

**Minutes**  
**PLANNING & ZONING COMMITTEE**  
**REGULAR MEETING AND VARIANCE HEARING**  
**Tuesday, June 12, 2007 9:30 a.m. – City Hall Conference Room**

1. Call to Order, Roll Call – Chair Bill Danaher called the meeting to order at 9:30 a.m. Present were: Bill Danaher, Ron Anderson, Kathryn McCullough Rea, Ron Foster and Marie Flood. Excused: Bob Glassman. Also present: Attorney Thomas Wright, Building Official Edward Borysiewicz, and Assistant to the City Clerk Lyn Paterson. Public: 3
2. Approval of Minutes: Regular Meeting and Variance Hearing May 16, 2007  
Approved as written.
3. Discussion  
Assistant to the City Clerk administered the oath to all witnesses in all matters to be heard on this date.
  - A. Variance Request – 401-411 3<sup>rd</sup> Street  
Disclosure of Ex Parte Communication - Committee Members  
Variance Request – Height, Lot 16, Block 3, Key Colony Beach Subdivision,  
401-411 3<sup>rd</sup> Street, Edward Malaczewski, Owner

Applicant was present. Building Official Edward Borysiewicz stated that Mr. Malaczewski has lived in Key Colony Beach since 1978 and has been a long time home owner. Mr. Malaczewski was unaware he was not in compliance with his height restrictions until he applied for his Certificate of Occupancy. Only a small part of the roof approximately 30 square feet of the roof line is over the height restrictions. The trusses were not the height as stated in the plans and to correct this over sight, the metal roof and the plywood would have to be removed plus the trusses changed at an approximate cost of \$35,000. The owner was trying to build the house the right way and was shocked everything was not correct.

The committee and Building Official discussed who was responsible for the error. The contractor is the one who made the error and the paper work had not been completed. Mr. Rodriquez was trying to help the home owner complete the duplex and he was going by the plans. Attorney Thomas Wright recommended, as soon as the house was framed it should be inspected to alleviate this problem. Building official agreed in the future he would inspect the property when the trusses are set.

The Committee considered the following standards and responses, making comments and asking questions.

1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.  
**Response:** I know the height was suppose to be 30' maximum from crown of road. When the trusses were installed, I ordered a elevation certification, and asked Ray Rodriquez (who installed the trusses) about the height, + he said you'll be ok. I never heard any negative from the Survey Company (R. E. Reece P A). They said that the ground floor slab was @ 7.15' and the top of the 2<sup>nd</sup> fl. walls was 18.09 and everything was ok according to the plans and truss, so I thought everything was fine.

Variance Request – 401-411 3<sup>rd</sup> Street - continued

**Comment:** If the request does not meet the first 6 criteria must they read the next 3? Attorney Wright stated number one of the second set is different from the first one and the committee can approve the variance but should go through the process. No special circumstances were found and why could the owner not fire the contractor? The owner’s financial partner would not allow the contractor to be fired. Mr. Malaczewski bought the property and demolished existing house and his son’s godfather is the finance partner.

**Vote:** Anderson - no Rea - no, Foster – no, Flood – no, Danaher - no **Vote: No**

2. The special conditions and circumstances referred to above do NOT result from the actions of the applicant.

**Response:** The error is in no way any fault of mine. I depended on experience of professional people to do the work according to the approved plans by Key Colony Beach, + survey people to do the different surveys encompassed by this job, I was under the impression everything was in order + correct.

**Comment:** Not applicable, if the first criteria is not met.

**Vote:** None

- 3 That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district.

**Response:** I am not looking for any special privilege. I have a nice home built + it would make the neighborhood look nice. I have tried my best to do the house according to all the building codes set up by the City of Key Colony Beach. I don’t know how or where we got 1½’ over the height limit. I did some research in public records and found 5 incidences where height elevation come in to conflict with the height code 6” T 3’ over + they were granted; so it will not confer with giving me a special privilege over others.

**Comment:** Other variances have been granted by the City and are inserted in the package. Also to avoid this type of error once the trusses were set, the house would be inspected.

**Vote:** Anderson - yes Rea - no, Foster – no, Flood – yes, Danaher - no **Vote: No**

4. That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.

**Response:** If denied the variance it would put a great hardship on me because I don’t see any easy repair solution. I have lived in Key Colony Beach since 1978 + I like it here. I knocked my old house down, to make a nice one for me in Key Colony Beach and to keep up with the beautification + expectation of the City + again the height various I am asking for has been granted to others before me.

**Comment:** There would only be a financial hardship. If it came to repairing the error could the house be lived in? It cannot be used for living until a Certificate of Occupancy is issued and until it passes inspection, a certificate cannot be issued.

**Vote:** Anderson - yes Rea - yes, Foster – yes, Flood – yes, Danaher - yes **Vote: Yes**

5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

**Response:** The variance would complete my home for the C.O. + would not be over extending the use of the land, as all other setbacks are in order as to front, back + sides, I am just a little over on the height and earlier variances have been granted for the same problem I am having now.

Variance Request – 401 – 411 3<sup>rd</sup> Street - continued

**Comment:** None

**Vote:** Anderson - yes Rea - yes, Foster – yes, Flood – yes, Danaher - yes

**Vote: Yes**

6. That granting the variance will be in harmony with the general intent and purpose of this chapter and that such variances will not be injurious to the area involved or otherwise detrimental to the public welfare.

**Response:** Granting of the variance to leave the structure the way it is would be in conformity with other variances granted to others for the same problem I am having + would be in harmony with the general purpose of the land use, + it would in no way be injurious to the welfare of the public due to the dwelling being 1½ feet over height.

**Comment:** In the current procedures there is no input from the neighbors until it goes to the City Commission. The committee asked the owner if he had talked to any neighbor about the error or received any comments from them, he had not. Attorney Wright mentioned if there was a question about the survey being incorrect the City has other tools or have their own surveyor do a separate survey. Why should the city pay for a survey? The owner would have to pay for the survey, the owner stated he had requested another survey but has not received one at this time. Building Official Borysiewicz said it is a hip shape roof and the ridge is 22 ft long and is 1½’ too high. Unfortunately it was not caught earlier and it was felt the owner should not have to bare the additional expense to correct the error which is not noticeable. The Building Department is changing their procedure.

**Vote:** Anderson – yes, Rea - yes, Foster – yes, Flood – yes, Danaher - yes

**Vote: Yes**

After considering all six criteria’s there were; one - not applicable, two - no and three - yes, so the committee will consider the second three criteria. Chair Bill Danaher felt there would be a significant financial hard ship to the owner to correct this error, it does not stand out with the hip roof, and it is back from the road. He recommends approving the variance.

General Standards: When all of the six (6) specific conditions do not exist, the committee may recommend and the city commission may make an exception and grant a variance when they believe that all three general standards are met. Please note that all three of these standards must be met to recommend approval of the variance request.

1. Special and unnecessary conditions do exist in the request.

**Comment:** None

**Vote:** Anderson – yes, Rea – yes, Foster – yes, Flood – yes, Danaher – yes

**Vote: Yes**

2. Literal enforcement of the provisions of this chapter will result in unnecessary and undue hardship on the applicant

3. **Comment:** None

**Vote:** Anderson – yes, Rea – yes, Foster – yes, Flood – yes, Danaher – yes

**Vote: Yes**

4. The granting of the variance will have minimum adverse effect on other citizens of Key Colony Beach or on the city.

**Comment:** None

**Vote:** Anderson – yes, Rea – yes, Foster – yes, Flood – yes, Danaher – yes

**Vote: Yes**

Variance Request – 401 – 411 3<sup>rd</sup> Street - continued

**Motion** - Moved by Marie Flood, seconded by Kathryn Rae, to recommend approval of this variance request, to allow the 1’ 6” height variance for a small section of the roof area at 401 – 411 3<sup>rd</sup> Street, Edward Malaczewski, Owner. Roll Call Vote: Unanimous approval.

Building Official Borysiewicz recommended the owner get approval letters from the neighbors. The city commission will hear this matter on July 26, 2007 at 9:30 a.m.

- B. Variance Request – 860 12<sup>th</sup> Street
  - Disclosure of Ex Parte Communication - Committee Members
  - Variance Request – Rear and Front Set back, Lot 38, Block 12, Key Colony Beach
  - Subdivision 2<sup>nd</sup> Addition, 860 12<sup>th</sup> Street, Ronald D Schneider, Owner

Attorney Tom Wright stated the owner of 860 12<sup>th</sup> Street is for sale to Harry Knopp and part of the contingency is that Mr. Schneider start the variance procedure. Attorney Wright also stated he represents Mr. Schneider in the sale so he feels he should recuse himself. Building Official Borysiewicz’s wife Gail also has a business interest, as she represents the buyer Mr. Knopp. Building Official Borysiewicz said he would give only the facts and then recuse himself.

As mentioned above the home is for sale and Mr. Doug McDuff from McDuff Construction is here to represent the soon to be new owner Harry Knopp. Building Official Borysiewicz stated the new owner Mr. Knopp desires a partial rear property line variance set back of 10 feet, and a partial front property line setback variance of 11 feet. The present rear set back is 25 feet from the mean high water line, and the present front set back is 25 feet. The new owner Mr. Knopp is requesting the rear set back be 15 feet from the mean high water line and the front set back be 14 feet. This will match the existing corner of the home. Since the house was built over 40 years ago, the way the rear setbacks are determined has changed. Previously it was 21 feet from the water side vertical edge of the seawall cap as this is where the house was originally built, the current rear setback requirement is 25 feet from the mean high water line. The front setback variance to 14 feet is requested to agree with another granted variance.

Committee and Building Official discussed the difference in measuring the rear setback and the age of the house. Building Official Borysiewicz recused himself and Doug McDuff will answer any questions he can. The Committee asked if the house was going to be renovated or was it to be demolished. Also if it was renovated could the pool be moved and used as a foot print and could the owner go up to gain more space. Mr. McDuff stated there were no plans and he was not sure but thought Mr. Knopp was looking to renovate because they were getting older and did not want to climb stairs. The new owner wanted to get the most usable structure space from the north west corner and the proposed addition to line up with the corner of the house.

The Committee considered the following standards and responses, making comments and asking questions.

1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.

**Response:** The existing single family home was built forty four years ago and encroaches into the current rear setback requirement of 25’0” by 10’0”. The applicant requests this 10’0” relief be continued along the rear setback areas.

Variance Request – 860 12<sup>th</sup> Street - continued

The applicant also requests a minor front setback area of relief identical to the variance granted to 550 5<sup>th</sup> Street on 6-16-04 which enables this odd, notched shape, dead end of street property to have a buildable area similar to normal, rectangular lots. The applicant desires relief only to utilize his property and propose buildable lot area as others in the City.

**Comment:** There was a discussion about the lot being at the end of the street which makes it a peculiar circumstance and whether the DCA had to be involved. The only other variance given a setback was for a screened room on 13<sup>th</sup> Street.

**Vote:** Anderson – yes, Rea - yes, Foster – no, Flood – no, Danaher - no **Vote: No**

2. That the special conditions and circumstances do not result from the actions of the applicant.

**Response:** The existing home already encroaches into the current rear setback but was permitted under zoning regulations in the City forty four years ago.

**Comment:** Not applicable, if the first criteria is not met.

**Vote:** None.

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district.

**Response:** Numerous other applicants have been granted similar variances for setbacks for adequate use of their property, especially with older, non conforming homes. Please see attached approved variance an example of identical partial front set back relief.

**Comment:** None

**Vote:** Anderson – no, Rea - no, Foster – no, Flood – no, Danaher - no **Vote: No**

4. That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.

**Response:** New addition to existing home without variance would result in two triangle shaped small buildings connected by a hallway which would be visually detrimental to the neighborhood and City character.

Please see attached sketch “A”. Proposed sketch “B” with requested variance would result in an aesthetically pleasing home and increased buildable area for the owner.

**Comment:** Neither “A” or “B” are too cute and there are other alternatives.

**Vote:** Anderson - no, Rea - no, Foster – no, Flood – no, Danaher – no **Vote: No**

5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

**Response:** The applicant is requesting the minimum variance necessary to create an eye pleasing home and make reasonable use of the land with the existing non-conforming home.

**Comment:** New home owner is buying a home too small for his needs and can relocate the swimming pool to make it larger.

**Vote:** Anderson - no, Rea – no, Foster – no, Flood – no, Danaher – no **Vote: No**

6. That granting the variance will be in harmony with the general intent and purpose of this chapter and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

**Response:** The new addition and renovation planned by this variance will improve the property, neighborhood and community character.

**Comment:** The owner will end up with a weird shape home that does not fit the neighborhood.

**Vote:** Anderson – no, Rea - no, Foster – no, Flood – no, Danaher - no

**Vote: No**

**Motion** – Moved by Marie Flood, seconded by Ron Foster, to recommend denial of the variance request for a partial rear setback variance of 10 feet to match existing corner of the home and partial front setback variance of 11 feet at 860 12<sup>th</sup> Street, Ronald D. Schneider, owner. Roll Call Vote: Unanimous approval.

This variance request can go before the city commission on July 26, 2007 or the variance request may be withdrawn and the check be returned to the home buyer, Mr. Harry Knopp.

4. Any Other Business - None

There being no further business, the meeting adjourned at 10:55 a.m.

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Lyn Paterson, Assistant to the 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.