

**VARIANCE NO. VA-02-01
KENNETH WALKER**

FINAL ORDER OF MANATEE COUNTY HEARING OFFICER MARK SINGER ON BEHALF OF MANATEE COUNTY APPROVING VARIANCE NO. VA-02-01, TO ALLOW APPROVAL OF A VARIANCE TO ALLOW CONSTRUCTION OF AN ADDITION AT AN EXISTING FINISHED FLOOR ELEVATION OF 6.36' FOR AN EXISTING HISTORIC STRUCTURE WITHOUT MEETING THE MINIMUM FLOOD PLAIN ELEVATION REQUIREMENTS OF LAND DEVELOPMENT CODE SECTION 718.6.1.7.C. FOR A SINGLE FAMILY RESIDENTIAL LOT IN THE RSF-6/CH/HA (RESIDENTIAL SINGLE FAMILY-6 DWELLINGS PER ACRE/COASTAL HIGH HAZARD OVERLAY/HISTORICAL RESOURCES OVERLAY) AND THE RES-6/CEA/CSVA/HR (RESIDENTIAL-6 DWELLING UNITS PER ACRE/COASTAL STORM VULNERABILITY AREA OVERLAY/HISTORICAL RESOURCES OVERLAY) FUTURE LAND USE CATEGORY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

CLERK OF DISTRICT COURT
MANATEE CO. FLORIDA

2002 AUG -2 AM 8:45

FILED FOR RECORD
R. B. SHORE

WHEREAS, the Board of County Commissioners of Manatee County adopted the Manatee County Land Development Code, Manatee County Ordinance 90-01, as amended; and

WHEREAS, pursuant to the Land Development Code, Manatee County Ordinance 00-22, as amended, the Hearing Officer has the authority to grant Variances; and

WHEREAS, the Historic Preservation Board granted a Certificate of Appropriateness to Kenneth Walker on February 20, 2002; and

WHEREAS, Kenneth Walker has requested a Variance to allow construction of an addition at an existing finished floor elevation of 6.36' feet for an existing historic structure without meeting the minimum flood plain elevation requirements of Land Development Code Section 718.6.1.7.C. for a single family residential lot in the RSF-6/CH/HA (Residential Single Family - 6 dwelling units per acre/Coastal High Hazard Overlay/Historical and Archaeological Overlay) zoning district and the RES-6/CEA/CSVA/HR (Residential - 6 dwelling units per acre/Coastal Evacuation Area Overlay/Coastal Storm Vulnerability Area Overlay/Historical Resources Overlay) Future Land Use Category;

WHEREAS, on July 17, 2002 the aforementioned Hearing Officer held a public hearing to receive the staff report, applicant's presentation and public comment and argument regarding the proposed Variance to allow construction of an addition at an existing finished floor elevation of 6.36' feet for an existing historic structure without meeting the minimum flood plain elevation requirements of Land Development Code Section 718.6.1.7.C.

NOW, THEREFORE, after consideration of the application for Variance No. VA-02-01 requested by Kenneth Walker, the Hearing Officer makes the following Findings of Fact and Conclusions of Law and issues this Final Order as follows:

Section 1. Findings of Fact. The aforementioned Hearing Officer, after considering comment, argument, evidence, documentation, and staff report presented, as well as all other matters presented at the Public Hearing above referenced, hereby makes the following Findings of Fact:

- A. The zoning classifications for the subject property are RSF-6/CH/HA (Residential Single-Family - 6 dwelling units per acre/Coastal High Hazard Overlay District/Historic and Archaeological Overlay District).
- B. The variance is the minimum necessary which would allow the applicant continued use of this property while as not to destroy the historic character and design or designation of the building.
- C. This variance request is a permitted variance under the standards of Land Development Code Section 718.10. The application is for a variance to allow construction of an at-grade addition to an existing historic structure without meeting the minimum floodplain elevation requirements of the Land Development Code 718.6.1.7.C.
- D. This variance request is consistent with the applicable standards for a variance under Land Development Code Section 718.10.
- E. The single-family home (wood framed) was built between 1910-15. The style of the house can be described as Frame Vernacular with a square exterior. This house is a contributing structure within the Historic Cortez Fishing Village (Florida Master Site File #MA-653). The Manatee County Historic Preservation Board approved a Certificate of Appropriateness on February 20, 2002 to allow the issuance of a building permit to construct the addition, subject to three stipulations that have been recorded in the Certificate. As such, the addition has been found to adhere to the Secretary of the Interior's Standards for Historic Preservation.
- F. The evidence establishes that standards of review set forth in Section 718.10 of the Land Development Code for the granting of a variance have been met for the variance for the following reasons:
 - 1) Elevating the structure would destroy the historic character of the building and negatively impact the historic designation of the district; thus a unique and unnecessary hardship would result if elevation requirements were strictly enforced, and the variance is the minimum variance necessary to afford relief.
 - 2) A Notice of Disclaimer will be issued upon approval of the variance as required by Section 718.10.1.3.
 - 3) The addition constitutes new construction and substantial improvement on a lot of one-acre or less as the total is .25 of an acre.
 - 4) The application is consistent with the technical evaluation requirements of Section 718.10.2 of the Land Development Code.

Section 2. Conclusions of Law. Based upon the prior Findings of Fact and considering the testimony, evidence, documentation, and the staff report presented, the above referenced Hearing Officer hereby makes the following Conclusions of Law:

- A. This Hearing Officer has jurisdiction over the parties and subject matter in this proceeding pursuant to Section 718.10.1 of the Manatee County Land Development Code, as amended.
- B. The applicant has the burden of proving entitlement to the Variance, *Gomez v. City of St. Petersburg*, 550 So. 2d 7 (Fla 2nd DCA 1989)
- C. The variance is not of the type prohibited by Section 509.3 of the Land Development Code
- D. The variance meets the criteria set forth in Section 509.3 of the Land Development Code

Section 3. Order. Based upon the foregoing, the variance is hereby approved and issued to Kenneth Walker for the property located at 12007 45th Avenue West, Cortez, FL, and more particularly described in Exhibit "A" attached hereto and incorporated herein, to allow construction of an addition at an existing finished floor elevation of 6.36' feet for an existing historic structure without meeting the minimum flood plain elevation requirements of Land Development Code Section 718.6.1.7.C. is hereby approved subject to the following conditions:

- A. This variance shall not be effective until it has been recorded in the Public Records of Manatee County, Florida by the applicant and a copy of the recorded Variance is received by the Planning Department.
- B. The variance shall not run with the land as required by Section 718.10.3 of the Manatee County Land Development Code.
- C. The variance shall terminate should 50 percent or more of the historic structure be destroyed.
- D. This approval shall be contingent upon compliance of any conditions stipulated by the Manatee County Historic Preservation Board (Reference HPB/COA-01-03 and HPB/COA-01-03(R)).
- E. The new addition shall meet 5' side yard setback.
- F. All construction on this site shall use flood resistant materials as approved by the Building Department. The floor and electric shall be at the same elevation (or higher) than the existing structure.

Section 4. Final Action. This Order shall be Final after thirty days from the date of execution by the Hearing Officer has elapsed.

Page 4 VA-02-01 - Kenneth Walker

Section 5. Appeals. Appeals are governed by Section 304.7 of the Land Development Code.

ORDERED ON BEHALF OF MANATEE COUNTY this 25th day of August, 2002.

MANATEE COUNTY, FLORIDA

BY: 

Mark D. Singer, as
Hearing Officer for Manatee County

ATTEST: R.B. SHORE
Clerk of the Circuit Court

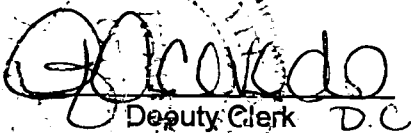

Deputy Clerk D.C.

EXHIBIT "A"

LEGAL DESCRIPTION:

BEGIN 6 3/8 CHAINS WEST AND 4 1/2 CHAINS SOUTH OF NE CORNER OF U.S. LOT 3, IN SECTION 3, TOWNSHIP 35 SOUTH, RANGE 16 EAST AND RUNS THENCE WEST 5/8 CHAINS, THENCE SOUTH 4 CHAINS, THENCE EAST 5/8 CHAINS, THENCE NORTH 4 CHAINS TO THE POINT OF BEGINNING.

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R.B. SHORE CLERK OF CIRCUIT COURT MANATEE COUNTY FL.