

10/13/20

Ms. Cheri Smith, City Clerk  
City of Key West  
1300 White Street  
Key West, FL 33040

**RE: 13 Hilton Haven Drive  
Applicant Response to Planning Board Staff Report**



Dear Ms. Smith:

This letter is in response to the Staff Report filed by the Planning Department for the above-mentioned item appearing on the 10/15/20 Planning Board Agenda. I respectfully request this response be included with the agenda item for the public record.

Coastal Construction Control Line ("CCCL"):

1. We are seeking a variance to the CCCL in Sec. 122-1148. The Planning Board has the right to grant variances to the City's CCCL as evidenced by the previous CCCL variance Res. No. 2011-025<sup>1</sup> and upheld in Tannex Development L.C. vs. Planning Board of the City of Key West<sup>2</sup>.
2. We are not seeking a variance to the State's CCCL in F.S. 161-053(3) as incorrectly stated in the Staff Report, because "there is no established Coastal Construction Control Line (CCCL) in Monroe County" - Valerie Jones, FDEP Coastal Construction Control Line Permitting Manager<sup>3</sup>.
3. The Planning Department made a finding in 2008 that this property owner should apply for a CCCL variance for this property<sup>4</sup>.

Manmade Unnatural Dredge and Fill Shoreline with No Beach or Dune System:

The shoreline at 13 Hilton Haven Drive was professionally surveyed by Biosurvey's, Inc.<sup>5</sup> This professional Biological Assessment found the shoreline is unnatural dredge and fill and does not contain beach or dune systems. FDEP also found that this "property does

---

<sup>1</sup> Previously Granted CCCL Variance - Exhibit A (previously provided to the Planning Department as part of the application process)

<sup>2</sup> Tannex Development L.C. vs. Planning Board of the City of Key West - Exhibit B (previously provided to the Planning Department as part of the application process)

<sup>3</sup> Email from FDEP re: CCCL - Exhibit C (previously provided to the Planning Department as part of the application process)

<sup>4</sup> Memo from Planning Director re: 13 Hilton Haven Drive - Exhibit D (previously provided to the Planning Department as part of the application process)

<sup>5</sup> Biological Assessment – Exhibit E (previously provided to the Planning Department as part of the application process)

not appear to be located on or near one of the listed beaches, DEP would claim no CCCL jurisdiction and therefore no CCCL permitting would be required”.

The staff report inappropriately bases a denial recommendation on the Policies of Goal 5-1.3. LAND USE CONTROLS AND CONSTRUCTION STANDARDS FOR PROTECTING THE NATURAL SHORELINE AND THE VERY LIMITED BEACH/DUNE SYSTEM<sup>i</sup>, which are designed for and specifically apply to the construction standards for protecting natural shorelines. 13 Hilton Haven is not a natural shoreline as demonstrated in the Biological Analysis.

The staff report even concurs that the shoreline is unnatural in its historical analysis “Hilton Haven historically was created from fill through dredging to construct the East Coast Railways”. But, notwithstanding, the report still applies two policies of Natural Shoreline Protection Goal 5-1.3 as a basis for denial.

The report also applies the LDR provision for the protection of natural shorelines and beaches (Sec. 110-189(d)) as a final basis for denial. Again, as discussed above, the property does not have natural shoreline or beaches and therefore it is inappropriate to apply this section of code in an attempt to rationalize a denial.

#### Approval Criteria:

The Approval Criteria of the Code are laid out in our written application<sup>6</sup>.

Process/History – The staff report does not include the complete history of this application.

Date	Action
01/16/20	Application Submitted
07/02/20	Planning Department Refuses to Process Application Based on “Natural Shoreline”
07/15/20	Applicant Appeals City Planner Refusal to Process <sup>7</sup>
08/11/20	City Attorney Allows Variance Application to Proceed <sup>8</sup>
10/15/20	Planning Board Hearing
10 days	Local Appeal Period
45 days	DEO Appeal Period

#### Conditions:

Condition No. 2. seems to attempt to limit “house boats” based on a ROGO rationale, however, houseboats are not regulated by ROGO. “Floating Homes<sup>9</sup>” are regulated by ROGO and as such, we suggest the following edit:

2. The proposed upland single-family residence would replace the ~~houseboat~~ Floating Home on the property. The owner may not construct this upland residence and acquire a ~~houseboat~~ Floating Home, unless they receive an additional unit through the Building Permit Allocation System.

---

<sup>6</sup> Findings of Fact – Exhibit F

<sup>7</sup> Appeal of City Planner’s Decision to Refuse Process - Exhibit G

<sup>8</sup> City Attorney Email – Exhibit H

<sup>9</sup> **Sec. 14-181 Floating home means** any structure designed to be waterborne and which is used primarily as a dwelling, but not including vessels used primarily as mobile waterborne vessels for transportation.

Condition No. 4 seems to attempt to predict how Keys Energy will respond to the construction drawings. In our coordination with Keys Energy we were told that when they get the construction drawings, they will determine what needs to occur, relative to the powerline-house proximity. To avoid potential unnecessary revisions to this approval, we request the following revision:

4. ~~Per Keys Energy—The power line shall be relocated away from the proposed structure. The proposed location shall comply with the utility easement. The power line shall be relocated as required by Keys Energy.~~

Condition 5 is based on an erroneous understanding of the CCCL as described above and we request this condition be eliminated.

5. ~~—The Planning Board cannot issue a Coastal Construction Control Line variance.~~

Condition 6 is based on the misunderstanding that this is a natural shoreline or a beach/dune system. There is no reason to require bureaucracy designed to protect natural shorelines be applied to this property, when the professional biologists and the FDEP itself states there is no natural shoreline or beach dunes. We request this condition be eliminated.

6. ~~—This application shall be forwarded to FDEP as required by Section 110-189(d)~~

#### Conclusions:

There is no State CCCL in Monroe County. Approving a variance to the City's CCCL is within the purview of the Planning Board.

The shoreline is unnatural and altered. Comp Plan Objective 5-1.3 and LDR Sec. 110-189(d) does not apply.

Coordination will continue to occur with Key Energy to determine the location of all power lines.

The project has wide support for the requested variance to replace the destroyed floating home by constructing a home on the upland portion of the parcel.

This application meets all the approval criteria for the issuance of a variance to allow the beneficial and reasonable use of the land. We respectfully request the Planning Board grant the variance.

Thank you for your consideration.

Sincerely,



Owen Trepanier

---

<sup>i</sup> OBJECTIVE 5-1.3: LAND USE CONTROLS AND CONSTRUCTION STANDARDS FOR PROTECTING THE NATURAL SHORELINE AND THE VERY LIMITED BEACH/DUNE SYSTEM. The City shall not allow any construction of man-made structures on the City's beach, excepting beach access structures compliant with State construction standards. In addition, water dependent structures such as life guard stands or beach renourishment may be constructed if such structures meet the construction standards of federal and state agencies having jurisdiction. Any such construction activity must include measures to restore the beach and vegetation pursuant to a plan approved by the federal and/or state agencies having appropriate jurisdiction. No vegetation shall be removed unless the revegetation shall occur at a ratio 3 to 10 times the affected vegetated areas. The federal and/or state agencies having jurisdiction shall approve the revegetation ratio plan including the threshold for revegetation. The City shall continue to enforce Land Development Regulations which include performance standards designed to protect the limited beach and establish construction standards mandating that no development shall be located seaward of the shoreline, excepting structures approved by the State. The City's natural beach is in public ownership and shall be available for public access.