

CITY COUNCIL AGENDA STATEMENT



Date: September 14, 2021
To: Honorable Mayor and Council Members
From: Brian Shea, Planning Director
Subject: Appeal of Planning Commission Decision Regarding Variance Approval

BACKGROUND:

Below is the portion of the staff report from the May Planning Commission meeting as it pertained to the variance request.

VARIANCE EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:

This request is being evaluated in accordance with Section 102.120 and in context with the approved Conditional Use. The criteria contemplated for a variance under other circumstances are “hardship” criteria.

In accordance with Section 102.120 of the Code, staff has considered and determined the Applicant met the following criteria:

A. *Special Circumstances:*

The Property has a gross area of nine (9) acres or 392,171 Square feet, with approximately 7.69 or 334,887 square feet of upland. The applicant proposes to have a Mixed-Use light industrial use on the property. Pursuant to the Code, the property has an open space requirement of 20% and pursuant to Table 103.15.3, Code Section 103.15, a FAR requirement of thirty percent (30%). Utilizing the above mentioned FAR ratio and the total Mixed-Use site square footage of 289,723.35 SF, the Property has a maximum FAR potential of 86,916.9 SF. The Development contemplates the addition of a 15,200 SF non-residential warehouse, which is well below the FAR permitted on the Property under the Code.

Based on the unusual and unique conditions or circumstances of the Property, only one (1), spatially limited portion of the Property is viable for development. Pursuant to Section 106.02(B)(6), Clearing of native vegetation (Class I and II habitats) shall be limited to the immediate development area which shall be shown as the area of approved clearing

on the site plan approved by the City Biologist and shall be subject to the mitigation and management requirements of the Code.

A Habitat Evaluation Index prepared by Terramar Environmental Services, Inc, delineates hammock quality, and specifically identifies approximately 47,457 square feet or 1.09 acres of low-quality hammock. Pursuant to Code table 106.16.1, Low-Quality Hammock has a 50% open space-requirement, which permits the Applicant to clear up to 23,728.5 SF for the Development (“Development Area”).

The unusual composition and location of the spatially limited Development Area limits the potential configuration and placement of the 15,200 SF warehouse, and the configuration shown in the Overall Site Concept Plan for Florida Keys Aquarium Encounters (“Site Plan”). However, the applicant states that it is not feasible to develop the warehouse within the Development Area without a variance reducing the required wetland buffer from 50’ to the SFWMD standards, which require the wetland buffers to have an average of twenty-five feet (25’) and permit a minimum of fifteen feet (15’) at any given area.

The City has previously approved projects with substantially larger developments to allow them to utilize the SFWMD’s regulations in order to permit development within limited space. The Site Plan illustrates that the Development has an average wetland buffer of 25’ and does not have any portion within the 15’ minimum requirement and is therefore compliant with the SFWMD regulations.

B. *Hardships:*

The special conditions and circumstances explained above were not created by Applicant.

C. *No Detriment:*

The relief will not create a substantial detriment, as determined by the Director, to the public good, substantially impair affected wetland resource, in the opinion of the biologist or impair the intent and purpose of the LDRs or applicable policies under which the variance is granted. The additional of a conservation easement on the parcel increases the ability to retain natural resources.

Additionally, the Development will allow for coral propagation and manatee rehabilitation, both of which are of large public interest in the Florida Keys. Additionally, the proposed laboratory and classroom will increase interactive and educational opportunities for the public.

D. *No Special Privileges:*

The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated. Similar variances have been sought and approved for Fisherman's Community Hospital and the Coco Plum Wastewater Treatment Plant.

E. *Use Authorized:*

The site was previously authorized through a conditional use and amendments to the conditional use, and the Conditional Use application is addressed further in this staff report.

F. *Relevant Factors:*

1. Physical Characteristics of the proposed construction.

The proposed construction is a fifteen thousand two-hundred square foot (15,200 sf) non-residential building, as a Warehouse for marine life and coral propagation, along with raised walkways, and a dock.

2. Whether the use of the property is dependent upon granting the variance.

The use of the property is not dependent on the granting of the variance. The property can continue to be used in its current format. However, any redevelopment of the site requires a conditional use and site plan approval.

3. Whether granting the variance increases or decreases the danger to life and property.

The granting neither increases nor decreases the danger to life or property.

4. The importance to the community of the services to be provided if the variance is granted.

Granting of the variance would permit the applicant to increase educational and interactive opportunities to the public, allowing them to experience the wonders of the Florida Keys and would assist in the much-needed propagation of coral and the rehabilitation of manatees, which are often injured or killed by boats.

5. The compatibility of the proposed variance to the surrounding properties.

The site currently has structures approved through conditional use. This conditional use seeks to expand the uses further. With the neighboring zoning requirements, screening and buffering will reduce impact to neighboring residential properties.

6. The ability to safely access the property by regular and emergency vehicles if the variance is not granted.

The approval of the variance allows for the proposed development to meet fire truck turnaround standards.

7. The costs of provided governmental services if the variance is or not granted.

There are no foreseen costs with either granting or denying the variance.

RECOMMENDATION:

Staff recommends that approval of the variance with the following conditions:

1. All conditions of the Conditional Use approval.
2. A recordation of a conservation easement on the project parcel within the wetland area.
3. Protection of the wetland area shall be assured through a conservation easement recorded in the public records of Monroe County, Florida, pursuant to Chapter 106, Article 8 – “Conservation Management Areas”.
4. To reduce further impact potential to the wetlands for this setback reduction Staff is recommending a six-foot-high fence or wall, between the development and the wetlands. The height of the wall as measured from the improved grade would ensure that human encroachment is less likely to occur.

ANALYSIS:

The Planning Commission was provided competent substantial evidence upon which to vote in favor of granting the variance. Said evidence included information regarding similar outside agency approval requirements, such as SFWMD standards. Additionally, the criteria for granting the request as outlined in Section 102.120 were deemed to be met by the Planning Commission.

CONCLUSION:

The City of Marathon indicates that the Planning Commission acted within their authority in granting the Variance. The appellant has filed an appeal for the granting of the variance, and the City Council shall conduct a de novo hearing and shall consider whether the decision of the Planning Commission, should or should not be sustained or modified. By resolution, the City Council as the appellate body shall either affirm, modify or reverse the lower decision and such action shall be by a majority vote of all members present.

RECOMMENDATION:

Based on the conclusions identified immediately above, the City Council should deny the Appeal of the Planning Commission decision brought by Seawatch at Marathon Condominium Association, Inc. determining that the decision of the Planning Commission should be upheld.

**ATTACHMENT 1
PC Resolution 2021-001**

Sponsored by: Shea

**CITY OF MARATHON, FLORIDA
PC RESOLUTION 2021-001**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST FOR A SETBACK REDUCTION ALONG THE WETLAND DELINEATION LINE; PURSUANT TO CHAPTER 102, ARTICLE 20, SECTION 102.115, "REVIEW AND APPROVAL PROCEDURES"; LOCATED AT 11710 OVERSEAS HIGHWAY; WHICH IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 4, SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00104130-000000.

WHEREAS, on the 17th day of May 2021, the City of Marathon (the "City") Planning Commission (the "Commission"), conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by Florida Keys Aquarium Encounters, LLC (the "Applicant"), for a variance pursuant to Section 102.115 of the City Code (the "Code"); and

WHEREAS, the purpose of the variance is to allow the Applicant to construct a warehouse structure closer than the required 50-foot setback from wetlands, yet still consistent with SFWMD wetland setback standards (the "Proposed Use") at the property described in the application (the "Property").

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Planning Commission hereby approves Development Order Number 2021-10, a copy of which is attached hereto as Exhibit "A", granting a variance to Florida Keys Aquarium Encounters, LLC for the Proposed Use. The Director of Planning is authorized to sign the development order on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the Planning Commission of the City of Marathon, Florida, this 21st day of June 2021.

THE CITY OF MARATHON PLANNING COMMISSION



Lynn Landry, Planning Commission Chair

AYES: 4
NOES:
ABSENT: 1
ABSTAIN:

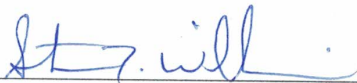
ATTEST:



Lorie Mullins,
Board Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE
CITY OF MARATHON, FLORIDA ONLY:**



Steven T. Williams,
City Attorney



**CITY OF MARATHON, FLORIDA
VARIANCE
DEVELOPMENT ORDER # 2021-10**

A DEVELOPMENT ORDER OF THE PLANNING COMMISSION OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST FOR A SETBACK REDUCTION ALONG THE WETLAND DELINEATION LINE; PURSUANT TO CHAPTER 102, ARTICLE 20, SECTION 102.115, "REVIEW AND APPROVAL PROCEDURES"; LOCATED AT 11710 OVERSEAS HIGHWAY; WHICH IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 4, SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00104130-000000.

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WHEREAS, the purpose of the variance is to allow the Applicant to construct a warehouse structure closer than the required 50-foot setback from wetlands, yet still consistent with SFWMD wetland setback standards (the "Proposed Use") at the property described in the application (the "Property").

FINDINGS OF FACT:

A. *Special Circumstances:*

The Property has a gross area of nine (9) acres or 392,171 Square feet, with approximately 7.69 or 334,887 square feet of upland. The applicant proposes to have a Mixed-Use light industrial use on the property. Pursuant to the Code, the property has an open space requirement of 20% and pursuant to Table 103.15.3, Code Section 103.15, a FAR requirement of thirty percent (30%). Utilizing the above mentioned FAR ratio and the total Mixed-Use site square footage of 289,723.35 SF, the Property has a maximum FAR potential of 86,916.9 SF. The Development contemplates the addition of a 15,200 SF non-residential warehouse, which is well below the FAR permitted on the Property under the Code.

Based on the unusual and unique conditions or circumstances of the Property, only one (1), spatially limited portion of the Property is viable for development. Pursuant to Section 106.02(B)(6), Clearing of native vegetation (Class I and II habitats) shall be limited to the immediate development area which shall be shown as the area of approved clearing on

the site plan approved by the City Biologist and shall be subject to the mitigation and management requirements of the Code.

A Habitat Evaluation Index prepared by Terramar Environmental Services, Inc, delineates hammock quality, and specifically identifies approximately 47,457 square feet or 1.09 acres of low-quality hammock. Pursuant to Code table 106.16.1, Low-Quality Hammock has a 50% open space-requirement, which permits the Applicant to clear up to 23,728.5 SF for the Development (“Development Area”).

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B. *Hardships:*

The special conditions and circumstances explained above were not created by Applicant.

C. *No Detriment:*

The relief will not create a substantial detriment, as determined by the Director, to the public good, substantially impair affected wetland resource, in the opinion of the biologist or impair the intent and purpose of the LDRs or applicable policies under which the variance is granted. The additional of a conservation easement on the parcel increases the ability to retain natural resources.

Additionally, the Development will allow for coral propagation and manatee rehabilitation, both of which are of large public interest in the Florida Keys.

Additionally, the proposed laboratory and classroom will increase interactive and educational opportunities for the public.

D. *No Special Privileges:*

The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated. Similar variances have been sought and approved for Fisherman's Community Hospital and the Coco Plum Wastewater Treatment Plant.

E. *Use Authorized:*

The site was previously authorized through a conditional use and amendments to the conditional use, and the Conditional Use application is being reviewed concurrently per Section 102.115.B.

F. *Relevant Factors:*

1. *Physical Characteristics of the proposed construction.*

The proposed construction is a fifteen thousand two-hundred square foot (15,200 sf) non-residential building, as a warehouse for marine life and coral propagation, along with raised walkways, and a dock.

2. *Whether the use of the property is dependent upon granting the variance.*

The use of the property is not dependent on the granting of the variance. The property can continue to be used in its current format. However, any redevelopment of the site requires a conditional use and site plan approval.

3. *Whether granting the variance increases or decreases the danger to life and property.*

The granting neither increases nor decreases the danger to life or property.

4. *The importance to the community of the services to be provided if the variance is granted.*

Granting of the variance would permit the applicant to increase educational and interactive opportunities to the public, allowing them to experience the wonders of the Florida Keys and would assist in the much-needed propagation of coral and the rehabilitation of manatees, which are often injured or killed by boats.

5. *The compatibility of the proposed variance to the surrounding properties.*

The site currently has structures approved through conditional use. This conditional use seeks to expand the uses further. With the neighboring zoning requirements, screening and buffering will reduce impact to neighboring residential properties.

6. *The ability to safely access the property by regular and emergency vehicles if the variance is not granted.*

The approval of the variance allows for the proposed development to meet fire truck turnaround standards.

7. The costs of provided governmental services if the variance is or not granted.

There are no foreseen costs with either granting or denying the variance.

CONDITIONS IMPOSED:

Granting approval of the Application is subject to the following conditions:

1. All conditions of the Conditional Use approval.
2. A recordation of a conservation easement on the project parcel within the wetland area.
3. Protection of the wetland area shall be assured through a conservation easement recorded in the public records of Monroe County, Florida, pursuant to Chapter 106, Article 8 – “Conservation Management Areas”.
4. To reduce further impact potential to the wetlands for this setback reduction Staff is recommending a six-foot-high fence or wall, between the development and the wetlands. The height of the wall as measured from the improved grade would ensure that human encroachment is less likely to occur.

VIOLATION OF CONDITIONS:

The applicant understands and acknowledges that it must comply with all the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Development Order or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, the Planning Commission does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, will not be detrimental to the community as a whole, and the applicant has demonstrated by competent substantial evidence that it meets the variance criteria set forth in Section 102.120 of the Code; and
2. In rendering its decision, as reflected in this Resolution, the Planning Commission has:
 - (a) Accorded procedural due process;
 - (b) Observed the essential requirements of the law;
 - (c) Supported its decision by substantial competent evidence of record; and

3. The Application for a variance is hereby GRANTED with conditions.

RECORDING:

The applicant shall at its sole cost and expense, record a certified copy this Development Order in the Public Records of Monroe County, Florida within five (5) days of receipt of same from the City. The applicant shall provide the City with proof of the recording of the Development Order in accordance with the provisions of this paragraph.

EFFECTIVE DATE:


This development order shall not take effect for thirty (30) days following the date it is filed with the Board Clerk, and during that time, the variance approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

6/21/21
Date



Brian Shea, Planning Director

This Development Order was filed in the Office of the Board Clerk of this 21 day of June 2021.



Lorie Mullins, Board Clerk

NOTICE

Under the authority of Section 102.123 of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, in 12 months after its effective date or upon expiration of the associated building permit(s), or in five (5) years if any required building permit associated with the variance has not been extended or has lapsed and become void. The time period may be extended for an addition of 12 months by the PC or City Manager. Requests for time extensions shall be in writing and shall be submitted prior to the expiration date. The request shall state the reason for the extension.

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to Ben Daughtry - Florida Keys Animal Encounter, LLC., 11710 Overseas Highway, Marathon, FL 33050, this 21 day of June, 2021.

ATTACHMENT 2
Appeal Documentation
Appeal & Planning Commission Transcript

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CITY OF MARATHON PLANNING COMMISSION

City Hall Council Chambers
9805 Overseas Highway
Marathon, Florida 33050

Monday, May 17, 2021
5:57 - 8:00 p.m.

RE: Request by Florida Keys Animal Encounters, LLC for a
Conditional Use Permit

Request by Florida Keys Animal Encounters, LLC for a
Variance

PLANNING COMMISSION:

LYNN LANDRY, CHAIR
MATT SEXTON
SUSAN KLOCK
MIKE LEONARD

STAFF:

GEORGE GARRETT, CITY MANAGER
BRIAN SHEA, PLANNING DIRECTOR
STEVE WILLIAMS, CITY ATTORNEY
LORIE MULLINS, PLANNING ADMINISTRATIVE ASSISTANT

ALSO PRESENT:

NICHOLAS MULICK, ESQ.
BART VALDES, ESQ.
BARTON SMITH, ESQ.
BEN DAUGHTRY, APPLICANT

P R O C E E D I N G S

1
2 MS. MULLINS: I'm going to read 2 and 3 together.
3 Item 2 is a Consideration of a Request by Florida Keys
4 Animal Encounters, LLC for a Conditional Use Permit
5 Pursuant to Chapter 102 Article 13 of the City of
6 Marathon Land Development Regulations Entitled
7 "Conditional Use Permits", for the Expansion of the
8 Previously Approved Sea Life Amusement Park and a
9 Marine Educational Facility, to Include a 15,200 Square
10 Foot Warehouse, Office, and Lab Space, at 11710
11 Overseas Highway, and Legally Described as a Part of
12 Government Lot 4, Section 5, Township 66 South, Range
13 33 East, Key Vacas, Monroe County, Florida, Having Real
14 Estate Number 00104130 followed by six zeroes; and Item
15 3 is Consideration of a Request by Florida Keys Animal
16 Encounters, LLC for a Variance Pursuant to Chapter 102
17 Article 20 from the Provisions of Section 106.28 of the
18 City of Marathon Land Development Regulations
19 Regulating the Minimum Setback for a Principal
20 Structure on Property Located at 11710 Overseas Highway
21 and Legally Described as Part of Government Lot 4,
22 Section 5, Township 66 South, Range 33 East, Key Vacas,
23 Monroe County, Florida, Having Real Estate Number
24 00104130 followed by six zeroes.

25 MR. WILLIAMS: All right. Before we begin, have

1 any of the four of you been contacted by anyone outside
2 of the meeting here? And we need to disclose any ex
3 parte communications if so.

4 COMMISSIONER LEONARD: No.

5 COMMISSIONER KLOCK: Aside from the large slew of
6 e-mails that we received through Ms. Mullins, no.

7 COMMISSIONER SEXTON: I've been contacted by the
8 applicant, Chamber of Commerce, and some of the opposed
9 people. Does not affect my decision this evening.

10 MR. WILLIAMS: That's the important part. And
11 what was the form of contact? E-mail, telephone calls,
12 and in-person meetings?

13 COMMISSIONER SEXTON: E-mail and telephone.

14 MR. WILLIAMS: Okay.

15 CHAIRMAN LANDRY: I've had a conversation with the
16 applicant and also an owner from Seawatch. It will not
17 affect my decision on this tonight.

18 MR. WILLIAMS: Thank you.

19 MR SHEA: Before you tonight is the conditional
20 use and the variance application for Florida Keys
21 Animal Encounters, LLC.

22 MR. WILLIAMS: And again, sorry. I'm going to be
23 the bad guy tonight. I'm sorry, everybody in the room.
24 Let's jump to procedure. Before we commenced this
25 evening it was brought to my office's attention that a

1 party or a group sought to continue the hearing for
2 this evening. That was brought to Mr. Shea's
3 attention, Lorie's attention, and my attention as well.
4 We did not act on that motion to continue. It was
5 forwarded on to you. As members of the Planning
6 Commission you are the proper entity to vote upon that,
7 so before you delve into the actual evidence,
8 testimony, and everything this evening it would make
9 more sense procedurally to hear the motion to continue,
10 vote upon said motion to continue, and then act
11 accordingly for the rest of the meeting. But that's my
12 suggestion, but if you're going to continue it, why do
13 that two hours from now?

14 CHAIRMAN LANDRY: I guess we should hear that
15 motion first.

16 MR. VALDES: Good evening. Bart Valdes, on behalf
17 of Heidi Valdes. 609 W. Horatio, Tampa, Florida, is my
18 business address, and my address here in Marathon is
19 7304 Gulf of Mexico Boulevard.

20 We did file a request to continue the hearing.
21 The reason why is we got notice of this proposal at the
22 very end of April, April 28. Since that time we've
23 hired an expert planning and wetlands expert. We
24 didn't know if Ms. Walters was going to be able to get
25 in her report. I literally got it in today and I plan

1 to present it today. Also, looking out in the crowd,
2 probably a large number of the people here are against
3 this. Raise your hand if you're against it, just so
4 I --

5 MR. WILLIAMS: Oh, please. Let's not do this.

6 MR. VALDES: And the point is that --

7 MR. WILLIAMS: No. No. The point is, is we do
8 not take polls of the parties. It is contrary to
9 Florida case law that that is not to occur, so let's
10 not do it.

11 MR. VALDES: And the point is I'm not going to
12 disappoint the people that have showed up here tonight,
13 so we'll withdraw our request and we're ready to move
14 forward tonight.

15 CHAIRMAN LANDRY: Thank you.

16 MR. SMITH: Hello.

17 CHAIRMAN LANDRY: Are you going first?

18 MR SHEA: Yup. Okay. The project site is
19 located at 11710 Overseas Highway, near Mile Marker 53.
20 The applicant is seeking conditional use approval for
21 the increase of the 15,200-square-foot office,
22 laboratory, and warehouse on site as well as the
23 variance for the wetland setback.

24 Here's the location map showing the property
25 highlighted in blue. The Future Land Use Map

1 designation is Mixed Use Commercial as well as
2 Conservation, and the current zoning is also the Mixed
3 Use and Conservation. Here you can see that the site
4 is split-zoned with that Future Land Use and Mixed Use
5 Commercial and the Conservation and the corresponding
6 zoning.

7 Now, for reference, the applicant is seeking
8 approval for the portion that is the northernmost
9 portion of this site.

10 In terms of previous approval, this property has
11 come forward for a conditional use previously, they did
12 the development of the Aquarium Encounters site, they
13 then amended the existing development to remove the
14 affordable housing that was proposed on the site
15 because they'd provided affordable housing offsite as
16 well as other minor amendments to the site plan. The
17 applicant is now seeking to come forward and increase
18 from the previously approved square footage to 15,200
19 square feet, and that proposed structure will include
20 coral propagation, manatee rehabilitation, laboratory
21 space, office, and a classroom.

22 Here's the FEMA Fish and Wildlife Map just showing
23 the habitat types on site. As noted in the staff
24 report, if any impact is proposed within the Endangered
25 Species, then the Species Assessment Guides will be

1 used to review said development and proposals.

2 And here's the overall site plan of the site.

3 Now, the first portion that we're going to go over
4 is the variance application in terms of presentation.
5 Again, the existing setback as of your staff report was
6 50 feet from the wetlands. The applicant is seeking on
7 average a 25-foot setback from the wetland line, which,
8 as noted in the staff report, is compliant with the
9 South Florida Water Management District standards for a
10 setback.

11 The relevant factors for the approval of the
12 variance are stated above. The proposed construction,
13 again, is 15,200 square feet for marine life and coral
14 propagation. Whether or not the variance is, the use
15 is dependent on granting the variance, while the use is
16 not dependent upon it, the redevelopment requires
17 conditional use and site plan approval, which is why we
18 are here, and whether the variance increases or
19 decreases danger to life, safety, or property, the
20 granting neither increases nor decreases, so that
21 condition is met.

22 The importance to the community of the services to
23 be provided if the variance is granted, as stated, the
24 coral propagation, manatee rehabilitation, and other
25 work that is done for the environment is a benefit

1 overall to the City, and within the area that is being
2 proposed with our existing codes in place any detriment
3 to native vegetation will have to be mitigated per
4 Section 106 of our code.

5 The compatibility of proposed uses, we, again, are
6 here for the compatibility for the conditional use, if
7 I could briefly go back to the overall site plan,
8 you'll see that the existing neighboring warehouse
9 structure to the north is roughly 1,300 square feet --
10 or 13,000 square feet, so compatibility-wise it's very
11 similar on the site for a 15,200 square foot.

12 The ability to safely access the property is also
13 a condition that we review, and the fire department has
14 reviewed the project for the conditional use, they have
15 added additional conditions for that for the
16 conditional use, so that will be met, and whether or
17 not there are extra government services or costs
18 associated with those services, and there are currently
19 not.

20 So based upon that staff is recommending approval
21 of the variance with additional conditions, those
22 conditions being that all conditions of the conditional
23 use be approved, a recordation of a conservation
24 easement for the wetland, protection of the wetland
25 area shall be assured through this conservation

1 easement per Chapter 106, and to reduce further impact
2 to the wetland area we are proposing that the applicant
3 add a 6-foot-tall fence to the site.

4 Then in terms of the conditional use approval, we
5 looked at all of the criteria there, including ingress
6 and egress, parking, screening above framing, open
7 space. As mentioned, the low hammock has a 50 percent
8 open space requirement. The applicant is proposing to
9 meet that open space requirement. In terms of the
10 screening and buffering, with the relocation or
11 preferred location of the native vegetation on site,
12 that should be relocated to the portion of the site
13 that borders the residential high, so that will add to
14 that increased buffer area, and with the additional
15 parking and ingress and egress through the existing
16 road, that will meet code.

17 In conclusion, staff has reviewed the conditional
18 use and felt it to be in compliance with the LDRs, is
19 recommending approval with the following conditions.
20 And, again, sorry for the typo, but the Condition 1
21 should state the 15,200, not the old square footage
22 that's in your staff report.

23 CHAIRMAN LANDRY: Any questions for Brian?

24 MR. SMITH: I have one.

25 CHAIRMAN LANDRY: Thank you, Brian.

1 MR SHEA: Thank you, sir.

2 CHAIRMAN LANDRY: Welcome back, Mr. Smith.

3 MR. SMITH: Thank you. Thank you. I was told if
4 I keep showing up I may have to rent a space. I hope
5 there's a small corner, cubby, something, something
6 just to store some overnight clothes.

7 Thank you all for having me, and I'm pleased to
8 represent Florida Keys Animal Encounters on this
9 fantastic project that it's bringing forward. We have
10 a slide show for both items, they're separate. I
11 believe it starts with the conditional use approval, so
12 I think I'll start with that one, as that was the first
13 agenda item.

14 As stated by Mr. Shea, this is a request for a
15 conditional use approval to amend the existing
16 conditional use approval to expand Florida Keys
17 Aquarium Encounters to provide a much-needed coral
18 restoration and propagation facility, manatee
19 rehabilitation, offices, classrooms, and docks for all
20 of these features to be implemented.

21 So the first slide, this is of the actual project,
22 and in this slide we're showing the site area. This is
23 the site data, and this is all the data that's on the
24 site plan that's been provided in your packet, and the
25 24 by 36 had been provided as well. The gross area,

1 upland area, and all of these details are provided in
2 your packet. Again, this is a depiction of the site.
3 As you can see, the building's on the top part. And as
4 a key component we've provided a environmental site
5 assessment by Phil Frank, who is a biologist, Ph.D.,
6 many of you know him well, Phil Frank went out, he
7 inspected all of the hammock, determined it's low
8 quality hammock, which allows for it to be cleared with
9 a 50 percent requirement of open space. That 50
10 percent open space is met by the plan that's put in
11 place.

12 So again, this is an amendment to the existing
13 major conditional use, and it must be in compliance
14 with Section 102.79 of the Code of Ordinances. The
15 property is already partially developed with a
16 2,800-square-foot educational and public aquarium. The
17 existing conditional use permitted the development of
18 the existing 2,800-square-foot building and an
19 additional 6,080-square-foot building. This amendment
20 is now to add a 15,200-square-foot building in the
21 least sensitive environmental area.

22 The proposed development is the 15,200-square-foot
23 building for marine life and coral propagation, raised
24 walkways and a dock. The development would include
25 elevated walking paths along the mangroves. The

1 warehouse will be utilized for coral propagation and
2 rehab as well as for manatee and other wildlife. In
3 addition to these uses, the development would allow the
4 property to have a classroom and lab space as well as
5 more office and a holding space for Aquarium
6 Encounters, Dynasty Marine Associates, Inc., and
7 R3EACH, Research, Rescue, Rehabilitation, Education,
8 Awareness, Community, Habitat, the nonprofit of the
9 company.

10 So this is all in your packet. These are all the
11 data, data requirements evidencing that all of the
12 requirements of the code are in compliance. All of the
13 proposed buildings and the open space, lot coverage,
14 all meet the compliance. The lot coverage percentage
15 is in compliance, the open space percentage is in
16 compliance, all within the requirements of the code.

17 The development does not contemplate any
18 residential, so that is not relevant, and for the
19 commercial floor area analysis, the maximum is up to 40
20 percent. The proposal with the additional
21 15,200-square-foot building is 20 percent, in
22 compliance with the code as to floor area ratio.

23 Required hammock, open space, and clearing, I know
24 this sounds like it's going to a contested issue. We
25 have provided and it's in the record the report of Phil

1 Frank identifying that it's low quality hammock, that
2 the hammock meets criteria to be cleared so long as
3 there's a 50 percent open space that is provided. We
4 meet those criteria under the code.

5 This is his habitat evaluation prepared by
6 Terramar Environmental Services, Inc. That's
7 specifically identifying approximately the acreage of
8 the hammock and how much can be cleared. As can be
9 seen on the charts that were provided and that is in
10 the record that the property meets the requirements for
11 hammock and for open space.

12 Setbacks, we meet all of the setbacks that are
13 required. The wetland setback, we are requesting a
14 variance. The wetland setback is unique in that
15 wetlands are regulated also at the State through the
16 DEP regulations but they've delegated their authority
17 to the South Florida Water Management District to
18 actually permit it. It's part of the South Florida
19 Water Management District's regulations. The setback
20 can be an average of 25 feet -- a minimum of 15 feet,
21 and it must average 25 feet. We are requesting to meet
22 those standards, which are the State standards that
23 provide reasonable assurance that it will not degrade
24 the wetlands that are associated outside of the
25 setback, so because we are going to meet those

1 standards, we are providing reasonable assurance that
2 it will not degrade those wetlands, and we've provided
3 documentation into evidence that we meet the criteria
4 for a variance, and I'll go through that separately in
5 a separate slide show.

6 Height. Where the required height's 42 feet we
7 will be within the requirements of the height. Parking
8 data, our documentation shows that we're required to
9 have 35.4 parking spaces. We will have a total of 43
10 parking spaces on the site. The wetland buffer yard, I
11 just went through this.

12 All of the other development standards required
13 under the code, we have provided evidence that we meet
14 those standards and therefore we are compliant with the
15 requirements of the code to obtain a conditional use
16 approval.

17 Additional considerations, Mr. Shea went through
18 these. I don't think we need to go through these in
19 more detail. If there are questions on ingress and
20 egress, noise, glare, or odor or utilities I certainly
21 can address them, but I don't think that's going to be
22 germane to the approval, but we do meet the minimum
23 requirements to obtain approval.

24 And with that, the applicant has provided
25 competent and substantial evidence that we meet all the

1 requirements of the code in order to obtain approval of
2 the amendment to the major conditional use and we would
3 request that the Board find that we have provided
4 competent and substantial evidence that we meet the
5 requirements of the code to obtain an amendment to the
6 conditional use and grant the -- sorry, recommend this
7 one to the City Commission that we meet the conditions
8 for obtaining conditional use.

9 And I can stop there, we can go through this item
10 first, or I can combine them together and we can
11 continue through the variance if that's the pleasure of
12 the Council.

13 CHAIRMAN LANDRY: Let's go ahead with the
14 variance.

15 MR. SMITH: Let me pull that next one up.

16 All right. Here's the variance application, and I
17 will adopt all of the statements that I made under my
18 presentation for the conditional use, so to keep the
19 presentation as brief as possible and I'll just go
20 through some of the parts that are germane to the
21 variance application.

22 As we discussed, it's a request for a variance
23 with a wetland buffer. It's not a setback on the sides
24 that would affect another property owner. The wetland
25 buffers are to provide reasonable assurance that you

1 will not degrade the wetland, and of course South
2 Florida Water Management District provides criteria for
3 the minimum standards that are required under the State
4 to protect wetlands. We are requesting to meet those
5 standards.

6 First, the existence of special site conditions or
7 circumstances. This is a very unique wetland line that
8 provides significant amount of wetland that must be
9 buffered. Because of how the site plan works out it
10 does provide a unique circumstance that we believe
11 constitutes the existence of special conditions or
12 circumstances under the code.

13 The City of Marathon in several cases has found
14 that the same exact example meets the conditions for
15 special circumstances, Indigo Reef Resort, Fishermen's
16 Community Hospital, and the wastewater treatment plant
17 are three examples of where the variance has been
18 granted based on the same exact set of circumstances
19 that we have here, so this is not precedent-setting in
20 that this is something that has been done routinely
21 before for the wetland buffer we need to meet the South
22 Florida Water Management District standards.

23 Conditions not created by the applicant. Wetlands
24 certainly weren't created by the applicant. They are
25 there and they've been there for quite a long time and

1 we hope they'll be there for a long time in the future
2 with those boardwalks being able to provide people in
3 the community an ability to see the wetlands and enjoy
4 them.

5 Special privileges are not conferred. The
6 granting of this variance will not provide any special
7 privileges. Anyone that meets the South Florida Water
8 Management District standards would be allowed to have
9 the setbacks that the South Florida Water Management
10 District provides and as well the City has previously
11 granted the same variance and same privilege to other
12 projects.

13 Hardship condition exists. A literal
14 interpretation of the code would apply to the
15 applicant, the ability to develop the floor area
16 necessary for all of the programs that they're looking
17 to implement on this portion of the property. And
18 again, this is something that has been done in the past
19 for projects of a larger nature.

20 This is only the minimum variance granted. This
21 is the minimum variance that is being granted in almost
22 all respects. Most of the property does need to be 50
23 foot -- sorry, most of the property is well over
24 25 feet away, and we can assure that this meets the
25 South Florida Water Management District's standards.

1 It's not injurious to the public welfare. I think
2 this is self-explanatory, that the wetlands will be
3 protected and that the public welfare is protected by
4 them.

5 And, of course, is the use authorized? The use is
6 authorized under the code.

7 So with that we would request approval of the
8 variance, meeting the criteria under the code. And
9 with that I'll open it up to any questions from the
10 Commission.

11 CHAIRMAN LANDRY: Any questions?

12 COMMISSIONER LEONARD: I have one.

13 CHAIRMAN LANDRY: Yes, sir. Mr. Leonard.

14 COMMISSIONER LEONARD: As far as setbacks go,
15 okay, we discussed, why do you have to have the setback
16 from 50 to 25? Why can't you do it at 50, and can you
17 explain that to us at all?

18 MR. SMITH: So at 50 feet the building reaches a
19 size that you cannot provide for manatee rehabilitation
20 and coral propagation. You need a lot of internal
21 space for those types of projects.

22 COMMISSIONER LEONARD: That's, that's kind of
23 floating in the air. We need a little more specifics.
24 If it's 50 feet versus 25, what size building are you
25 building? Is it still 15,000 square feet?

1 MR. SMITH: No.

2 COMMISSIONER LEONARD: How big would it be?

3 MR. SMITH: I can't answer that question because I
4 don't know the scale of the building it would be, but I
5 know that it would eliminate the ability to have the
6 programs that they're looking to put in the building.

7 COMMISSIONER LEONARD: Are we sure of that?

8 MR. SMITH: That was my understanding.

9 COMMISSIONER LEONARD: Okay. So, so, so what
10 you're saying is, is that, is that if we don't give the
11 variance on the 25-foot setback, okay, then they can't
12 do this project? Are you sure that's what you want to
13 say?

14 MR. SMITH: I would have to confer with my client,
15 but when we looked at different designs I know it would
16 eliminate a lot of the programs that they're looking to
17 implement.

18 COMMISSIONER LEONARD: Okay. All right. That's
19 interesting. Thank you.

20 COMMISSIONER KLOCK: What kind of coral projects
21 are they looking at?

22 MR. SMITH: Coral propagation.

23 COMMISSIONER KLOCK: Propagation. I apologize.

24 MR. SMITH: So I believe it would be all of the
25 typical corals that are growing in the Florida Keys.

1 COMMISSIONER KLOCK: Right. And the reason I'm
2 asking is kind of to get back to what Mr. Leonard is
3 saying because, you know, one of the things we're
4 talking about is how much space is really needed,
5 whether or not the entire space and setback can be
6 accomplished on staghorn coral and not have the exact
7 amount of space that your client might desire but can
8 still be accomplished, without, you know, the setbacks
9 that you've asked for.

10 MR. SMITH: Absolutely. And, Ben, do you want to
11 speak to that? You've got to come up to the
12 microphone. It's got to be on the record. I've
13 learned that over the years.

14 CHAIRMAN LANDRY: State your name for the record,
15 please.

16 MR. DAUGHTRY: Ben Daughtry, Aquarium Encounters
17 and Dynasty Marine. Thank you, guys, for having me
18 here.

19 So kind of to the overall answer, sir, I kind of
20 answered this previously to somebody else, which is
21 we're limiting ourselves even where we're at in all
22 honesty in that 15,000. I'd love to be able to put a
23 20,000-foot building in there. And as we start to
24 shrink this building some of these things are either
25 going to have to be cut back or go away. And

1 unfortunately things like, that are very important to
2 me, like classrooms, we don't have enough classrooms at
3 the aquarium, I want to put a big classroom in here
4 with wet labs and those kind of things, whether it's
5 coral restoration, whether it's some of the rescue
6 stuff that we're doing in our operational business
7 Dynasty Marine is going to be back there, so the things
8 that don't drive income are things that shrink first
9 and those are, those are things that are important to
10 me and they're important to, I think, this community,
11 and so every thousand square foot that we shrink down
12 we've got to remove stuff and we'll have to make those
13 decisions of what they are just based on the reality of
14 the numbers, so.

15 COMMISSIONER LEONARD: Okay. So, so let me ask
16 you the question, then. If, if it remains at a 50-foot
17 setback, okay, approximately how big a building would
18 you be able to build?

19 MR. DAUGHTRY: I think when we looked at it, it
20 was 8,000, something like that, about half the size. I
21 think.

22 COMMISSIONER LEONARD: So it's cutting it by 40 or
23 45 percent?

24 MR. DAUGHTRY: Yeah.

25 COMMISSIONER LEONARD: Building size? Okay.

1 MR. DAUGHTRY: Yeah. It's significant.

2 COMMISSIONER LEONARD: So it's a significant
3 change?

4 MR. DAUGHTRY: It's a significant change.

5 COMMISSIONER LEONARD: Okay. That's what I was
6 trying to understand.

7 MR. DAUGHTRY: And those are kind of --

8 COMMISSIONER LEONARD: I understand that, but it
9 gives me some guidance on what that 25 feet means.

10 MR. DAUGHTRY: Yeah. It's significant for us.

11 Anything else while I'm up here, or --

12 COMMISSIONER SEXTON: Just to add, on the coral
13 propagation, you guys are doing reef rehabilitation
14 and --

15 MR. DAUGHTRY: Yeah. So currently we're working
16 with Reef Renewal USA, and you'll be hearing from
17 somebody from that organization, and we're doing quite
18 a bit of work with them. It's part of the seven reefs
19 that NOAA has been talking about and the Florida Keys
20 National Marine Sanctuary, and so we're partnering with
21 them on this, and FWC, where we have a nursery actually
22 out in the wild but we need upland support for that so
23 we're bringing corals both from nurseries in Tavernier
24 and in the Lower Keys, we bring those corals up and
25 we'll bring them into our facility, we'll do some of

1 the fragging and things that we need to do, set them
2 back out on the reefs. And then there's a whole nother
3 level of coral work that needs to be done. The stony
4 coral tissue disease that kind of rammed through the
5 Keys over the last three, four years, FWC got in front
6 of that and took a tremendous number of corals out of
7 the ocean in front of that and they shipped them to
8 AZA, Association of Zoos and Aquarium facilities,
9 basically, and so there's thousands of corals out
10 there, and those corals need to come back and get put
11 back into the ocean at some point, and with Dynasty
12 Marine we have great working relationships with all of
13 these zoos and aquariums because we've been working
14 with them for over 30 years now, so we've got multiple
15 facets on how this coral propagation, not only
16 propagation but replanting, is going to go. So it's a,
17 we're at the very beginning stages of what's going to
18 be a huge undertaking to, to replace our coral reefs.

19 COMMISSIONER KLOCK: To follow up on one of the
20 things that Mr. Smith was talking about in his
21 presentation, he talked about the benefit to the
22 community and enhance the public welfare. Are you
23 involving the City of Marathon community at all in your
24 coral propagation and your rehabilitation and the
25 fragging and all of that?

1 MR. DAUGHTRY: Yeah. So it's, that's great that
2 you ask, because Reef Renewal USA is really a
3 volunteer-based organization, so it's all about
4 volunteerism and trying to get ownership from the local
5 community to own the reef out there, that it's the
6 reason that we all moved here or live here, continue to
7 live here, so very much so they'll be involved in that
8 and we'll be doing, one of the great partnerships for
9 us with Reef Renewal is that we are the public side for
10 Reef Renewal, we're the only public facility, and we
11 see fifty, 60,000 people a year in our facility. Those
12 people are going to come in and they're going to see
13 what we're doing, we're actually going to be having
14 coral fragging parties that will be open to the public
15 and that kind of thing and trying to really drive some
16 interest in this, because it's going to take, it's
17 going to take the whole village.

18 COMMISSIONER SEXTON: Who do you work with in
19 terms of the manatee rehabilitation?

20 MR. DAUGHTRY: So it's currently FWC and Dolphin
21 Research Center. Dolphin Research Center has really
22 been the frontrunner on the rescuing and stuff down
23 here. We've for about three years now been involved in
24 that. You may or may not know, there's been a pretty
25 significant issue with manatees up on the east coast, I

1 think 700 dead now. It's a huge count. I have e-mails
2 going back and forth today with Miami Seaquarium, they
3 specifically have two to three animals that they're
4 looking to place. I've been in the permitting system
5 already, I don't have the permits to do that, and it's
6 an issue to do that, but because the State of Florida
7 has over 90 manatees right now their, all of their
8 facilities are overflowing and what they want to do is
9 take non-critical care animals and potentially have us
10 store some of them, specifically the young ones, the
11 calfs, because they have to be approximately two years
12 old before they can release them back into the wild, so
13 right now there's a lot of calfs that were left when
14 the moms passed away in that situation, so we're
15 looking at some smaller animals that we're hoping to
16 get in here and help them with that. And we're going
17 to do that, by the way, that's an immediate need. This
18 is something that's probably going to happen in the
19 next couple of months, maybe before that, so before
20 this project, but having this project gives us more
21 capabilities, obviously.

22 Thank you, guys.

23 MR. SMITH: We obviously have people signed up to
24 speak on this. Would you like to open it up for public
25 comment?

1 MR. WILLIAMS: And Mr. Mulick has approached me,
2 he would like to speak, and then if any of you who have
3 submitted your name in to Lorie, if Mr. Mulick is
4 representing you or speaking for you, you can just say
5 that "I waive" and then we'll move through there. So
6 at this point on behalf of, I believe, the neighbors,
7 if Mr. Mulick can identify who he represents, and this
8 may move this along.

9 MR. MULICK: Mr. Chairman, Commissioners, my name
10 is Nicholas Mulick. I am here this evening on behalf
11 of the Seawatch of Marathon Condominium as well as an
12 Association for Protection of Keys Endangered Wetlands,
13 Hammocks, and Birds. That association is about 75
14 members at this point. We're here to express our
15 strong opposition to this project.

16 Let me begin by telling you that this is sort of
17 upside-down, seeking a variance when in order to obtain
18 the variance they're going to move 6,000 square feet of
19 space in an environment along U.S. 1, it is already
20 scarified, there is very, very little environmental
21 value, they're going to take those 6,000 feet and move
22 it up to a much more environmentally sensitive area.
23 That is specifically in opposition to your clustering
24 rule. The ordinance is very crystal clear about you
25 cannot locate commercial square footage, actually any

1 square footage, from the least sensitive to the higher
2 sensitive, so one of the issues here is how do we go
3 about deciding whether to grant the variance if part
4 and parcel of that is a violation of your own
5 clustering rule.

6 But let's, let's move on from that for a moment
7 and talk about some of the issues in the application.
8 You will notice that nowhere in the application nor the
9 application and the staff report is there mention of
10 the requirement this variance be used to use that
11 property for an economically viable purpose. It is
12 obviously not so. And I say that because this City
13 already approved a conditional use that allows
14 somewhere over 10,000 square feet already existing or
15 planned on that site, but keep in mind, the applicant
16 would like you to believe that we have a 1-acre site
17 that we're considering, this is an 8-and-a-half-acre
18 site. And I know you're being told that it's nine
19 acres, but that is not true. It's not a true
20 statement. It's about 8.3 acres. You're also being
21 told that there's about seven and a half, eight acres
22 of upland. That is not a true statement. It's a
23 little over three. And I say that because there is
24 a -- and by the way, this was, present at that meeting
25 was Mr. Ben Daughtry, and this is the meeting back on

1 August 30, 2004, and it was in response to a
2 pre-application request, and that request specifically
3 says the lot area, the area, the 9, they say 9, it's
4 actually 8.3 acres, is 4.83 acres of upland. Now, how
5 we got from in 2004 4.83 to 9 -- I'm sorry, about 7 1/2
6 or 8 acres, you'll have to ask the applicant.

7 Now, there's more to this story than meets the
8 eye. The applicant was comfortable with 6,000 square
9 feet along U.S. 1 to engage in educational programs,
10 has offices. Now, I don't know about you, but 6,000
11 square feet is a heck of a building. That's a very
12 large area. Now we're going to propose to take 6,000
13 square feet, add it to 9, and move it up into a
14 hammock. Among other things, if you believe that that
15 creates a hardship because there's precedent how to use
16 the South Florida Water Management District standard,
17 well, the case law in this state and indeed a case in
18 this county says the opposite. You cannot use previous
19 variances as precedent. And the reason that is the
20 case, and I can cite to that case if you'd like me to
21 do so, but the reason that is the case is because
22 variances are unique, they address peculiar, unique,
23 exceptional circumstances. Every property in this
24 county and city is unique in every respect. They then
25 would have you believe that the hammock is somehow

1 unique and therefore creates a problem to them. That's
2 not the way these variances work. You take the
3 property in its entirety, the property, and that's what
4 they're talking about here, they're talking about an
5 almost 8-and-a-half-acre site which already has
6 substantial development on it.

7 Now, let me ask you something, ladies and
8 gentlemen. Do you really believe that it takes a
9 15,000-square-foot building to propagate coral and have
10 classrooms and a lab? The scale of that is difficult
11 to understand. It's hard for me to describe the scale,
12 but I think I can do that pretty easily. By the way,
13 that is going to be, I think they said, close to the
14 maximum height. You know, of course, that there's a 7
15 foot BFE level, so they're going to be starting at
16 7 feet, building up from there, and there's some
17 indication there may be two stories. I don't know.
18 That's for the applicant to tell you. But the truth of
19 the matter is you will have a structure that is, as I
20 said, over 15,000 square feet. It's a warehouse, by
21 the way. This is not a home, it's not a church, it's
22 not a hospital. This building itself is smaller than
23 that building they're proposing. This building here is
24 smaller in size. To get the scale, why would you need
25 a building of this size in a hammock, on a single road,

1 one-way each way? How do you fit the parking? How do
2 you fit the loading dock? This is just too much.
3 We're trying to shoehorn in something that not only
4 does not belong there, it doesn't fit there.

5 Now, the suggestion that somehow it's okay to use
6 the South Florida Water Management District standards,
7 it makes me wonder, why do we have an ordinance that
8 says 50 feet, why don't we just eliminate the ordinance
9 and just go with South Florida Water Management
10 District?

11 And keep in mind, the things that were varied are
12 not privately-owned. I think one was a hospital.
13 Well, I can understand that you're going to relocate a
14 hospital if there's no other way to build it. But the
15 applicant will tell you if you ask him that he can put
16 together the project. What he can't do is he can't
17 sell marine life that he's collected and ship it out
18 around the world. He cannot do that if he says he's
19 going to do all the rest. And so I'm going to ask you
20 again, think it through, use logic, do you really think
21 that 15,000-square-foot building, larger than where we
22 are standing, I'm standing and you're sitting, is
23 necessary to put it in a hammock and to take 6,000
24 square feet and move it into a hammock from an area
25 that, by the way, they had requested and they were

1 comfortable with, it was adequate, what changed in two
2 years? Why do the neighbors need to deal with this
3 issue?

4 Let me add something else that I think is
5 important. This is an environmentally sensitive area.
6 They would have you believe that this is the least
7 environmentally sensitive. You need to use common
8 sense here. Don't, don't allow your common sense to be
9 blurred by a community statement, that the community
10 needs this. The community needs a lot of things, but
11 what they need more than anything is the environment
12 that brought us all here, an environmentally sensitive
13 area. We are the gem of the United States. You've
14 heard it in Congress. They have said we are probably
15 the most valuable resource in the continental United
16 States because we have the coral reef, because we have
17 unique flora and fauna. Among other things, we don't
18 have the site plan here, they're proposing to put a
19 boardwalk over a wetland and over and through mangrove.
20 Well, I'm not sure why maybe somebody wants to walk
21 over a wetland, but clearly there's no way that can be
22 permitted. You cannot put an improvement, you can't
23 add, I guess they're going to put it on some columns or
24 some sort of fixtures in the wetland. So none of this
25 project is really viable. And the parking I'm going to

1 leave to, there are others who can speak more to that
2 issue. But the fact of the matter is if you, again, if
3 you consider this, you will be in a position where you
4 will countenance a situation where we're taking land
5 from an area, I say land, 6,000 square feet of
6 improvements along U.S. 1 and we're going to move it up
7 U.S. 1 and we're going to move it back into a hammock.

8 Ladies and gentlemen, the standard here, the cases
9 are crystal clear, there's not a single case I'm aware
10 of that allows you in a hardship variance criteria to
11 approve this application. And it's very simple. The
12 property can be put to a viable economic use because it
13 is, it's already being put to that use. Now, if you
14 deny this variance what will happen is the applicant
15 will be back where they started, they'll have their
16 6,000-square-foot I guess classrooms, laboratory, and
17 all. 6,000 square feet. They'll have that. It's not
18 going away if you deny this.

19 Secondly, is the property economically viable? I
20 don't know why it became unviable in two years, because
21 that's what this Board did, I don't know if this Board
22 did but the City did that, allowed them to modify their
23 project, actually, remove some affordable housing from
24 the site.

25 So I would say to you, ladies and gentlemen, and

1 others will address the other impacts, the personal
2 impacts, the view corridor, et cetera, but I can tell
3 you that your own ordinance says in it specifically, if
4 you saw the depiction of it on the screen, it requires
5 you to find this a hardship, it requires you to find
6 that no viable economic use can be put to that 9, they
7 say 9, the fact is it's 8.3 according to their own
8 surveyor, by the way, you'll see part of the packet
9 that the survey says 8.3, so there is so much here not
10 just uncertain but in conflict internally that I don't
11 see how you could in good faith grant this variance.
12 If the owner, if the applicant wants to come back and
13 maybe sharpen their pencil and make more sense of this,
14 that's a different, that's another issue, that's not
15 for me to say, but what I am concerned about is that
16 people who live here, they moved here because of the
17 beautiful environment, and they're going to have an
18 enormous structure, they're going to be looking out
19 their window, the folks who moved here, those
20 condominiums, they did not expect to see this, and the
21 reason they didn't expect to see it is it's in a
22 hammock. It's an environmentally sensitive area. So
23 the question comes down to this, and I think, I think
24 Mr. Leonard asked the question, can you do, can your
25 project be viable without this, and they're telling

1 you, well, no, I'll have to reduce the size of it. By
2 the way, I will tell you, I don't think anything should
3 go there, and I'll tell you why, because the 6,000
4 square feet is already in the books, it's already in a
5 scarified area, there's no need to move that up to a
6 more sensitive area, but the decision is made, the
7 6,000 square feet has been made available to them, but
8 I don't think that you should allow 15,000 square feet,
9 I don't think you should allow 6,000 square feet there
10 because there's already a place for it, I'm asking you
11 to consider your duty to enforce the regulations as you
12 see them based upon the facts, and I'll ask you one
13 final question. Do you really believe that this is in
14 the nature of a hardship as that term is defined in
15 your own records? And let me, let me say that there is
16 a definition, by the way, of a hardship in your code.

17 It does discuss what a hardship is, and it's very
18 clear. It talks about specifically, once again, you
19 have to demonstrate that there is no use for the
20 property without this, and number two, that it'll have
21 no impact on your neighbors, and how could you say that
22 a warehouse of that magnitude in a hammock maybe 300
23 feet from a residential subdivision is not going to
24 have a negative impact?

25 So thank you very much for listening. I'll answer

1 any questions if you would like.

2 CHAIRMAN LANDRY: Thank you.

3 MR. MULICK: Thank you.

4 MR. VALDES: Good evening again. Bart Valdes,
5 individually and on behalf of Heidi Valdes.

6 I wanted to, as I promised when I first came up,
7 I'll go ahead and pass out the report that we just got
8 today.

9 MR. SMITH: I will object. The requirements of
10 the code are that they be provided to the staff and to
11 the applicant at least two days prior to the hearing.

12 MR. WILLIAMS: Yeah. I was going to say, you're
13 going to at a minimum take a vote as to whether to
14 accept a last-minute handout or not, as Mr. Smith is
15 correct, it should be submitted to the Commission so
16 you have time to review it prior to the hearing and
17 staff has time to review it prior to the hearing, as
18 well, so I think you at least at a minimum need to take
19 a vote as to whether to accept it or not, and you're
20 perfectly within your right if you do not. So that's
21 fine.

22 CHAIRMAN LANDRY: Any further advisement on that?

23 MR. WILLIAMS: I haven't seen it. I have no idea
24 what it contains or what it purports to. I have no
25 idea why we're getting into this last minute. We had

1 motions to continue that were filed timely, but we have
2 not seen whatever Mr. Valdes possesses, so you're
3 within your rights to vote as you see fit, but I think
4 at a minimum we need a vote whether to accept it or
5 not.

6 CHAIRMAN LANDRY: Any comments?

7 COMMISSIONER LEONARD: I have a motion. My motion
8 is we reject the proposal as presented by Mr. Valdes.

9 COMMISSIONER SEXTON: Second.

10 MR. VALDES: I'd like to be heard as to why it's
11 coming in now.

12 MR. WILLIAMS: It's untimely, sir.

13 MS. MULLINS: All right. Matt Sexton?

14 COMMISSIONER SEXTON: Yes.

15 MS. MULLINS: Susan Klock?

16 COMMISSIONER KLOCK: Yes.

17 MS. MULLINS: Mike Leonard?

18 COMMISSIONER LEONARD: Yes.

19 MS. MULLINS: Lynn Landry?

20 CHAIRMAN LANDRY: Yes.

21 MR. VALDES: All right. So if I understand what
22 you just said, you're not going to accept this into the
23 record as evidence? Is that what I understood?

24 CHAIRMAN LANDRY: Yes, sir. That would be
25 correct.

1 MR. VALDES: That's fine. What we'll go ahead and
2 do is I'll mark it as Exhibit 1 and I'll hand it to the
3 Clerk later on, I think that's fair, to be included in
4 the record, as I'm seeing the other Bart over there
5 saying yes, so we'll do that.

6 But essentially the point of all of this is you've
7 got to look at the use. The first variance is for a
8 conditional use, and if you look at the application
9 it's very clear what they're asking for. It's a
10 15,200-square-foot warehouse for light industrial.
11 That's the use that's being proposed here. And the
12 applicant is Dynasty Marine, and if you have any
13 question about what the applicant's going to use this
14 warehouse for, this light industrial warehouse, because
15 you heard him say other wildlife, and what the
16 applicant is proposing essentially is to have this
17 warehouse to be used to harvest all sorts of different
18 tropical fish and other fish and grow those fish and
19 then sell them all over the world, that's the stated
20 purpose of Dynasty Marine, to effectively serve
21 Aquarium's customers by discovering, acquiring, and
22 acclimating difficult-to-capture marine life of all
23 sizes for public display. And that's critical because
24 Dynasty Marine claims they have this large
25 tractor-trailer that they're going to drive down the

1 very small lane that you see in the packet. It's
2 essentially an 18-wheeler that they plan to drive down
3 there. There's no ability for it to turn around, it's
4 a very narrow road, and it would essentially block that
5 road not only while it's backing, not only while it's
6 turning, but it would create a situation where it would
7 be impossible for emergency vehicles or traffic coming
8 in and out of the Seawatch development to actually get
9 there. The applicant doesn't address that at all. In
10 fact, the applicant leaves out of its application that
11 Seawatch is even to the north of the property. If you
12 look in the application, they talk about how their
13 property is bounded by other areas but they don't
14 mention the residential area there.

15 If you look at the plan, they only have seven
16 parking spaces, so what are they going to do? They
17 want to use the parking on the front. Well, the plans
18 themselves don't have any connectivity. They have the
19 truncated area that they claim is going to be a walkway
20 over the wetland, but there'll be people or cars going
21 up and down the street or cars parking along the
22 street.

23 The stormwater. Look on the concept plan. There
24 is absolutely nowhere for any stormwater holding,
25 retainage, or anything like that on the property, and

1 the reality is that it would be extremely difficult to
2 deal with the stormwater, and there's certainly nothing
3 on the concept plan.

4 Essentially the 15,000-square-foot building, just
5 as Mr. Mulick described, if we took this whole City
6 Hall building and put it in the hammock, well, look how
7 much parking is outside, look how much stormwater
8 runoff is outside, there is none of that in the concept
9 plan that is before you today for this
10 15,000-square-foot warehouse. It simply does not
11 exist.

12 They're relying upon a traffic study that was done
13 in 2005, that's the traffic study listed in the
14 application, and that has not been updated, that has
15 not been put in there, and there is no study as to the
16 ability for vehicles to turn or anything else like
17 that.

18 The area on the City's maps is actually in an area
19 designated as City Proposed Conservation Acquisition
20 Map as an area that the City would like to acquire. So
21 there's no doubt that this is an environmentally
22 sensitive area. There's also, if you look at the
23 original deed to this property included in the
24 application plus their updated maps you can see because
25 of sea level rise how much the mean high water line has

1 already changed and gotten so much closer to the
2 upland.

3 So again, what they want to do here is simply
4 build a bigger building for commercial purposes. They
5 already have the entitlement under the prior
6 conditional use to 6,000 square foot, but they want to
7 put a 15,200-square-foot industrial warehouse for
8 commercial uses, and it's simply not suitable for the
9 size and they haven't taken into consideration the
10 other factors.

11 We ask that this Board be very deliberate and this
12 Commission be very deliberate and look at these issues
13 very carefully and serve as that (inaudible)-keeping
14 model that it's supposed to be, because the reality of
15 the situation is that the case law in Florida is
16 incredibly clear, and not only that, but your own code
17 here in Marathon defines hardship, and it's defined as
18 the exceptional difficulty associated with the land.

19 I'd like more time.

20 MR. WILLIAMS: If he would like a little extra,
21 it's up to your discretion.

22 MR. VALDES: It's defined as the exceptional
23 difficulty associated with land that would result from
24 a failure to grant a requested variance. The community
25 requires that the variance is exceptional, unusual, and

1 peculiar to the property involved. Mere economic or
2 financial hardship alone is not exceptionable.

3 Inconvenience, aesthetic considerations, physical
4 handicaps, personal preferences, or the disapproval of
5 one's neighbors can likewise not as a rule qualify as
6 exceptional hardship. All of these problems can be
7 resolved through other means without granting a
8 variance if the alternative is more expensive or
9 requires the property owner to build elsewhere or put
10 the parcel to a different use than originally intended.
11 In other words, if this warehouse can be built anywhere
12 else, if the property can be used, and it is already
13 being used, then you must deny the variance.

14 The key cases, and I'll just cite a couple of them
15 to you, are the Town of Indialantic v. Nance case.
16 That case was a hardship variance. A person was
17 seeking to build a hotel, and here's what the court
18 did. What the court said is, "Nance's only basis for
19 the hardship allegation is that it would not be
20 economically feasible to build a motel. He could build
21 a motel on his two lots, but the building wouldn't as
22 aesthetically pleasing." Just like what your code
23 says. "A hardship may not be found unless no
24 reasonable use (in this case, for a motel) can be made
25 of the property." They're already using this property

1 for the aquarium. They can even put something else on
2 the back of it if they meet all the standards, but the
3 requirement under the law is that no reasonable use can
4 be made.

5 Same thing with the Herrera v. City of Miami case,
6 which dealt with whether or not you can have a
7 reasonable use of the property and unless there's no
8 reasonable use, then it's not suitable.

9 The Town of Ponce Inlet v. Rancourt says
10 essentially that if the only hardship is mere economic
11 disadvantage that was self-created -- remember, this
12 applicant came back years ago to put this property in
13 its current configuration, if they wanted a different
14 configuration they could have done it at that point --
15 what they're saying now is it's a mere economic
16 disadvantage for them not to be able to build this
17 15,200-square-foot building, that's what the applicant
18 was saying when he said we'll have to start cutting
19 things away, and the courts have consistently said that
20 the argument fails because the hardship was one of mere
21 economic disadvantage and it was self-created.

22 Lastly is the Auerbach v. City of Miami case, and
23 this case is critically important as you consider,
24 because what this case said is that when the original
25 plans for development did not include a certain larger

1 structure and the project was able to go forward
2 without that larger structure, then you can't possibly
3 prove hardship later on.

4 So I ask this Commission to consider the law of
5 the State of Florida, consider the application,
6 consider the deficiencies in the application, consider
7 the environmental aspects, consider the planning
8 aspects, the access aspect, and deny the variance.

9 COMMISSIONER KLOCK: Mr. Valdes, would you mind
10 giving those citations to the court reporter?

11 MR. VALDES: I will give her all of the cases, and
12 if you'd like to see the cases, I've got copies as
13 well.

14 MR. WILLIAMS: And if there's no questions from
15 the Council, I think Lorie does have a stack of
16 speakers.

17 COMMISSIONER KLOCK: Is it possible to ask Mr.
18 Smith a follow-up question before we go to new
19 speakers?

20 MR. SMITH: I am always available.

21 COMMISSIONER KLOCK: Mr. Smith, do you happen to
22 know if the manatee rescue and rehabilitation project
23 and/or the coral restoration will be inside the
24 warehouse or are they going to be outside the
25 warehouse?

1 MR. SMITH: My understanding is that they are all
2 going to be inside of the warehouse. And there's a lot
3 of misstatements that were made during those two
4 presentations that I'll address after all of the
5 public comment.

6 COMMISSIONER KLOCK: That's fine. Those are the
7 only questions I had. Thank you.

8 CHAIRMAN LANDRY: Thank you.

9 Public speakers, Ms. Lorie?

10 MS. MULLINS: Daniel Samess.

11 AUDIENCE MEMBER: All right. Good evening,
12 Commissioners.

13 MR. WILLIAMS: State your name for the record,
14 please.

15 AUDIENCE MEMBER: Daniel Samess, representing the
16 Greater Marathon Chamber of Commerce.

17 So I'm here representing the Chamber, of course.
18 My board of directors voted to support this project,
19 who represent over 540 businesses in the middle of the
20 Florida Keys but primarily right here in Marathon. The
21 board really likes the project for obvious reasons. I
22 think you heard a lot of them this evening. And I
23 think also the board made this decision, you know,
24 basing it on the owner, you know, Mr. Daughtry, and his
25 track record. If you've seen what he's done taking a

1 barren piece of land and developing it into, you know,
2 a world class attraction. And not only that.
3 Environmentally, too. The board is very impressed with
4 the, if you've just been to his facility before and
5 then after, seeing the mangroves, seeing the enhanced
6 or renewed water flow in there, seeing wildlife
7 actually swimming in there, it is extremely impressive,
8 so we feel confident that he'll do the same, you know,
9 with the proposed project behind the Aquarium
10 Encounters. And I think when you all, meaning Mr.
11 Leonard and you all, pressed the previous applicant
12 regarding the Circle K with alternative green energies,
13 this is kind of that. Restoring our coral, saving
14 manatees, I mean, what better assets, specifically the
15 coral restoration, do we have here? So I would also
16 ask you to use your common sense and logic. Is this
17 good for our environment? We think it is. It's
18 obviously good for business, and that's okay too.
19 Understand it's a small island and there's Mixed Use
20 properties on the front of U.S. 1 and right behind it
21 residential most every street. A number of people here
22 that I know live right behind a commercial business.
23 It's just kind of where we live in a limited space
24 here.
25 I think in addition to that, you know, you're,

1 you're investing, again, in the applicant, and that
2 does mean a lot because we've had developers in the
3 past say one thing and do another, and it's our
4 experience that Mr. Daughtry, what he's said, he has
5 done specifically.

6 So with that once again we ask for your support.
7 Thank you so much.

8 COMMISSIONER LEONARD: Thank you.

9 MS. MULLINS: Susan Tatgenhorst.

10 AUDIENCE MEMBER: Good evening, Commissioners.

11 Thank you for your time. As our Planning
12 Commissioners, your decision to approve building
13 requests and allow Marathon to grow is probably very
14 cut-and-dried, but tonight your decision will affect
15 50-plus homes and buildings, a roadway serving these
16 homes, all potentially to be flooded at certain times
17 of the year, not to mention a live wetland teeming with
18 birdlife. These are all located on the east side of
19 Marathon behind the Aquarium Encounters building.

20 My husband and I have been Marathon residents for
21 over 35 years. I would like to mention the wetlands
22 and birds behind the aquarium that do not have a voice
23 and rely on you and us to decide their fate. Frankly,
24 I'm a bit shocked. I always thought this is what you
25 and all of us who love the Keys will do for them. Our

1 neighbors and my family have viewed endangered birds
2 that come to these wetlands, either migrating or as
3 their home. We have observed little blue heron,
4 reddish egret, roseate spoonbill, and more, all of whom
5 are listed on Florida's Endangered and Threatened
6 Species List, and many other birds enjoying what they
7 believe is their home. Before seeing the spoonbills we
8 had not seen spoonbills for over 20 years and thought
9 we never would see them again in the wild or in the
10 Keys, and never in Marathon. They have arrived each
11 year since. Wetlands are treasured wherever they are
12 found, and we need to start preserving them. These
13 wetlands are the first view our visitors and we see as
14 you approach Marathon on U.S. 1 welcoming everyone to
15 our island. I remember when U.S. 1 was two lanes with
16 dirt on either side of the road. Now as we drive
17 through Marathon we see buildings, homes, asphalt,
18 concrete, residue of man's progress, and our
19 residential and visitor population increases
20 dramatically each year. We have many empty, run-down
21 buildings and homes on our island that this Commission
22 and our City Council should be directing businesses to
23 rehab first before destroying the natural beauty all of
24 us cherish that Marathon holds.

25 Each year during the wet season these wetlands go

1 up and over the aquarium's lane in areas which is our
2 only access to our community of 50-plus homes and
3 buildings and they cover the entire property of the
4 1-acre proposed site and the 8-acre wetland parcel to
5 the back of the Aquarium Encounter building you are
6 voting on tonight. The wetlands --

7 Can I, two more paragraphs?

8 CHAIRMAN LANDRY: Yes, ma'am. Finish up.

9 AUDIENCE MEMBER: Thank you.

10 The wetlands over-extend, flooding the lane and
11 our gatehouse-surrounding area and wooded area in front
12 of our first building of 16 homes when king tides
13 occur. These areas will not be able to handle or
14 manage the rainwater runoff from this building or any
15 other structures from this proposed site. The lane to
16 our community first building of homes, gatehouse, and
17 possibly one lift station to our sewer system will be
18 flooded during the rainy season and king tides if you
19 decide tonight to allow them to build. We have
20 witnessed this firsthand. My husband and I have lived
21 at Seawatch, were owners there, for almost 25 years and
22 we observed this flooding every single year.

23 I thank you for your time. My hope is you take
24 the time to reflect on these very important issues
25 before you vote. Thank you.

1 CHAIRMAN LANDRY: Thank you.

2 MS. MULLINS: Brian Bolton.

3 AUDIENCE MEMBER: Planning Board members, my name
4 is Brian Bolton. I'm a full-time resident of Seawatch,
5 7203 Gulf of Mexico Boulevard. Thanks for hearing my
6 position on this variance and conditional use request
7 by Florida Keys Animal Encounters, LLC. This is in
8 addition to the letter I already sent in.

9 As on your website, the Planning Board's mission
10 is to improve the quality of life for the citizens of
11 the City of Marathon and visitors while balancing
12 economic development with preservation and conversation
13 of natural resources and sound fiscal policy. This
14 variance request if approved will enable a small local
15 business to put a large industrial warehouse right on
16 top of and next to wetlands, wildlife habitat, and many
17 local residents' homes. This will have a permanent
18 negative impact on the environment, wildlife,
19 residents, and I feel business itself in the City of
20 Marathon.

21 This particular parcel is Mixed Use. According to
22 your own definitions in this packet on page 32
23 describing Mixed Use, the word warehouse is never
24 mentioned. If you go to Section 103.09 of the City's
25 zoning code for Mixed Use, again, no warehouse is

1 mentioned, but Section 103.08, Industrial, is
2 mentioning a warehouse. We know the applicant wants to
3 use this as a commercial warehouse with a high activity
4 24/7 use. That is not part of Mixed Use, that
5 definition, as far as I can tell. I'm not a lawyer.
6 They did compare it to another structure on the
7 property, the boat barn. They say it's a warehouse.
8 That's not a warehouse. It's a private owner's garage
9 to park your boats in that's maybe accessed once or
10 twice a week. That's it. There's no 24/7 operation,
11 no pumps, no noise, no lights, no nothing, and it's
12 within 150 feet of anyone's house. This particular
13 structure they're proposing will be within 55 feet of
14 people's bedroom windows. By the way, Marathon does
15 have many other areas that have warehouses that are
16 zoned Industrial. There's no reason this business
17 couldn't be put there instead of where they're
18 proposing.

19 So please, let's have the industry grow in
20 locations where industry belongs in Marathon. I urge
21 you to deny this request. Thank you.

22 CHAIRMAN LANDRY: Thank you.

23 MS. MULLINS: Michael Echevarria.

24 AUDIENCE MEMBER: Good evening. My name is
25 Michael Echevarria. I'm the president of Reef Renewal

1 USA. We are a 501(c)(3) not-for-profit that's formed
2 to do coral reef restoration up and down the Florida
3 Keys. We've been privileged to work with Aquarium
4 Encounters and Dynasty Marine as our stakeholders in
5 the Marathon area. As you all probably know, Sombrero
6 Reef is one of the seven iconic reefs and sanctuaries
7 declared as getting restoration focus. We have two
8 grants starting in June to be able to restore both
9 staghorn, elkhorn, and brain corals that have been
10 decimated over the years.

11 The partnership that we've developed with the
12 collaborators of the Aquarium Encounters and Dynasty
13 does, in fact, require local volunteerism, and they
14 have been our volunteers so far. They've been doing
15 work for the last year as commercial businesses have
16 been involved here on our project. We intend to have
17 40 to 50 volunteers, divers and non-divers, to be able
18 to do work for us.

19 I've been to their facility several times, and
20 it's important to realize that the staging of these
21 corals, as Mr. Daughtry was talking about, is very
22 important, so we do our work offshore, but we've got to
23 bring them back in to do various things, specifically
24 boulder and stony corals need to be cut up, stored,
25 housed, moved around, brought in from storms, if

1 there's any kind of disease issues we've got to bring
2 them in, so it's a very important component, and we're
3 very pleased to have both Dynasty Marine and Aquarium
4 Encounters as our local stakeholders partners in this
5 project to help restore the Florida Keys reef track.

6 Thank you.

7 CHAIRMAN LANDRY: Thank you.

8 MS. MULLINS: Hiram Collazo.

9 AUDIENCE MEMBER: Good evening. My name is Hiram
10 Collazo, and I've been the proud owner of 7104 Gulf of
11 Mexico Boulevard for the past five years and I'm here
12 to affirm my objection and denial of this project.

13 And yes, I definitely agree with what you said
14 earlier, what you stated, that here in the City of
15 Marathon we focus on curb appeal. Curb appeal? What
16 kind of a curb appeal a 15,000-square-foot warehouse
17 would have? Totally agree with you. That's a big
18 warehouse. There's no way to give a curb appeal to a
19 warehouse like that.

20 Second of all, I truly agree with what the
21 gentleman here mentioned earlier. The setbacks,
22 25 feet, 75 feet, a hundred feet? In case of a fire a
23 15,000 square feet will devour the building next door
24 immediately, it will completely devour it, not to say
25 the cars, the vehicles that are going to be adjacent at

1 25 feet. I totally disagree with that. It will burn
2 our building next door, especially me. I'm there. I'm
3 right next door.

4 Besides the wetlands. I fully agree. Detrimental
5 to the wetlands. When I first came to this country I
6 say I want to stay in the Keys. Now we commercializing
7 so much, so what's going to happen? Soon I'll be
8 sleeping in a warehouse. Besides saying the fire
9 department, I looked briefly at the preliminary
10 drawings, and I didn't see a turnaround for the fire
11 department, I didn't see a special road. I worry about
12 the pumps for the sewers there, I worry about those
13 pumps running all night making noise. I worry about a
14 lot of things. Lighting, it's going to more require
15 lighting that's going to bother the neighbors next
16 door. So close to Seawatch that it present a clear and
17 present danger in every way, to the wetlands, to the
18 fire, curb appeal. I don't see why they want to do it
19 so big in the back.

20 That's all I got to say, and I strongly oppose
21 this project. Thank you.

22 MS. MULLINS: Richard, I can't read the last name,
23 sweet-something.

24 AUDIENCE MEMBER: Can you hear me?

25 CHAIRMAN LANDRY: Yes, sir.

1 AUDIENCE MEMBER: Okay. Because I couldn't hear
2 anyone that's talked through this mic yet, so.

3 I'm Richard Sweetnam, from 8201 Gulf of Mexico
4 Boulevard, Seawatch.

5 I've been here nine years in October, and I'm more
6 concerned not only with the destruction of the habitat
7 and the flora and fauna, but I'm more concerned about
8 the freight dock. A freight dock I am well familiar
9 with. I was a golf pro from Denver, and in the
10 wintertime I worked for all of the freight docks,
11 learned how to drive the trucks, and did everything
12 there was to do. That was just to keep myself healthy
13 for the next golf year. The freight docks are so
14 filthy. They are just miserably filthy. They're
15 dusty, you have forklifts on them to lift freight, now
16 it's going to be animals, there's accidents that
17 happen. You're going to have the dirty freight docks
18 and then you're going to have the accidents with the
19 animals, and the dust and dirt I don't think mix with
20 fish and wildlife, and especially manatees. By the
21 way, I watered mine just last week.

22 So I think what should be done, since you talked
23 about the electric charging stations, why not have, if
24 you do get this proposal through, make sure that the
25 equipment that's being used is electrical equipment,

1 such as even the trucks coming into Marathon, if you go
2 with Cummins they're working on an electric vehicle
3 now. I know there's plenty of electric forklifts.
4 Just make sure that if you do push this proposal
5 through that you make these people use the electric
6 equipment. And since you want to put in the charging
7 stations, it'll all mix together.

8 But I am against the proposal because the view,
9 the wildlife, the fauna, you're going to destroy an
10 awful good view that we have in our area, and we don't
11 want to look down on buildings, we don't want to hear
12 the loud noises, we already have loud noises from
13 parties that we hear, and when you have these trucks
14 coming in, it's going to destroy the traffic around
15 Seawatch too. I mean, it's only one little road down
16 there, and you get a truck that takes a wrong turn, try
17 and turn that truck around one time.

18 So those are my problems that I have with it, and
19 I think my time is up, but I do thank you.

20 CHAIRMAN LANDRY: Thank you very much.

21 MS. MULLINS: Charlotte Quinn.

22 AUDIENCE MEMBER: Good evening. I'm Charlotte
23 Quinn. I'm the CEO for the Crane Point Museum and
24 Nature Center.

25 I have been partnered with the Aquarium Encounters

1 since I took over Crane Point seven years ago. I've
2 had nothing but respect for the operation that they run
3 and for the community help that they give us. They
4 don't make any money when they come over to try to
5 assist me because a well doesn't work or I've got fish
6 that aren't well. They come, they help me, I've never,
7 ever had an issue with that.

8 I believe that they are good stewards of the land
9 and of the sea. Coral restoration is something that we
10 need. We know we need that. We also need attractions
11 here in Marathon. We want people to stop. They need
12 Crane Point, they need the Aquarium Encounters.
13 Children need education. Education of our youth, it's
14 number one with me, and for them to offer free
15 education for children, for students, for field trips,
16 to me is a wonderful thing and a win-win for all of us.
17 They are very community oriented. They do a lot more
18 than people realize. They just don't blow their horn
19 about it. They just keep quiet and help if needed.

20 I've been to Aquarium Encounters and I've been to
21 Dynasty many, many times. The pumps over at Dynasty
22 are the same pumps that I have at Crane Point. They're
23 like a pool pump. They don't make noise, they don't
24 run all night. They run as the water needs to be
25 circulated.

1 Anyway, I appreciate you listening to me. I
2 concur with everything that Daniel Samess said, and
3 Crane Point supports this as well as our executive
4 board. Thank you so much.

5 CHAIRMAN LANDRY: Thank you.

6 MS. MULLINS: Bob Rehbock.

7 AUDIENCE MEMBER: My name is Bob Rehbock, and I've
8 been a resident here in Marathon for the past 38 years.

9 I'd like to ask you to consider what the east end
10 of Marathon will look like with a 30,000-square-foot
11 building. That's 15,000 footprint, two stories high.
12 That's the equivalent of almost six -- excuse me, of
13 ten Marathon homes.

14 What we're talking about here is really a
15 disaster. It would be a holocaust for all of the birds
16 and wildlife that comes to the wetlands every year.
17 They come here to breed and to survive. That will be
18 gone with any development over the wetlands.

19 Further, I'd like you to consider the construction
20 that this destructive manner and tasteless building
21 will do to the neighborhood. A two-story, 40- to
22 50-foot-high building will be seen from the highway and
23 will not be something that would be to the benefit of
24 Marathon. I think we're going to end up if that
25 happens looking like Scranton, Pennsylvania.

1 Also, I'd like you to consider that the approval
2 of the variance could truly be called an ecological
3 disaster. And let's call Dynasty Marine what it is.
4 It's actually not an educational facility, but rather a
5 commercial enterprise that imports and exports fish.

6 In closing just let me add that, a quote from the
7 current variance that says, "The granting of the
8 variance neither increases or decreases the danger to
9 life on the property," end of quote. Well, I'm afraid
10 that granting this variance would decrease the life of
11 the existing living birds that are there now. I ask
12 you to say no to the approval of this variance.

13 Thank you.

14 CHAIRMAN LANDRY: Thank you, sir.

15 MS. MULLINS: Sylvia Eriksen.

16 AUDIENCE MEMBER: I'm Sylvia Eriksen. I live at
17 the marina part of Seawatch behind, behind the
18 building. I'm not a very good public speaker, so I'm
19 just going to read a little page I wrote here.

20 My concerns for our hammock and wetlands: These
21 are to be preserved, not to be destroyed. These areas
22 are home and feeding areas for our local bird families,
23 which are a lot of different species, also some
24 migrating birds. That is their sanctuary. It is their
25 quiet, peaceful, and safe place for them all to nest,

1 rest, and eat. Also an occasional raccoon will be seen
2 washing his hands, taking his food, to make sure his
3 hands are clean. Can you imagine all we could lose
4 with the construction trucks, human traffic, all in and
5 out, coming and going past that sanctuary on a daily
6 basis? Their homes would be destructive and would be
7 devastated. All the wildlife. If their hammock and
8 wetlands were disturbed or destroyed they would leave,
9 and possibly several would die.

10 My last comment is this. The access road is
11 barely wide enough for two cars to pass safely as
12 you're going into the Seawatch area and where we live
13 behind the gate. If ingress and egress where their
14 proposed area there is to go in, there is no way that
15 it could ever happen. It would be totally blocked.
16 And not only that, us going in and out of our homes and
17 big trucks coming in and out could possibly end up
18 disastrous with young people going in and out and old
19 people -- older people, I don't want to say old, I
20 didn't mean that, older people going in and out, as
21 retirees it's just a dangerous situation because the
22 road is very narrow, and if you've never really driven
23 down there, drive down there sometime. The wetland
24 there and the hammock there is absolutely beautiful and
25 there's all kinds of bird and wildlife that go in and

1 out there. And our road is very narrow. And I don't
2 know how much they have on the other side where they
3 could even widen the road. They'd have to take all the
4 fence out, and it just would, it just would not be
5 good.

6 Thank you very much.

7 MS. MULLINS: Julie Joyce-Rehbock.

8 AUDIENCE MEMBER: Good evening, Commissioners. I
9 appreciate this opportunity to share my concerns
10 regarding the request for this variance. My name is
11 Julie Joyce-Rehbock, and I live at 8402 Gulf of Mexico
12 Boulevard. I'm a local artist and a resident of
13 Seawatch for the past 38 years.

14 In trying to find the best way to express my shock
15 that a proposal for a variance where an enormous
16 15,000-square-foot industrial two-story concrete
17 warehouse can be shoved only 55 feet away from one of
18 Seawatch's condo buildings which houses 16 units and is
19 home to some 20 residents that would forever be
20 affected by the severe encroachment, that it is even
21 being discussed for approval, I find it truly affects
22 my soul.

23 Everything about this concept is disruptive. It
24 feels unbalanced and not mindful. For the applicant to
25 ask for so much from so many, all for gain, when it

1 will affect so many residents of Seawatch, not to
2 mention the wildlife and local birds who frequent the
3 wetlands, salt marshes, mangroves, and hammock, all in
4 this quiet and peaceful piece of land. Did you know
5 that in the fall sometimes hundreds of migrating birds
6 rest and feed in those wetlands on their migration?
7 Please protect them.

8 Seawatch is a tranquil residential community, 40
9 years old, where residents enjoy not only views of the
10 ocean and gulf but also views of the serene and quiet
11 wetlands, that special, undisturbed area where nature
12 reigns.

13 Given the wishes of the applicant, there will be
14 boardwalks over the wetlands, boats on Vaca Cut for
15 their expeditions for specimens, all brought to this
16 huge industrial warehouse where massive pumps will work
17 24/7 and other noisy equipment for their holding tanks,
18 never again the sound of silence.

19 Many of the residents of the condo building will
20 lose their sky space, their breezes, their views, and
21 their peace. Instead they will face a wall of concrete
22 only 55 feet from their windows where the security
23 lights at night will shine into their homes for years
24 to come instead of the darkness of the evening sky they
25 enjoy now. How can that be balanced and mindful?

1 This variance is being sought because the
2 applicant does not have enough dry land to build his
3 huge industrial warehouse so he wants owners of
4 Seawatch to alter their lives to accommodate him. Even
5 residents not in the affected building will surely
6 endure delays in entering and exiting Seawatch as
7 refrigerator trucks and large delivery trucks will be
8 using this narrow two-lane road where a hairpin turn is
9 needed to reach the warehouse. I believe that anyone
10 who comes to view this huge wetland area and the way
11 Seawatch is situated in this protected and peaceful
12 space surely will see that this is not the right place
13 for an industrial building of this size that will
14 create so many disturbances for so many and will
15 disrupt the quiet and peaceful land.

16 I urge the Commissioners to look into their souls
17 and vote no.

18 CHAIRMAN LANDRY: Thank you.

19 MS. MULLINS: Mike Puto.

20 AUDIENCE MEMBER: Commissioners, just real
21 quickly, this is a --

22 MS. MULLINS: Mike, Mike, Mike, Mike raise your
23 right hand.

24 AUDIENCE MEMBER: Oh, I'm sorry.

25 (Audience member sworn.)

1 AUDIENCE MEMBER: Just real quickly, this is, this
2 is a great project and it's going to be good for
3 Marathon, it's going to be good for the community. And
4 I worked very hard with them years ago when we used to
5 play at the other end of the bridge there and you can
6 see what they've done with the project that the
7 aquarium is now, that was awesome, a mess, they cleaned
8 it up, and all the cars that came out of there, planes,
9 everything else, it was just amazing the stuff that was
10 there. It used to be a marina, and now you got clear
11 water, it's clean.

12 And, like I said, it's a great family, I've known
13 them for a long time, being here all my life, and I
14 just wanted to let you know that it's a great project
15 and I think it's going to be awesome for Marathon. And
16 they do good work, and I think if there was any
17 concerns they're going to work with everybody to make
18 sure that the right thing gets done. It's not just
19 let's go build and do something. They're good people,
20 and I support them a hundred percent and I support this
21 project.

22 CHAIRMAN LANDRY: Thank you, Mike.

23 AUDIENCE MEMBER: Yes, sir.

24 MS. MULLINS: No more speakers.

25 CHAIRMAN LANDRY: Okay. We'll close the public

1 comment at this point.

2 Mr. Smith, did you --

3 MR. SMITH: Thank you. Bart Smith again, on
4 behalf of the applicant, and I just want to go through
5 and try to address some of the comments and statements
6 that were made.

7 I think first, the applicant is Florida Keys
8 Aquarium Encounters. You all know about him, you know
9 the work he does. To state anyone else is the
10 applicant is false. There's no evidence of it. That
11 is the applicant. The applicant is applying for a
12 research and lab. It's not a warehouse. Research and
13 labs under the code Section 103.15.1 are approved as a
14 conditional use. We are here on an application for an
15 amendment to a conditional use. You have to evaluate
16 it under the criteria for an amendment to the
17 conditional use. The evidence in the record shows that
18 they meet the criteria for an amendment to the
19 conditional use. No statements that were made
20 constitute evidence that those criteria were not met.

21 There was a statement about clustering.
22 Clustering is a requirement that when you clear hammock
23 you clear only one area and you put all the development
24 in that one area. In this instance you have an area,
25 one area being cleared, it's all together. That is the

1 definition of clustering. In fact, in this instance
2 the requirement is that for low-lying hammock, which
3 has been shown, it's low-level hammock, or low-grade
4 hammock, that you're allowed to clear 50 percent. They
5 are clearing less than 50 percent to build a building
6 whose footprint is 7,600 square feet. Not 15,200, not
7 30,000. 7,600 square feet. The total area that is
8 cleared that will be utilized is under 22,000 square
9 feet. So the fact of stating this is some monstrous
10 facility is patently untrue, and the plans show that.
11 So it meets the criteria for a conditional use, the
12 footprint is within the footprint allowed, it is
13 similar to buildings in the area, and there's no
14 evidence that supports otherwise.

15 The idea that they're going to be exporting
16 tropical fish, there's no evidence in the record of
17 that.

18 There is no evidence and there's no com -- the
19 evidence shows that it's concurrent with its traffic.

20 Stormwater. Typically you don't hear people talk
21 about gigantic swales in the Florida Keys. We just
22 don't have the space. They're injection wells. Of
23 course they don't show up in large spaces on plans
24 because we don't utilize swales at all. Such a large
25 use of the land that injection wells are the typical

1 utilization or underground trench drain systems, all
2 utilized fairly regularly and approved by South Florida
3 Water Management.

4 Now, to get to the biggest germane issue is the
5 variance. There was a lot of statements made about
6 economic hardship and no economic viability and no
7 economic use, so I scratched my head for a while
8 because I swear I've read this code a couple times and
9 I can't recall those words being in the code. So I
10 went back to the code and I read the code, and I was
11 right. The requirement that no economic use be, no
12 other economic use, is not actually a requirement. So
13 I'm going to go through all of these requirements and
14 standards just so that we're all back on the same page.

15 So we're going back to Chapter 102, and Chapter
16 102.113 is the variance procedure. Section 102.113
17 Purpose and Intent. I'm not going to read it. I can
18 represent there's no utilization of the word
19 "Economic".

20 Section 102.114, Requirements for Application,
21 nothing about those standards.

22 Section 102.115, Review and Approval Procedure,
23 provides the approval procedure for the review. No
24 economic requirements there.

25 The 102.116, Time Period for Hearing and Action,

1 that gives the time frames that these things have to be
2 brought forward. Again, no economic requirements.

3 Section 102.117, Effective Date of Action,
4 provides when the effective date of the action has to
5 be.

6 Section 102.118, Notice of Property Owners,
7 obviously deals with who needs to be noticed.

8 Section 102.119, Compliance with Noticing
9 Requirements, again goes to the noticing.

10 Section 102.120, Approval Standards. Okay.

11 Here's the one. So Special Circumstances, and it
12 provides, "Prior to approving an application for a
13 variance the Planning Commission or Director shall find
14 that all of the following apply to the property.

15 Special Circumstances: Because of exceptional
16 narrowness, shallowness, or the shape of the specific
17 piece of property." So in this case it's the shape of
18 the property and it's special circumstances dealing
19 with this property in the wetlands.

20 2, Hardships. "Other extraordinary and
21 exceptional situation or condition of the property
22 and/or location or surroundings, the strict application
23 of the regulation results in exceptional undue
24 hardships upon the owner of the property."

25 Now we got to go to that word, "hardships". Of

1 course that was brought up and is a very important
2 part. So go to the definition of hardships.

3 Hardship's definition under the definitions says,
4 "Exceptional difficulty associated with the land that
5 results from a failure to grant the requested variance.
6 The community requires that the variance is
7 exceptional, unusual, and peculiar to the property
8 involved." I'd put forth that we've provided evidence
9 that it is exceptional, it is unusual and peculiar to
10 the property involved.

11 Here's, here's the next sentence: "Mere economic
12 or financial hardship alone is not exceptional." So
13 there's the word "economic", but it's used in the
14 sentence, "Mere economic or financial hardship alone is
15 not exceptional." Here we described, we are trying to
16 build a research lab for something that is exceptional,
17 coral restoration, the protection of wildlife, for
18 labs, for classrooms, and those are exceptional. It's
19 beyond just an economic hardship that they can't do
20 these without this variance. So therefore this is more
21 than just an economic or financial hardship.

22 It goes on: "Inconvenience, aesthetic
23 considerations, physical handicaps, personal
24 preferences, or the disapproval of one's neighbor
25 likewise cannot as a rule qualify as an exceptional

1 hardship." We are not stating that it's an
2 inconvenience, aesthetic considerations, and physical
3 handicaps. We're stating that without this this
4 project and this research and lab cannot be created
5 that provides for coral propagation and for manatee
6 rehabilitation.

7 Finally, the last sentence of Hardship, "All of
8 these problems can be resolved through other means
9 without granting a variance even if the alternative is
10 more expensive or requires the property owner to build
11 elsewhere or put the parcel to a different use than
12 originally intended." It's already being used as a
13 research and lab. They're looking to utilize this
14 research and a lab for a specific purpose, and this is
15 the only way that it can be utilized. It is
16 exceptional. It's exceptional what they're doing on
17 this property, and we should find that it's an
18 exceptional hardship if they can't develop this.

19 So, going back to the remaining parts of the
20 requirements, C, No detriment: "The relief will not
21 create a substantial detriment as determined by the
22 Director to the public good." I don't think that's
23 applicable.

24 "No special privileges. The granting of the
25 variance will not constitute a grant of special

1 privileges inconsistent with the limitations upon other
2 properties in the vicinity." As I've stated, these
3 privileges have been granted to others.

4 E, Use Authorized, "The variance will not
5 authorize a use or activity which is not otherwise
6 expressly authorized by the regulation governing the
7 parcel of property." As I said, research and labs are
8 a conditional use, meets the criteria.

9 And then it provides relevant factors, and the
10 relevant factors are all questions that this Board is
11 asked. "The Planning Commission or Director shall
12 consider the following factors relevant to granting a
13 variance: Physical characteristics of the proposed
14 construction," we've looked at this, this is going to
15 provide boats that can bring the coral out and in, it's
16 a physical characteristic that would assist, "Whether
17 the use of the property is dependent upon granting the
18 variance," and it is, "Whether granting the variance
19 increases or decreases the danger," it does not
20 increase or decrease. It's neutral. There's no
21 evidence otherwise.

22 Four, the Importance to the Community of the
23 Services to be Provided if the Variance is Granted.

24 These are all factors to be weighed, and this one,
25 number 4, this is an incredibly important feature to

1 the community and it's primarily part of a
2 not-for-profit arm to try to get the community involved
3 in realizing the restoration of the reef and how
4 important that is to this community and all of the
5 Florida Keys, and that factor alone should outweigh all
6 others and provide for the granting of this variance.

7 Five, the variance is towards the wetland. It's
8 actually away from, it's a wetland, it's an internal
9 wetland sand pack that we're talking about. It's not a
10 variance that pushes anything closer to anyone out
11 there's property. It's allowing the building to be
12 pulled to be pulled back away from other properties.
13 "The ability to safely access" -- and I say pull away.
14 They are right up against the sand pack, so it's not as
15 if we can move the building in a different direction.

16 "The ability to safely access the property by
17 regular and emergency vehicles if the variance is not
18 granted." There were statements made about the ability
19 to access the property. The Fire Marshal reviewed the
20 plans. The Fire Marshal is comfortable with the plans
21 for access for a fire truck. I think that should be
22 satisfactory evidence that we meet the emergency
23 standards.

24 And finally 7, "The cost of providing governmental
25 services if the variance is or not granted," well, it

1 certainly wouldn't increase governmental services if
2 it's not -- it could increase governmental services. I
3 mean, the protection of the reefs, the protection of
4 wildlife, those are typically provided by the
5 government or subsidized by the government, and so I
6 would put forward that this also should be a factor
7 weighing in favor of granting the variance.

8 There are other statements made as to pumps and
9 lighting. There's evidence from the Director of the
10 Crane Hammock that this is not the case, and the
11 requirements require that the lighting utilize the
12 lighting requirements under the code.

13 So with that said, the evidence in the record is
14 competent, substantial evidence that the amendment to
15 the conditional use meets the code. We would request
16 it be granted. And there's also competent, substantial
17 evidence in the record that the variance meets the
18 requirements of the code and that the special
19 circumstances have been met and the undue hardship. I
20 would request that you grant both and recommend
21 approval for the amendment to the major conditional use
22 and grant the variance. Thank you.

23 MR. MULICK: Mr. Chairman, I need to address you.
24 I don't normally do this. I'm --

25 MR. SMITH: I would object.

1 MR. MULICK: I know you don't want it heard.

2 He just said on the record that the size of this
3 building was half. He said it was half, correct? Look
4 at the design, look at the site plan. It's 15,000
5 square foot of floor area, of footprint.

6 MR. SMITH: No. The floor area is not --

7 MR. WILLIAMS: Both of you, please.

8 Before we go any further, Mr. Landry, do you want
9 to accept some comments from Mr. Mulick before,
10 although he's already put them forward, but would you
11 like to acknowledge the comments he's made? And
12 certainly we don't need input from the remaining
13 members of the public at this point, either. So if
14 you'd like Mr. Mulick to be able to have a brief
15 rebuttal, it is not typical, but he's there.

16 CHAIRMAN LANDRY: Yes, sir.

17 MR. MULICK: Thank you, Chairman Landry. As I
18 said, I don't normally do this. Please look at --

19 CHAIRMAN LANDRY: Excuse me, sir. We're closed to
20 public comments on it.

21 MR. MULICK: Okay. Well, just so you know, this
22 is not what he said it is.

23 CHAIRMAN LANDRY: Wait. We've closed the public
24 comments. I'm sorry.

25 MR. MULICK: You can't make a decision based upon

1 false information.

2 MR. WILLIAMS: Before you begin your deliberations
3 I have a couple of questions if you don't mind.

4 CHAIRMAN LANDRY: No. Not at all.

5 MR. WILLIAMS: The questions are for Mr. Shea.

6 Mr. Shea, what's your current job title?

7 MR SHEA: Planning Director.

8 MR. WILLIAMS: And how long have you held that
9 position?

10 MR SHEA: Since December.

11 MR. WILLIAMS: Of?

12 MR SHEA: Of last year.

13 MR. WILLIAMS: And what was your previous position
14 prior to becoming the Planning Director?

15 MR SHEA: Senior Planner.

16 MR. WILLIAMS: And how long did you hold that
17 position?

18 MR SHEA: I don't know off the top of my head. I
19 would say at least four years.

20 MR. WILLIAMS: How long have you been with the
21 City of Marathon in total?

22 MR SHEA: Over seven years now.

23 MR. WILLIAMS: And what is your educational
24 background?

25 MR SHEA: I have a Master's Degree in historic

1 preservation, and I took courses in urban planning. I
2 have a Bachelor's Degree in history with a minor in
3 urban planning, and I have an Associate's Degree in
4 architecture.

5 MR. WILLIAMS: And as part of your current
6 position and your former positions are you required to
7 maintain continuing education credits and --

8 MR SHEA: Yes. I have the AICP, which is the
9 American Institute of Certified Planners, and I'm
10 required to do 32 hours every two years for that, and
11 then I also have the Certified Flood Plain Manager, as
12 well.

13 MR. WILLIAMS: No further questions.

14 CHAIRMAN LANDRY: Do we have any questions for
15 staff?

16 COMMISSIONER KLOCK: I have another quick
17 follow-up question for Mr. Smith.

18 CHAIRMAN LANDRY: Go ahead.

19 COMMISSIONER KLOCK: Mr. Smith, the only thing
20 that I think was mentioned by various community members
21 that I don't think you addressed, they mentioned truck
22 issues and ingress and egress of the one road, and one
23 other member mentioned potential use of solar
24 equipment, so if you could just address those two
25 possible issues for the project?

1 MR. SMITH: Certainly. So ingress and egress, the
2 fire, typically what you utilize is what's the largest
3 vehicle that can access the site, and in this instance
4 the largest vehicle that can access the site is a fire
5 truck, and so a fire truck was able to safely maneuver
6 down the roadway and safely able to maneuver into the
7 parking area, maneuver, and leave the property, and so
8 it meets the requirements for safety of the roadways to
9 allow access to the property.

10 As to the solar itself, I know Mr. Daughtry does a
11 lot of innovational aspects. I cannot recall for the
12 life of me, is there solar involved in this project?

13 MR. DAUGHTRY: Do you want me to come up?

14 MR. SMITH: Yup.

15 COMMISSIONER KLOCK: Okay. So the allegations
16 regarding 18-wheelers and refrigerated trucks --

17 MR. SMITH: As to the trucks that are needed to be
18 utilized, you plan for the trucks that are going to
19 utilize the space. You have to have the turn radius to
20 do so in order to even bring the trucks in. I know for
21 different animals you do need larger trucks, but that
22 is not an often occasion. Mr. Daughtry can probably
23 speak to that more.

24 MR. DAUGHTRY: So what, do you want to talk solar
25 first, or do you want to talk --

1 COMMISSIONER KLOCK: We have already --

2 MR. DAUGHTRY: So from a solar standpoint, it's
3 something that we'll certainly look into panel-wise.
4 All of our equipment, just so that you guys know, are
5 not big, massive pumps. They're literally three to
6 three-and-a-half-horsepower pool pumps. That's what we
7 have. They'll be indoors. We're not going to have
8 noise pollution issues that are of concern, and I can
9 understand that they would be a concern, but it is not
10 an issue. The pumps that we currently use are
11 adjustable pumps that allow us to maximize
12 efficiencies, so already we're, we're big fans of that
13 because we have to pay the electric bill, so believe
14 me, we're looking for efficiencies where we can find
15 them and we'll continue to do that with this building.

16 As far as trucking goes, I'll say that we are
17 going to have some semis through there, it's on average
18 maybe 20 to 30 times a year, okay? We, we do
19 transports for the large semis less than once every
20 other week and they're gone for somewhere between three
21 and seven days when we're transporting marine life to
22 different aquariums that are for public display so that
23 people can see all the beautiful animals that we have
24 here in the Florida Keys and understand that the reefs
25 and all the animals and all the different things that

1 we have, and this is something that we've done since
2 the early '80s at Aquarium Encounters.

3 Since I'm up here, I do want to say that semi
4 trucks have been making their way back and forth
5 through that property for the last five to seven years
6 as there's been massive spalling issues in that
7 compound that you guys are probably aware of, and while
8 those trucks have been coming by and while there's
9 jackhammers day in and day out, those birds have stayed
10 there, and ideally those birds will stay there through
11 what we're talking about doing, which is less invasive
12 than three years of jackhammering a concrete building.

13 The, the elevated walkway is something that is
14 permitted. It's permitted as part of normal use
15 already in the code that we can do that, something
16 similar to Anne's Beach, something similar to what's
17 behind the property here. We want to do the same thing
18 that we've done at Aquarium Encounters. We want to be
19 part of the environment. If you've been there and
20 walked through it, we're surrounded by mangroves, we're
21 covered by mangroves, we've kept as many mangroves on
22 that property as we possibly could while building out
23 what we built out, and we believe that it's a win-win
24 once again, kind of as Dan Samess said, both
25 economically, ecologically, and for the city and for

1 the 25 people that work there, I think it's a win all
2 the way around. We try to create that in anything we
3 do.

4 CHAIRMAN LANDRY: Mr. Leonard?

5 COMMISSIONER LEONARD: I'm a capitalist, and I
6 think any time a business is growing and it needs to
7 expand, I think it's wonderful, especially at the same
8 time when you keep track and protect the environment.
9 However, I'm not convinced that a 50-foot setback is
10 going to completely destroy what you want to do,
11 especially since what I heard tonight was comment after
12 comment on the coral and everything you're doing
13 regarding the coral but little if any comments on the
14 manatees. In fact, the only comments we heard on the
15 manatees were from you. So I need more education on
16 why a 50-foot setback just takes this plan and moves it
17 away.

18 MR. DAUGHTRY: Well, once again, in order to do
19 anything that we're going to do back there if we have
20 to cut that building's size in half or whatever it's
21 going to be, it's going to cut our capabilities in half
22 to do any of those things that we want to do
23 potentially in that. Does that mean we do half the
24 corals? Maybe not. Maybe it means we stay with corals
25 and we stay away from manatees. Maybe, you know, we,

1 we will have to make the best decisions for our company
2 at that time when we see what space we have to work
3 with. But I can tell you that if, if I had more square
4 footage I would do it. The variance that we're looking
5 for specifically is away from Seawatch. I think there
6 was a lot of misunderstanding with that initially based
7 on social media comments. And the one reason I can't
8 say specifically what I'm doing with manatees is
9 because I don't have my letter of authorization yet,
10 but I am literally, as of today about four o'clock I'm
11 talking to people that are in search and need of ways
12 to house them and like I said, I'm going to find a
13 temporary way to do that. If the need is now, my
14 feeling is that I'll find a way to start helping in
15 that situation without any building back there right
16 now.

17 COMMISSIONER LEONARD: Thank you. I feel your
18 passion.

19 MR. DAUGHTRY: Thank you.

20 CHAIRMAN LANDRY: I have a question for you, Mr.
21 Daughtry.

22 MR. DAUGHTRY: Yes, sir.

23 CHAIRMAN LANDRY: Is the plan to not only do coral
24 restoration and rehab manatee, but are you moving
25 Dynasty Marine into that property?

1 MR. DAUGHTRY: We, we are using, moving Dynasty
2 Marine into that property. Yes.

3 CHAIRMAN LANDRY: Okay. It's just something that
4 has not been said tonight.

5 MR. DAUGHTRY: I've talked about that, I feel
6 like. But yes, Dynasty Marine will be moved to that
7 property, and once again, we have, for 35 years we've
8 used these animals in public display, hundreds of
9 millions of people have seen them for educational value
10 and understand what we have in the Caribbean and the
11 Florida Keys in particular.

12 CHAIRMAN LANDRY: Thank you.

13 MR. DAUGHTRY: You're welcome.

14 CHAIRMAN LANDRY: Anything else?

15 MR. WILLIAMS: I've got a question if we can
16 resolve this factually so I don't spend any time in
17 appeals and so we're not bogged down by this. If,
18 Brandon, can you throw Exhibit C to the variance on the
19 screen?

20 MR. DAUGHTRY: Do you want me to stay up here, or
21 no?

22 MR. WILLIAMS: Please. Yeah. You may be able to
23 answer this faster and better than anyone else and
24 we'll clear it up for everyone in the room.

25 Sorry, Brandon. I gave you no notice. It's the

1 site plan. It's the drawing down by Overall Site
2 Concept but the last page of tonight's packet. Skip to
3 the variance. That looks like it. Thank you.

4 Okay. Looking at the top building, and I'm just
5 trying to get the math clear in my head, it looks like
6 the top side of the length of that building is
7 180 feet.

8 MR. DAUGHTRY: That's correct.

9 MR. WILLIAMS: If you come down the left side, it
10 says 100 feet.

11 MR. DAUGHTRY: That's correct.

12 MR. WILLIAMS: I'm doing quick math. If I add two
13 zeroes to 180 I'm at 18,000 square feet, we back off
14 the corner on the right-hand side and I assume that
15 gets us to 15,200?

16 MR. DAUGHTRY: That's correct.

17 MR. WILLIAMS: Okay. I believe I heard Mr. Smith
18 state that it was going to be a 7,600-square-foot
19 footprint. Is either Mr. Smith's memory off a little
20 bit, or is this not the current diagram?

21 MR. DAUGHTRY: This is the current diagram. This
22 is correct.

23 MR. WILLIAMS: Okay. So, so I don't have a
24 factual record issue later, this diagram is the one you
25 want the Planning Commission to consider?

1 MR. DAUGHTRY: This is correct.

2 MR. WILLIAMS: Okay. Thank you, sir.

3 MR. DAUGHTRY: You're welcome.

4 MR. MULICK: Chairman, since you've opened up
5 testimony, could I just respond? I'll take 30 seconds.

6 MR. WILLIAMS: Nick, I just helped you. Shh.

7 MR. MULICK: Well, there's another issue here. I
8 can say it right now. Is it going to be a two-story?
9 Yes or no? Is it or isn't it a two-story?

10 MR. WILLIAMS: You're free to ask that if you
11 wish, Mr. Landry, or any member of the Planning
12 Commission if they deem that question worthy of asking
13 the applicant.

14 CHAIRMAN LANDRY: Right. Could you answer that
15 for us, Mr. Daughtry?

16 MR. DAUGHTRY: Yeah. So, so certainly part of the
17 building at least will be two stories. I can't say, I
18 haven't gone through all of the, all of the site plan
19 stuff because until we have this meeting and then we
20 have the meeting with the council I didn't want to
21 spend \$150,000 trying to figure out whether or not it
22 made any sense, but it would be my intention to have at
23 least part of the building has two stories, yes.

24 COMMISSIONER KLOCK: The max height, I think it
25 said here, would be 42 feet tall?

1 MR. DAUGHTRY: So what it said was that we would
2 be under the max height, whatever, whatever's allowed,
3 so I don't necessarily intend to make it 42 or 41.11,
4 but we will be within, I think the main, the main point
5 is that we will be within whatever fire needs there
6 are, whatever noise needs there are, whatever light
7 needs there are, all of the, all of the things that we
8 have to do to check the box, including stormwater
9 runoff and those things, we're going to, we've agreed
10 with the City that we will take care, do all of those
11 things to whatever the code is as expected by anybody.

12 MR. SHEA: And just to add to that real quick,
13 with a commercial structure there is the option to
14 flood-proof so it does not have to meet the elevation.
15 You can flood-proof within that area.

16 CHAIRMAN LANDRY: So there is a possibility of a
17 shorter building but flood-proof?

18 MR. DAUGHTRY: I'm not looking to build anything
19 extra. Once again, the same thing, efficiencies when
20 it comes to a business. You know, I don't want to put
21 a bunch of extra square foot, I don't want to have to
22 air-condition a bunch of extra square foot, so I'm
23 going to be sensible when we go to do that, and, you
24 know, at least four people up here spoke about their
25 views as far as overlooking my property, and I am

1 sensitive to that, but I want to be able to build what
2 we really need as well, so.

3 CHAIRMAN LANDRY: Okay. Thank you, sir.

4 MR. DAUGHTRY: Thank you.

5 CHAIRMAN LANDRY: Mr. Garrett, if I may ask you a
6 question? Swear him in.

7 (Sworn.)

8 CHAIRMAN LANDRY: I'm sorry, Brian, I'm not trying
9 to bypass you. George has been here a little longer.

10 Just going back to South Florida Water Management
11 District, can you give us some enlightenment on exactly
12 why we're at 50 feet and they're at 25 when it seems
13 that it would be better if we just were in line with
14 them as a city?

15 MR. GARRETT: I've actually had that conversation
16 a bit in the last day or two. What the applicant's
17 attorney, Mr. Smith, has stated is correct. South
18 Florida Water Management District does only require
19 25 feet, and his purpose for that I think is stated
20 accurately, as well. I think one of the things that
21 should be noted about this if there's consideration to
22 be had here is that there is, as I understand it, at
23 least, going to be a physical barrier between
24 essentially the development here and the wetlands, and
25 I think that's important in defining a boundary between

1 the project and those wetlands for the sake of
2 protection. I think clearly as I saw the County's code
3 develop, and for the sake of everybody here, I've been
4 here since '84 and I went through all of the process of
5 developing the County's Comprehensive Plan, which we,
6 frankly, inherited. It really was about protection of
7 those resources nearby, wetlands in particular, and I
8 think to the extent that precautions are made 25 feet
9 is sufficient, and in this case as I understand it
10 there's essentially going to be revetments between the
11 two, so.

12 CHAIRMAN LANDRY: Thank you, sir.

13 MR. GARRETT: I guess probably the end answer to
14 that, too, is we might actually consider changing the
15 code the District's and DEP's set requirements.

16 CHAIRMAN LANDRY: It would make it a little bit
17 more seamless in the future.

18 MR. GARRETT: Yeah. It would.

19 CHAIRMAN LANDRY: Any further questions?

20 MR. WILLIAMS: And we will need a separate vote.
21 Although we heard them and considered them both
22 tonight, we will need separate votes.

23 CHAIRMAN LANDRY: Yeah. I have 2 is the variance,
24 right?

25 MS. MULLINS: No. Number 2 is the conditional

1 use.

2 CHAIRMAN LANDRY: Okay. So we should do the
3 variance first, right? Or does it matter?

4 MS. MULLINS: It doesn't matter.

5 MR. WILLIAMS: One's a recommendation, and one is
6 your vote.

7 CHAIRMAN LANDRY: Okay. Let's do the variance
8 first, Item 3. Do we have a motion?

9 COMMISSIONER LEONARD: Motion. Motion to approve
10 Item 3, the variance.

11 COMMISSIONER KLOCK: Second.

12 MS. MULLINS: Okay. Matt Sexton?

13 COMMISSIONER SEXTON: Yes.

14 MS. MULLINS: Susan Klock?

15 COMMISSIONER KLOCK: Yes.

16 MS. MULLINS: Mike Leonard?

17 COMMISSIONER LEONARD: Yes.

18 MS. MULLINS: Lynn Landry?

19 MR. WILLIAMS: Yes.

20 MS. MULLINS: Okay. It's approved.

21 AUDIENCE MEMBER: What a joke.

22 CHAIRMAN LANDRY: I just have a question. Is the
23 road going to Seawatch a City of Marathon road, public
24 road, private road? How does that --

25 MR. SHEA: It is not a City of Marathon road.

1 It's private, and there's an easement in place for
2 Seawatch.

3 CHAIRMAN LANDRY: Okay. So the applicant owns the
4 road?

5 MR SHEA: Yes.

6 CHAIRMAN LANDRY: And he's given an easement to
7 Seawatch?

8 MR SHEA: Yes.

9 CHAIRMAN LANDRY: Okay. The situation that it is,
10 and we hear from everybody in the audience how small
11 and narrow that road is and those of you who know me
12 and my plight on widening roads in a particular part of
13 Marathon, I'm kind of sensitive to this, is there room
14 to widen that road to make it better accessible to
15 everyone including the applicant? Sorry, Brian, to put
16 you on the spot.

17 MR SHEA: It could be potentially possible.
18 Staff would recommend widening it more on the western
19 portion rather than the wetland portion.

20 CHAIRMAN LANDRY: Okay. Could I ask the applicant
21 a question? Sorry, Mr. Daughtry, I should have asked
22 you when you were up here and it slipped my mind.

23 MR. DAUGHTRY: I need to get some exercise.
24 That's good.

25 CHAIRMAN LANDRY: Being that it is such a narrow

1 road, would you be opposed to widening that road or
2 giving property to widen that road?

3 MR. DAUGHTRY: Yeah. No, I wouldn't be opposed to
4 that. It might actually benefit some of the concerns
5 that they, they have had, the Seawatch folks have had.
6 There's some, there's some other opportunities where we
7 can work together as well, and when I was speaking in
8 the Technical Review Committee, there's some fire
9 access issues into Indigo Reef that the fire department
10 would like to see some help with and I've already
11 voiced my concern, my ability to help with that. I'm
12 happy to do that if Seawatch and Indigo Reef want to
13 get together on that. I've spoke to a member of
14 Seawatch about that as well. So, look, there's
15 opportunities here for working together and win-wins.
16 There's, there's some other issues with the Aqueduct.
17 Seawatch has a 40-year-old steel pipe in the ground
18 that's going to be a problem for them. So there's an
19 opportunity there because we're going to need to put a
20 water pipe in as well. So there's, there's some areas
21 for, for out-branches.

22 CHAIRMAN LANDRY: Okay. Well, I just think that
23 that would be a big help to the community at large,
24 especially at Seawatch with the traffic going back.

25 MR. DAUGHTRY: Sure. So anywhere there's narrow

1 roads that you'd like widened?

2 CHAIRMAN LANDRY: Yes. Yes, I would. Where
3 there's room to do it, I would love to see it happen in
4 this city.

5 MR. DAUGHTRY: I believe that there is, as well.

6 CHAIRMAN LANDRY: Okay. Thank you. That's all I
7 have. Item 2.

8 COMMISSIONER KLOCK: Motion to approve.

9 COMMISSIONER SEXTON: Second.

10 MR. WILLIAMS: And to be clear, is that including
11 the Chairman's road widening as a condition, or is that
12 just discussion and --

13 COMMISSIONER KLOCK: I would like to see it as a
14 condition. I think that the widening of the road
15 should be a condition.

16 MR. SMITH: Here's my only concern, is that west
17 side is all wetlands, and so you could have the Army
18 Corps or the DEP deny a permit, and so, I mean, if we
19 put reasonable efforts and should a permit be denied it
20 would not be required, I'm comfortable with it.

21 COMMISSIONER KLOCK: That would make sense.

22 CHAIRMAN LANDRY: Mr. Attorney.

23 MR. WILLIAMS: So we'll make the language subject
24 to application to the Corps for widening of the road
25 and whether it's granted or denied, but it will not be

1 fatal to this particular use.

2 MS. MULLINS: So Matt Sexton?

3 COMMISSIONER SEXTON: Yes.

4 MS. MULLINS: Susan Klock?

5 COMMISSIONER KLOCK: Yes.

6 MS. MULLINS: Mike Leonard?

7 COMMISSIONER LEONARD: Yes.

8 MS. MULLINS: Lynn Landry?

9 CHAIRMAN LANDRY: Yes.

10 MS. MULLINS: Okay. Thank you.

11 MR. SMITH: Thank you.

12 CHAIRMAN LANDRY: I would like to take a moment to
13 thank everybody for coming out and voicing your opinion
14 on this item. It is very imperative in this city that
15 we have community input and people to come out and
16 voice their opinions. So again, thank you very much,
17 and as of that, this meeting is adjourned.

18 (Proceedings concluded at 8:00 p.m.)

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C E R T I F I C A T E

STATE OF FLORIDA)
COUNTY OF MONROE)

I, Susan L. McTaggart, Florida Professional Reporter and Notary Public, State of Florida at Large, do hereby certify that I was authorized to and did report by stenotype the proceedings in the above-entitled matter, and that the transcript is a true record of said proceedings.

Dated this 31st day of May, 2021.

Susan L. McTaggart, FPR

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**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-74**

RESOLUTION 2021-74 APPROVING OR DENYING AN APPEAL HELD PURSUANT TO CHAPTER 102, ARTICLE 17, "APPEALS," FILED BY NICHOLAS MULICK ON BEHALF OF SEAWATCH AT MARATHON CONDOMINIUM ASSOCIATION INC. SEEKING TO OVERTURN THE DECISION OF THE CITY OF MARATHON PLANNING COMMISSION WHOSE DECISION APPROVED A VARIANCE FOR WETLAND SETBACK REDUCTION (PC RESOLUTION 2021-001); PROVIDING FOR THE APPROVAL OR DENIAL OF THE APPEAL BY CITY COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on May 17th, 2021, the Planning Commission, sitting as the Deciding Body for variances, heard the variance request taking testimony and evidence from the City, the Applicant, and other affected parties determining in a unanimous decision to approve the variance; and

WHEREAS, on August 2nd, 2021 pursuant to Chapter 102, Article 17, Nick Mulick on behalf of Seawatch at Marathon Condominium Association, Inc., affected parties, appealed the decision by the Planning Commission in their determination to issue a variance as certified by PC resolution 2021-001; and

WHEREAS, on September 14, 2021, the City Council, sitting as the City's Appellate Body for decisions of the Planning Commission and other appointed bodies, heard the appeal taking testimony and evidence from the City, the Appellant, and other affected parties determining in a decision to _____ the appeal; and

WHEREAS, this Resolution represents the public record of the decision of the City Council to _____ the appeal brought by Seawatch at Marathon Condominium Association, Inc.; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. 1. the appeal of Seawatch at Marathon Condominium Association, Inc. concerning the issuance of PC Resolution 2021-001 is hereby _____.

2. this Resolution is subject to appeal for a period of no longer than thirty (30) days pursuant to the City's Code of Ordinances.

Section 3. The City Clerk shall forward a certified copy of this Resolution to the Applicant.

Section 54 Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 14th day of September, 2021.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

Steve T. Williams, City Attorney