




MEMORANDUM

Date: March 14, 2023

To: Honorable Mayor and Commissioners

Via: Albert P. Childress
City Manager 

From: Raj Ramsingh
Chief Building Official

Subject: **23-5207 – Appeal of Substantial Improvement Determination** An Appeal of a Substantial Improvement Determination issued by the Floodplain Administrator for 2320 Patterson Ave., Key West, Florida (RE #00050210-000000)

Introduction

On November 6, 2023, the City Clerk's Office received a Notice of Appeal of a Substantial Improvement Determination from Barton W. Smith, Esq. of Smith Hawks Attorneys at Law, on behalf of the property owner of 2320 Patterson Avenue, Passero Development LLC. The Notice of Appeal is in response to a Substantial Improvement Determination from the City of Key West Building Department's FEMA/Floodplain Coordinator, Zoe Porter, signed and dated October 26, 2023 (Exhibit A). The determination was issued due to the extent of work conducted on a single-family home exceeding 50% of the structure's market value assessed before the commencement of improvements. The Building Department recommends that the City Commission deny the Notice of Appeal, supporting the Substantial Improvement Determination issued by the Floodplain Administrator concerning the single-family home addressed at 2320 Patterson Avenue.

This item was postponed from the December 14 and January 11 City Commission meetings at the applicant's request.

Background

The subject property, 2320 Patterson Avenue, is mapped within a Special Flood Hazard Area on the Monroe County, Florida, and Incorporated Areas Flood Insurance Rate Map (FIRM), dated February 18, 2005. The property is mapped on FIRM Panel 12087C1517K within an AE-7 flood zone. The property consists of a Pre-FIRM single-family home, meaning the house was constructed before the adoption of the effective FIRM. Pre-FIRM and post-FIRM structures not compliant with local, state, and federal floodplain regulations are subject to substantial improvement analysis, as defined and regulated within Chapter 34 of the City of Key West Code of Ordinances. At the time of determination, Chapter 34 defined substantial improvement, in part, as "*Any combination of repair, reconstruction, rehabilitation, addition, or other improvement or alteration of a building or structure, taking place during a five-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. ...*". Since the issuance of the determination, the definition of substantial improvement has been amended to reflect a one-year cumulative period per Ordinance 23-28;

however, the determination is still applicable if the one-year cumulative period is applied. Title 44 of the Code of Federal Regulations (CFR) Section 60.3 requires all substantial improvements of residential structures within AE flood zones to have the lowest floor elevated to or above the base flood level. As a higher regulatory standard, Section R322.2.1(1) of the Florida Building Code requires the lowest floor elevation to be at or above the base flood elevation plus one (1) foot.

The property was listed for sale in 2020 and later sold in 2021. The description of the real estate listing stated, in part, "*The home is being sold as a lot since the house is not in livable condition and will most likely need to be removed...*". Following the sale of the property, a series of building permit applications were submitted to the Building Department, as outlined in Exhibit B *Timeline of Events*. The primary building permit application, BLD2021-0584, was submitted to the City on March 4, 2021, and remained in corrections with the floodplain manager for nearly a year before approval due to concerns with the valuation of the proposed work compared to the value of the structure. A code case, CC2021-00760, was opened on May 5, 2021, for unpermitted work occurring on the property; Code Compliance staff documented demolition to the structure's interior. Due to the ongoing floodplain concern with the initial building permit, the Building Department approved a separate after-the-fact demolition building permit, BLD2021-2179, to address the unpermitted work identified through CC2021-00760. The property owner, who is also the applicant and contractor for the building permits, was advised that approval of the demolition building permit is only to satisfy the unpermitted demolition work and that no further work is to be completed.

The applicant provided the Floodplain Administrator with a private appraisal dated March 17, 2021, to support the renovations proposed through BLD2021-0584; the appraisal was not accepted due to the intention of the assessment being for mortgage financing and not assessing the depreciated value of the structure. A second private appraisal dated February 11, 2022, was submitted to support BLD2021-0584, valuing the depreciated value of the structure at \$467,206. This appraisal was accompanied by a schedule of values and materials that did not meet or exceed 50% of the depreciated value assessed in the second appraisal. Based upon the second appraisal, coupled with the schedule of values and materials, The initial renovation permit, BLD2021-0584, was approved with conditions based upon the second private appraisal and the schedule of values and materials. The conditions include strict adherence to the submitted schedule of value, the use of materials and finishes identified in the schedule of materials, a restriction on the conversion of the garage to habitable space, and a restriction on the addition or expansion of any wall.

Subsequent building permit applications for roofing, plumbing, electrical, and mechanical HVAC were submitted to the Building Department and demonstrated compliance with the approved schedule of values presented with the initial renovation permit. The mechanical HVAC permit, BLD2022-0722, was approved on the condition that the air conditioning units are mounted at or above Base Flood Elevation (BFE), plus one foot, pursuant to Florida Building Code Section R322.2.1.(1.). Final inspections for the plumbing, electrical, and mechanical HVAC building permits were later requested and disapproved. Building Department Inspector Wright disapproved and expressed concern with the submitted job cost associated with the plumbing permit (BLD2022-1053); Building Department Inspector Richardson disapproved and expressed concern with the submitted job cost associated with the electrical permit (BLD2022-0725) and disapproved the mechanical equipment inspection until the City's FEMA/Floodplain Coordinator inspected the elevation of the condenser unit. On January 10, 2023, Inspector Richardson and former FEMA/Floodplain Coordinator Bridget Flores inspected the condenser unit and documented that the unit does not meet the elevation requirement of BFE+1', as required per the Code.

At the request of Mr. Smith's firm, the Chief Building Official, Raj Ramsingh, and FEMA/Floodplain Coordinator, Zoe Porter, conducted a site visit to the subject property on September 13, 2023. City staff advised that the scope of work on the previously approved building permits was exceeded and that the renovations appear to exceed the 50% allowance. The applicant advised that the materials used throughout the renovation were purchased from Home Depot and, therefore, are low-cost and do not meet the substantial improvement threshold. It should be noted that per FEMA's Substantial Improvement/Substantial Damage Desk Reference P-758 Section 4.4.4 when materials or servicing

equipment are donated or discounted below normal market values, the value should be adjusted to an amount that would be equivalent to that estimated through normal market transactions. It should also be noted that, despite the property owner working as the contractor on the project, P-758 Section 4.4.5 states, "Should the property owner undertake improvement and repair projects on their own, the market value or going rate for labor must also be included in the estimates of the cost of improvements.". City staff advised that they would relay their concerns and Mr. Smith's stance to the Florida Division of Emergency Management (FDEM) Office of Floodplain Management for their position.

On October 2, 2023, Mr. Ramsingh and Ms. Porter met with the Florida Division of Emergency Management's (FDEM) State National Flood Insurance Program (NFIP) Coordinator, Conn Cole. Aside from City staff concerns with the cost of renovations and exceedance of the approved scope of work, Mr. Cole advised that the private appraisal dated February 11, 2022, is insufficient due to the effective date of the assessment falling after the start of renovations. Mr. Cole later identified additional issues concerning both private appraisals in Exhibit C, *Appraisal Checklist for SI/SD Determinations*. Therefore, following the definition of *market value* as defined in Sec. 34-132 of the Code of Ordinances, the market value for substantial improvement analysis shall be derived from the tax assessment value adjusted to approximate market value by a factor provided by the property appraiser. According to the 2021 property record card, the value of the structure during tax year 2021 was \$71,147, plus an additional 15%, \$10,672.05, providing a \$81,107.58 total market value for the structure before improvements started.

Based upon careful review of the approved plans compared to the work completed, a site visit, and discussions with the State NFIP Coordinator, the Floodplain Administrator issued a substantial improvement determination advising that the renovations completed on the single-family home have exceeded 50% of the structures market value and must come into compliance with all applicable state and local floodplain regulations.

The basis for appeal identifies two elements: (1) the floodplain administrator is estopped and precluded from denying private appraisal after building permits are issued based on said private appraisal, and (2) the floodplain administrator incorrectly denied the "Barefoot Appraisal." It should be noted that Section 34-126(6) of the Code states "*Suspension or revocation. The floodplain administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this ordinance or any other ordinance, regulation or requirement of this community.*". Floodplain approval was issued based on the information provided with the initial building permit. However, this information contained inaccurate and incomplete information by not including the full extent of the work. In addition, the second private appraisal ("Barefoot Appraisal") violates the floodplain ordinance, specifically Section 34-125(a), due to the effective date falling after the start of construction, as evidenced through CC2021-00760 and BLD2021-2179.

Procurement

A vote to reverse the appeal will not incur any costs for the City. However, the City of Key West is a participant in the Community Rating System (CRS), which provides flood insurance rate incentives to property owners within the community on the condition that the City adopts and governs higher regulatory standards than those required of the Nation Flood Insurance Program (NFIP). New and substantially improved structures must comply with floodplain regulations as part of the minimum requirements of the NFIP. A finding that the City failed to implement the minimum standards of the NFIP adequately could negatively impact the City's participation in the CRS and potentially pose a financial burden on property owners within the community.

Recommendation

The City Manager's Office recommends that the City Commission vote to deny the Notice of Appeal of Substantial Improvement Determination for 2320 Patterson Ave., Key West, Florida (RE #00050210-000000), thereby supporting City staff's determination of substantial improvement of the single-family home.

Exhibits:

Exhibit A – Substantial Improvement Determination

Exhibit B – Timeline of Events

Exhibit C - Appraisal Checklist for SI/SD Determinations from the State NFIP Coordinator