

Minutes

KEY COLONY BEACH CITY COMMISSION VARIANCE PUBLIC HEARING

Thursday, June 11, 2009 - 9:30 a.m. City Hall Auditorium

1. ***Call to Order, Pledge of Allegiance, Prayer, Roll Call*** - The Variance Public Hearing was called to order by Mayor Sutton at 9:30 a.m. immediately followed by the Pledge of Allegiance and Prayer. *Present:* Mayor Ron Sutton, Commissioner Jeff Vorick, Commissioner Seneca "Tucker" DeGraw, Vice-Mayor Geraldine Zahn and Commissioner Mary Schmidt. *Also Present:* Attorney Thomas Wright, Police Chief Robert Petrick, Building Official Edward Borysiewicz and City Clerk Vickie Bollinger. Public: 11

2. ***Introductory Statement***

Mayor Sutton read: Variance Request from Franco and Mary D'Ascanio, 431 2nd Street (Lot 19, 23 & 24; Block 2; Key Colony Beach Subdivision) for the following:
Applicant requests a variance to the Key Colony Beach Code of Ordinances, Chapter 5 *Boats, Marine Facilities & Waterways*; Section 5-39 *Mooring posts not connected to a dock*, to install 7 mooring piles at a height of 13.5 feet above mean sea level when only 4 piles are permitted to a maximum height of 10 feet above mean sea level. Four of the mooring pilings will also extend 27 feet beyond the 30 feet permitted by city code. This variance is requested to accommodate one 80-foot vessel.

3. ***Proof of Publication, Affidavit of Mailing Notices - City Clerk***

City Clerk stated notice of this hearing was published in the Florida Keys Keynoter May 30, 2009 and notices were mailed to 38 surrounding property owners.

4. ***General Standards for Granting a Variance: LDR 101-171(5)(a)***

Mayor Sutton read the general standards: Variances from the terms of this chapter shall be approved only if they will not be contrary to public interest. In order to recommend or authorize any variance from the terms of this chapter, all of the specific standards listed in LDR 101-171(5)(a) must be met. However, when all of the 5 conditions are not met, the planning & zoning committee may recommend and the city commission may make an exception and grant a variance when they believe that the granting of the variance will have minimum adverse effect on other citizens of Key Colony Beach or on the city. Approval of a variance under these conditions would require a favorable vote of 4/5 of the city commission. *This variance request was approved by the Planning & Zoning Committee by a vote of 4-1, did not meet all six conditions, and requires a 4/5 vote of the commission for approval.*

5. ***Review of Variance Request***
 - a. Disclosure of Ex Parte Communications – Commissioner Schmidt stated she had discussions but not with the applicant. She stated that those discussions would not have an impact on her deliberations or vote in this matter.
 - b. Administration of Oath to Witnesses - City Clerk administered the oath to all witnesses.
 - c. Presentation of Variance Request – Planning & Zoning Chair Bill Danaher stated this matter was first heard by the Planning & Zoning Committee last October. The Committee had questioned the width and water depth of the navigable channel. The applicant produced an engineering study certifying the width and depth of the channel. Chair Danaher said the committee had little interest in the number and height of the pilings, but had concerns about navigation issues. He said not all 5 conditions were met and approval would require a 4/5 vote

- of the city commission.
- d. Statement by applicant if desired – Franco D’Ascanio stated this project had received permits from Army Corps of Engineers and the Department of Environmental Protection. He stated two studies were provided: one for the width of the channel and one for the depth. The result of the studies showed that concerns for navigation were unfounded; the channel has more than adequate room for navigation. He said per the studies there is a navigable channel at least 121 feet wide to a depth of 6 feet. Mr. D’Ascanio said the New Year’s boat parade in the canals did not have navigation problems for those big boats and the canals were not as wide as the channel. He said area charter boat captains felt there was adequate room for navigation.
 - e. Planning & Zoning Committee Recommendation – City clerk read the recommendation of the Committee to approve the variance as it would have minimal impact on the city. The motion was approved by a vote of 4-1.

6. *Correspondence and Public Comments*

City Clerk stated commissioners had received copies of all correspondence sent to the Planning & Zoning Committee and the City Commission. Seven residents commented against granting the variance and two had no opposition.

Public comments:

Pat McCarthy stated he was part owner of a marina on Coco Plum and he was concerned about navigation. He said they haul out large work boats and traps and asked how far into the channel this boat would be. Mr. D’Ascanio showed him pictures and provided width and depth information. A photo was also provided to the commission. Mr. McCarthy asked why he was not notified of this variance hearing. He expressed concern that when the Coco Plum docks get built the channel will be difficult to navigate.

Mayor Sutton stated that the Coco Plum docks did not have a bearing on this hearing and asked that comments be pertinent to the variance being discussed.

Terry Fisher, owner of Key Colony Beach Marina, stated he was opposed to closing off any part of this channel; and he had concerns about docks coming from the Coco Plum side. He said granting this variance was totally contrary to the public interest.

Stacy from a marina on Coco Plum asked why no notice was given to them about the issue. She said she had contacted the City of Marathon.

Building Official Borysiewicz stated that the city manager and one councilman from Marathon had contacted him. He said he explained the variance to them and they had no issue with it.

Mayor Sutton stated this is a Key Colony Beach issue and that ACOE sends out notices regarding these issues also.

Jeff Stuncard, D’Asign Source, stated there are survey stakes on Coco Plum but any decision about docks will be in the future and those owners will have to adjust plans for any existing docks. He said city regulations require notice to those within 300 feet of the variance.

Amedeo D’Ascanio stated that ACOE and DEP are responsible to notify property owners in the area and they did that. He said ACOE has jurisdiction over navigable waters and they have issued a permit for this project.

7. *Commissioner Comments*

In response to a question, Mr. Franco D’Ascanio stated the boat would be for personal use; there would be no charters out of Key Colony Beach. It may be chartered from other countries.

Commissioner expressed concerns about the possible use of this boat as a charter, the number of citizens who expressed opposition to the variance, and navigation safety for all boats in the

channel. It was noted that similar variances have been granted and that city code does not address the size of the boat and whether or not it can be a charter boat. Commissioners discussed the width of the channel; moving the dock to the south; this channel is not like a canal; this channel has lots more traffic including commercial boats. Charter boats may be docked behind residences, but the property may not be used as a pick-up or departure point for customers.

Bill Danaher, 8th Street, stated that there are other charter boats docked behind houses in the city. As long as there are no customers at the property, they are picked up elsewhere; this is not against city code.

Commissioners stated concerns about restricting waterways, but engineering studies show there is ample room for navigation.

Building Official Borysiewicz stated that he had been working with the D’Ascanios for over a year and that the boat will be docked there whether or not the variance is granted. The variance is for the additional mooring piles which extend into the channel farther than allowed by city code.

The piles will provide extra protection for the boat, especially during a storm.

Attorney Wright advised that no one has a right to a variance and that the commission should base their decision on the criteria as stated in the LDR.

It was stated that Planning & Zoning voted that criteria 4 and 5 were not met.

Building Official Borysiewicz stated that he reviewed plans to lengthen the dock a couple of years ago, but doesn’t recall any discussion about the mooring piles. He said he saw the mooring piles on the ACOE drawings and informed Mr. D’Ascanio the project would require a variance.

Planning & Zoning Chair Danaher stated the Committee had no concern about the number or height of the piles, but was concerned about the 9 foot encroachment into the channel.

Amedeo D’Ascanio stated the LDR will not allow the dock to be 30 feet out, but the ACOE does not have that limit. He said city code 5-40 limits restrictions in waterways to one-fourth the width of the waterway. He said they are asking for that flexibility and meet the ACOE standards. He said it’s a large channel and the piles are needed for safety in the event of a storm.

Franco D’Ascanio stated the boat will be docked there whether or not the variance is granted.

Attorney Wright advised that the variance is not about placement of the vessel and the commission needs to consider the dock and the impacts of its use.

Building Official Borysiewicz confirmed that the city only regulates the size of a vessel if more than one-fourth of the waterway was restricted. He confirmed the city had issued dock permits before that may have mooring piles that extended further than code allowed. This was not done correctly, was done without a variance, but that is the past.

Attorney Wright stated that this may have been allowed in the past; perhaps in error. The commission may consider any pattern of city wide development that is relevant to the variance.

Building Official Borysiewicz stated variances have been granted for docks, but not mooring piles, but maybe they should have.

8. *Motion to Approve, Deny, or Approve with Conditions*

Motion – Moved by Commissioner Vorick, seconded by Commissioner Schmidt, to accept the findings and recommendations of the Planning & Zoning Committee and to approve the variance at 431 2nd Street, Franco and Mary D’Ascanio, Owners. Roll Call Vote: Yes – Vorick, Schmidt, Zahn and Sutton; No – DeGraw. Motion passed by a vote of 4 – 1.

Variance Hearing adjourned at 10:10 a. m.

Vickie L. Bollinger, City Clerk

Note: A mechanical recording has been made of the meeting of which these minutes are a part, and a copy is on file in the office of the City Clerk, as a

public record.