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IN RE:
CITY OF KEY WEST, FLORIDA
PLANNING BOARD HEARING
2015-12-17
6:00 P.M.

TRANSCRIBED EXCERPT OF AUDIOTAPED HEARING

01:12:30 - 01:30:50

1 (Audiotaped excerpt of hearing as
2 follows:)

3 MR. HOLLAND: The next item is 10, it's
4 the after-the-fact variance, 1324 20th Terrace, and
5 we will hear from staff.

6 MR. PIKE: Sammy?

7 MR. HOLLAND: Yes, sir.

8 MR. PIKE: I want to ask Larry something
9 on this.

10 MR. HOLLAND: Okay.

11 MR. PIKE: Larry, this -- this -- this
12 No. 10, on 20th Terrence, that's right next door to
13 my daughter's house. Does that create a conflict?

14 MR. ERSKINE: No, nothing -- nothing about
15 this could inure to your personal benefit or any --
16 any close relative, in my view. Any -- any -- any
17 benefit that could flow from this I think would
18 be -- it would be indirect. So I think you can sit
19 on this one.

20 MR. PIKE: Okay.

21 MR. HOLLAND: Satisfied?

22 MR. PIKE: I'm satisfied.

23 MR. HOLLAND: Okay.

24 MR. PIKE: I want to make sure he was.

25 MR. HOLLAND: All right. Go ahead, Pat.

1 MR. WRIGHT: So this is a request for an
2 after-the-fact variance of 1324 20th Terrace, and
3 this is in the SF zoning district.

4 This request seeks variances to minimum
5 side and rear setbacks, maximum building coverage
6 and impervious surface, as well as minimum
7 open-space requirements due to the construction of a
8 new addition by converting, enclosing, and expanding
9 an existing open carport.

10 This application was generated by an
11 ongoing code enforcement -- I'm sorry, code
12 compliance case. A stop-work order was issued by
13 code compliance on February 4th, 2015, and again on
14 February 23rd, 2015. The entire carport was
15 enclosed, plumbed, and electric was installed, all
16 without permits after these attempts by city code
17 compliance to stop the ongoing unpermitted
18 construction on this property.

19 The property prior to this construction
20 was over the allowed dimensional regulations
21 indicated in this request. The existing unpermitted
22 addition exceeds all aspects of the dimensional
23 regulations in which they are requesting variances
24 for.

25 The chief building official has objections

1 to the unpermitted construction and they were
2 included in your package and can be found on page 36
3 of the attachment.

4 The fire marshal's office has also
5 expressed similar concerns.

6 It's staff's opinion that hardship
7 conditions do not exist in this case. This
8 application is not in compliance with six out of
9 seven of the variance criteria. And due to all of
10 these factors, staff is recommending the requested
11 after-the-fact variance be denied.

12 MR. HOLLAND: Okay, Patrick. Thank you.

13 Any questions for staff?

14 MR. KLITENICK: I have one question about
15 the application. I'm looking at the application --

16 MS. SPOTTSWOOD: Can I interrupt you one
17 second?

18 MR. KLITENICK: Yeah. Sure.

19 MS. SPOTTSWOOD: I recognized the name for
20 the first time, and I do believe this gentleman came
21 to my office and asked for some help with his code
22 case in this. We ended up referring it out, but I
23 did want to put that on the record that I did speak
24 to him about this code case months ago.

25 MR. ERSKINE: Did you get any information

1 that you considered to be attorney-client type
2 information?

3 MS. SPOTTSWOOD: Gosh, I can't -- it
4 just -- just popped into my head, so I'm having a
5 hard time even remembering what he told me about it.
6 It was during busy times. We referred him out
7 pretty quickly, so I don't think so.

8 MR. ERSKINE: Okay. I think -- I think --
9 I think it was good for you to disclose it. I don't
10 think, you know, at this point that constitutes a
11 conflict.

12 MS. SPOTTSWOOD: Okay. Thank you.

13 MR. KLITENICK: May I?

14 MR. HOLLAND: Of course.

15 MR. KLITENICK: No, no, no problem.

16 I had an application -- application.

17 I had a question about the application
18 itself. I mean, we're talking about a variance for
19 basically concerning all, you know, everything being
20 involved in the site data table, and it's blank.

21 MR. WRIGHT: Yeah, the -- the site data
22 table was indicated on the actual drawings that Alan
23 Perez did. That -- that often happens. As long
24 as -- as long as we have a site data table, and I
25 also provide a site data table with the specific

1 dimensional regulations that are of concern in the
2 staff report. But essentially it's been -- been
3 past practice that as long as they provide a site
4 data table on their plans, that's the site data
5 table we go with. It's not uncommon, but I can
6 understand your concern.

7 MR. KLITENICK: Okay. If you're happy
8 with it, I'm happy. Thank you.

9 MR. HOLLAND: That's it, Richard?

10 MR. KLITENICK: Yes, sir.

11 MR. HOLLAND: All right.

12 Any other questions from staff?

13 Then we'll hear from the applicant.

14 MR. HUNTER: Good evening. Dustin Hunter,
15 501 Whitehead Street, Suite 2, on behalf of the
16 applicant. We are here obviously on an
17 after-the-fact variance request, most notably the
18 side setback.

19 As you can see on the property, the
20 addition does not extend beyond the rear setback
21 that the property doesn't already sit on. So really
22 what -- what we're dealing with here is, this side
23 setback is -- is the main issue, of course.

24 In terms of the impervious surface, it was
25 already cement. It was a carport. And so

1 essentially what has gone on here is the enclosure
2 of the carport.

3 In terms also of the issue with concerns
4 from the fire department, there are access doors on
5 either side of the structure so that one could
6 conceivably get through in the event of an
7 emergency.

8 Of course, importantly, my client has gone
9 to the neighbors specifically with the -- in
10 accordance with the good neighbor policy, has spoken
11 to Ms. Christina Perez [phonetic] -- and I'll
12 provide these for the record -- of 1320 20th
13 Terrace, Mr. Cleveland Knolls [phonetic] of 1328
14 20th Terrace, Deanna Carvinel [phonetic] of 1323
15 20th Terrace, Eric Rahamen [phonetic] of 1327
16 20th Terrace, and Jorge Ariola [phonetic] of 1331
17 20th Terrace. All have expressed no objection to
18 this project, and many actually have included little
19 messages of support of them being a good neighbor
20 and whatnot.

21 Ultimately what this project is, and the
22 purpose of this project, is so that Ms. Villa's son
23 can -- she is aging, on a fixed income, and the
24 thought process is that the son, Emilio, is to live
25 in this area so that he can help provide for her

1 care as she ages.

2 So we appreciate the opportunity to
3 present this today.

4 MR. HOLLAND: Okay. Thank you.

5 Mr. Pike?

6 MR. PIKE: I need a little advice here.
7 Mr. Hoffman [sic] has actively represented me in
8 a -- attorney at this point and I think that, with
9 that relationship that exists, that maybe I need to
10 recuse myself. I didn't realize that Mr. --
11 Mr. Hoffman was going to be representing this
12 particular client.

13 MR. ERSKINE: So you -- you've got --
14 you've got current ongoing --

15 MR. PIKE: Yes.

16 MR. ERSKINE: -- matters?

17 MR. KLITENICK: I -- I -- I'll just offer
18 an opinion. Unless he's a partner in the law firm,
19 I don't think that inures to his benefit at all.

20 MR. PIKE: If you're good with it, I'm
21 good with it.

22 MR. KLITENICK: I'm just offering -- I'm
23 just offering an opinion 'cause, I mean, this -- I'd
24 like to see Peter here because, you know, he's --
25 he's the architect with experience and expertise in

1 these -- in these type of things, and we have
2 similar situations with, you know, with some other
3 attorneys that come up.

4 MR. PIKE: I think that's correct. I
5 would just -- I'm kind of rolling it around in my
6 head, but I believe that to be correct. All right.
7 Thank you.

8 MR. KLITENICK: I didn't mean to step on
9 your toes there, Larry.

10 MR. PIKE: I just wanted to divulge that.

11 MR. HOLLAND: Anybody else have any
12 questions for the applicant?

13 MR. VARELA: I've got a question, Sam.

14 MR. HOLLAND: Go ahead.

15 MR. VARELA: I notice you said -- you said
16 you had a bunch of neighbors that were in support of
17 it. Was there any neighbors that objected to it?

18 MR. HUNTER: We did not get any
19 indications of a negative reaction to it. If
20 there's been any submitted into the record since
21 then, I'm unaware, but this was all this past week
22 that he's gone into it.

23 I will provide this for the record.

24 MR. HOLLAND: Did you receive any direct
25 public comment on it?

1 THE CLERK: I did not.

2 UNIDENTIFIED SPEAKER: I didn't receive
3 any either.

4 MR. HOLLAND: Has any -- anybody signed up
5 to speak on this item?

6 THE CLERK: No, sir.

7 MR. HOLLAND: Okay. You know, from my
8 perspective, the overwhelming gorilla here is the
9 fact that they were cited twice, at least twice, and
10 continued -- and just continued on to build out, and
11 that -- that's -- that's a very difficult thing to
12 look past.

13 By the way, Mr. Barroso, I think we need
14 some comment.

15 MR. BARROSO: Good evening. Jason
16 Barroso, Key West Fire Department.

17 The fire marshal's position is, on these
18 types of situations, if this project was to come
19 before us to our office new, we would not approve as
20 it is now. We support the LDRs, we support the
21 setbacks and the zonings for this area and basically
22 that's his position. I mean, it's not something
23 that we would approve new.

24 If we have to respond there tonight, we
25 have to respond there and we'd have to, you know,

1 we'd have to do our job.

2 It's existing and we believe that there's
3 mechanisms in place for you all to -- to navigate
4 through this process, but it's not something that we
5 would support if it was to come to us new.

6 MS. SPOTTSWOOD: You said that there are
7 things that can be done as it is now. Since it is
8 here now, are there things, or are you just
9 recommending that we deny this because of life
10 safety issues?

11 MR. BARROSO: There is a life safety issue
12 with the accessibility for setbacks. We'd be
13 consistent on that.

14 I don't have any necessary recommendations
15 for him at this point because, really, one of the
16 avenues that we've used as a recommendation for
17 applicants is a sprinkler, but it still blocks our
18 accessibility down the side setback, so it doesn't
19 really improve that. And that's one of the areas
20 the fire marshal looks closely at as well is the
21 accessibility.

22 And I think his position is it just is a
23 project that basically if it was to come before us
24 today as a new application or a renovation, it's not
25 something that we would support. Basically

1 that's -- that's his point on it.

2 MR. COHEN: Mr. Chair, if you don't mind,
3 I'd like to just add a couple other points, and you
4 started in that direction, which is two stop-work
5 orders. And one of the things I think the board may
6 want to consider as they try to make a decision as
7 to what to do, we're -- we're trying to have people
8 comply, and it becomes difficult if you're able to
9 have two stop-work orders, not make a magistrate's
10 meeting, do an after-the-fact variance, because we
11 are asked to accept that, then ask for an
12 after-the-fact permit.

13 And on page, I think it's on 31 or 61, you
14 can see the chief building official's position to be
15 able to say, well, what's a remedy? If -- if you're
16 able to -- to do this, then I'm -- my question
17 becomes, how does code enforcement function going
18 forward and what is it that the planning department
19 is to do if, in fact, there is nothing that says to
20 an individual you cannot stop doing something that
21 the code does not permit and that the building
22 official says you should not move forward on?

23 MR. HOLLAND: Any other comment?

24 Questions?

25 MR. GILLERAN: Based upon the

1 recommendation of the planning board, the fire
2 marshal, and the city officials, I recommend denial.

3 MR. HOLLAND: Motion to deny.

4 Do I hear a second?

5 MR. KLITENICK: I'll second that.

6 And -- and just for discussion, you know,
7 my -- my issue with this, is that this wasn't an
8 accident. This was intentional. Not that I always
9 agree with, you know, decisions of administrative
10 officials to stop work and not stop, but twice. And
11 then when you have the building official saying
12 that, you know, he would have been there with the
13 police absent him having to, I think for some
14 medical treatments or something like that, that
15 gives me a lot of pause to then, you know, say
16 everything's okay with this, especially when you
17 have the fire marshal saying that they have concerns
18 about life safety issues. So it's not something
19 that I can support.

20 MR. HOLLAND: Anybody else?

21 MR. VARELA: Jason, even with the -- with
22 what he explained about opening both doors, you
23 still feel that it's --

24 MR. BORROSO: Mr. Varela, the position of
25 the fire marshal is that, and the way we look at

1 these applications, if this was to come before us,
2 we would not approve this type of construction into
3 the setbacks. We would have them conform. The fact
4 that it's there now, we would have to respond. The
5 accessibility on the side yard setback is -- is the
6 issue where they encroached on that and it's
7 obstructed.

8 Basically his position is what I just
9 said, you know, he would not support this if it was
10 to come before us as a new application. He is
11 leaning towards Ron and the other mechanisms that
12 are in place to resolve these types of situations.
13 I believe there is an avenue in place to do that
14 through the building official and through the code
15 and --

16 MR. VARELA: I'm just looking at it --
17 Mr. Chair, I'm looking at it from the standpoint of
18 the code --

19 MR. GILLERAN: Hold on. As a point of
20 order, we have a motion and a second.

21 MR. HOLLAND: Yeah, I'm sorry.

22 Fredy, we've got a motion on the floor and
23 a second.

24 Any further discussion?

25 MR. VARELA: Yes.

1 MR. HOLLAND: Go ahead.

2 MR. VARELA: I'm looking at it from the
3 humanity -- the human aspect of this. I mean, this
4 guy has built this, obviously, to take care of his
5 mother, which is an aging woman from what the
6 attorney just told us, and we're going to ask him to
7 tear it down so that his mother is going to be there
8 by herself, and if she needs somebody, nobody is
9 going to be there to take care of her. So then
10 we've got to look at the humanity part of this
11 aspect.

12 I do realize he was stopped twice. I do
13 realize that the fire marshal is saying this, but,
14 you know, we've got -- we've also got to take into
15 consideration that this is -- there's a human factor
16 here.

17 MR. HOLLAND: Okay. Anybody else?

18 MR. BARROSO: I'd like to make one point
19 of clarity, please. We're not recommending them to
20 take the structure down. That's not been our past
21 practice. What we are, and I want to be very clear
22 on that, is that if it is -- you know, if it was to
23 come before us new or a new application, this is not
24 something that we would support. And we believe
25 that there's mechanisms in place for them to deal

1 with these types of situations. And that's how the
2 fire marshal is viewing that at this particular
3 point.

4 MR. HOLLAND: Anybody else?

5 Did anybody sign up to speak?

6 COURT CLERK: No one has signed up to
7 speak, sir.

8 MR. HOLLAND: We've got a motion on the
9 floor and a second.

10 MS. SPOTTSWOOD: I'd like to move to table
11 this so that the fire marshal can meet with the
12 applicant again and see if there is anything that
13 can be done other than just say --

14 MR. HOLLAND: Hold on, we've got a --

15 MR. KLITENICK: I'll withdraw my second.

16 MS. SPOTTSWOOD: -- so that we can see if
17 the fire marshal has any recommendation other than
18 what's been presented here today.

19 MR. COHEN: I'm not able to speak for the
20 fire marshal, but I don't believe it's a fire
21 marshal issue. It's what the fire marshal's
22 response was today, it's -- it's not -- it's not
23 their issue. Their issue is access, which they
24 described to you, their difficulty with access. You
25 have a building official that says the position that

1 they would take, and you have staff that says put
2 all that together, plus the fact that it does not
3 meet any of the variances.

4 We appreciate the fact that they presumed
5 to do this because of care of a parent, but we're
6 still going to suggest two stop-work orders and then
7 you ask for an after-the-fact variance and an
8 after-the-fact permit. I'm not -- I'm not sure how
9 you then say to the community what constitutes code
10 enforcement and planning. I'm going to be blunt.
11 Well, what is code enforcement and planning?

12 MR. KLITENICK: Mr. Chair, I think that --

13 MR. HOLLAND: Go ahead, Richard.

14 MR. KLITENICK: I think what Mr. Varela
15 says is right, there is a human factor here, but
16 there's two very strong balancing things here. So
17 my support of tabling this for a month, which really
18 isn't going to affect anything, is to find maybe
19 there's a solution that doesn't require tearing this
20 whole thing down.

21 MR. HOLLAND: As in a modification of what
22 is built or something like that?

23 MR. KLITENICK: I don't know. I mean --

24 MR. HOLLAND: I mean, because I'm not
25 going to support it the way it is right now.

1 Where are we?

2 You've withdrawn your second?

3 MR. KLITENICK: Correct.

4 MR. GILLERAN: I made a motion to deny.

5 MR. HOLLAND: Richard seconded it, but has
6 since withdrawn.

7 MR. PIKE: I'm going to go ahead and
8 second --

9 MR. HOLLAND: Hold -- hold on.

10 Did you want to say something else, Jason?

11 MR. BARROSO: We have looked at this
12 project and we are leaning towards Ron Whoppler
13 [phonetic] and we're looking for staff and for their
14 recommendations as well.

15 MR. GILLERAN: Can I make a motion to
16 deny, please?

17 MR. HOLLAND: Yes. Jim's motion to deny
18 stands.

19 Do I hear a second?

20 MR. PIKE: I would -- I would like to
21 second Mr. Gilleran's motion.

22 MR. HOLLAND: Okay. We have a motion to
23 deny by Mr. Gilleran and a second by Mr. Pike.

24 Is there any further discussion?

25 Hearing none, call the roll.

1 COURT CLERK: James Gilleran?
2 MR. GILLERAN: Yes.
3 THE CLERK: Richard Klitenick?
4 MR. KLITENICK: Yes.
5 THE CLERK: Peter Pike?
6 MR. PIKE: Yes.
7 THE CLERK: Cristy Spottswood?
8 MS. SPOTTSWOOD: Yes. I'm sorry, but,
9 yes.
10 THE CLERK: Fredy Varela?
11 MR. VARELA: No.
12 THE CLERK: Sam Holland?
13 MR. HOLLAND: Yes. Sorry.
14 COURT CLERK: Motion passes.
15 (End of audiotaped excerpt of hearing.)
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CERTIFICATE

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I, Loretta A. Lee, RPR, CET, Certified
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do hereby certify that I was authorized to and did
listen to and transcribe the foregoing recorded
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Dated this 8th day of February, 2016.



LORETTA A. LEE, RPR, CET
Certified Shorthand Reporter
Certified Transcriptionist
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Job No. 1374298

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