

Town of Fort Myers Beach
Public Works Services, Inc.
Agenda Item Summary

Blue Sheet Number: **2011-123**

1. Requested Motion: Motion to approve a Release of Lien in **Meeting Date:** 10/17/11
Code Enforcement Case No. 2005-051F upon payment to the Town of the amount of \$37,035.00.

Why the action is necessary: The property owner is asking the Town Council to approve a Release of Lien and wishes to be granted a reduction in the amount of the lien.

What the action accomplishes: Determines an appropriate amount for reduction of the lien which, upon payment, releases lien attachments on all properties due to Code Enforcement Case No. 2005-051F

2. Agenda:

Consent
 Administrative

3. Requirement/Purpose:

Resolution
 Ordinance
 Other

4. Submitter of Information:

Council
 Town Staff
 Town Attorney

5. Background:

Code Enforcement Case No: 2005-051F, (5858 Lauder St) was heard by Town of Fort Myers Beach Special Magistrate on April 12, 2006. The Magistrate found the property to be in violation of the Town's Land Development Code for illegally converting a single family residential home into a triplex and creating a ground level living unit in violation of flood plain regulations. Subsequently, the property owners filed an appeal of the Code Enforcement Order in Lee County Circuit Court. During the pendency of the appeal, the property owner, on May 10, 2006, requested a stay of the fine. The request was granted with certain conditions. Condition #4 states, **"Such a stay is conditioned upon the Appeal being duly prosecuted and the Respondent providing written status reports to Code Enforcement every 4 months."** There is no written record of any status report being provided to the Town of Fort Myers Beach Code Enforcement Division. The appeal was denied on December 4, 2009. The property owner eventually corrected the violations and the property was found to be in compliance on July 27, 2010.

See the Town Manager's memo dated October 6, 2011 detailing the recommendation for a lien reduction to an amount of \$37,035.00

6. Alternative Action:

Decline to reduce the lien.

7. Management Recommendations:

Approve the lien reduction to an amount of \$37,035.00

8. Recommended Approvals:

| Town Manager | Town Attorney | Finance Director | Public Works Director | Community Development Director | Cultural Resources Director | Town Clerk |
|--------------|---------------|------------------|-----------------------|--|-----------------------------|------------|
| | | | |  | | |

9. Council Action:

Approved Denied Deferred Other

TO: MAYOR AND COUNCIL MEMBERS
FROM: TERRY STEWART, TOWN MANAGER
DATE: OCTOBER 6, 2011
SUBJ; LIEN REDUCTION REQUEST FOR 5858 LAUDER STREET PROPERTY, Case No 2005-051F

This memorandum shall provide a recommendation for reduction of the outstanding lien amount currently in place for the property located at 5858 Lauder Street in the Town of Fort Myers Beach. The owner of that property, Mr. George Ganim wishes to secure a Release of Lien so that he may legally sell or transfer the property.

Our policy is that violations on properties subject to a lien must be corrected before a lien reduction request will be presented to council. Code Enforcement has validated that the violation on this property was corrected. In addition, it has also been policy for staff to recommend that all hard costs be recouped within any reduction recommendation and Town Council has consistently accepted those recommendations. Hard costs for this case include a \$285 magistrate hearing fee, and \$25,000 in attorney's fees. The attorney's fees in this case result from an appeal the property owner filed with the Lee County Circuit Court. The Town was successful in defending against the appeal and the Town's enforcement action was upheld.

The original case was heard by the Town Magistrate on April 12, 2006 and the property owner was given thirty (30) days to correct the violation. The property owner elected to file appeal rather than correct the violation, then appeared before the magistrate again on May 10, 2006 where he asked for and received a stay of the daily lien accrual during the pendency of the appeal. As noted that appeal was decided in the Town's favor on December 4, 2009.

Because the daily lien accrual was stayed during the pendency of the Circuit Court appeal and the appeal was subsequently denied, the lien accrual from May 10, 2006 through the violation correction date of July 27, 2010 is 1,539 days at \$50.00 per day, totaling \$76,950.00. In determining a reduction amount to recommend to the Town Council I believe it fair to use the appeal decision date of December 4, 2009 as a starting point. The violation compliance date of July 27, 2010 establishes a 235 day period at \$50.00 per day totaling \$11,750.00.

In conclusion, the recommendation is for the collection of all hard costs, \$25,000 + \$285 plus the fine amount of \$11,705, for a total amount of \$37,035.

The Ganim Law Firm, P.C.
GANIM, GANIM & GANIM

4666 MAIN STREET
BRIDGEPORT, CONNECTICUT 06606

TELEPHONE (203) 372-7772
FAX (203) 374-7199

527 TUNXIS HILL ROAD
2ND FLOOR LEFT
FAIRFIELD, CONNECTICUT 06825
REPLY TO BRIDGEPORT ADDRESS

GEORGE W. GANIM*
GEORGE W. GANIM, JR.
RAYMOND W. GANIM†
PAUL J. GANIM
THOMAS G. GANIM
MARY G. KOLESNIK
6/14/65 - 10/30/08

*ALSO ADMITTED IN MA
†ALSO ADMITTED IN D.C.

September 23, 2011

PARALEGALS:
SHEILA VESCIGLIO
FRANCES FALLER
VIRGINIA COLON
LOIS PAYNE

BOOKKEEPER:
LAURA HAMILTON

Mr. Terry Stewart
Town Manager
Ft. Myers Beach, FL 33901

Re: Town of Ft. Myers Beach v. George W. Ganim
5858 Lauder Street, Ft. Myers Beach, Florida

Dear Mr. Stewart:

The undersigned, George W. Ganim is formally requesting to be placed on the Town Council agenda for Monday, October 17, 2011 for the purpose of requesting a mitigation of a lien placed upon the above property relating to a 2006 zoning violation. The alleged violations were contested and a hearing held before the special magistrate who made a finding against me which were subsequently appealed to the courts, who in turn upheld the magistrate decision.

The magistrate issued a \$50 a day code enforcement order beginning May 10, 2006, however, the running imposition of the fine was stayed by the magistrate pending a final determination by the appeals court.

The final appeal to the District Court of Appeals was denied on December 4, 2009. Following the court's decision, the property engaged a contractor to abate the violation and full compliance with the code enforcement order occurred May 5, 2010.¹ The fine imposed by the magistrate was \$50 per day plus \$285 for cost of prosecution. While this is the maximum liability, there are mitigating factors which I desire the council to be aware of and supported by the exhibits.

1. In the year 2000, my wife and I purchased the property, which was across the street from where we lived, which consisted of the main house and an upper two room accessory apartment and lower studio unit. (Exhibit 1)

¹ However, the town contends full compliance did not occur until 60 days later while it awaited a report from an engineer engaged by the owner at the request of the town.

September 23, 2011

Page Two

2. In the year 2005, Hurricane Charlie damaged the lower unit. At that time it was covered by FEMA flood insurance under a policy issued which verified that the lower unit was pre-firm construction and therefore insurable. (Exhibit 2)

3. Thereafter, I undertook to engage a contractor to restore the lower unit and he obtained, on my behalf, a Lee County building permit on March 9, 2005, which was renewed on November 13, 2006. In issuing the permit, Lee County recognized the pre-firm nature of the lower unit. (Exhibit 3)

4. The work to restore which was undertaken by the contractor was protected by §2-50 of the Ft. Myers Beach code entitled "Vested Rights" which provided:

"Persons holding valid building permits or development orders... shall be vested to complete their development..." (Exhibit 4) [emphasis added]

It is to be noted that the work was proceeding in good faith under a "valid" permit.

5. The owner in reliance upon the building permit, expended significant sums of money on the remodeling work of this lower apartment damaged by Hurricane Charlie.

6. That while the work was progressing, the contractor was visited by the ZEO on May 18, 2005 to confirm that work was being done under a permit and upon confirmation the work was allowed to proceed. (Exhibit 5)

7. Thereafter, at the direction of the then development director, Jerry Murphy, the ZEO on July 28, 2005 issued a "stop work order" and no further work was performed pending a resolution. (Exhibit 6)

8. The then director of development, Jerry Murphy adopted the position that the lower unit was not a legal pre-fema unit and based much of his testimony on "speculation". (Exhibit 7) He also contended that the upper unit was illegal and claimed I was "changing a single family house into a triplex". (Exhibit 8)

9. Following the magistrates finding of violations which included both the lower unit for which the building permit had been issued and the upper unit which was not involved in the construction, an appeal was taken and upon motion, a stay of fines was issued by the magistrate while the appeal was being pursued. (Exhibits 9, 10 and 11)

10. When the courts decided not to overturn the magistrate's decision on December 4, 2009 (Exhibit 12), I communicated with both Town Manager Green and ZEO Hendrick my desire to bring about corrective actions and set upon a course of engaging a contractor to do what the town requested and completed same on May 25, 2010 to the satisfaction of the building inspector. (Exhibit 16)

11. Subsequent to the court's decision, I requested the new development director, Frank Shocky to determine the legality of the upper unit and he issued a report on April 27, 2010 wherein he declared this unit to be "lawful" - this being the same unit Murphy contended was illegal. (Exhibit 15)

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BOOKKEEPER:
LAURA HAMILTON

About George W. Ganim

In 2005, when confronted with what I considered to be the wrong actions upon the part of previous town officials in administering code enforcement, my lawyerly instinct was to fight back. Fight back I did, but in the end, I lost at a great cost of money, time and effort only to give proof to the old adage that "you can't fight city hall".

I am now 84 years of age with deep roots in this community dating back to 1966, where my wife and I own a home on this island. I lived through both the depression and WWII after which I obtained my law degree with high honors from Boston University, married my wife of 55 years and together we raised 8 children, all of whom grew up experiencing the pleasures of Ft. Myers Beach.

My love and respect for the law motivated 6 of my children to become lawyers and be part of our family law firm. I am proud to say in the 60 years of my practice, I have never been cited once for unethical conduct. During my long tenure of practice, I served as Deputy City Attorney for the City of Bridgeport and was appointed counsel to the Charter Revision Commission, charged with updating the Charter and ordinances of the City of Bridgeport.

Six years of battling back against the town has been a costly experience to me and yet as a citizen and property owner, I feel that at times one must stand up and fight. Fortunately, under our system of government we are allowed to fight back and at the end of the day, one should not be punished for employing the very system that was put in place to protect us all. Suffice it to say, I never intended to violate the code and acted in good faith with great reverence for the law.

Finally, we all share the same goals to making Ft. Myers Beach an outstanding community and it serves no real purpose to punish one of its citizens for utilizing the system that was designed to protect all of us.

Thanking you, I am

Yours truly,

George W. Ganim

GWG/sav

INDEX TO EXHIBITS

In Re: 5858 Lauder Street, Ft. Myers Beach

- Ex. 1 4/1/2000 - Purchase of house by Ganim and history of prior building permits issued by Lee County
- Ex. 2 2004 - Hurricane Charlie/Flood insurance covers lower unit as legal pre-fema flood regulations of 9/19/84
- Ex. 3 3/9/2005 & 11/13/06 - Building permits issued and renewed by Lee County to restore lower apartment from Hurricane Charlie damage (see Sec. 2-50 "Vested rights" Ft. Myers Ordinance)
- Ex. 4 5/18/2005 - ZEO report of "illegal work" on lower apartment "unfounded, permit exists for work" - work allowed to proceed by B. Konier, ZEO
- Ex. 5 7/28/2005 - "Stop work order" - charge: ground level in violation of flood plain regulations and changing single family to triplex
- Ex. 6 7/25/2005 - Notice of Code Violations issued by B. Konier, ZEO Code Enforcement (see footnote)*
-
- Ex. 7 2006 - Jerry Murphy transcript "speculation" testimony
- Ex. 8 4/26/06 - Second Corrective Code Enforcement Order
- Ex. 9 3/13/2006 - Motion for Stay Pending Court Appeal
- Ex. 10 4/12/2006 - Order granting Stay and automatic review of appeal status retained by magistrate
- Ex. 11 5/10/2006 - Code Enforcement Order staying fine by Magistrate
- Ex. 12 12/4/2009 - Denial of Certiorari by District Court of Appeals
- Ex. 13 1/21/2010 - Letter to Town Manager Jack Green
- Ex. 14 1/22/2010 - Letter to Dave Hedrick, ZEO
- Ex. 15 4/27/2010 - Administrative Determination and findings by Dr. Frank Shockey that upper apartment was lawful since December 15, 1997 - prior to Magistrate's hearing
- Ex. 16 5/27/2010 - Compliance work performed on lower apartment

*B. Konier was transferred to Lee County Zoning Enforcement and was recently dismissed from office on misconduct charges.

State of MASS.
County of HAMPDEN

THE FOREGOING, instrument was acknowledged before me this 31st day of MARCH, 2000, by CHRISTINE M. STEVENS, who is personally known to me or who has produced DRIVER LICENSE identification.

My Notary Commission Expires: 5-13-05
(Seal)



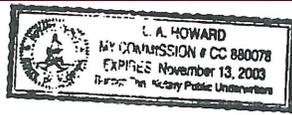
Richard L. Stevens
Signature of Notary Public
RICHARD L. STEVENS
(Print Name of Notary)

State of Florida
County of Lee

THE FOREGOING, instrument was acknowledged before me this 4th day of April, 2000, by JOSEPH E. STEVENS, who is personally known to me or who has produced DRIVERS LIC as identification.

My Notary Commission Expires:
(Seal)

Richard L. Stevens
Signature of Notary Public
RICHARD L. STEVENS
(Print Name of Notary)



| USE CODE | USE CODE DESC | NUMBER OF UNITS | UNIT OF MEASURE |
|----------|---------------------------|-----------------|-----------------|
| 100 | Single Family Residential | 9,000.00 | Square Feet |

BUILDING 1 OF 1

BUILDING CHARACTERISTICS

| IMPROVEMENT TYPE | BEDROOMS | BATHROOMS |
|-------------------------------|----------|------------|
| 3 - single family - elevated | 3 | 2 |
| MODEL TYPE | STORIES | YEAR BUILT |
| 1 - single family residential | 1 | 1971 |

BUILDING SUBAREAS

| DESCRIPTION | YEAR ADDED | AREA (SQFT) |
|----------------------------|------------|-------------|
| BASE (BAS) | 1971 | 1,796 |
| FINISHED LOWER LEVEL (FLL) | 1971 | 476 |
| FINISHED OPEN PORCH (FOP) | 1971 | 187 |
| STOOP (STP) | 1971 | 60 |
| STOOP (STP) | 1971 | 340 |

BUILDING FRONT PHOTO



Photo Date: December of 2003

BUILDING FOOTPRINT

1ST FLOOR

Building/Construction Permit Data for Parcel 33-46-24-W2-0030E,0110

Parcel Site: 5858 LAUDER ST, Fort Myers Beach, FL 33931

| Permit No | Type | Description | Permit Amount | Permit Date | Worked Date | CO Date |
|-----------|------|------------------|---------------|-------------|-------------|---------|
| 93196 | RMOV | RES - House Move | 2,000 | 12/28/1982 | 4/26/1984 | |
| 93197 | R-AD | RES - Addition | 2,000 | 12/28/1982 | 4/26/1984 | |
| 93198 | REMO | OLD - Remodeling | 3,000 | 12/28/1982 | 4/26/1984 | |

[[Display Real Property record for this parcel](#)]

[[Parcel Queries Page](#) | [Lee PA Home](#)]

F-7

Home

Status

Parcel

Help

Permit Status

Information below summarizes the permit you selected.

Permit Number: 2005-00724
Case Type: Alteration/Interior Remodeling
Value: \$3,000.00
Status: Issued

Project Name: FT MYERS BEACH
Address: 5858 LAUDER ST FORT MYERS BEACH 33931
Strap #: 334624W20030E0110
Conditions: on off estero on lanark 1/4 on lauder **671-8887**
Description: on lower level, replace some studs, drywall, cabinets, ceramic tile, and raise electric outlets
Important Dates: Received: 1/13/2005 Issued: 3/9/2005 Finalized:
Flood Zone: AE Required Elevation: Not Applicable Flood Compliance: Not Applicable
Structural Protection: Not Applicable

Permittee:
Name: GANIM GEORGE W + JOSEPHINE
Address: 1450 ESTERO BLVD FT MYERS BEACH FL 33931

Permit Builder:
Name: GEORGE GANIM
Address: 1450 ESTERO BLVD FT MYERS BEACH FL 33931

Permitting/Plan Review Activity

| Activity | Requested | Scheduled | Completed | Disposition | County Staff |
|---|-----------|-----------|-----------|-------------|------------------|
| Application Received | 1/13/2005 | | 1/13/2005 | DONE | Debra S. Miron |
| Plan Review | 1/13/2005 | 1/20/2005 | 1/24/2005 | DONE | Dave Ortiz |
| <i>Comments: No changes in existing setbacks - hurricane damage repairs and interior modifications (electrical) to structure.</i> | | | | | |
| Review | 1/13/2005 | 1/20/2005 | 2/14/2005 | DONE | Randy Simes |
| <i>Comments: FMB Hurricane Damage RES REM RLS 1/25/05</i> | | | | | |
| Fee Determination | 1/13/2005 | | 2/16/2005 | N/A | Rhonda J Tallent |
| Final Documents Required | 1/13/2005 | | 3/9/2005 | DONE | Tracy Jones |
| <i>Comments: NOC & SIGN OWNER BUILDER DISCLOSURE</i> | | | | | |
| Permit Pick-up (F) | 2/16/2005 | | 2/16/2005 | DONE | Rhonda J Tallent |
| <i>Comments: READY NEEDS NOC & NEED TO SIGN OWNER BUILDER DISCLOSURE.</i> | | | | | |

Subpermit Activity

| Activity | Requested | Scheduled | Completed | Disposition | County Staff |
|-----------------------|-----------|-----------|-----------|-------------|--------------|
| Permit Issued (F) | | | 3/9/2005 | DONE | Tracy Jones |
| Permit Info Board (F) | | | 3/9/2005 | DONE | Tracy Jones |
| Permit Req'd/Issued | | 2/14/2005 | 3/9/2005 | DONE | Tracy Jones |
| <i>Comments: O/B</i> | | | | | |

Permit Status: NOTICE OF COMMENCEMENT
Requested: 1/13/2005
Completed: 3/9/2005
Disposition: DONE
County Staff: Tracy Jones



LEE COUNTY
SOUTHWEST FLORIDA

COMMUNITY DEVELOPMENT
RESIDENTIAL BUILDING PERMIT
APPLICATION

TO BE COMPLETED BY APPLICANT:

PROP. OWNER George GANIM
STRAP # 37-46-24-W2-0030E.0110
LOT _____ BLK _____ UNIT _____
D.O. # _____
SUBDIVISION _____
JOB ADDRESS: 5858 LAUDER
PERMIT REQUESTED Remodel
DIRECTIONS TO JOB N. of Estero on LAHAR Right on LAUDER
CONST. VALUE \$ 3000- SQ. FT. 1200

CON. BUS NAME OWNER
CONTACT PERSON JACK
MAILING ADDRESS 11380 Bayside Blvd East Myers Beach 33957
PHONE # 671-8887 FAX # _____
LICENSE # _____ E-MAIL _____

Case # Per 2005-0724
Date 1-13-05
Rep. Dem

DO NOT WRITE BELOW THIS LINE
PLAN REVIEW
Date App'd 2/14/05 App'd by Randy Scand
SBC Occupancy Class RE

Type of Const. SI Bldg. Area 476
Bldg. Height 8 # Stories 1
Lin. Ft. _____ # Units 1
Radon Exempt Y Flood Exempt Y

PROPOSED CONSTRUCTION VALUATION
LA _____ Sq.Ft. @ \$ _____ /Sq.Ft. = \$ _____
O.A. 476 Sq.Ft. @ \$ 6 /Sq.Ft. = \$ 2856
Total Value = \$ _____

Construction Contract Price \$ _____
DSLD Value \$ _____ Year _____
Appraised Building Value \$ _____

SUB INFORMATION
Elec. Amps: _____ Plumbing: Y / N
Roof Type L AC: Duct Only Y / N
A/C: Seer _____ KW _____ Tons _____
Shutters: Y / N LPG / Natural Gas: Y / N
County Maintained Rd? Y / N Sgl / Dbl _____
Fire Sprinklers/Alarm: Y / N
Aluminum: Y / N Master # _____
Const. Details Mstrd? Y / N Master # _____

DO NOT WRITE BELOW THIS LINE

| TECHNICIAN | W | S | Y | N |
|---|---|---|---|---|
| Recorded Warranty Deed | - | - | - | ✓ |
| Building Addendum | ✓ | - | - | - |
| Notice of Commencement | ✓ | - | - | - |
| O/B Disclosures | ✓ | - | - | - |
| Impact Letter | - | - | - | ✓ |
| Sewer/Septic # <u>N/A</u> | - | - | - | - |
| Water Well # _____ | - | - | - | - |
| Deemed to Comply Checklist | - | - | - | - |
| Sealed Plans | - | - | - | - |
| Sealed Survey | - | - | - | - |
| Site Plans | - | - | - | - |
| Construction Drawings | - | - | - | ✓ |
| Energy Calculations + Cover Sheet | - | - | - | - |
| Truss/Roof Layout | - | - | - | - |
| Duplex Firewall Sec. | - | - | - | - |
| Typical Wall Sec. | - | - | - | - |
| Plumb./Elec. Layout | - | - | - | - |
| Window/Garage Door/Exterior Door Detail | - | - | - | - |
| Shutters | - | - | - | - |

PERMIT FEES

| Category | Amount |
|------------------------|----------------------------------|
| Gross Floor Area | <u>476</u> |
| Bldg. Permit Fee | \$ <u>52</u> |
| Fire Sprinkler | \$ _____ Plumbing \$ _____ |
| Fire Alarm | \$ _____ Electrical \$ <u>40</u> |
| Gas | \$ _____ Roof \$ _____ |
| Shutters | \$ _____ Sewer \$ _____ |
| (Admet) \$ <u>2.38</u> | HVAC \$ _____ |
| Permit Fees Sub Total | \$ <u>92.38</u> |

IMPACT FEES

| | |
|------------------|-----------------|
| Community Parks | \$ _____ |
| EMS | \$ _____ |
| Fire | \$ _____ |
| Regional Parks | \$ _____ |
| Roads | \$ _____ |
| School | \$ _____ |
| Impact Sub Total | \$ _____ |
| Radon/Admin | \$ _____ |
| Driveway Permit | \$ _____ |
| TOTAL FEES DUE | \$ <u>92.38</u> |

ZONING REVIEW
Date 1-24-05
Zoning RS (FMB)
Flood Zone AE EI 13/14
Coastal Building Zone ON
Coastal Const. Line NO
Coastal Letter Sent N/A
Lot Size 120x75
Fire District FMB
Road Class: local / private / corner
PB/R/O/B B Page 52
Land Use/Soil LOW DENSITY
Hold Date _____
Add'l Forms _____
Exempt / Var. / Hear _____

By D/O
Min. Req. Setbacks 25-25-7.5-20
Actual Setbacks NO CHANGES IN S/S

Box 2057 Kalispell MT 59903-2057

Report a claim call: (800) 759-8656



FLOOD POLICY DECLARATIONS

Revised Declaration
TYPE: DWELLING

POLICY PERIOD: 4/25/2005 to 4/25/2006

A change occurred to this policy effective: 5/13/2005

Coverage limits reflected on this declarations page are effective as of: 4/25/2005

INSURED NAME & ADDRESS



STEPNEY LLC &
GANIM, GEORGE & JOSEPHINE
4666 MAIN ST
BRIDGEPORT, CT 06606-1839

PRODUCER NAME & MAILING ADDRESS

PRODUCER#: 04500-21228-221
BROWN & BROWN INC
3820 COLONIAL BLVD STE 200
FORT MYERS, FL 33912-1094

PHONE# (239)278-0278

POLICY INFORMATION

PREMIUM PAYOR: Insured

COMMUNITY NAME
FORT MYERS BEACH, TOWN OF

COMMUNITY NUMBER
1206730429C

INSURED PROPERTY ADDRESS

5858 LAUDER ST
FORT MYERS BEACH, FL 33931-4228

POLICY TERM: One Year

BUILDING DESCRIPTION

Coverage Limitations May Apply, Refer
to your Standard Flood Insurance
Policy for details.

CONTENTS LOCATION
Enclosure and Above

Single Family
Two Floors
Attached Building w/Enclosure

PROGRAM
Regular

FLOOD ZONE
AE

CONSTRUCTION
Pre-Firm
Construction

COVERAGE & RATING INFORMATION

BUILDING

CONTENTS

PREMIUM PAID

Coverage: \$114,700
Deductible: \$500
Rates: .810/ .600

Coverage: \$8,000
Deductible: \$500
Rates: .960/ .600

Premium Subtotal: \$957.00
Previous Premium Subtotal: \$957.00
ICC Premium: \$75.00
CRS Discount: \$155.00
Expense Constant: \$.00
Federal Policy Fee: \$30.00
Endorsement Amount: \$.00
Total Premium: \$907.00

1ST MORTGAGEE
INGTON MUTUAL BANK F A
SUCCESSORS OR ASSIGNS
BOX 100564
COLUMBIA, SC 29501
PHONE#: 0687167130

2ND MORTGAGEE

This Declarations Page, in conjunction with the policy, constitutes your Flood Insurance Policy.
IN WITNESS WHEREOF, we have signed this policy below and hereby enter into this Insurance Agreement.

Ramani Ayer
President

M. Wheeler
Secretary

Hartford Fire Insurance Company

INSURED COPY

5/16/2005
EN



necessary hardship.

ec. 6-406. Penalty for violation of article.

The director and the coordinator are authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article.

Sec. 6-407. Applicability of article.

This article shall apply to the entire Town of Fort Myers Beach. No structure or land shall be located, extended, converted, or structurally altered without full compliance with the terms of this article.

Sec. 6-408. Basis for establishing flood regulations.

The entire Town of Fort Myers Beach has been designated an area of special flood hazard by the Federal Emergency Management Agency. Their maps illustrating the minimum federal floodplain regulations as adopted on September 19, 1984, and all revisions thereto, are adopted by reference and declared to be a part of this article. These flood insurance rate maps show base flood elevations and coastal high-hazard areas (V zones) for the entire town and are available for inspection at town hall and at the Lee County Administration Building, 2115 Second Street, Fort Myers, or can be purchased by calling 1-800-358-9616. The individual map panels are numbered as follows:

| General area shown | Panel number | Latest |
|------------------------|--------------|---------|
| Bowditch - Donora | 125124 0429D | 9/20/96 |
| Donora - Gulfview | 125124 0433B | 9/19/84 |
| Gulfview - Flamingo | 125124 0441B | 9/19/84 |
| Flamingo - Buccaneer | 125124 0442C | 7/20/98 |
| Buccaneer - Big Carlos | 125124 0444D | 7/20/98 |

Sec. 6-409. Reserved.

Sec. 6-410. Conflicting provisions.

Where this article and any other part of this code conflict or overlap, whichever imposes the more stringent restriction shall prevail.

Sec. 6-411. Reserved.

Sec. 6-412. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This article shall not create liability on the part of the town council, or by any officer or employee thereof, for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

Secs. 6-413-6-440. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 6-441. Designation of administrator.

Lee County's flood insurance coordinator ("coordinator") is hereby appointed to administer and implement the provisions of this article on behalf of the Town of Fort Myers Beach.

Secs. 6-442-6-443. Reserved.

Sec. 6-444. Applications and certifications.

(a) The provisions of this article will be enforced concurrently with review of proposed building permits and development orders. No separate application is required. However, the following information is required on the plans submitted for review:

- (1) Elevation, in relation to mean sea level, of the proposed lowest floor of all structures;
- (2) Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed; and
- (3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in § 6-472, when dry or wet floodproofing is proposed.

(b) A permit holder must submit to the coordinator a floor elevation or floodproofing certification after the lowest floor is completed, or, in instances where the structure is subject to the regulations applicable to coastal high-hazard areas, after placement of the horizontal structural members of the lowest floor:

- (1) Within 21 calendar days of establishment of the lowest floor elevation, or floodproofing by whatever construction means, or upon placement of the horizontal structural



Brown & Brown, Inc.
3826 Colonial Boulevard, Suite 200
Fort Myers, Florida 33913-1013
352-938-0178 • FAX 352-938-1994
Toll Free 800-645-1808
www.brownandbrown.com

November 29, 2005

George W Ganin
4666 Main Street
Bridgeport, CT 06606

RE: Flood policy # 99013815402005 covering location:
5858 Lauder St., Ft. Myers Beach, FL

Dear Mr. Ganin,

We have reviewed your Flood policy covering the captioned location, and find that you are properly insured for building coverage under the elevated floor. Your policy reflects use as an apartment, and you are being charged a premium for this use. The elevation certificate prepared for your purchase of Flood coverage also indicated there is use of an area under the elevated floor.

FEMA, in processing your Hurricane Charley claim, in 2004, found you are being properly insured for the use of this building. If you were not, FEMA would have billed you additional premiums to bring your premium to the correct level for the use and coverage for the building, or denied your claim. They did neither.

Since your building was built in 1971, prior to the mapping date of 1984, any coverage purchased without the elevation certificate would not have provided coverage for the enclosure.

Your Flood policy outlines the coverage provided for the enclosure.

Please contact me with any further questions.

Sincerely,

Janet Collins
Janet Collins, ACSR
Agent

*FEMA
found use
of bldg is
properly used
by flood
policy*

22



265 Congress Street
Bridgeport, CT 06604
(800) 348-FIRE • (203) 367-7766
Fax: 367-9216

John J. Cotter, Jr.
President
Richard Ouellette, S.P.P.A.
Vice President
John D. Cotter
Field Operations Manager

August 1, 2005

RE: Carrier : The Hartford Fire Insurance Company
Insured : Ganim, George
Policy No : 99013815402004
Loss Location: 5858 Lauder St, Ft Meyers Beach, FL
Loss Date : 8/13/04
Loss Type : Flood Damage
Our File No : D-2475

To Whom It May Concern:

This will follow our discussion with Mr. Ganim regarding the above captioned property on recent date.

Please be advised, the undersigned represented Mr. Ganim on a flood damage claim for the captioned property, date of loss, August 13, 2004.

A claim was made and collected for damages to the lower section of this building, which was an apartment. A copy of the detailed building estimate is enclosed identifying the items made for claim.

This structure dated the pre building elevated rules of National Flood, and coverage was afforded for this 1st floor apartment damage.

If I can be of any further assistance, please do not hesitate to contact me.

Respectfully submitted,

Richard R. Ouellette, S.P.P.A.
Vice President
NUTMEG ADJUSTERS, INC.

RRO/dmm
Enclosures

BUILDING PERMIT

Alteration/Interior Remodeling

PERMIT NUMBER: RES2005-00724

ISSUED: 03/09/05
EXPIRES: 09/09/05

Owner Name: GANIM GEORGE W + JOSEPHINE
 Contractor: GEORGE GANIM
 Project Name: FT MYERS BEACH
 Description: on lower level, replace some studs, drywall, cabinets, ceramic tile, and raise electric outlets
 Job Address: 5858 LAUDER ST FORT MYERS BEACH 33931
 Zoning: FMB-RS Flood: N
 Coastal Zone: Y Flood Compliance:
 SETBACKS: Front Rear: R. Side: L. Side:
 Minimum Distance Between Structures: Rear Left: Right:
 Number of Amps: Upgrade: Number of Meters:
 Relocate: Number of Pedes: Engineering:
 Type of Mechanical Permi
 New/Replace Interior / Exterior: Number of Compressors: Number of Exhaust Hoods:
 Type of Plumbing Permit: Living Area:
 Type of Roof Permit: Type of Septic Permit: HRS No.:
 Type of Fire Permit: Fire Master No.:
 Type of AC System : KW : Tons : Seer:
 INSPECTION REQUEST LINE: 479-8997

| DATE | BY | DATE | BY |
|-------------------------|-------|-----------------------|-------|
| 101 Foundation | _____ | 501 Roof Dry-In | _____ |
| 102 Floor | _____ | 502 Roof Process* | _____ |
| 103 Tie Beam** | _____ | 503 Roof Final | _____ |
| 104 Columns/ Pilings | _____ | 205 Gas Rough | _____ |
| 130 Sheathing | _____ | 208 Gas Line | _____ |
| Straps Eng. and | _____ | 209 Gas Tank | _____ |
| Bucks** | _____ | 206 Gas Final | _____ |
| 105 Framing | _____ | 125 Shutter Final | _____ |
| 903 Tenant Sep (Duplex) | _____ | 106 Final Building** | _____ |
| 107 Insulation | _____ | 204 Final | _____ |
| 201 1st R. | _____ | 305 Final | _____ |
| 202 2nd R. Plumb | _____ | 402 Final HVAC | _____ |
| 203 Sewer | _____ | 906 Rough Fire | _____ |
| 301 T. Pole | _____ | 902 Fire Final | _____ |
| 302 TUG/ 310 TOH** | _____ | Septic/ Call 332-9560 | _____ |
| 303 Service Change | _____ | Wells/ Call 479-8114 | _____ |
| 304 R. Electrical | _____ | 112 Aluminum | _____ |
| 401 Rough HVAC | _____ | 117 Shed | _____ |

FEMA req'd prior to (103), **(130) must be passed prior to a (501) insp., **Appropriate form letter req'd prior to a (302) or (310) insp., *(502) req'd on Concrete Tile Roof only, *Termite Certificate req'd prior to CC or CO

FEDERAL AND STATE LAWS REQUIRE THAT FOR DEMOLITION AND RENOVATIONS THE OWNER AND/OR OPERATOR TO SUBMIT A NOTICE TO THE DEPARTMENT OF ENVIRONMENTAL PROTECTION PRIOR TO THE REMOVAL OF ASBESTOS PRODUCTS AND /OR THE DEMOLITION OF A STRUCTURE. FOR MORE INFO CONTACT DEP AT 239-332-6975
 WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. IF YOU DO INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT. IN ADDITION TO THE REQUIREMENTS OF THIS PERMIT THERE MAY BE ADDITIONAL RESTRICTIONS APPLICABLE TO THIS PROPERTY THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY. THERE MAY BE ADDITIONAL PERMITS REQUIRED FROM OTHER GOVERNMENTAL ENTITIES SUCH AS WATER MANAGEMENT DISTRICTS, STATE OR FEDERAL AGENCIES. THIS PERMIT IS VOID IF THE FIRST INSPECTION IS NOT MADE WITHIN 6 MONTHS FROM THE DATE ISSUED OR IF NO INSPECTION HAS BEEN MADE FOR A PERIOD OF 6 MONTHS FROM THE MOST RECENT PASSED INSPECTION. BUILDING PLANS MUST BE ON JOBSITE AT TIME OF INSPECTION. REINSPECTION FEE IS \$25.00

THIS CARD MUST BE PLACED ON A BOARD AT EYE LEVEL SO IT CAN BE READ FROM

John R. Bosserman, P.A.
Engineering Services

8695 College Parkway - Suite 339
Fort Myers, Florida 33919

December 18, 2004

Lee County Codes & Building Services
P.O. Box 398
Fort Myers, Florida 33902-0398

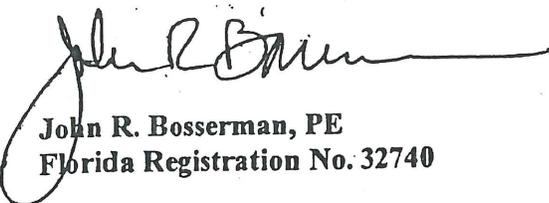
RE: 5858 Lauder St.
Fort Myers Beach

The finished portion of the ground level of this single family elevated piling residence experienced water damage due to Hurricane Charley. All walls are non-load bearing wood frame partitions, several wood studs are badly damaged by what appears to be termites.

A termite inspection is recommended as a first priority to determine if termites are presently active. Treatment should follow if they are. Either way, all damaged studs should be replaced or the damaged sections cut out, replaced and spliced with a 1/2" plywood, 3-1/2" X 12", centered splice plate and (4) 8d nails each half at 1-1/2"oc, staggered.

Repair and replacement also should include raising all electrical outlets that are below 48" AFF; removal and replacement of exterior wall insulation; removal and replacement of all water damaged finish materials (ie. flooring, wallboard and trim); clean-up and painting.

Sincerely,



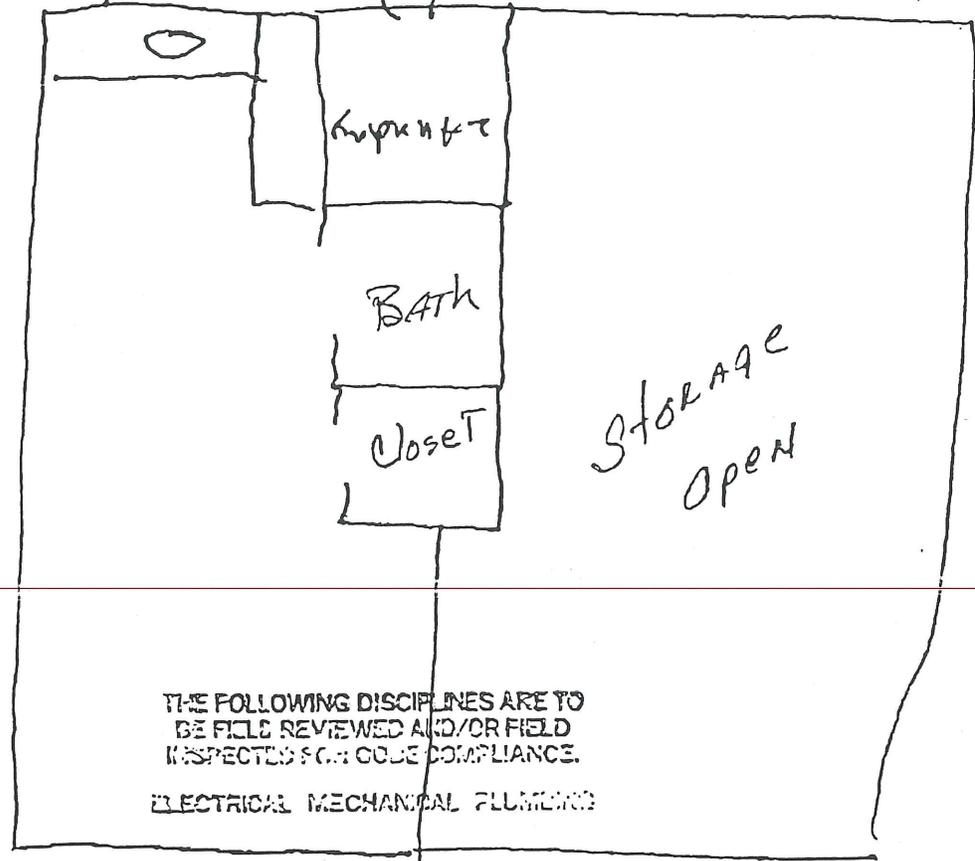
John R. Bosserman, PE
Florida Registration No. 32740

REVIEWED
FOR CODE COMPLIANCE
DEVELOPMENT SERVICES
BY Rajay Suresh DATE 2/14/05

Tel. (239) 278-0093 • Fax (239) 278-0039

5858 Laundry - Lower Level

Replace drywall - all walls
Replace Cabinets



THE FOLLOWING DISCIPLINES ARE TO
BE FIELD REVIEWED AND/OR FIELD
INSPECTED FOR CODE COMPLIANCE.
ELECTRICAL MECHANICAL PLUMBING

- Tile Floor over existing Concrete
- Raise electrical outlets
- Replace some studs (damaged by Termites)
- Replace front door

Reviewed by: RLS

All window, exterior door, and garage door cut sheets (showing installation and wind load compliance) must be on job site for inspector's review.

BUILDING PERMIT APPLICATION ADDENDUM

(MUST BE COMPLETED IF CONSTRUCTION VALUE IS \$2500.00 OR MORE)

Fee Simple Titleholder's Name (if other than owner) _____
Fee Simple Titleholder's Address _____
Bonding _____
Bonding Company's Address _____
Architect/Engineer's Name _____
Architect/Engineer's Address _____
Mortgage Lender's Name _____
Mortgage Lender's Address _____

This application is for a permit to do the work and installation indicated. No work or installation has commenced prior to the issuance of a permit and all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. I understand that a separate permit must be secured for (ELECTRICAL WORK, PLUMBING, SIGNS, WELLS, POOLS, FURNACES, BOILERS, HEATERS, TANKS AND AIR CONDITIONERS, ETC.) The foregoing information is accurate, the county has been advised of all easements on the property and all work will be done in compliance with all applicable laws regulating construction and zoning.

Under penalties of perjury, I declare that I have read the foregoing Building Permit Application Addendum and that the facts stated in it are true.

Signature (owner/authorized agent) _____ Date _____
Printed Name _____

OWNER BUILDER DISCLOSURE STATEMENT

State law requires construction to be done by licensed contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as the owner of your property, to act as your own contractor even though you do not have a license. You must supervise the construction yourself. You may build or improve a one-family or two-family residence or a farm outbuilding. You may also build or improve a commercial building at a cost of \$25,000 or less. The building must be for your own use and occupancy. It may not be built for sale or lease. If you sell or lease a building you have built yourself within one (1) year after the construction is complete, the law will presume that you built it for sale or lease, which is a violation of this exemption. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances. Any person working on your building who is not licensed must work under your supervision and must be employed by you, which means that you must deduct F.I.C.A. and with-holding tax and provide worker's compensation for that employee, all as prescribed by law. Your construction must comply with all applicable laws, ordinances, building codes and zoning regulations.

I have read and understand the foregoing Disclosure Statement.

Under penalties of perjury, I declare that I have read the foregoing Owner Builder Disclosure Statement and that the facts stated in it are true.

Signature (owner/authorized agent) John Wilcox Date POA
Printed Name John Wilcox

Spatial District Query Report

STRAP Number: 33-46-24-W2-0030E.0110

| District Name | District Value(s) | Pct of Parcel in District (if fractional) | Notes |
|----------------------------------|---|---|-------|
| Airport Noise Zone | | NOT FOUND | |
| Coastal Building Zone | Coastal Bldg Zone Coastal Building Zone (ORD 94-22) | | |
| Coastal High Hazard Area | Coastal High Hazard Zone High hazard | | |
| Fire District | Fire District Taxing Authority Fort Myers Beach 032 | | |
| Flood Insurance Zone | Flood Zone AE-EL13 AE-EL14 | 89.59% 10.41% | |
| FIRM Floodway | | NOT FOUND | |
| Flood Insurance Panel | Community Panel Version Date 125124 0441 B 091984 Community Panel Version Date 120673 FMB (null) (null) | > 99.99% > 99.99% | |
| DNR Flood Zones | | NOT FOUND | |
| Flood Insurance Coastal Barrier | | NOT FOUND | |
| Planning Land Use 2010 | Landuse Low Density | | |
| Sea Turtle Lighting Zone | | NOT FOUND | |
| Vegetation Permit Required | Vegetation Permit Esteru Island | | 1 |
| Soil | Map Symbol Soil Name 4 CANAVERAL- URBAN LAND COMPLEX | | |
| Eagle Nesting Site buffer | | NOT FOUND | |
| Unincorporated Lee County Zoning | Zoning Designation RS-1 | | |
| Development Orders | | NOT FOUND | |
| Fort Myers Beach Interim Zoning | ZoningAbbrev RS | | |

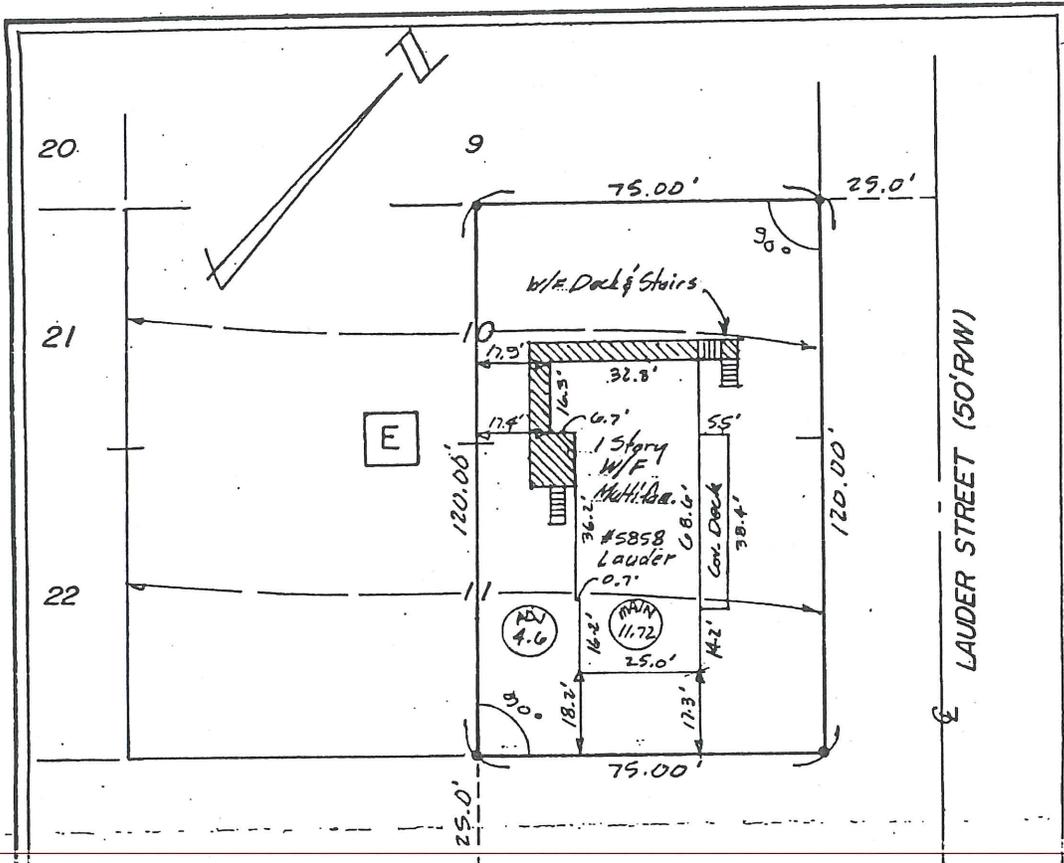
[[Modify](#)] Report Settings

Note

Details

1 Vegetation Removal Permit REQUIRED, Contact Environmental Sciences (239) 479-8585.

Our goal is to provide the most accurate data available, however no warranties, expressed or implied, are provided with this data, its use, or interpretation.
All information subject to change without notice.



LANARK AVE. (50'RW)

Boundary Location & NGVD Elevation
Revised Description 4/5/00

Subject Property Located in
FEMA Flood Zone A-15 (13' - 14')
Panel 125124-0441-B
Dated 9/19/04

LEE COUNTY DEVELOPMENT SERVICES
RESIDENTIAL ZONING REVIEW
APPROVED

Certify To: George Ganim, *SGY*

date 1/24/05
FOR HURRICANE DAMAGE RETIREMENTS
NO CHANGES IN EXISTING SETBACKS
approval based on site information provided by applicant

Legal Description:
The Northeasterly one-half (1/2) of Lots 10 and 11,
Block E, McPhie Park, Unit 1, as recorded in Plat
Book 8, Page 52, Public Records of Lee County, Florida.

LEGEND

- o = 4" Iron/cap set
- = 4" Iron rod found
- ▲ = PK Nail set
- = PK Nail found
- = Concrete Monument Found
- = Public Utility Easement
- D.E. = Drainage Easement
- P.C. = Point of Curve
- P.T. = Point of Tangent
- R.C. = Point of Reverse Curve
- R/W = Right of Way
- P.O.B. = Point of Beginning
- P.O.C. = Point of Commencement
- C.B.S. = Concrete Block Stucco
- N.C.V.D. = National Geodetic Vertical Datum (1929)
- F.P. = Power Pole
- T.PED = Telephone Pedestal
- F.H. = Fire Hydrant
- C.B. = Catch Basin
- = Center Line
- D = Dead
- M = Measured
- C = Calculated
- F = Flat

5858 Lauder St

CERTIFICATION:
I HEREBY CERTIFY THAT THIS SKETCH OF SURVEY OF THE
HEREON DESCRIBED PROPERTY IS A TRUE AND CORRECT
REPRESENTATION OF A SURVEY MADE UNDER MY DIRECTION
AND THAT SAID SURVEY IS ACCURATE AND CORRECT TO THE
BEST OF MY KNOWLEDGE AND BELIEF, AND UNLESS OTHERWISE
SHOWN, THERE ARE NO VISIBLE ENCROACHMENTS. I FURTHER
CERTIFY THAT THE SURVEY REPRESENTED HEREON MEETS THE
MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN
THE STATE OF FLORIDA, ESTABLISHED PURSUANT TO CHAPTER
61C17-6, FLORIDA ADMINISTRATIVE CODE.

NOTES:

1. Description as furnished by client.
No search of the Public Records was conducted by this firm.
2. Elevations as shown are based on N.C.V.D. 1929 datum unless otherwise stated.
3. Bearings are based on plat or deed.
4. Encroachments are based on plat.
5. There may be other easements not shown hereon recorded in the Public Records of governing county.
6. No Determination of Hazardous Waste Materials has been made by this firm.
7. Signor limits liability only up to the cost of the survey.
8. This survey is protected by copyright and all rights are reserved.

DATE: 3/22/00
SCALE: 1" = 30'
JOB #: 12906

BY *R.L. Schurmann*
R.L. SCHURMANN, RLS
FLORIDA REG. # 22239

S & H LAND SURVEY COMPANY
13611 McCREGOR BLVD., SUITE 21
FT. MYERS, FLORIDA 33919

BUILDING PERMIT

11-13-06 *PL*

Alteration/Interior Remodeling

PERMIT NUMBER: RES2005-00724

ISSUED: 11/13/06
EXPIRES: 05/13/07

Owner Name: GANIM GEORGE W + JOSEPHINE
 Contractor: GEORGE GANIM
 Project Name: FT MYERS BEACH
 Description: on lower level, replace some studs, drywall, cabinets, ceramic tile, and raise electric outlets
 Job Address: 5858 LAUDER ST FORT MYERS BEACH 33931
 Zoning: FMB-RS Flood: N
 Coastal Zone: Y Flood Compliance:
 SETBACKS: Front Rear: R. Side: L. Side:
 Minimum Distance Between Structures: Rear Left: Right:
 Number of Amps: Upgrade: Number of Meters:
 Relocate: Number of Pedest Engineering:
 Type of Mechanical Permi Interior / Exterior: Number of Compressors: Number of Exhaust Hoods:
 New/Replace Living Area:
 Type of Plumbing Permit: Type of Septic Permit: HRS No.:
 Type of Roof Permit: Fire Master No.:
 Type of Fire Permit: Seer:
 Type of AC System : KW : Tons :
 INSPECTION REQUEST LINE: 479-8997

| | DATE | BY | DATE | BY |
|-------------------------|-------|-------|-----------------------|-------|
| 101 Foundation | _____ | _____ | 501 Roof Dry-In | _____ |
| 102 Floor | _____ | _____ | 502 Roof Process* | _____ |
| 103 Tie Beam** | _____ | _____ | 503 Roof Final | _____ |
| 104 Columns/ Pilings | _____ | _____ | 205 Gas Rough | _____ |
| 130 Sheathing | _____ | _____ | 208 Gas Line | _____ |
| Straps Eng. and | _____ | _____ | 209 Gas Tank | _____ |
| Bucks** | _____ | _____ | 206 Gas Final | _____ |
| 105 Framing | _____ | _____ | 125 Shutter Final | _____ |
| 903 Tenant Sep (Duplex) | _____ | _____ | 106 Final Building** | _____ |
| 107 Insulation | _____ | _____ | 204 Final | _____ |
| 201 1st R. | _____ | _____ | 305 Final | _____ |
| 202 2nd R. Plumb | _____ | _____ | 402 Final HVAC | _____ |
| 203 Sewer | _____ | _____ | 506 Rough Fire | _____ |
| 301 T. Pole | _____ | _____ | 502 Fire Final | _____ |
| 302 TUG/ 310 TOH** | _____ | _____ | Septic/ Call 332-9560 | _____ |
| 303 Service Change | _____ | _____ | Wells/ Call 479-8114 | _____ |
| 304 R. Electrical | _____ | _____ | 112 Aluminum | _____ |
| 401 Rough HVAC | _____ | _____ | 117 Shed | _____ |

FEMA req'd prior to (103), **(130) must be passed prior to a (501) insp., **Appropriate form letter req'd prior to a (302) or (310) insp., **(502) req'd on Concrete Tile Roof only, *Termite Certificate req'd prior to CC or CO

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 WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. IF YOU DO INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT. IN ADDITION TO THE REQUIREMENTS OF THIS PERMIT THERE MAY BE ADDITIONAL RESTRICTIONS APPLICABLE TO THIS PROPERTY THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY, THERE MAY BE ADDITIONAL PERMITS REQUIRED FROM OTHER GOVERNMENTAL ENTITIES SUCH AS WATER MANAGEMENT DISTRICTS, STATE OR FEDERAL AGENCIES. THIS PERMIT IS VOID IF THE FIRST INSPECTION IS NOT MADE WITHIN 6 MONTHS FROM THE DATE ISSUED OR IF NO INSPECTION HAS BEEN MADE FOR A PERIOD OF 6 MONTHS FROM THE MOST RECENT PASSED INSPECTION. BUILDING PLANS MUST BE ON JOBSITE AT TIME OF INSPECTION. REINSPECTION FEE IS \$25.00

PLACED ON A BOARD AT EYE LEVEL SO IT CAN BE READ FROM

improvements program contained in the Fort Myers Beach Comprehensive Plan and are scheduled for completion no more than three years after issuance of a certificate of occupancy (provided that the comprehensive plan complies with the requirements of 9J-5.055(3)(c)2.); or

- (2) improvements to remedy the deficiency are the subject of an enforceable development agreement, or an agreement or development order pursuant to F.S. ch. 380, which ensures that improvements will be in place and available to serve the development at the adopted level of service not more than three years after issuance of a certificate of occupancy.

Sec. 2- 50. Vested rights.

(a) Persons holding valid building permits or development orders issued pursuant to ch. 6 or 10 shall be vested to complete their developments in accordance with the precise terms of those development orders as approved in writing or shown on accompanying plans without having to comply with the concurrency level of service requirements of the Fort Myers Beach Comprehensive Plan, provided that development has commenced prior to January 1, 1999, and is continuing in good faith. A determination of vesting pursuant to this subsection does not exempt a developer from submission of project data required by the director. Submission of project data assists the town in monitoring impacts on infrastructure as development progresses. Any development order vested pursuant to this subsection which is amended on or after January 1, 1999, shall be subject to full concurrency requirements as to those portions of the development which are being approved or changed. However, if an amendment to a development order vested pursuant to this subsection results in a reduction of anticipated impacts on public facilities and services, the director, in his discretion, may find that the proposed amendment does not impair the overall vested status of the development.

(b) Persons owning developed property for which ch. 15 of the Fort Myers Beach Comprehensive Plan provides guaranteed rebuilding rights shall be vested to rebuild to the extent so guaranteed them without having to comply with the concurrency level of service requirements of the Fort Myers Beach Comprehensive Plan.

(c) A determination of vested rights shall be valid for a period equal to the original maximum possible duration of a development order, but without extensions. The town shall not grant the extension of a final development order absent review by the director and a finding of continuing concurrency eligibility.

Sec. 2-51. Variances.

(a) To provide for a reasonable economic use of land in those rare instances where a strict application of the concurrency requirements of this article would constitute an unconstitutional taking of property without due process of law, the director may issue a concurrency variance certificate. This certificate may be issued only if the director finds all of the following circumstances to be true:

- (1) There are not sufficient facilities available to serve the development without violating the minimum concurrency requirements of this article;
- (2) No reasonable economic use can be made of the property unless a development permit is issued;
- (3) ~~No reasonable economic use can be made of the property by conditioning the development permit upon sufficient facilities becoming available, as provided for in this article; and~~
- (4) The request to vary from the concurrency requirements of this article is the minimum variance which would allow any reasonable economic use of the property in question.

The director may require the applicant to substantiate the circumstances set forth in subsections (a)(2) through (4) of this section by submitting a report prepared by a professional appraiser. Upon verifying the existence of each of the circumstances set forth in subsections (a)(2) through (4) of this section, the director may issue his concurrency variance certificate with such conditions as he believes are reasonably necessary to protect the public health, safety and welfare and give effect to the purpose of this article while allowing the minimum reasonable use necessary to meet constitutional requirements. If the director has reason to question the truth of such circumstances as set forth in the appraiser's report, the director may hire an independent professional appraiser to verify whether reasonable economic use can be made of the property without the issuance of the permit requested by the applicant. Where the reports of the individual appraisers are inconsistent, the town

Tidemark Advantage: [Activity for VI02005-08197]

File Edit Options Window Help

Exit New Open Task List GSE GIS

Close View Add Delete Sign Off Print Documents

| Description | Menu Code | Date1 | Date2 | Date3 | Disp | Done By | Notes |
|--------------------|-----------|-----------|-----------|-----------|------|---------|---|
| Initial Inspection | H0700 | 5/18/2005 | 5/23/2005 | 5/18/2005 | DONE | RFK | CLOSED - UNFOUNDED - check of site, complaint of illegal work on lower level. p |
| Case Closed | A0050 | 5/18/2005 | | 5/18/2005 | DONE | RFK | |
| Complaint Received | A0010 | 5/18/2005 | | 5/18/2005 | DONE | RFK | |

View/Add Activities

COPY

(5)

STOP WORK ORDER

Contractor _____ Permit No. RES 2005-00724

Owner George Garvin

Address 5858 Lander St F.M.B.

Code Violation FMD CDC Sect 34-1177, 34-642, 6-472

changing single family to duplex; ground level unit in violation of flood plain regulations

Corrective Action stop all work until a special exception or variance is obtained for lower level unit.

Date 7/28/05 Inspector [Signature] Phone 265-0202
KONOR

**NOTICE OF CODE VIOLATION
TOWN OF FT MYERS BEACH**



LEE COUNTY
SOUTHWEST FLORIDA

Ref: VIO 2005-11767 Date: 25 July 2005

George W & Josephine Ganim

1450 Estero Blvd

Ft Myers Beach FL 33931

**DEVELOPMENT SERVICES
CODE ENFORCEMENT
P.O. BOX 398
FT. MYERS, FL. 33902
(239)765-0202**

RE: VIOLATION ADDRESS: 5858 Lauder St., Ft Myers Beach, FL

STRAP# 33 - 46 - 24 - W2 0030E . 0110

single fam zoning dist.

*applicability
definitive
document*

Dear Property Owner/Tenant:

An inspection of the above referenced property on 25 July, 2005 disclosed the existence of a violation contrary to Town of Ft Myers Beach FMB LDC Sect 34-1177 (a)(b)(g) - accessory apartments ; Sect 34-642 - applicability of use: Table 34-2 - Land Use Table: Sect 6-472 (1)(b) -

(1) & (5) - Flood Plain Regulations, Specific Standards

This violation is in the form of creating a single family home into a triplex in RS zoning without a special exception or variance to do so and creating a ground level living unit in violation of Flood Plain Regulations.

You are directed to abate or remedy this violation within 30 days of receipt of this notice by obtain the required special exception or variance or remove the below flood grade unit and restore the house to a single family use.

ONCE THE VIOLATION HAS BEEN CORRECTED, PLEASE CONTACT THE CODE ENFORCEMENT OFFICER NAMED BELOW at (239) 765-0202.

If you fail to remedy this condition within the time frame specified above or if the violation is abated and reoccurs, this case may be scheduled before the Lee County Hearing Examiner. You will be notified as to time, date and location of this hearing.

Please be advised that, under Florida Statutes Chapter 162 and Town of Ft Myers Beach Land Development Code Chapter 2, Article VII, a fine of up to \$250.00 per day may be imposed for each day this violation continues to exist past the date set for compliance by the Hearing Examiner.

Please contact Lee County Code Enforcement at (239) 765-0202 with respect to any questions you may have regarding this notice.

(Accepting party) PRINT NAME

(Signature of accepting party) / (Date)

Acceptance of this document does not constitute an admission of responsibility, but does fulfill the statutory notice requirements of Florida Statute 162.12. The person accepting the document was informed of the contents of the notice at the time of delivery.

Bob Konior

PRINT

Code Enforcement Officer
Development Services Division

I swear or affirm the above statements are true and correct to the best of my knowledge and belief.

Sworn and subscribed before me this _____ day of _____, 2005 by _____ personally known to me.

(Inspector/Affiant) / (Date)

Notary Public State of Florida

4/12/08

1 historical data about this property before the
2 Respondent responds.

3 THE HEARING EXAMINER: Sure.

4 MS. DALTON: Could you swear in Mr. Murphy,
5 please.

6 THE HEARING EXAMINER: I believe he already was
7 sworn.

8 Didn't you raise your hand?

9 MR. MURPHY: I was in and out.

10 Thereupon,

GERRY MURPHY,

11
12 having been first duly sworn, was examined and testified as
13 follows:

14 MS. DALTON: Are you okay if he testifies here?

15 MR. KAYUSA: Oh, sure.

16 DIRECT EXAMINATION

17 BY MS. DALTON:

18 Q. Mr. Murphy, could you state your position for the
19 record, please.

20 A. Yes. I am the Director of Community Development
21 for the Town of Fort Myers Beach.

22 Q. Did you have an opportunity to review the
23 historical data regarding this property recently?

24 A. I did.

25 Q. When was that?

1 Q. A house was moved, an addition was added, and
2 there was some remodeling, correct?

3 A. Well, something was moved. There was an addition
4 to something and there was a remodeling.

5 MS. DALTON: Can we have the document to review
6 while you are asking questions?

7 BY MR. KAYUSA: (Cont'g.)

8 Q. Well, a house was moved right; that word is there?

9 A. It's a residential house move permit. It doesn't
10 mean the entire structure was moved. It means something was
11 moved. And my speculation on that now -- and that's all I
12 can do is speculate -- is that was the addition that was
13 moved.

14 There was also, then, a permit issued to connect
15 that to the existing structure, and then a remodeling
16 permit, which probably was for the entire structure, in
17 conjunction.

18 Q. How about the permit that says addition. What are
19 you speculating that means?

20 A. That was to allow the connection of the building
21 that was moved to the existing building.

22 Q. And how much speculation is involved in this?

23 A. Quite a bit. The one thing that isn't
24 speculation, however, is the seven and a half foot ceiling
25 height.

1 Q. Well, sir, the charge that's brought against my
2 client today makes no mention of that claim. I mean, that's
3 the first thing we heard it today, right?

4 A. Well, I think that's the evidence supporting the
5 claim that the habitable space below flood is illegal.

6 MR. KAYUSA: I have no more questions for this
7 gentleman.

8 I don't know, have you all finished?

9 MS. DALTON: Yes.

10 THE HEARING EXAMINER: It is your turn.

11 MR. KAYUSA: Mr. Ganim.

12 DIRECT EXAMINATION

13 BY MR. KAYUSA:

14 Q. Mr. Ganim, you applied for a building permit?

15 A. For the work currently done on the lower unit,
16 yes.

17 A building permit was applied for and issued, Your
18 Honor.

19 MR. KAYUSA: They can't hear me?

20 THE HEARING EXAMINER: I need to have you go to
21 the microphone.

22 MR. KAYUSA: Okay. I'm sorry. We have another
23 record.

24 MS. DALTON: It is the Town record.

25 MR. MURPHY: It's the official record.

BEFORE THE HEARING EXAMINER FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA

| | | |
|-------------------------------------|---|--------------------|
| TOWN OF FORT MYERS BEACH, FLORIDA | : | |
| Petitioner, | : | CASE NO: 2005-051F |
| vs. | : | |
| George W. Ganim and Josephine Ganim | : | |
| Respondent | : | |

SECOND CORRECTIVE CODE ENFORCEMENT ORDER ENTERED NUNE PRO TUNC

THIS CAUSE came on for public hearing on April 12, 2006, before the undersigned Lee County Hearing Examiner with the Respondent, counsel present. Having considered the sworn testimony, evidence and arguments presented, the Hearing Examiner finds and decides as follows:

A. FINDINGS OF FACT

1. The Respondents are the owners, lessees, responsible entity or otherwise in charge of or responsible for the subject property.
2. The Respondent received notice of the alleged existence of a certain condition on the property described herein, and that such condition constituted a violation of a Town of Fort Myers Beach Ordinance.
3. The notice given to the Respondent specified that certain actions to abate the alleged violation were to be taken by a time certain, but the Respondent failed to complete such actions timely.
4. The following condition exists on the subject property located, as reported by the Petitioner, at : 5858 LAUDER ST. FORT MYERS BEACH, FLORIDA 33931

CHANGING A SINGLE FAMILY HOME INTO A TRIPLEX IN RS ZONING WITHOUT A SPECIAL EXCEPTION OR VARIANCE TO DO SO AND CREATING A GROUND LEVEL LIVING UNIT IN VIOLATION OF FLOOD PLAIN REGULATIONS.

5. Petitioner has incurred administrative costs and expenses in the amount of \$285.00 in the prosecution of this case.

B. CONCLUSION OF LAW

1. Respondents, by reason of the foregoing, in violation of FMB LDC SECTION 34-1177(a)(b)(g)-accessory apartments; Sect 34-642- applicability of use;



Table 34-2- Land Use Table; Sect 6-472(1)(b)(1) and (5)- Flood Regulations, Specific Standards.

2. The costs incurred herein constitute a legal debt against the Respondent, pursuant to Section 162.09, Florida Statutes, which is due and owing to the Petitioner as of the date of this Order.

Wherefore it is ORDERED that Respondent shall:

1. Correct or abate the aforesaid violation in the following manner **PRIOR TO** the date listed below:
OBTAIN THE REQUIRED REZONING, SPECIAL EXCEPTION OR VARIANCE OR REMOVE THE BELOW FLOOD GRADE UNIT AND RESTORE THE HOUSE TO A SINGLE FAMILY USE.

In the event that the said violation is not corrected or abated as indicated above prior to **May 10, 2006**, a fine of **\$50.00** per day shall be imposed against Respondent, beginning on that date and continuing for each day that the aforesaid violation continues to exist.

When the violation has been abated, the Respondent **MUST CALL DEVELOPMENT SERVICES DIVISION (CODE ENFORCEMENT) AT 335-2535 AND REQUEST A RE-INSPECTION.**

2. Reimburse the Petitioner for the costs set out in Finding #5.

In the event the costs awarded herein are not paid prior to **MAY 10, 2006**, these costs may become a lien against the Respondent, upon being recorded in the Public Records of Lee County, even if the violation has been abated in accordance with this Order.

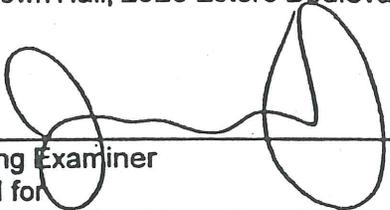
Failure to abate this violation as set forth herein could result in the accrual of additional administrative costs and expenses.

Payment of administrative costs and fines: checks should be made payable to "Town of Fort Myers Beach and mailed to the Town of Fort Myers Beach (Code Enforcement), 2523 Estero Blvd., Fort Myers Beach, Florida, 33931 , or made in person at the offices of the Town of Fort Myers Beach, 2523 Estero Blvd., Fort Myers Beach, Florida. Please include case number on checks.

Non-compliance with the terms of this Order will result in the imposition of a lien against all real and personal property of Respondent, and could result in a lien foreclosure action.



DONE AND ORDERED at Town of Fort Myers Beach Town Hall, 2523 Estero Boulevard, Fort Myers Beach, Lee County, Florida on April 26, 2006.

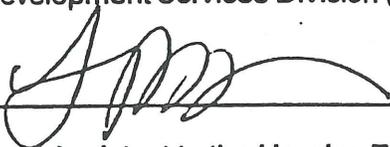


Hearing Examiner
in and for
the Town of Fort Myers Beach, Florida

APPEAL: An aggrieved party may appeal an Order of the Hearing Examiner of Lee County to the Circuit Court. The appeal shall be limited to appellate review of the record created before the Hearing Examiner. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by U.S. Mail to RESPONDENT, and to ANNE DALTON, Esquire, Town of Fort Myers Beach, 2523 Estero Blvd., Fort Myers Beach, FL 33931; and by hand delivery to Lee County Development Services Division (Code Enforcement), on April 26, 2006.



Legal Assistant to the Hearing Examiner for the Town of
Fort Myers Beach, Florida

BEFORE THE HEARING EXAMINER FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA

THE TOWN OF FORT MYERS BEACH,

Petitioner,

v.

Case No. 2005-051F

GEORGE W. GANIM and JOSEPHINE
GANIM, Husband and Wife,

Respondents.

MOTION FOR STAY PENDING APPEAL

The Respondents, GEORGE W. GANIM and JOSEPHINE GANIM, Husband and Wife, respectfully ask the Hearing Examiner, pursuant to Florida Rule of Appellate Procedure 9.190(e)(3) & .310, to grant a stay pending appeal in this matter for the following reasons:

1. The Hearing Examiner has entered a Code Enforcement Order and a Corrective Code Enforcement Order finding the Respondents to be in violation of certain provisions of the Land Development Code. The Hearing Examiner might well enter a third Order in this matter because of procedural irregularities pertaining to the first two.
2. The Respondents have the right to appeal the Hearing Examiner's Orders pursuant to Sections 26.012(1) & 162.11, Florida Statutes (2005). The Respondents intend to avail themselves of this right.
3. For this appellate review to be meaningful, a stay of the Orders entered by the

Hearing Examiner must be in place while the appeal is pending, this stay being subject to the conditions necessary to protect the legitimate interests of the Town of Fort Myers Beach.

WHEREFORE, the Respondents, GEORGE W. GANIM and JOSEPHINE GANIM, Husband and Wife, respectfully ask the Hearing Examiner to grant a stay pending appeal in this matter on conditions that are just and proper.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Stay Pending Appeal has been furnished by regular U.S. Mail to Joseph Madden, Hearing Examiner, 2222 Second Street, Fort Myers, FL 33901; to Ann Dalton, TOWN ATTORNEY, The Town of Fort Myers Beach, 2523 Estero Boulevard, Fort Myers, FL 33931; and, to Michael F. Kayusa, of MICHAEL F. KAYUSA, ESQ., Post Office Box 6096, Fort Myers, FL 33911, this 13th day of March, 2006.

Respectfully submitted,

/s/ Robert L. Donald

Robert L. Donald
Fla. Bar No. 218219
Appellate Counsel for the Ganims
LAW OFFICE OF ROBERT L. DONALD
1375 Jackson Street, Suite 402
Fort Myers, FL 33901-2841
(239) 337-1170 facsimile
(239) 337-1999 voice

BEFORE THE HEARING EXAMINER FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA

THE TOWN OF FORT MYERS BEACH,

Petitioner,

-vs-

CASE NO: 2005-051F

GEORGE W. GANIM and JOSEPHINE
GANIM, Husband and Wife,

Respondents.

_____ /

TRANSCRIPT EXCERPT OF PROCEEDINGS

~~Before Joseph Sadler, Hearing Examiner, at~~

proceedings had in the above-styled cause, held at the
Fort Myers Beach City Hall, 2523 Estero Boulevard, Fort
Myers Beach, Florida, on April 12, 2006.

DICHARIA & ASSOCIATES COURT REPORTING, INC.
1-866-400-TINA (8462)

Heritage Square Building
1422 Hendry Street
Suite 303
Fort Myers, Florida 33901
(239) 337-2477

Bonita Executive Center
8891 Brighton Lane
Suite 111
Bonita Springs, Florida 34135
(239) 337-2879 (Fax)

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APPEARANCES:

Law Office of Robert L. Donald
1375 Jackson Street, Suite 402
Fort Myers, Florida 33901
BY: ROBERT L. DONALD, ESQ.
Appearing on behalf of The Ganims

Law Office of Michael F. Kayusa
Post Office Box 6096
Fort Myers, Florida 33911
BY: MICHAEL F. KAYUSA, ESQ.
Appearing on behalf of The Ganims

Fort Myers Beach Town Attorney
2523 Estero Boulevard
Fort Myers, Florida 33931
BY: ANN DALTON, ESQ.
Appearing on behalf of The Town of
Fort Myers Beach

1 * * *

2 THE COURT: I think what I'm going to do is,
3 I'm going to stay the -- I'm going to stay the
4 enforcement, pending the appeal, and that's it. No
5 further finding other than that.

6 MR. DONALD: Who does this order?

7 THE COURT: I do the order.

8 MR. DONALD: Okay. Heck, you do it all, don't
9 you? Thanks.

10 THE COURT: It's what we've always done with
11 code enforcement when a formal appeal has been
12 processed, so --

13 MR. DONALD: Thank you.

14 THE COURT: Keep us posted with the appeal
15 process.

16 MR. DONALD: Is it going to be part of your
17 order that we have an automatic review in four
18 months, or no?

19 THE COURT: Yes, we will. Automatic review of
20 the status of the appeal, and that can be done in
21 writing from my office.

22 (Hearing concluded at 11:45 a.m.)
23
24
25

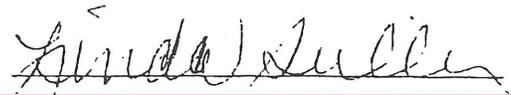
1 STATE OF FLORIDA)

2 COUNTY OF LEE)

3 I, Linda J. Sullivan, Professional Reporter, do
4 hereby certify that the foregoing proceedings were taken
5 before me at the date and place as stated in the caption
6 hereto on Page 1 hereof; that the foregoing
7 computer-assisted transcription is a true record of my
8 Stenographic notes taken at said proceedings.

9 Dated this 11th day of May, 2006.

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Linda J. Sullivan
Professional Reporter
20th Judicial Circuit

5-14-10
58 Lumber

PARCEL #: 33-46-24--W2-07E.0110

THIS SPACE FOR RECORDING

BEFORE THE HEARING EXAMINER OF
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA

TOWN OF FORT MYERS BEACH, FLORIDA :
Petitioner, : CASE NO.: 2005-051F
vs. :
GEORGE W. GANIM AND JOSEPHINE GANIM:
Respondent :

CODE ENFORCEMENT ORDER GRANTING STAYING FINE

THIS CASE was first heard by the undersigned Lee County Hearing Examiner, in and for the Town of Fort Myers Beach, at a public hearing on April 12, 2006, after which an Order was entered which found that a violation existed on the subject property and required the Respondent, GEORGE W. GANIM AND JOSEPHINE GANIM, as the responsible persons or entity, to complete certain actions that would abate the violation by a date certain or face the imposition of a specified fine

On May 10, 2006, the Hearing Examiner received competent evidence that the violation had not been abated in accord with the above Order, and therefore finds and decides:

1. That the above-noted Order has not been complied with, and
2. That the violation still exists on the subject property.
3. Upon petition of Respondent's Counsel, a Stay of the Fine set forth on the attached order is granted during the pending of an Appeal filed by and on behalf of the Respondent.
4. Such stay is conditioned upon the Appeal being duly prosecuted and the Respondent providing written status reports to Code Enforcement every 4 months.

DONE AND ORDERED at Town of Fort Myers Beach Town Hall, 2523 Estero Boulevard, Fort Myers Beach, Lee County, Florida on May 10, 2006.

Hearing Examiner of Lee County, Florida
in and for the Town of Fort Myers Beach, Florida

REHEARING: If the property owner disagrees with the Hearing Examiner's finding herein that the violation has not been properly abated, which has resulted in the imposition of the per day fine, then the property owner has 20 days from the date of this order to request a rehearing. The request must be made in writing to the Lee County Code Enforcement Office and will be scheduled, if possible, on the next regularly scheduled Code Enforcement public hearing docket. Evidence and testimony presented at the hearing will be limited to the facts and arguments necessary to prove the violation

THIS IS A TRUE CERTIFIED
COPY OF THE ORIGINAL

was abated in accordance with the requirements of the order finding first violation. Any Order resulting from the rehearing may be appealed to the Circuit Court as set out below.

APPEAL: An aggrieved party may appeal this Order of the Hearing Examiner to the Circuit Court. The appeal shall be limited to appellate review of the record created before the Hearing Examiner. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by U.S. Mail to Respondent, and to Anne Dalton, Esquire, Town of Fort Myers Beach, 2523 Estero Blvd., Ft. Myers Beach, FL 33931; and by hand delivery to Lee County Development Services Division (Code Enforcement), on June 13, 2006.



SECRETARY

THIS IS A TRUE CERTIFIED
COPY OF THE ORIGINAL



NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

| | |
|-------------------------------|---|
| GEORGE W. GANIM and JOSEPHINE |) |
| GANIM, |) |
| |) |
| Petitioners, |) |
| |) |
| v. |) |
| |) |
| TOWN OF FORT MYERS BEACH, |) |
| FLORIDA, |) |
| |) |
| Respondent. |) |

Case No 2D09-5

Opinion filed December 4, 2009.

Petition for Writ of Certiorari to the Circuit
Court for Lee County; Michael T. McHugh,
Judge.

Michael C. Tice, Fort Myers, for Petitioners.

Hala Sandridge and Denise L. Wheeler of
Fowler White Boggs P.A., Tampa, for
Respondent.

PER CURIAM.

Denied.

CASANUEVA, C.J., and SILBERMAN and WALLACE, JJ., Concur.

The Ganim Law Firm, P.C.
GANIM, GANIM & GANIM

4666 MAIN STREET
BRIDGEPORT, CONNECTICUT 06606

TELEPHONE (203) 372-7772
FAX (203) 374-7199

527 TUNXIS HILL ROAD
2ND FLOOR LEFT
FAIRFIELD, CONNECTICUT 06825
REPLY TO BRIDGEPORT ADDRESS

GEORGE W. GANIM*
GEORGE W. GANIM, JR.
RAYMOND W. GANIM†
PAUL J. GANIM
THOMAS G. GANIM
MARY G. KOLESNIK
6/14/65 - 10/30/08

*ALSO ADMITTED IN MA
†ALSO ADMITTED IN D.C.

PARALEGALS:
SHEILA VESCIGLIO
FRANCES FALLER
VIRGINIA COLON
VIRGINIA SILANO
LOIS PAYNE

BOOKKEEPER:
LAURA HAMILTON

January 21, 2010

Mr. Jack Green
Town Manger
Town of Fort Myers Beach
2523 Estero Blvd.
Ft. Myers Beach, FL 33931

Re: 5858 Lauder Street

Dear Mr. Green:

In response to your letter of December 29, 2009, I would still like to meet to discuss resolution of the issues.

I would like to call to your attention that I am in compliance with the outstanding orders. The upper unit is unoccupied and the lower unit, which was being remodeled under a building permit, has never been worked on since the stop order was issued. It was never occupied. I would invite you to personally examine the premises to verify. I will provide keys to you or the Zoning Office for this purpose.

I am not interested in a continued confrontation with the Town over this issue. I have been a part of Ft. Myers Beach since 1966 and only look forward to its continued progress.

Please advise of your pleasure.

With every good wish, I am

Very truly yours,

George W. Ganim

GWG/bf

: Anne Dalton, Town Attorney

BRIDGEPORT, CONNECTICUT 06606

TELEPHONE (203) 372-7772

FAX (203) 374-7199

527 TURNER HILL ROAD
2ND FLOOR LEFT
FAIRFIELD, CONNECTICUT 06625
REPLY TO BRIDGEPORT ADDRESS

GEORGE W. GANIM[®]
GEORGE W. GANIM, JR.
RAYMOND W. GANIM†
PAUL J. GANIM
THOMAS G. GANIM
MARY G. KOLESNIK
5/14/65 - 10/30/08

ALSO ADMITTED IN MA
ALSO ADMITTED IN D.C.

PARALEGALS:
SHEILA VESCIGLIO
FRANCES FALLER
VIRGINIA COLON
VIRGINIA SILANO
LOIS PAYNE

BOOKKEEPER:
LAURA HAMILTON

Sent Via Fax to Expedite
Fax No. 239-765-0909

January 22, 2010

Mr. Dave Hedrich
Zoning Enforcement Officer
Town of Ft. Myers Beach
2523 Estero Blvd.
Ft. Myers, FL 33931

Re: 5858 Lauder Street

Dear Mr. Hedrich;

I would ask you to inspect the above owned property to confirm its single family usage. This includes the enclosed area below the house as well as the entire upper floor. If you find it convenient to call me I will arrange access to the premises for you if need be.

Thanking you, I am

Very truly yours,

George W. Ganim

GWG/bf
Enc.

**ADMINISTRATIVE DETERMINATION
DEPARTMENT OF COMMUNITY DEVELOPMENT
FORT MYERS BEACH, FLORIDA
FMBADD2010-0001**

WHEREAS on April 5, 2010, George W. Ganim, owner of the subject property, requested an administrative determination of Town of Fort Myers Beach Land Development Code (LDC) Section 34-1178, regarding property legally described as

The Northeasterly half of Lots 10 and 11, Block E, MCPHIE PARK UNIT 1 SUBDIVISION, as recorded in Plat Book 8, Page 52, public records of Lee County, Florida;

and

WHEREAS the subject property is within the Low Density Future Land Use Map (FLUM) category according to the Town of Fort Myers Beach Comprehensive Plan; and

WHEREAS the subject property is zoned RS (Residential Single-family);
and

WHEREAS the subject property qualifies for one (1) unit of residential density under the Low Density FLUM category, according to LDC Section 34-632; and

WHEREAS the subject property is developed with one residential building whose first habitable floor is elevated by means of pilings, with the ground floor partially enclosed; and

WHEREAS the existing building was originally constructed approximately 1971 according to the records of the Lee County Property Appraiser (field card attached as Exhibit A)

WHEREAS circa 1978 the building contained an interior floor area of approximately 1450 square feet, not including open or screened porches or the storage/utility areas of the ground floor, and had a gable roof, according to the field card referenced above; and

Whereas said field card does not indicate that any portion of the building existing circa 1978 was configured as a separate apartment; and

WHEREAS in 1978 Thomas and Ann Butler acquired Lots 1, 2, 3, and 4, Block B, ISLAND SHORES UNIT 2 SUBDIVISION, as recorded in Plat Book 9, Page 25, public records of Lee County, Florida; and

WHEREAS in 1980 Thomas and Ann Butler acquired the subject property;
and

WHEREAS according to the records of the Lee County Property Appraiser (field card attached as Exhibit B) circa 1978 the parcel described as Lots 1 and 2, Block B, ISLAND SHORES UNIT 2 SUBDIVISION was improved with two residential structures, one of which was a wood-frame structure on pilings consisting of two rooms, a bedroom and a bathroom, under a shed roof, within a total floor area of approximately 400 square feet and approximate dimensions of 16 feet by 24 feet; and

WHEREAS in 1982 Thomas and Ann Butler sold Lots 1, 2, 3, and 4, Block B, ISLAND SHORES UNIT 2 SUBDIVISION to the Southland Corporation and a building permit was issued to the Southland Corporation for the construction of a convenience store on said Lots 1, 2, 3, and 4 in 1983; and

WHEREAS in 1982 a house move permit was issued by Lee County for moving a structure to the subject property; and

WHEREAS currently attached to the circa 1978 house on the subject property, and sharing with it a common wall and containing one lockable door, but also accessible by one exterior door, is a living area of approximately 400 square feet with approximate dimensions of 16 feet by 24 feet, consisting of two rooms, one of which is a bathroom and one of which is a living area including a kitchenette (hereinafter, "the apartment"); and

WHEREAS the apartment is covered by a shed roof, although the main portion of the structure is covered by a gable roof; and

WHEREAS the apartment is visible in aerial photographs available from the Florida Department of Transportation dated 1986, but is not visible in aerial photographs dated 1975; and

WHEREAS Policy 4-C-7 of the Fort Myers Beach Comprehensive Plan states that an accessory apartment may be legal if it was built between 1962 and 1984 and complies with all requirements except the density cap of 6 units per acre and floodplain regulations, both of which took effect in 1984; and

WHEREAS in 2000, in case 2000-555, a code enforcement order by the hearing examiner found a condition on the subject property identified as "a single-family residence was converted to a duplex, which is not permitted in the RS-1 zoning district" to be in violation of the Land Development Code; and

WHEREAS subsequently in 2000, in case 2000-555, the hearing examiner found that the order had been complied with and the violation had been abated by "removal of the stove and tenants"; and

WHEREAS in 2006, in case 2005-015F, a code enforcement order by the hearing examiner found a condition identified as "changing a single-family residence into a triplex in RS zoning without a special exception or variance to do so and creating a ground level living unit in violation of flood plain regulations" to be in violation of the Land Development Code on the subject property; and

WHEREAS the order in case 2005-015F directed that the violation be abated by the following: "obtain the required rezoning, special exception or variance or remove the below flood grade unit and restore the house to a single family use"; and

WHEREAS the order entered by the hearing examiner for case 2005-015F has not been complied with and the condition on the subject property remains in violation; and

WHEREAS LDC Section 34-1178 provides that its purpose is "to recognize and legalize certain existing accessory apartments where the immediate presence of a property owner is presumed to mitigate any negative effects that might result from the use or rental of such apartments"; and

WHEREAS, for purposes of LDC Section 34-1178, an accessory apartment is "a single living unit no larger than 850 square feet, with or without cooking facilities, that was in existence as of December 15, 1997. For such an accessory apartment to remain lawful under this section, the property owner or an immediate family member must be in residence on the premises, or on an immediately adjoining lot, during any period when the apartment is not vacant"; and

WHEREAS LDC Section 34-265 (1)(b) provides for the Director to render decisions of an administrative nature, such as procedures to follow in unusual circumstances; and

The Director hereby makes the following findings of fact with regard to the requested determination:

1. The factual findings contained in the above "Whereas" clauses are hereby incorporated by reference.
2. One unit of residential density lawfully exists on the subject property. An accessory apartment that meets the requirements of LDC Section 34-1178 is a living unit but not a dwelling unit as defined by the Fort Myers Beach Comprehensive Plan, and is not counted in residential density computations.

3. The apartment (the 400-square-foot portion of the house beneath the shed roof, consisting of two rooms, one of which is a bathroom and one of which is a living area including a kitchenette), has existed on the subject property since circa 1983, following its relocation from Lots 1 and 2, ISLAND SHORES UNIT 2 SUBDIVISION.
4. The apartment was in existence on the subject property as of December 15, 1997.
5. An order finding that a condition on the subject property is in violation of a municipal ordinance was issued by the hearing examiner. The purpose of LDC Section 34-1178 is "to recognize and legalize certain existing apartments" provided each such apartment was in existence as of December 15, 1997, and was not built in violation of flood protection regulations. This determination does not overturn the code enforcement order finding the violation, and is merely a means of potentially achieving compliance with the Land Development Code in accord with that order.

NOW, THEREFORE, IT IS HEREBY DETERMINED that the accessory apartment elevated and attached to the southeasterly side of the elevated single-family residence on the subject property is lawful under the provisions of LDC Section 34-1178.

SUBJECT TO the following conditions:

1. Development and/or redevelopment of the subject property must comply with all applicable provisions of the LDC and Comprehensive Plan in effect at the time of permitting.
2. Rental of any residential unit on the subject property must comply in all respects with the LDC and any other applicable local, county, state, or federal regulation, including the payment of any required taxes and the regulations of the RS zoning district.
3. In accordance with LDC Section 34-1178 (attached as Exhibit C), the owner of the subject property, or an immediate family member of the owner, must reside on the premises or on an immediately adjoining property during any period in which the accessory apartment is not vacant.
4. This determination does not address the existence of certain improvements beneath the first elevated floor of the structure on the subject property, which must be removed to comply with the code enforcement order.

DONE this 27th day of April 2010.

By: 
Frank Shockey, Ph.D., CFM, Director
Department of Community Development
Town of Fort Myers Beach

Town of Fort Myers Beach
INSPECTION ACTIVITY REPORT

Permit No. DEM10-0003

Site Address 5858 LAUDER ST

| | | |
|--------------------|------------------------------------|-------|
| Applied 5/24/2010 | Applicant Daniel Bentford Graviss | Lot |
| Approved 5/25/2010 | Owner GANIM GEORGE W + JOSEPHINE | Block |
| Issued 5/25/2010 | Contractor Daniel Bentford Graviss | Tract |
| Parent Permit | Description Demo Interior | |
| | Notes | |

| Scheduled | Completed | Type | Inspector | Result | Remarks | Inspector's Comments |
|-----------|-----------|---------------------------|-----------|--------|---------|----------------------|
| 5/25/2010 | 5/25/2010 | 100 NOC | KDM | OK | N/R | |
| 5/25/2010 | 5/25/2010 | 116 Demolition (Final) | BLD | PASS | | |

GRAVISS Construction, Inc.

118 Voorhis Drive

Fort Myers Beach, FL 33931

State certified General Contractor - Architectural drawings
Phone (239) 765-7644 Fax (239) 765-7643 Cell 239-691-7070

May 27, 2010

Submitted to: Paula
Lahala Realty,

Job location: 5858 Lauder St
Ft. Myers Beach, Fl

Invoice

| | |
|---------------------|-------------|
| Demo Down Stairs: | \$ 740.00 |
| Installed new beam: | \$240.00 |
| Permit: | \$ 125.00 |
| Total: | \$ 1,105.00 |

State Certified General Contractor - CGC A55944

Handwritten notes:
1. U.
4000
check #
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