



VILLAGE OF KEY BISCAIYNE

Office of the Village Manager



Village Council
Franklin H. Caplan, *Mayor*
Michael E. Kelly, *Vice Mayor*
Michael W. Davey
Enrique Garcia
Robert Gusman
Mayra P. Lindsay
James S. Taintor

DATE: October 23, 2012
TO: Honorable Mayor and Members of the Village Council
FROM: John Gilbert, Village Manager
RE: 250 – 260 Sunrise Drive: Variance Request

Village Manager
John C. Gilbert

RECOMMENDATION

It is recommended that the Village Council approve a variance associated with an existing parking lot at 250-260 Sunrise Drive. This recommendation is subject to the conditions as set forth in the attached memorandum from the Building, Zoning, and Planning (BZP) Director. The recommendation is based on the Director's determination that the request is consistent with the variance review criteria.

BACKGROUND

The applicant has requested the Village Council approve a variance to permit an existing driveway aisle on the east side of the property to remain with a width of 6.9 ft. while the regulations require 20 ft. This situation has existed for the past 47 years.

The building was built in 1964 and the condominium documents were approved in 1965. The building contains 14 units. At the time the building was constructed, the County's parking regulations required one (1) space per unit and the driveway had to be wide enough to accommodate two way traffic. This means the parking spaces along the east side of the building had to be parallel to the lot line when the County issued the Certificate of Occupancy in 1964-1965. Sometime after that, the parallel spaces were re-stripped to angled spaces which increased the number of spaces from 14 to 21. The spaces were subsequently assigned by the condominium board to the unit owners. The re-stripping of the parking lot resulted in a 6.9 ft. driveway on the east side of the property adjacent to the subject spaces.

When the applicant requested a permit to reseal the parking lot, the BZP Department could not approve the application because the driveway aisle did not meet the minimum 20 ft. width requirement. The applicant then decided to apply for the variance which is the subject of this public hearing.

The Zoning and Land Development Regulations contain criteria to evaluate variance applications. The BZP Director has compared the application with the criteria. The Director found that the request is consistent with the review criteria and has recommended approval of the application subject to the conditions as set forth in the attachment.



VILLAGE OF KEY BISCAYNE

Department of Building, Zoning and Planning

Village Council

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DATE: October 23, 2012
TO: John C. Gilbert, Village Manager
FROM: Jud Kurlancheek, AICP, Director
Building, Zoning, and Planning Department
RE: 250 – 260 Sunrise Drive: Variance Request

Director

Jud Kurlancheek, AICP

Chief Building Official

Eugenio M. Santiago, P.E.

APPLICATION SUMMARY

Applicant	Sunrise Manors Inc.
Request	Waive 13.1 feet of the required 20 foot width for a two-way parking aisle in order to provide a two-way parking aisle with a width of 6.9 feet in an existing parking lot.
Site Address	250 – 260 Sunrise Drive
Master Plan Land Use	Low Density Multiple Family Residential
Zoning District	RM – 16 Low Density Multiple Family
File Number	RV - 34
Recommendation	Approval with conditions

EXPLANATION AND ANALYSIS

Background:

The Request: Waive 13.1 feet of the required 20 foot width for a two-way parking aisle in order to provide a two-way parking aisle with a width of 6.9 feet in an existing parking lot.

Variance Review Criteria: The Village's Zoning Ordinance provides for the granting of variance(s) subject to a finding that the petition meets the following criteria:

Criteria 1 Maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community.

Analysis Properties along Sunrise Drive and Galen Drive were originally developed in the 1960's and generally occupied by tourists and "snow birds" during the fall and winter months. Most of the occupants had one (1) car while some did not have cars. The zoning regulations at the time required one (1) parking space per unit. For the most part, the entire lot was paved to accommodate as many parking spaces as possible. Over the years the occupancy changed to where the majority of the units are occupied year round with persons having one or two cars.

The subject property contains 14 units and when it received a Certificate of Occupancy from the County in 1965 the parking lot had 14 spaces. Sometime after that, the parking lot on the east side was re-stripped to change the parallel spaces to angled which added 7 spaces for a total of 21. The drive aisle was reduced from 20 ft. to 6.9 ft. This situation has existed for approximately 47 years.

Similar to most of the properties along Sunrise Drive and Galen Drive, the parking lot does not have landscaping. This detracts from the property, neighboring properties, and does not provide an area for stormwater to drain.

In order to meet this criteria, it is necessary to add landscaping to the parking lot which protect the general welfare of the community through drainage and add to the appearance of the surrounding properties.

Recommendation Approval subject to the placement of landscaping at the end of each angled space along the side property line inclusive of ground cover and one (1) palm tree per space. The parking lot plan shall include the landscaping requirement and be approved by the BZP Director prior to the issuance of permit to re-stripping the lot.

Criteria 2 Is compatible with the surrounding land uses and would not be detrimental to the community.

Analysis All of the buildings on Sunrise Drive and Galen Drive have surface parking lots with very little landscaping. Parking lots on Sunrise and Galen Drives also have narrow driveways and many lack landscaping.

As such, the parking lot is compatible with those of the surrounding properties.

Recommendation Approval

RECOMMENDATION

Staff recommends approval of the variances subject to the following:

1. The placement of landscaping at the end of each angled parking space along the side property line including ground cover and one (1) palm tree per space. The parking lot plan shall include the landscaping requirement and be approved by the BZP Director prior to the issuance of permit to re-strip the lot.
2. The recording of a covenant on a form approved by the Village Attorney stating that the applicant holds the Village harmless in the event of insurance claims arising from the width of the driveway or design of the parking lot be presented to the Village prior to the issuance of a building permit for the re-striping and landscaping of the parking lot.



VILLAGE OF KEY BISCAYNE

Department of Building, Zoning and Planning
88 West McIntyre Street, Suite 250 Key Biscayne, FL 33149
Phone (305) 365-5512 Fax (305) 365-5556
www.keybiscayne.fl.gov

PLANNING AND ZONING APPLICATION

Date Filed: 8-28-12

File #: RV-34
(to be completed by Staff)

1. REQUEST FOR:

- () SUPERVISORY VARIANCE
() ADMINISTRATIVE VARIANCE
(x) REGULATORY VARIANCE
() APPEAL OF AN ADMINISTRATIVE DECISION
() SITE PLAN APPROVAL
() UNUSUAL USE
() OTHER
() AMENDMENT TO ZONING ORDINANCE
() SPECIAL EXCEPTION
() AMENDMENT TO THE COMPREHENSIVE PLAN
() ZONING DISTRICT CHANGE

Explain your request:

Several variances to allow the Applicant to obtain a building permit to complete asphalt overlay and re-striping of parking lots.

2. Street Address of Property: 250 - 260 Sunrise Drive, Key Biscayne

Legal Description: Lot(s) 7 & 8 Block 2

Subdivision: RUTGERS SUBDIVISION, PB 76/P62

3. Name of Applicant: Sunrise Manors Inc., a Condominium

Mailing Address of Applicant: C/o Whitney MacEachern 250-260 Sunrise Drive
Apt. A, Key Biscayne, FL 33149

Business Telephone: 305-206-6157 Home Telephone: 305-365-1821

Fax: Email: whitney@maceachern.net

4. Name of Property Owner if Different from Applicant: N/A

Address of Property Owner if Different from Applicant: _____

Business Telephone: _____ Home Telephone: _____

Fax: _____ Email: _____

5. Contact Person: Name Mark E. Fried, Esq.

Address Mark E. Fried, P.A. 1110 Brickell Ave., Ste. 310, Miami, FL 33131

Telephone: 305-371-7079 Fax: 305-371-5727

6. Name/address of anyone else who should receive notice of the hearing?

List is attached.

7. If applicant is owner, indicate date purchased: August 5, 1965

8. If applicant is lessee, indicate date leased N/A Years _____

9. Is there an option to purchase the property? Yes () No (X)

10. Is the request the result of a violation notice? NO If yes, attach a copy of the violation.

11. Existing use of property condominium. If residential, how many apartments 14 ?

hotel units N/A ? If commercial, how many sq. ft. in your space N/A ?

Single family home? Yes () No (X)

12. If this application pertains to an Appeal of an Administrative Decision, indicate the basis of the appeal. (If necessary attach additional explanation)

N/A

13. If this is a request for a variance, the Code requires that you substantiate why this request should be granted. In order to do this properly, please indicate how your request complies with the following standards:

- a. Maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community.

See attachment

-
- b. Is compatible with the surrounding land uses and would not be detrimental to the community.

See attachment

14. If this is a request for any other type of application, please see staff for a listing of the evaluation criteria.
15. All supporting data and exhibits submitted with this application become a permanent part of the public records.
16. If you are a lobbyist as described in the Village Code, please contact the Village Clerk at (305) 365-5506.

13.

Applicant requests 3 variances:

1. waive the size and dimension requirements to maintain the six (6) angled parking spaces on the east side of the property;

2. waive the aisle width of the off-street parking facilities; and

3. waive the landscaping strip along the east property line of the Property.

a. Maintains the basic intent and purpose of the zoning, Subdivision and other land Use Regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community.

The applicant has maintained the parking spaces as depicted in the schematic since March 2, 1976. An aerial photograph of the Property taken on September 20, 1968 obtained from Miami History Museum photographic archives depicts that the parking spaces on the east side of the Property were angled parking spaces. The applicant's maintaining the parking spaces and striping as existed for more than 44 years does not affect the stability and appearance of the community. Allowing the applicant to maintain its off-street parking as it has during the twelve years the Village of Key Biscayne has existed is maintaining the basic intent and purpose of the zoning.

b. Is compatible with the surrounding land Uses and would not be detrimental to the community.

The applicant has maintained its off-street parking (parking space angles, widths, lengths and aisle width) while the surrounding land uses were developed. The applicant's continued use of its off-street parking for more than 44 years has not been detrimental to the community and would not be detrimental to the community by allowing the applicant to repave its parking facilities and re-striping them as they have existed. The granting of the variance is compatible with the surrounding land uses - condominium. Since the conditions of the Applicant's parking lot striping has been maintained for more than 36 years, Applicant's request is compatible with the surrounding land uses and would not pose any threats on or be detrimental to automobile or pedestrian traffic on Sunrise Drive or the community.

SUPERVISORY VARIANCES ONLY

The Supervisory procedure requires the nearest abutting property owner to approve your request and your certification that the work was not performed by you. Your signature on this application constitutes your certification that you did not perform the work. The next step is to request the nearest property owner to sign below or provide a letter approving your request. Their signature certifies that they have read this application and approves of the request.

ABUTTING PROPERTY OWNER AFFIDAVIT

I, the undersigned, have read or have had read to me the information applicable for a request for a Supervisory Variance from the Zoning Regulations. I fully understand that by subscribing my name to the below consent form that I am waiving any objection to the proposed construction as outlined above and as shown on the plans accompanying this application. I further certify that I have subscribed my name freely and without any duress or apparent misrepresentation on the part of the applicant.

Date	Name (Type or Print)	Address	Signature

ADMINISTRATIVE VARIANCES ONLY

The Administrative Variance procedures require all abutting property owners to approve your request. The attached map will assist you in identifying who must sign the below petition. It is suggested you meet with staff prior to circulating your petition.

ABUTTING PROPERTY OWNER AFFIDAVIT

I, the undersigned, have read or have had read to me the information applicable for a request for and Administrative Variance from the Zoning Regulations. I fully understand that by subscribing my name to the below consent form that I am waiving any objection to the proposed construction as outlined above and as shown on the plans accompanying this application. I further certify that I have subscribed my name freely and without any duress or apparent misrepresentation on the part of the applicant.

Date	Name (Type or Print)	Address	Signature

Date	Name (Type or Print)	Address	Signature

Date	Name (Type or Print)	Address	Signature

Date	Name (Type or Print)	Address	Signature
Date	Name (Type or Print)	Address	Signature
Date	Name (Type or Print)	Address	Signature

If you need additional signatures please use the above format.

CERTIFICATION OF COMPLIANCE WITH APPLICABLE REGULATIONS

(I) (We) certify that (I) (we) understand and will comply with the provisions and regulations of the Zoning Regulations. (I) (we) further certify that the above statements and drawings made on any paper or plans submitted herewith are true to the best of (my) (our) knowledge. (I) (we) understand that the application and attachments become part of the official records of the Village and are not returnable.

Signature of Applicant: By: Sunrise Manors Inc. [Signature] Date 8-22-2012

Signature of Owner: By: Sunrise Manors Inc. [Signature] Date 8-22-2012

Application Received by: [Signature] Date 8-28-12

Approved by: _____ Date _____

AFFIDAVITS

Complete one or more of the following that relates to your request.

Tenant or Owner Affidavit (if tenant is applicant then owner must sign owner/power of attorney affidavit)

I, _____, being first duly sworn, depose and say that I am the owner/tenant of the property described herein and which is the subject matter of the proposed hearing; that all the answers to the questions in this application and all supplemental data attached to and made a part of the application are honest and true to the best of my knowledge and belief.

I, _____, hereby authorize the staff of the Village of Key Biscayne to enter my property for the purpose of inspecting the property and posting a NOTICE OF PUBLIC HEARING on my property and I take the responsibility of removing this notice after the date of hearing. I also authorize members of the Village Council to inspect my property. I understand these inspections are necessary to permit staff and members of the Village Council to perform their responsibilities as required by the Zoning Ordinance.

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

Signature of Applicant

Sworn to (or affirmed) and subscribed before me this
____ day of _____, by _____
Name of person making statement

Signature of Notary Public - State of Florida

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

Corporation Affidavit

I, Whitney McEachern, being first duly sworn, depose and say that we are the President/Vice President, and Secretary/Ass't. Secretary of the aforesaid corporation, and as such, have been authorized by the corporation to file this application and all supplemental data attached to and made a part of this application are honest and true to the best of our knowledge and belief; that said corporation is the owner/tenant of the property described herein and which is the subject matter of the proposed hearing.

I, Whitney McEachern, president of Sunrise Manors Inc., hereby authorize the staff of the Village of Key Biscayne to enter my property for the purpose of inspecting the property and posting a NOTICE OF PUBLIC HEARING on my property and I take the responsibility of removing this notice after the date of hearing. I also authorize members of the Village Council to inspect my property. I understand these inspections are necessary to permit staff and members of the Village Council to perform their responsibilities as required by the Zoning Ordinance.

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

Whitney McEachern
Signature of President (Corp. Seal)

Sworn to (or affirmed) and subscribed before me this
22 day of August 2012, by Whitney McEachern, President of Sunrise Manors Inc.
Name of person making statement

Signature of Notary Public - State of Florida

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification _____
Type of Identification Produced _____

	MARK E. FRIED Notary Public, State of Florida
	My Comm. Exp. March 15, 2016 No. EE 151208

Owner/Power of Attorney Affidavit

I, Whitney McEachern, being duly sworn, depose and say that Sunrise Manors Inc. is the owner of the described real property and that I am aware of the nature and effect the request for: Regulatory Variances

relative to my property, which is hereby made by me OR I am here by authorizing Mark E. Fried, Esq. to be my legal representative before the Village Council.

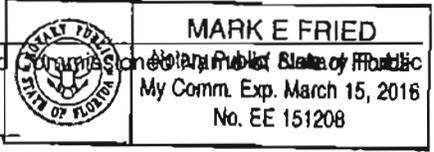
I, Whitney McEachern, hereby authorize the staff of the Village of Key Biscayne to enter my property for the purpose of inspecting the property and posting a NOTICE OF PUBLIC HEARING on my property and I take the responsibility of removing this notice after the date of hearing. I also authorize members of the Village Council to inspect my property. I understand these inspections are necessary to permit staff and members of the Village Council to perform their responsibilities as required by the Zoning Ordinance.

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

Whitney McEachern
Signature of President (Corp. Seal)

Sworn to (or affirmed) and subscribed before me this 22 day of August 2015 by Whitney McEachern.
Name of person making statement

Mark E. Fried
Signature of Notary Public - State of Florida

Print, Type, or Stamp  MARK E FRIED
Notary Public, State of Florida
My Comm. Exp. March 15, 2016
No. EE 151208

Personally Known OR Produced Identification _____
Type of Identification Produced _____

MARK E. FRIED
PROFESSIONAL ASSOCIATION
ATTORNEY AT LAW
1110 BRICKELL AVENUE
SUITE 310
MIAMI, FLORIDA 33131

Telephone (305) 371-7079
Facsimile (305) 371-5727

E-Mail: mfried@markfriedlaw.com

August 27, 2012

Mr. Jud Kurlancheek, Director
Building, Zoning & Planning
Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, FL

Re: Planning and Zoning Application
Regulatory Variance
Sunrise Manors, Inc.
250 - 260 Sunrise Drive

Dear Mr. Kurlancheek,

This firm represents Sunrise Manor Inc., a Condominium, regarding its application for variances to obtain a building permit to resurface and re-stripe its parking lot.

I read the Village of Key Biscayne Comment Sheet regarding Approvals as of 07-20-2012. This addresses each item listed:

A standard architectural or engineering scale drawing is enclosed;

45 degree parking spaces existed since at least 1968. The applicant is requesting a variance for the width of the aisle;

Survey showing strip of landscaping was a building plan previously filed that is being withdrawn. There has been no landscaping or an area cut out of the pavement for landscaping since at least 1968. The applicant is requesting a variance for landscaping; and

The parallel parking layout is being withdrawn. With 45 degree parking spaces there is not 22' width for the aisle. The applicant is requesting a variance from the 2-way aisle.

The issue of ADA parking was also addressed. It is my opinion that the ADA parking is not applicable to the applicant. The Code of the Village of Key Biscayne does not require handicapped parking. Part 36 - Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities does not apply to applicant. Part 36 applies to any -- (1) Public accommodation; (2) Commercial facility; or (3) private entity that offers examinations or courses. The Florida Building Code: Accessibility does not apply. The scope of the code establishes standards for accessibility to *places of public accommodation* and *commercial facilities* by individuals with disabilities. The applicant's property is neither of these as defined by the code. The Florida Building Code is applicable to a Private Building or Facility defined as, "A place of public accommodation or a commercial building or facility subject to title III of the ADA and 28 CFR part 36 or a transportation building or facility subject to title III of the ADA and 49 CFR 37.45." The applicant's private building is not subject to those provisions. A copy of the ADA provisions and the Florida Building Code provisions are attached.

If required as a condition of granting the variances necessary to resurface the applicant's parking lots and restripe them as they had existed from at least 1968 to 2010, when the Southern Asphalt started repaving the lot without obtaining a permit, the applicant would enter into an agreement to hold harmless and indemnify the Village of Key Biscayne, its manager and employees from and against any damages, judgments, deficiencies, settlements, liabilities, and expenses (including without limitation, attorney's fees) from any and all liability and claims for damages to property or injuries to persons that may arise against the Village as a result of its approving the variances.

Very truly yours,

MARK E. FRIED, P.A.

By: 
Mark E. Fried

Enclosures

cc: Whitney MacEachern

Key Islander Condominium Association, Inc.

% C.P.M. Corp. 1801 Coral Way, Suite 305, Miami, FL 33145

August 30, 2012

Whitney MacEachern, President of Sunrise Manors Inc., a Condominium, the owner of the common elements of the Condominium, notified the undersigned, president of Key Islander Condominium Association, Inc., of its application for a regulatory variance to repave and restripe its parking lots and driveways.

The information applicable for a request for a Regulatory Variance from the Zoning Regulations was reviewed and considered by the association's Board of Directors. The Board of Directors did not object to the proposed construction by Sunrise Manors, Inc., a Condominium.

The Board of Directors of the Association authorized the president of the Association to execute for and on behalf of the Association, this waiver of any objection to the proposed construction as outlined in Sunrise Manors Inc.'s Planning and Zoning Application and as shown on the plans accompanying its application.

I further certify that I have subscribed my name freely and without any duress or apparent misrepresentation on the part of Ms. MacEachern or Sunrise Manors Inc.

KEY ISLANDER CONDOMINIUM ASSOCIATION, INC.



Danilo Dueñas, MD
President, Board of Directors
Key Islander Condominium Association, Inc.
290 Sunrise Drive, Unit # 104
Key Biscayne, FL 33149

Sunrise Manors 260 Sunrise Drive (East Side)



Sunrise Manors 250 Sunrise Drive (West Side)

