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November 9, 2021

Jason Brown,
County Administrator
Indian River County Administration Bldg.
1801 27th Street
Vero Beach, FL 32960

**Re: David and Nancy Herbert
755 Reef Road, Vero Beach, FL 32963
Permit No. 2019100490/ Appeal of Public
Works Director Determination of Non-Compliance.**

Dear Jason,

Please treat this letter as an appeal of the decision of Richard Szpyrka, Public Works Director, to deny signing off the final permit on a newly constructed residence located on 755 Reef Road, Vero Beach, FL, 32963.

The applicants, David and Nancy Herbert, constructed a new residence on an existing single-family lot that had previously been the location of a single-family residence that was torn down. A driveway remained on the lot following the tear down.

When the site plan was submitted, the engineer checked off the box indicating a concrete type drive when in fact the applicant had sought to use ~5" stabilized grade base (coquina rock) and 1"-1.5" of #89 stone. The stone is dense enough so rainwater does not erode it but porous enough to allow water not to run onto the road. It was an error that the construction site plan showed a concrete type drive, but the applicant believes that such error should not be fatal when the code permits the type of driveway material utilized.

In the final letter determining non-compliance, Mr. Szpyrka noted that IRC Code §312.08(2)(A) sets forth the requirements of a driveway constructed in county right-of-

way and that the portion of any driveway constructed within the county right-of-way shall be constructed as shown in “section 312.19 Figures 2 and 3.”

The applicant does not deny the plain language of those code sections as applying to new construction but argues that the modification of an existing driveway of an established single-family lot does not fall under the purview of Figures 2 and 3. Rather, it is Figure 4, *Replacement of Asphalt Pavement for Permitted Pavement Cut* that should apply.

755 Reef Road is an existing lot with driveway system. The driveway (as verified by IRC Property Appraiser pictures) shows a loose pebble driveway. Figure 4 notes that the replacement of flexible pavement for permitted pavement cut specifically states under General Notes that “base and backfill materials shall be either of the same type and compensation as the materials removed, or of equal or greater structural adequacy.”

We believe this interpretation is correct based upon other code sections found in §312. For example, §312.06. *Prohibited Activity*, states that it should be unlawful for any person to “[C]onstruct, alter, arrange for, authorize, or participate in any construction or placement of fill, pavement, driveway... in... right-of-way without first obtaining a valid right-of-way permit.” The concept of “constructing” a driveway within a right-of-way is different than the placement of fill or material within an already existing driveway system.

The previous driveway that had a pebble-based surface eventually turned to mostly dirt. The applicant has expended significant funds to replace an existing dirt driveway with a new, high quality stone driveway that exceeds all desired outcomes. It not only prevents water from running onto the roadway where it pools (which means more water can remain on the lot where it can percolate into the ground), it is dense enough so that the material stays on the driveway itself (Please note the attached photos supporting this position). There is also a 12” deep driveway apron concrete ribbon curb that also prevents the stone from entering onto the roadway. This new driveway exceeds in every way the materials that were on the existing driveway.

The applicant requests that you find the driveway material complies with County regulations and direct the Public Works Director to sign off on the final permit.

I appreciate your attention to this matter.

Sincerely yours,

LAW OFFICES OF GLENN & GLENN

By: /s/ George A. Glenn, Jr.
George A. Glenn, Jr. Esquire

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cc. Deputy County Attorney Bill DeBaal
Public Works Director Rich Szpyrka

Enc.