before the Board to talk from the heart of what is important to her. Mrs. Cornford stated that they are newbies compared to the previous people and have lived in Key Colony for about five years. Mrs. Cornford further stated that they purchased their house five months before Irma decided to come through their neighborhood. Mrs. Cornford stated that they bought their house on 7<sup>th</sup> Street with many of the same reasons as the previous speakers which includes the open sidewalk which gives opportunity to speak to people. Mrs. Cornford explained that this has given them opportunity to meet people and make close friends. Mrs. Cornford continued by saying that they lived in the Marathon area for a long time and*

when they purchased the property, they purchased it for the look and feel of the old keys. Mrs. Cornford further stated that heritage is very important to them. Mrs. Cornford continued by saying that she will not be affected by the shade or water or similar things however she will be affected by the change and feeling of the opportunity that people will have. Mrs. Cornford stated that the Board needs to reject this. Mrs. Cornford further stated that just by looking at it that you can tell it will be an eyesore on 7<sup>th</sup> Street, but it is obvious that it is being built as a rental home. Mrs. Cornford stated that this is fine as many rental homes are up and down the street. However, when you look at the total structure with 12 toilets which is so “un-7<sup>th</sup> Street”. Mrs. Cornford added in closing that she is hoping that the board will consider the voices that they heard today. The people that live on 7<sup>th</sup> Street and care about 7<sup>th</sup> Street want to see 7<sup>th</sup> Street maintained and thanked the Board for its consideration in rejecting this request.

H. 79 7<sup>th</sup> Street – No Name. The Resident stated that they have lived in Key Colony Beach for 22 years. The Speaker further asked the question on what the density of the house is with 12 toilets, and how many people can legally live in the house. City Attorney Dirk Smits advised the Board that they are not here to answer questions but that they can take questions and ask the applicant in turn.

**5. Disclosure of Ex-Parte Communication:** Chair Joey Raspe asked all Board Members of any Ex-Parte Correspondence which might alter or change their vote which all Board Members answered no too.

**6. Proof of Publications:** All affidavits and legal notices were accepted as sufficient.

**7. VARIANCE REQUEST:** Chairperson Raspe read the variance request for 57 7<sup>th</sup> Street.

**8. Review of Variance Request:**

a) Building Official Gerard Roussin stated that the variance request presented today is in a substantial amount of 26.5 feet. The Building Official further stated that they have done a lot of work over the last year to update their Land Development Regulations’ and that they have no choice in what changes FEMA is bringing into the Flood Map. Building Official Roussin further stated that 7th Street is one of the areas that will be greatly affected by these changes. The City, the Building Department, the Planning & Zoning Board, and the City Commission have put in a lot of time and effort to what they thought was a fair and equitable distribution through the city for height changes. The Building Inspector stated that they came up with 37 feet across the city for residential and decided as the Board and City to make it a 40-foot recommendation to give people more room to work with. Building Official Roussin stated that he could support a 40-foot request because this is what they are trying to adopt when the Comp. Plan is completed and when the Land Development Regulations are approved by the DEO but has a really hard time approving a variance of 46.5 feet. The Building Inspector said that this would go above and beyond what the City’s intention were when they raised their heights and stated again that he has a really hard time supporting it.

Chair Joey Raspe asked of the one-foot roof overhang to the adjacent neighbor with a five-foot setback and that the runoff from the roof would certainly affect the neighbor’s property. The Building Inspector stated that this problem would be addressed in the permitting process as they are doing the plans review. The Building Inspector further stated that they can mandate that the applicant must have gutters on the building and will be held to the same standards as everyone else as what to retain on the property regarding storm water. The Building Official stated that the percentage was 15 percent, but part of the Land Development Regulations changes is increasing is to 25 percent which will help in other areas of the city. The current Land Development Regulations for the R2B Zone is one story, 20-foot, 15 percent retention, which is the current code. The Building Inspector further stated that if you look at the current code, the variance is 26.5 foot, which is an extreme amount. Building Inspector Roussin further explained that they are trying to get the R2B Zone rezoned, which is 7<sup>th</sup> Street, Sadowski, Clara and Coral Boulevard, and trying to give these residents the same opportunity to redo their properties to built them to proper flood level and to built them to proper height. The Building Inspector stated that this process has been ongoing and

that the board knows how long this has been going on. In addition, Covid has been an issue and it has been a very big production. Building Official Roussin further stated that he could support a 40-foot variance with the proposed changes coming, however, he cannot support 46.5 feet and believes that this would be a detriment to the neighborhood. Board Member Lin Walsh asked Building Official Roussin if he has an idea when the LDR's would be finalized. Building Official Roussin explained that when the proposed LDR's were initially adopted through the Planning & Zoning Committee and the City Commission, he (the Building Official) "put the cart in front of the horse by about a mile and a half" as he had sent these out to the DEO for approval. The DEO sent the proposed LDR's back indicating that they do not match what is in the Comp Plan and that is why the LDR changes were not approved. The Building Official further explained that since that time Jim Larue, who is redoing the city's Comp Plan, is working with the DEO to reflect the changes that the city wants. The Building Official further explained that once the Comp Plan has been approved by the DEO, then the LDR Changes can be sent up for approval. The time frame for the DEO can vary from being very short to a six month to a year time frame and the city does not know how long it will take for the items to come back from the DEO. Building Official Roussin further stated that the process is in the right sequence and the comp plan is being reviewed, changes are being made through Jim LaRue with the DEO and the city and that things are going in the right direction but they are not all the way home yet. Board Member Mike Yunker asked the Building Official on the relation between the square footage requirements in relation to height in the zoning code. The Building Official reported that there are no maximum square footage requirements within the proper setbacks and the right of the property owner. However, he believes the minimum square footage requirement is 450 feet. The city has a maximum story and a maximum height requirement. Board Member Mike Yunker further asked if the city has a maximum bathroom rule which the Building Inspector denied. The Building Official further explained that once the planning goes into the stage regarding bathrooms, the issue will be addressed with Dave Evans who oversees Wastewater in the city. Building Official Roussin further stated that each property is allotted a certain number of gallons but was unsure of the exact number.

**b. Statement by Applicant:** Mr. Abrams, Attorney for Mr. Blackwood, stated that he will be representing Mr. Blackwood today, but would also be testifying as well as a fact witness. Mr. Abrams presented a PowerPoint Presentation via Zoom. (Please contact the City Clerk @ [cityclerk@keycolonybeach.net](mailto:cityclerk@keycolonybeach.net) for a copy). Mr. Abrams stated that the property is a non-conforming plot of record, 40 wide and 110 feet deep with under 5,000 square feet total, and currently not occupied. Mr. Abrams continued by showing side by side comparisons between the current and proposed structure. The Attorney explained that the widow's top balcony accounts for 4.5 feet of the total height and is solely decorative in nature. Mr. Abrams further stated that the structure to the peak of the roof is 42 feet high and only two feet higher than the height recently approved by the Commission and sent to the state. The Attorney further stated that the only reason for the requested variance is for the recent approved proposed code changes. The attorney further presented slides of the proposed structure with the notation that the proposed structure without the widow's peak is only 42 feet high. Further slides showed the proposed car ports and different levels of the duplex. Mr. Abrams further stated that Mr. Blackwood understands the requirements to satisfy the conditions for the code. Mr. Abrams stated the first condition of good and sufficient cause is evident in the recent approved code changes November 8, 2021 and has been transmitted to the State where it is currently being considered. Mr. Abrams further stated that the proposed changes for new structures is to go 40 feet and two stories, but only if the minimum base flood elevation requirements are met. The attorney explained that base flood elevation requirements can vary from property to property and are very high in the area in question. Attorney Abrams further explained the base flood elevation requirements and the specifics for Mr. Blackwood's property. Mr. Abrams further stated that part of the 2015 Comprehensive Plan found that 92 percent of the available area in Key Colony was developed and only 8 percent were vacant. Mr. Abrams further stated that since then there are probably much less properties available, and that the variance request should be addressed with the knowledge of limited space available in Key Colony Beach. Board Member Tom DiFransico asked Mr. Abrams the justification for the extra 6.5 feet in structure. Mr. Abrams explained that the roof pitch has to be taken into account and that the purpose of this structure is to be

*much more disaster resistant and that the pitched roof is important for that. Mr. Abrams continued explaining the advantage to a metal pitch roof to a flat roof. Board Member DiFransico stated that he is looking forward to the explanation why this pitched roof is necessary. Board Member Mike Yunker asked Mr. Abrams to cite any variances that have been approved the Commission that are 26 feet high. Mr. Abrams stated that he could not. Mr. Abrams further stated that they would not have submitted the variance application if the current ordinance was not pending for approval. Mr. Abrams further stated that they believe that the variance should be approved under the pending code change. Mr. Abrams stated the Commission in the past has approved variances between 4-10 feet in height that were under current code requirements. Mr. Abrams stated that the opinion that the current variance request falls within that range if taken in consideration the pending code change. Chair Joey Raspe stated that the four-to-six-foot variances that were granted were 30-foot homes that were on oceanfront or large canal homes where the height restriction was 30 feet and to make the houses more aesthetically pleasing and to allow for new FEMA rules the Board granted those variances. These approvals were not based on 20 feet home asking for 26.5 feet.*

*Mr. Abrams continued with the PowerPoint Presentation by reporting on the second condition of unnecessary hardship. The attorney reported on the different requirements on 7<sup>th</sup> Street for base flood elevation requirements. Mr. Abrams explained that due to the height and FEMA restrictions the owner only has 30 feet of livable space. Mr. Abrams further stated that the owner purchased the property in 2018 after Hurricane Irma and had been trying to repair the property since. Mr. Abrams stated that the Board will hear testimony that the initial hurdle was the cost of renovation. Mr. Abrams stated that at this particular property the cost of renovation would have exceeded 50 percent of the structures fair-market-value. Mr. Abrams stated that his client reasonably decided to opt for a new structure. Attorney Abrams further stated that Mr. Blackwood did want to run the risk of a change order close to 50 percent of job completion and did not want that risk of cost. Mr. Abrams further continued answering Question No. 3. Mr. Abrams stated that if this variance would be granted it would modernize the property in question and would satisfy base flood line elevation and “would create one less disaster-prone structure on the island” like the one currently present on the property. Furthermore, the new duplex is an appealing Key West style home that would enhance the neighborhood and over time would bring up property values and create increased revenues. Mr. Abrams acknowledged that the proposed new property will indeed look bigger than the neighboring homes, but the Commission had already contemplated this when allowing future properties to go up to 40 feet. The attorney further stated that the houses in this neighborhood were built half a century ago and that there will be some uneasiness with modernization of a block. Mr. Abrams stated that new homes will seem out of place until the old homes will seem out of place, and that this is how progress works with real estate. Mr. Abrams continued to present several slides on how the new structure would look. Mr. Abrams stated that Mr. Blackwood had indicated that he would not have the Widow’s Peak at the top of the structure which accounts for 4.5 feet if the Board would impose this as a condition, however, the pitched roof does require that extra two feet of height. Mr. Abrams further elaborated on Condition No. 4. Mr. Abrams stated that the owner will testify that the repair of the property will exceed 50 percent of its replacement value. The Attorney continued by answering to the fifth condition that the variance falls within the range of previous granted variances. Mr. Abrams showed a remodeled property located at 68 7<sup>th</sup> Street to point out that the older house next to it looked out of place.*

*Mr. Abrams closed by asking if anyone had questions prior to him testifying.*

*Board Member Tom DiFransico asked Mr. Abrams if he thinks that because the house was damaged by Hurricane Irma if that was a unique or peculiar circumstance. Mr. Abrams stated that it is a combination of factors which all play into the uniqueness. The damage from Hurricane Irma and the damage above the 50 percent threshold for repairs makes it a unique circumstance. Board Member DiFransico asked Mr. Abrams if he was aware that many of the houses on that street had the same kind of damage and how Mr. Abrams could find this a unique circumstance. Mr. Abrams stated that there is no evidence on the record that shows that other houses on the block show that they had the same damage as the owners. Mr. Abrams apologized for the comment after the audience booed his remark. Mr. Abrams continued by stating that in fact he cannot speak for the other properties and that the interior of his client’s property is gutted, not usable and not habitable. Mr. Abrams further stated that it is a fact that the plotted*

lot of record show that is below the current minimum lot and with the property lines the only reasonable use of property is to go up. In addition to the base flood elevation requirements a unique circumstance is created for the property. Mr. Abrams stated that with the maximized development in Key Colony Beach the owner must treat what he has to the best he can with the understanding that he wants to do it in a way that respects neighbors' concerns and addresses aesthetic concerns. Mr. Abrams stated that they would be happy to meet with neighbors and address these concerns. Chair Joey Raspe asked Mr. Abrams if was aware that lots of people within the room were in the same zone as his client and that they were all able to repair their property without going to 46 feet. Chair Raspe further stated that this is where lots of the concerns stem from that the people lived through Hurricane Irma and understand what it means to pick up and put everything back together after the hurricane and to continue to live in a place that they love. In addition, Chair Joey Raspe stated that the residents do feel threatened by someone coming in after four years and wanting to build something that is out of character with their neighborhood. Mr. Abrams stated that the Board will hear testimony that his client was not just waiting for four years, and that the property was purchased with the intent to restore. Mr. Abrams stated that his client was not able to rebuild to the current code and had to wait for the changes to come into effect and that it is no longer viable and is an unjust hardship to his client. Mr. Abrams further stated that he is happy to meet with the residents before the Commission Meeting.

Building Official Gerard Roussin stated that he wanted to correct the statement made by the attorney that the minimum lot width in the R2B zone is 40 feet and not 50 feet. Furthermore, a substantial damage or improvement determination is made by the Building Official of the Jurisdiction and not by the Homeowner. Building Official Roussin further stated that he does not know what kind of determination or pricing was used and the determination is not made by the homeowner but by the Building Official of that municipality. Chair Joey Raspe asked if the Building Official had made such a determination which Building Official Roussin replied that he had not seen the property and has not been asked to make a determination of the property. Building Official Roussin further stated that the first time he read the email that somebody had made the determination of substantial damage which is incorrect. Mr. Abrams stated that he might have been incorrect with the remark of the 50-foot width and that might have been the land area he was referring to. Mr. Abrams stated that there would be testimony in regard to the substantial damage determination and stated that his client is not required to seek the substantial damage determination and disagrees with the Building Official.

Mr. Tucker, owner of 160 1<sup>st</sup> Street, stated that the proposed LDR's are not law yet. City Attorney Dirk Smits reminded the Board that citizens are not allowed to make statements at this time but can ask the Board a question which in turn can be directed to the attorney.

Board Member Mike Yunker asked Mr. Abrams what number of occupants are anticipated in the house. Mr. Abrams replied that his understanding is that it is a 2-family home and that his client's intention is to make it his permanent home until retirement and to have it as a second home until then. Mr. Abrams stated that he would have to ask the project consultant on the number of occupants that can live in the home. Board Member Mike Yunker further asked the attorney if he can confirm that there are 12 bathrooms in the house. Mr. Abrams again stated that he would have to direct this question to the project consultant who is in attendance today. Mike Yunker further asked what the square footage of living space is of the structure. Mr. Abrams directed the question to the project consultant as well. Mr. Abrams called his first witness Chris Nolan, Project Manager for Mr. Blackwood. Mr. Nolan stated his name and address for the record. Mr. Nolan stated that he is the business owner of Done-Right Development which focuses on construction consulting and management. Mr. Nolan further stated his education and work experience. Mr. Nolan further stated that he was hired by Mr. Blackwood for project consulting and oversight. Mr. Nolan further stated upon question that Mr. Blackwood's intent for the property is to move down to the Keys after retirement. Upon further questioning, Mr. Nolan stated that the applicant purchased the property in 2018 after Hurricane Irma with the house being completely destroyed with a lot of debris being inside. Mr. Nolan further stated that he started working for Mr. Blackwood shortly after the property was purchased and the contract was for a remodel to restore the building back to existing conditions. Mr. Nolan further stated that the property was purchased as a single-family residence but had been converted from a duplex prior. Mr. Nolan stated again that the

house was purchased with the intent to remodel to existing conditions. Upon further questioning Mr. Nolan stated that Mr. Blackwood made the decision not to remodel based on cost. Mr. Nolan stated that the cost to rebuild was sent as a contract and he received many other estimates from contractors as well. Mr. Nolan further stated that Mr. Blackwood made the decision not to rebuild based on the cost of construction when looking into the 50 percent rule. Mr. Nolan explained that the 50 percent rule is a statute that states if a property is non-compliant of the flood elevation it is given up to 50 percent of the market improvement value to be improved to livable conditions. Upon further questioning Mr. Nolan stated that it is important to follow the rule once the construction has started it is taken into the account the 50 percent rule as well as any construction in the prior three years. Mr. Nolan stated that anytime construction starts and once the cost accumulates past the 50 percent the work is null and void and has to be demolished and redone in order to come into compliance with the 50 percent rule which then would require elevation of the structure. Mr. Abrams asked Mr. Nolan if he agreed with Mr. Blackwood on the determination of this structure being above or close to the 50 percent rule compared to the fair market value of the structure. Mr. Nolan answered that he agreed and that it would not be wise to remodel due to the cost with the 50 percent rule. Upon further questioning Mr. Nolan stated that it is necessary to build above the 40-foot height to come into compliance with the flood elevation with the free board and zoning requirements. In addition, the height will allow for more parking and take the parking off the street as well as keeping the 10-foot wall and the roof pitch. Mr. Abrams asked Mr. Nolan why the pitched roof is necessary. Mr. Nolan answered that a pitched roof is a standard of construction in the Keys due to its best hurricane protection. Also, a metal roof requires a pitched roof and the minimum pitch for a standing seam roof is 1 in 12. Mr. Nolan stated that a flat roof is not a viable alternative due to its maintenance after the fact. Mr. Abrams asked if it is realistic to achieve the pitched roof with this structure with the base flood elevation and a height of 40 feet. Mr. Nolan replied that he believes the standard pitch for this kind of design is 3 in 12. Mr. Abrams asked if it is feasible to build the current structure under 40 feet. Mr. Nolan stated that it would be a determination of the roof pitch. Mr. Abrams asked again if it is feasible to build this 2-family home below 40 feet or if it has to build to 42 feet in order to achieve the pitched roof. Mr. Nolan replied that the proposed roof pitch mimics styles from the Keys. Chair Joey Raspe asked Mr. Nolan if that roof cannot be built to 40 feet with that pitch and if this was his answer to the question. Mr. Nolan replied that yes with the roof pitch he will be going over 40 feet. Upon further questioning Mr. Nolan replied that the widow's peak is solely a design feature with no access and allows to hide some utility features if needed to put on the roof. Mr. Nolan stated that it will not be viewable from the street level directly in front of the house due to the recess of the widow's peak. Building Official Roussin asked what the proposed design roof pitch is. Mr. Nolan stated that it is 5 in 12. Building Official Roussin asked if the minimum requirement is 3 in 12 for a metal roof which Mr. Nolan stated that it is the minimum requirement in addition to a standing seam roof requires an additional with above and beyond engineering. Board Member Tom DiFransico asked if he understood correctly that the minimum required roof pitch is 1 in 12. Mr. Nolan replied 1 in 12 with project specific engineering. Board Member asked again if 1 in 12 is the minimum for a metal roof which Mr. Nolan replied for a standing seam metal roof. Board Member DiFransico asked if Mr. Nolan is proposing a standing seam metal roof. Mr. Nolan replied that he believes that there is a 5 crimp on the roof. Board Member Tom DiFransico repeated his question if a 1 in 12 roof could be the minimum that could be used on that home. Mr. Nolan replied that it is possible to use 1 in 12 if they proposed a standing seam metal roof which usually is a higher rated roof than the 5-crimp roof. Board Member DiFransico asked if the other roof is a 3 in 12 and that Mr. Nolan is proposing a 5 in 12 for aesthetics which Mr. Nolan replied to as correct. Mr. Nolan called Mr. Blackwood as his next witness who stated his name and address for the record. Attorney Ryan Abrams asked Mr. Blackwood how he came to the determination to submit a variance application. Mr. Blackwood replied that sometime after he purchased the property in 2018, he met with the Building Official Gerard Roussin on more than one occasion. He recalls the first time he met with Building Official Roussin which was facilitated through the Realtor Lynn Goodwin which helped him with his original purchase. Mr. Blackwood further stated that he met with Building Official Roussin in his office and talked about the challenges he was having with renovation his existing building. Mr. Blackwood stated that he wanted to restore it as a duplex and that Building Official



Roussin explained the process to him. Mr. Blackwood stated that Building Official Roussin recommended to rebuild a new construction per duplex that he would have to apply under a variance application to do so. Mr. Abrams asked Mr. Blackwood if there was any specific design given that was proposed at the meeting today. Mr. Blackwood stated no that it was only in concept, but that he would build to the proposed and oncoming FEMA requirements. Mr. Blackwood stated that he understood that Building Official Roussin understood that he was going to accommodate and address the FEMA requirements for building above the flood zone. Mr. Abrams asked Mr. Blackwood what his intended use is for the structure once the construction is completed. Mr. Blackwood stated that he has been visiting ~~Clearwater Beach~~ Key Colony Beach since 1987 and that family and friends have been visiting Key Colony since the early 60's. Mr. Blackwater further stated that he has stated in Key Colony on 7<sup>th</sup> Street for over 25 years for seasonal 1-week visits for fishing and diving. Mr. Blackwood further stated that this has been his lifelong dream and lifelong savings purchasing this home and plans on building and living at this property as his second home. Mr. Blackwood stated that he is intimately familiar with the character of 7<sup>th</sup> Street and stated that he knows at least one person that has spoken at the meeting and that he has gotten along very well with his neighbors as well. Mr. Blackwood stated that his intent is no harm to his neighbors and looks forward to living full-time in the summer there at least. Upon further questioning Mr. Blackwood stated that he will be renting out the unit that he will not be living in through Key Colony Beach Realty. Mr. Blackwood further stated that he is planning on renting during the summer on a weekly basis and during the fall and winter on a seasonal basis. Mr. Blackwood answered upon being questioned that he recollects 9 bathrooms in total for the structure. Mr. Abrams presented a slide that showed the square footage of the building with the first-floor unit with 2,341 square foot and the second-floor unit 2,133 square feet. Mr. Blackwood stated that he did not want to add anything to the record but believes he had a fair amount of unfair criticism and false statements leveled against him. Mr. Blackwood stated that he cannot talk to about any other property owners on 7<sup>th</sup> street and how they overcame the 50 percent rule. Mr. Blackwood further stated that he only has the recollection but has no physical evidence of it in terms of a written estimate, but he believes that the structure was built in 1959. City Attorney Dirk Smits asked the Board if the witness had been sworn in. Chair Joey Raspe asked Mr. Blackwood if he was sworn in as a witness to speak. Mr. Blackwood stated that he took the oath in the morning and answered affirmatively at the beginning of the meeting. Mr. Blackwood further stated that his mental recollection of his evaluation of his building was about \$50,000.00. Mr. Blackwood further stated that he believes that a lot of people have a misunderstanding of what the 50 percent rule is. Mr. Blackwood stated that the 50 percent rule is the present value of the structure. Mr. Abrams stated that he has no further questions at this time. City Attorney Dirk Smits stated to the Chair that they are free to cross examine any of the witnesses that just testified including the representative and/or the owner. City Attorney Smits directed Attorney Abrams to please acknowledge if the representative is representing the corporation, as Mr. Blackwood apparently had just testified on behalf of the corporation. Attorney Smits requested for the record there cannot be two corporate representatives. Attorney Smits further stated that all the Board can cross examine the witness. Mr. Abrams stated the Mr. Blackwood is the corporate representative which Mr. Blackwood confirmed. City Attorney Dirk Smits asked if the testimony that the other witness had given was not on behalf of the corporation which Mr. Abrams replied that he supposes that he is not a corporate representative. Attorney Smits stated if he is just given testimony as a consultant which Attorney Abrams confirmed. Chair Joey Raspe if there were any questions by the Board for any of the witnesses. Board Member Mike Yunker asked Mr. Nolan if he had inspected the property in 2018 to determine the correctness of the information provided. Mr. Nolan stated that he had walked the property with Mr. Blackwood under a different project manager at that time in 2018. Board Member Tom DiFransico asked Mr. Nolan in reference to the mandatory pitch roof to achieve that height. Board Member Tom DiFransico stated to Mr. Nolan that he believes that if there was a lesser pitch on the roof, he could get easily under the 40 foot. Board Member DiFransico clarified the question with a metal roof with a lower pitch which Mr. Nolan replied that the standard and most pitch used on a metal roof with crimp is 3 and 12. Board Member DiFransico asked if that would get him under 40 feet which Mr. Nolan replied that he would have to check but it would definitely get them lower to what there are right now. Board Member Tom DiFransico asked Mr. Nolan if that would be a serious hardship to reduce

*the pitch of the roof. Board Member DiFransico clarified that the variance that is being asked for is going above 40 feet which is the city's limit and that the serious hardship stems from a roof where the chosen pitch is 5 and 12 and if it is really a hardship to reduce the pitch to come compliant with the city's rules. Mr. Nolan answered that it is not. Chair Joey Raspe stated to remember that the 40 feet are a future number and that current height restrictions are at 20 feet and that no mechanicals can be on the roof. Chair Raspe further stated that the ability to hide mechanicals is absurd since there cannot be mechanicals on the roof. Mr. Nolan stated that the reason this variance was applied was the belief that the LDR changes were already in effect. Chair Raspe asked Mr. Nolan if he had any recollection after Hurricane Irma that any of the LDR's were going to be changed within the next three years which Mr. Nolan replied no to and not at that time. City Attorney Smits stated to Chair Raspe that he can also cross examine Building Official Gerard Roussin as well as Attorney Abrams can. Chair Joey Raspe stated that he is still confused on the determination of the 50 percent rule and asked the Building Official when that does take place. Building Official Roussin stated that the Building Department does that determination when a permit gets submitted. The Building Official stated that he looks at the value of the permit and what structure value the property appraiser's office gives. Building Official Roussin stated that the value for the property from 2018. The Building Official further stated that it is the building only and does not include the land and it also includes a 20 percent buffer for Monroe County before of the county's cost. The Property Appraisers Office in 2018 the total value of the property \$688,776.00 with a land value of \$379,000.00 which leaves approximately \$310,000.00 for repairs. Chair Joey Raspe asked Building Official Roussin if a building permit has to be brought to the Building Department prior before a 50 percent rule comes into effect. The Building Official stated that is true or the individual owners can approach them, and they will work with them during that time. Building Official Roussin stated that the way the 50 percent rules works is if you are roughly within 45 % of that number will indicate how the homeowner will approach the property if the owner wants to redevelop or repair. Building Official Roussin stated that this has never been brought into his office about a 50 percent determination and that he was very surprised to see the determination in the email package. Chair Joey Raspe stated that a repair was not questioned in this particular case and asked the Building Official if it was a rebuilt from day one. The Building Official replied that he does not know. Mr. Nolan replied to Chair Raspe that the statement is not correct, and he had been working with Mr. Blackwood on remodel and after estimates arrived that were not feasible the owner looked into redevelopment after that. Chair Joey Raspe asked if there were any other questions for the witnesses. Board Member Lin Walsh asked for clarification that if they were looking at it from today, they were looking at it from a 20-foot height which the other board members agreed. Building Official Roussin stated that this is the current code, but it has also taken into account that new remodel work has to be signed that the owners are aware that new FEMA maps are coming out. Building Official Roussin stated that the current height is 20 feet but that both standards have to be worked with since these changes are coming. City Attorney Smits supported Building Official Roussin's statement that this is what can be called "Zoning in Progress".*

*Chair Joey Raspe continued the hearing by reading the applicant questions and responses. After reading the document Chair Raspe asked if there were any questions regarding the responses. Attorney Abrams stated that he had send a justification letter which was a replacement of the questionnaire which Chair Joey Raspe stated was received. Attorney Smits stated that the answers that were submitted at the time are the answers and any additional material submitted can be considered evidence. Chair Raspe also stated that the answers read were read from the original application. City Clerk Silvia Gransee stated that both application packages were submitted to the board for review, and it was not applicable to remove the original to replace it with the second package as requested by Attorney Abrams. City Attorney Dirk Smits stated that the second application can be considered as additional evidence submitted. Chair Raspe, City Attorney Smits, and Attorney Abrams agreed that the second application did not have to be read into the record.*

**c. Post Hearing Questions:** Chairperson Joey Raspe read the Post Hearing Questions to the Planning & Zoning Board.

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

Mike Yunker – no, Lin Walsh – no, Tom DiFransico – no, Joey Raspe – no. Roll call vote: NO.

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

Mike Yunker – no, Lin Walsh – no, Tom DiFransico – no, Joey Raspe – no. Roll call vote: NO

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

Mike Yunker – no, Lin Walsh – no, Tom DiFransico – no, Joey Raspe – no. Roll call vote: NO

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

Mike Yunker – no, Lin Walsh – no, Tom DiFransico – no, Joey Raspe – no. Roll call vote: NO

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

Mike Yunker – no, Lin Walsh – no, Tom DiFransico – no, Joey Raspe – no. Roll call vote: NO

**d. Planning & Zoning Board Recommendation:**

**MOTION:** Motion made by Tom DiFransico, seconded by Lin Walsh, to disapprove the granting of the requested variance for 57 7<sup>th</sup> Street.

**ON THE MOTION:** Roll Call vote. Chair Joey Raspe – yes, Mike Yunker – yes, Lin Walsh – yes, Tom DiFransico – yes. Unanimous approval.

**d. Planning & Zoning Board Recommendation:** The Planning & Zoning Board recommends to the City of Key Colony Beach Board of Commissioners for the requested variance for the property at 57 7<sup>th</sup> Street to be denied.

8. Any Other Business – None.

9. The meeting adjourned at 11:09 a.m.

Respectfully Submitted,

*Silvia Gransee*

City Clerk

**ADOPTED: April 20, 2022**

*Silvia Gransee*

City Clerk