



Kellerhals Ferguson Kroblin PLLC

Royal Palms Professional Building, 9053 Estate Thomas, Suite 101, St. Thomas, V.I. 00802

██████████ Telephone | ██████████ Fax | www.kellfer.com

August 2, 2017

Via Electronic Mail

Mr. Darien Wheatley
Board of Land Use Appeals
48B-50C Kronprinsdens Gade
GERS Building
St. Thomas, V.I. 00802
Darien.wheatley@doj.vi.gov

Re: Outstanding Variance Request for Permit No. CZT-05-17L

Dear Mr. Wheatley:

Enclosed please find a copy of our December 27, 2016 request for a height variance. This matter remains outstanding and we respectfully request that you take all steps necessary to schedule it for a hearing as soon as possible.

We are also confirming that there are no outstanding matters for appeal to the Board of Land Use, other than the variance matter noted above.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Erika Kellerhals

Encl

cc: Vonetta Norman, Esq.
Legal Counsel, Department of Planning and Natural Resources
vonetta.norman@dpnr.vi.gov



December 27, 2016

Via Hand Delivery

John P. Woods
Chairman of the Board of Land Use Appeals
c/o Darien Wheatley
48B-50C Kronprinsdens Gade
GERS Building
St. Thomas, V.I. 00802

DEPARTMENT OF PLANNING AND NATURAL RESOURCES
2017-01-03 10:00 AM

RE: HEIGHT VARIANCE REQUEST FOR PERMIT NO. CZT-05-17L
GREAT ST. JAMES, ST. THOMAS, UNITED STATES VIRGIN ISLANDS

Dear Chairman Woods,

On behalf of our client, Great St. Jim LLC, ("GSJ LLC") Kellerhals Ferguson Kroblin PLLC hereby requests a variance on the height limits imposed by the Department of Planning and Natural Resources in Special Condition No. 16 of Permit No. CZT-05-17L ("Permit") for Great St. James Island, St. Thomas, U.S. Virgin Islands. A copy of the permit is attached for your review.

In its permit application, GSJ LLC requested that it be allowed to erect a flagpole of eighty (80) feet. Special Condition No. 16 of that Permit, while granting permission to erect a flagpole, limits the height of the flagpole. The Permit provided "[t]he proposed flag pole shall be a maximum of 45 feet above existing grade." We are requesting a variance of this requirement, as the limitation of forty-five (45) feet is, in our opinion, arbitrarily related to height restrictions in the R-1 (Residential Low Density) District ("R-1"). Title 29, Section 229(c) of the Virgin Islands Code ("Code") expressly limits the height on residential structures in R-1. The language of section 229(c) specifically provides "[n]o residential structure shall exceed a height of two (2) stories." However, the Code does not specify any height limitations on other accessory structures that may also be permitted under the R-1 District. Furthermore, the height limitations provided in Title 29, Section 226(l) of the Code appear, in our opinion, to apply exclusively to attachments of substructures on to an existing building. For example, pursuant to Section 226(l), steeples, chimneys, water tanks, and flag poles, are limited to a height of fifteen (15) feet above the height limits of the particular district where they are located. However, this section does not address a free-standing structure like the flag pole that was requested for Great St. James.

Likewise, Title 29, Section 225(b)(93) of the Virgin Islands Code does not include a specific height measurement in its definition of a "story." In fact, Section 225(b)(92) provides a height

measurement of twenty-four (24) feet in relation to a "mezzanine", but does not define a story by itself. Furthermore, R-1 does allow by 'special Condition' the construction of communication towers that, in many cases, exceed the eighty (80) feet requested in the present circumstance. Many of these towers have already been approved and installed in the U.S. Virgin Islands.

The proposed flagpole will be less visually obstructive than the proliferation of communication towers that have invaded developed R-1 neighborhoods throughout the Territory. GSJ LLC's requested flagpole will be a singular structure that will not impair or reduce the value of any surrounding neighbors' properties. There is no intention to mount additional communication devices on the flagpole, but to simply, and proudly, fly the flag of the United States of America.

GSJ LLC submitted a request for reconsideration of this "Condition" to Commissioner Henry on November 29, 2016. See attached correspondence. However, the Commissioner advised us that this request for reconsideration must be filed with BLUA for a variance approval. We therefore look forward to your favorable response to this matter. Should you have any further questions or comments, please feel free to contact me at 340-779-2564.

Sincerely yours,



Erika A. Kellerhals

Encs.

Cc: Members of the Board of the Land Use Appeals
Commissioner Dawn Henry, Esq., Department of Planning and Natural Resources

MINOR COASTAL ZONE MANAGEMENT PERMIT NO. CZT-05-17L

I. **AUTHORITY.** This permit is issued by the Commissioner of the Department of Planning and Natural Resources and is administered and monitored by the Department pursuant to Title 12, Chapter 21, and Virgin Islands Code. As herein, "Permitter" is the Government of the Virgin Islands and "Permittee" is Great St. Jim, LLC.

II. **SCOPE.** This permit allows for:

- a. Limited tree planting (Parcel C-1 Remainder)
- b. Limited brush & debris removal (throughout island)
- c. Installation of a flag pole, 45 foot maximum (Parcel A Remainder)

This project is located Great St. James Cay, Virgin Islands.

III. **TERM.** This permit is effective upon its signing by the Commissioner of the Department of Planning and Natural Resources, pursuant to VI Code, Title 12 Chapter 21. Authorization for construction under this will expire if the Permittee fails to commence work within twelve (12) months from the date this permit becomes effective.

IV. **DOCUMENTS INCORPORATED BY REFERENCE.**

EXHIBIT A - CZM Permit Application signed August 1, 2016; amended 10/5/16

EXHIBIT B - Required document submittal (deed, tax letter and maps)

EXHIBIT C - Site plan including partial debris location plan

V. **GENERAL CONDITIONS.**

1. **Liability.** The Permittee agrees to assume full and complete responsibility for all liability to any person or persons, including employees, as a result of its control of the area described in Paragraph 2 of this permit, and all improvements thereon (which area and improvements are herein after referred to as "the premises") and to hold the Permitter free and harmless from civil or other liability of any kind during the time the permittee is in control of the premises pursuant to this permit.
2. **Personal Property and Damage.** All personal property of any kind or description whatsoever, located on the premises will be there at the Permittee's sole risk.
3. **Assignments or Transfer.** This permit may not be transferred or assigned except as provided in Section 910-15 of the Regulations of the Coastal Zone Management Act.
4. **Permit to be displayed.** A placard evidencing the permit shall be posted in a conspicuous place at the project site during the entire period of work.
5. **Reliance on Information and Data.** The permittee affirms that the information and data which he/she provided in connection with his/her permit application is true and accurate, and acknowledges that if subsequent to the effective date of this permit such information and data proves to be false or inaccurate, the permit may be modified, suspended or revoked in whole or in part, and that the

Commissioner may, in addition, institute appropriate legal action.

6. Development to be commenced. Any and all development approved by this Coastal Zone Management Permit shall be commenced within twelve (12) months from the date this permit becomes effective. Failure to perform substantial work within such period and thereafter until completion of construction will cause the permit to lapse and render it null and void unless an extension is granted by the Commissioner.
7. Notification of Completion. Upon completion of any activity authorized or required by this Coastal Zone Management Permit, the permittee shall promptly so notify the Director of the Division of CZM ("The Director") and where the service of a professional engineer were required in undertaking the activity, a certification of compliance provided by the project engineer that the plans and specifications of the project and all applicable Virgin Islands Code requirements have been met, shall be filed with the Director.
8. Inspection. The Commissioner or his authorized agents or representatives shall have the power to enter at reasonable time during projects working hours upon any lands or waters for which a Coastal Zone Permit has been issued. The Permittee shall permit such entry for the purpose of inspection and ascertaining compliance with the terms and conditions of said Coastal Zone Management Permit. The Permittee shall provide access to such records as the Commissioner in the performance of his duties under the Act may require the Permittee to maintain. Such records may be examined and copies shall be submitted to the Commissioner upon request.
9. Conditions of premises. The development authorized by this permit shall be maintained in a safe, attractive and satisfactory condition and in accordance with the description, plans or drawings approved by the Commissioner.
10. Restoration of Area. The permittee, upon revocation or expiration of the permit, shall upon order of the Commissioner, and his sole discretion, remove all structures authorized by the permit and restore the area to its original condition, and/or modify such structures, and/or comply with any directive of the Commissioner in satisfying the original permit condition in such time and manner as the Commissioner may direct.
11. Notices. All notices sent or required to be sent hereunder must be certified mail, return receipt requested. If addressed to the Permitter, same shall be sent to the Commissioner of the Department of Planning and Natural Resources, Cyril E. King Airport, Second Floor, St. Thomas, VI 00802, or to such place as the Permitter may herein after designate by certified mail. If addressed to the Permittee, same shall be sent to Great St. Jim, LLC, c/o Kellerhals Ferguson Kroblin, PLLC, Royal Palms Professional Building, 9053 Estate Thomas, Suite 101, St. Thomas, VI 00802 or to such place as the Permittee may hereinafter designate by certified mail, return receipt requested.
12. Nonwaiver. One or more waivers by the Permitter of any covenant or condition of this permit shall not be construed as a waiver or breach of the covenant or condition, and the consent or approval of the Permitter to or of any acts by the Permittee requiring the Permitter's consent or approval shall not be construed as approval of any subsequent similar act by the Permittee.

13. Revocation. It is specifically understood that all foregoing covenants and agreements, as well as other terms and special conditions hereby agreed to by Permittee, are to be well and faithfully kept by Permittee and that any failure by Permittee to keep same will result in revocation of this permit.
14. Other Approval. If the development covered under this permit requires separate and distinct approval from the United States Government or any agency, department, commission or bureau thereof, then no development or occupancy is allowed under this permit until such permits or approvals have been obtained.
15. Abandonment. If the Permittee abandons deserts or vacates the premises or discontinues its operations at the premises for a period totaling six (6) consecutive months, then the permit will terminate automatically and be rendered null and void.
16. Damage and Repair of Premises Described in Paragraph 2. In the event of damage to or destruction of the premises described in Paragraph 2 hereof, repair work may be done only after a request to do so has been submitted in writing to the Department and permission in writing has been granted. Repair must duplicate the original work, and must be in accordance with applicable law, rules and regulations.
17. Signatures on the Permit Document. The applicant shall sign and return the permit document to the Department within sixty (60) days of receipt thereof. Failure to return the signed permit within the time period specified herein will be considered a rejection of the terms and conditions of the permit and will render the offer of the permit null and void, unless a written extension is requested and granted.

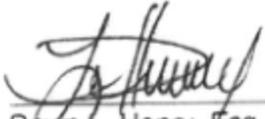
VI. SPECIAL CONDITIONS.

1. The Division of Coastal Zone Management shall be notified in writing at least forty-eight (48) hours before work commences.
2. The Coastal Zone Management permit placard shall be placed in a conspicuous location at the entrance of the site as soon as work commences.
3. This permit is valid only for work as stated in Paragraph 2 "Scope." No other work is allowed.
4. All disturbed areas shall employ sediment and erosion control measures to prevent silt runoff.
5. Site disturbance shall be limited to areas designated on the approved drawings listed as Exhibit C.
6. All other necessary permits shall be obtained prior to commencement of work.
7. Debris removal shall follow the location plan marked as Exhibit C. In no event shall self-powered wheeled or tracked equipment be allowed within the "shoreline", as defined by 12 VIC §402(b).

8. Shoreline debris shall be removed by hand.
9. No live vegetation shall be disturbed or removed during brush & debris removal operations.
10. Large dead trees and tree trunks may be cut on site into smaller, more manageable sizes for disposal.
11. Only a small excavator may be used for brush and debris removal operations.
12. Any trucks used to transport brush & debris shall be single axle vehicles.
13. It is recommended that organic debris be chipped and used on-site as landscaping and erosion control material.
14. Debris burial is limited to the two locations on parcel No. C-1 Remainder as identified in the site plans marked as Exhibit C.
15. Debris and non-landscape waste shall be removed from Great St. James.
16. The proposed flag pole shall be a maximum of 45 feet above existing grade.
17. Tree plantings shall be limited to a 60 foot x 120 foot area on Parcel C-1 Remainder.
18. Upon discovery of any archaeological or historical burial site or remains upon private lands, the owner or his representative shall immediately notify the State Historic Preservation Office verbally and in writing.
19. Silt fencing must be installed with steel posts and wire fence support as described in the 2002 Environmental Protection Handbook.

CZT-05-17L

On this 21 Day of October, 2016 the Department of Planning and Natural Resources hereby issues Minor CZM Permit No. CZT-05-17L.



Dawn L. Henry, Esq.
Commissioner

I, the undersigned, have read and understood all terms and conditions established in Permit No. CZT-05-17L and hereby agree to be bound by the terms and conditions contained therein.

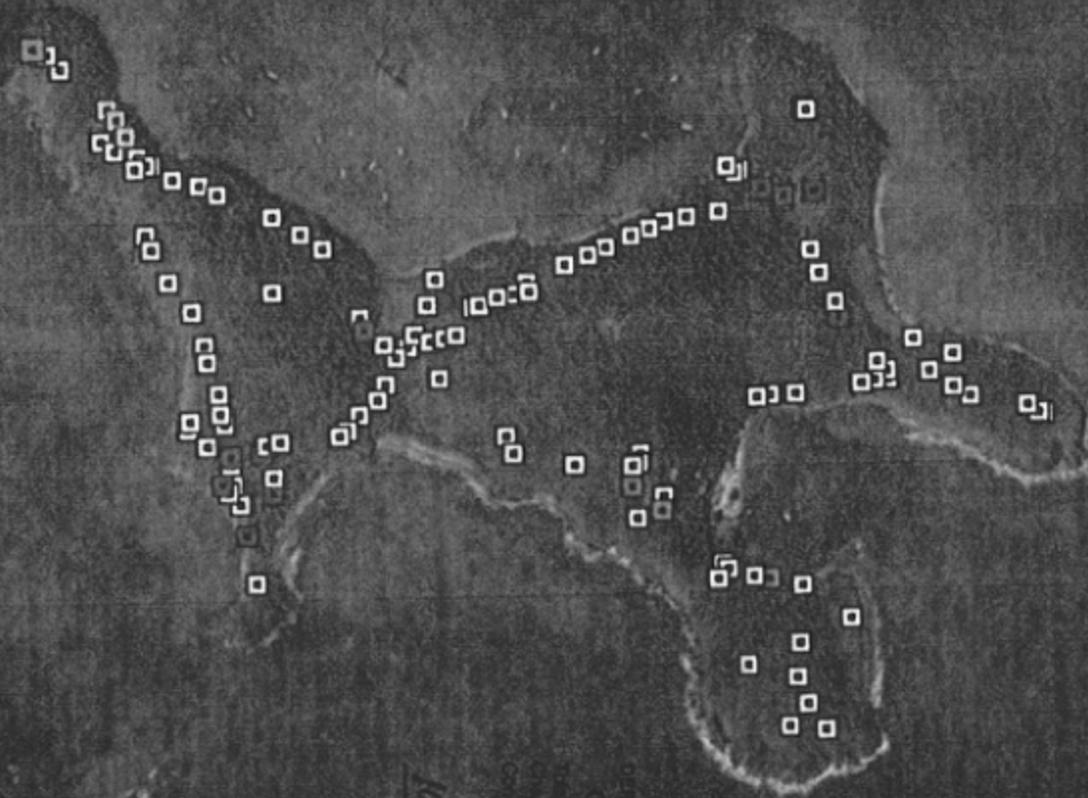
Signature

Date

cc: File

Partial Debris Location

Google earth
© 2016 DigitalGlobe
© 2016 CNES / Airbus



- Legend**
- Debris < 8ft
 - Debris > 8ft
 - Large Pile
 - Machinery
 - Rotten Vegetation

tabbles

EXHIBIT

C

1 of 2

2000 ft

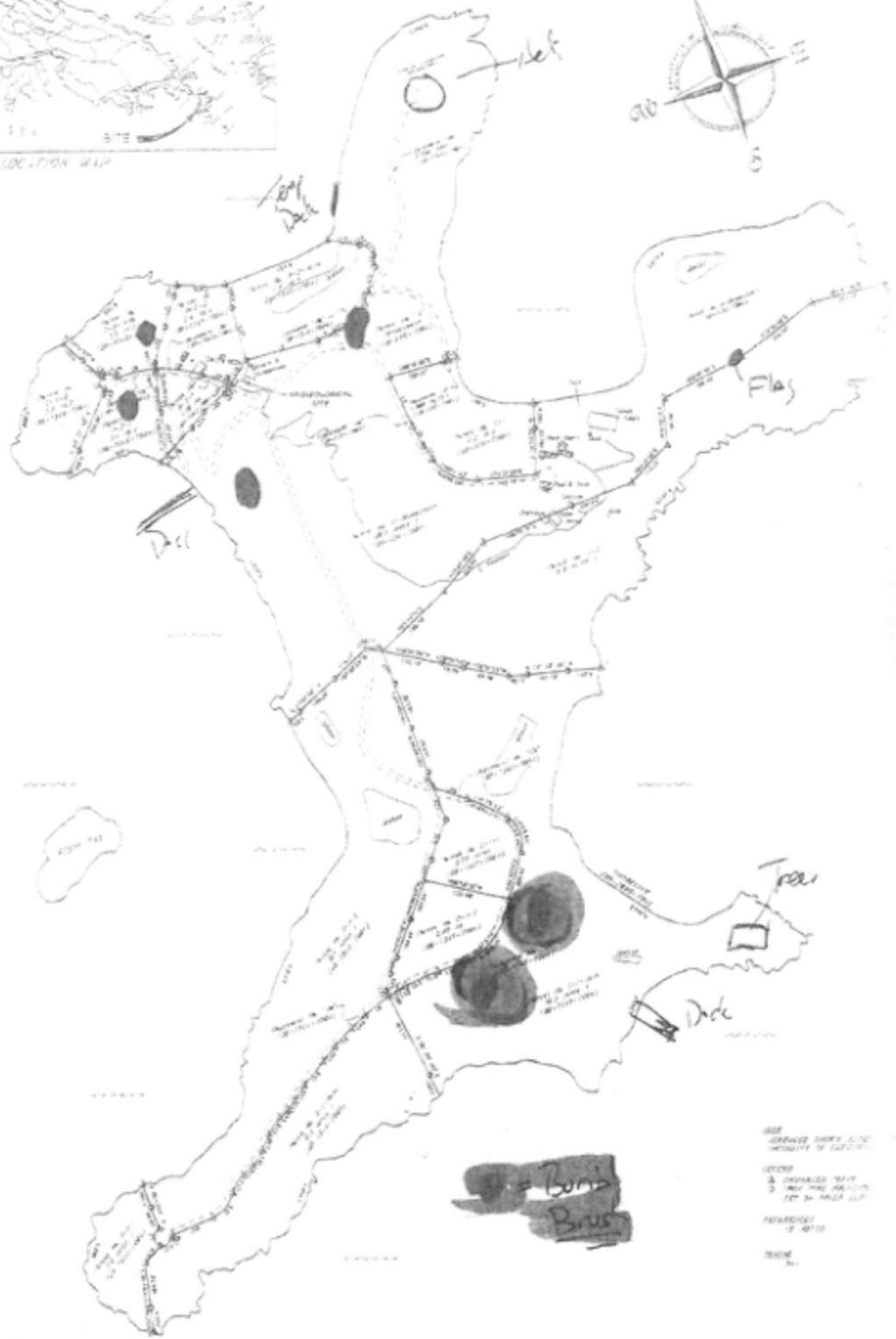


Malina

Shannon



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REVISIONS
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DATE

CARIBBEAN SEA

This is a copy of the map and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, as established and adopted by ALTA and NSPS, and includes items 4, 5(a), 6, 11(a), and 19 of Table A thereof. The title work was completed on 01-22-2015.

Date of Map: 01-22-2015
 BRIAN MOSLEY AND ASSOCIATES, INC.
 Brian Mosley
 Surveyor, P.L.S.



EM A	Brian Mosley Surveyor, P.L.S.	01/22/15	100%
	Land Surveys & Consulting	01/22/15	100%
ALTA/ACSM Land Title Survey of			
Parcels No. A-Rem., A-1, A-2,			
B-1-Rem., B-1-1, B-1-2,			
B-2-Rem., B-2-1, B-2-2,			
C-1-Rem., C-1-1, C-1-2,			
C-2-Rem., C-2-1, & C-2-2			
Great St. James Island			
No. 5A Red Hook Quarter			
St. Thomas, U.S. Virgin Islands			
Sheet 2 of 2			



November 29, 2016

Honorable Dawn Henry, Esq.
Commissioner, Government of the Virgin Islands
Department of Planning and Natural Resources
Cyril E. King Airport, Terminal Building – 2nd Floor
8100 Lindberg Bay
St. Thomas, U.S. Virgin Islands 00802

RE: RECONSIDERATION OF SPECIAL CONDITION NO. 16 TO PERMIT NO. CZT-05-17(L) FOR GREAT ST. JAMES, ST. THOMAS, U.S. VIRGIN ISLANDS

Dear Commissioner Henry,

The Jaredian Design Group, on the behalf of our client, Great Jim, LLC, requests the **RECONSIDERATION OF SPECIAL CONDITION NO. 16 OF PERMIT NO. CZT-05-17(L) FOR GREAT ST. JAMES, ST. THOMAS, U.S. VIRGIN ISLANDS.** That condition states, "The proposed flag pole shall be a maximum of 45 feet above existing grade." We are requesting reconsideration of this requirement, as the limitation of 45 feet is in our opinion arbitrary related to height restrictions in the R-1 District. The R-1 (Residential Low Density) District states in *Title 29, Section 229(c)* that the limitation on height is restricted to residential structures not exceeding two stories. It does not define height limitations on other accessory structures that may also be permitted under the R-1 District. Furthermore, the description of permitted height defined in *Title 29, Section 226(l)* appears, in our opinion, to define attachments of substructures on to an enclosed building. For example, steeples, chimneys, water tanks, and yes, flag poles, are limited to a height of 15 feet above the height limits of the particular district where it is located. However, this does not address a free-standing structure as the flag pole intended for Great St. James. Likewise, the definition of story outlined in *Title 29, Section 225(b)(92)* does not define a specific height for a story. It in fact defines the height of 24 feet in relation to a Mezzanine, but does not define a story by itself. The R-1 District does allow by 'Special Conditions' the construction of communication towers. Many of these towers have already been installed in the Virgin Islands in the R-1 District, taller than the 80 feet requested by Great St. Jim.

The proposed flag pole visually will be less obstructive than the proliferation of communication towers that have invaded developed R-1 neighborhoods throughout the Territory. Our intended pole will be a singular structure that will not impair or reduce the value of any surrounding neighbors' properties. It is not our intention to mount additional communication devices on the flag pole, but to simply, and proudly, place the flag of the United States of America on it.

It is important to us that this condition be reconsidered prior to our execution of CZT-05-17(L).
Should you have any further questions or comments, please feel free to contact me at 777-1600.

Very truly yours,

JAREDIAN DESIGN GROUP



John P. Woods, AIA, NCARB
Principal

Cc: Jean-Pierre L. Oriol, Director, Division of Coastal Zone Management/DPNR
Attorney Erika Kellerhals, Legal Counsel for Great St. Jim, LLC
LeRoy V. Smith, Jr., PE, Principal, Jaredian Design Group