

THE CITY OF KEY WEST
PLANNING BOARD
Staff Report



To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Jordan Mannix-Lachner, Planner I

Meeting Date: January 19, 2023

Application: **Variance – 2121 Fogarty Avenue (RE# 00049900-000000)** – A request for variances to the minimum required front and rear setbacks and maximum required building coverage in order to remodel an existing two-family home on a parcel located in the Single-Family Residential zoning district, pursuant to Sections 90-395, 122-238(4)a., 122-238(6)a of the Land Development Regulations of the City of Key West, Florida.

Request: A request for variances to required front and rear setbacks and building coverage in order to remodel an existing residential structure by adding roofs to existing decks and enclosing approximately 150 square feet of an upstairs deck in order to convert the upstairs accessory dwelling unit from a studio to a one-bedroom unit.

Applicant: Serge Mashtakov

Property Owner: Marianne Van Den Broek & Anna Schuhlein

Location: 2121 Fogarty Avenue (RE# 00049900-000000)

Zoning: Single-Family Residential District



Background:

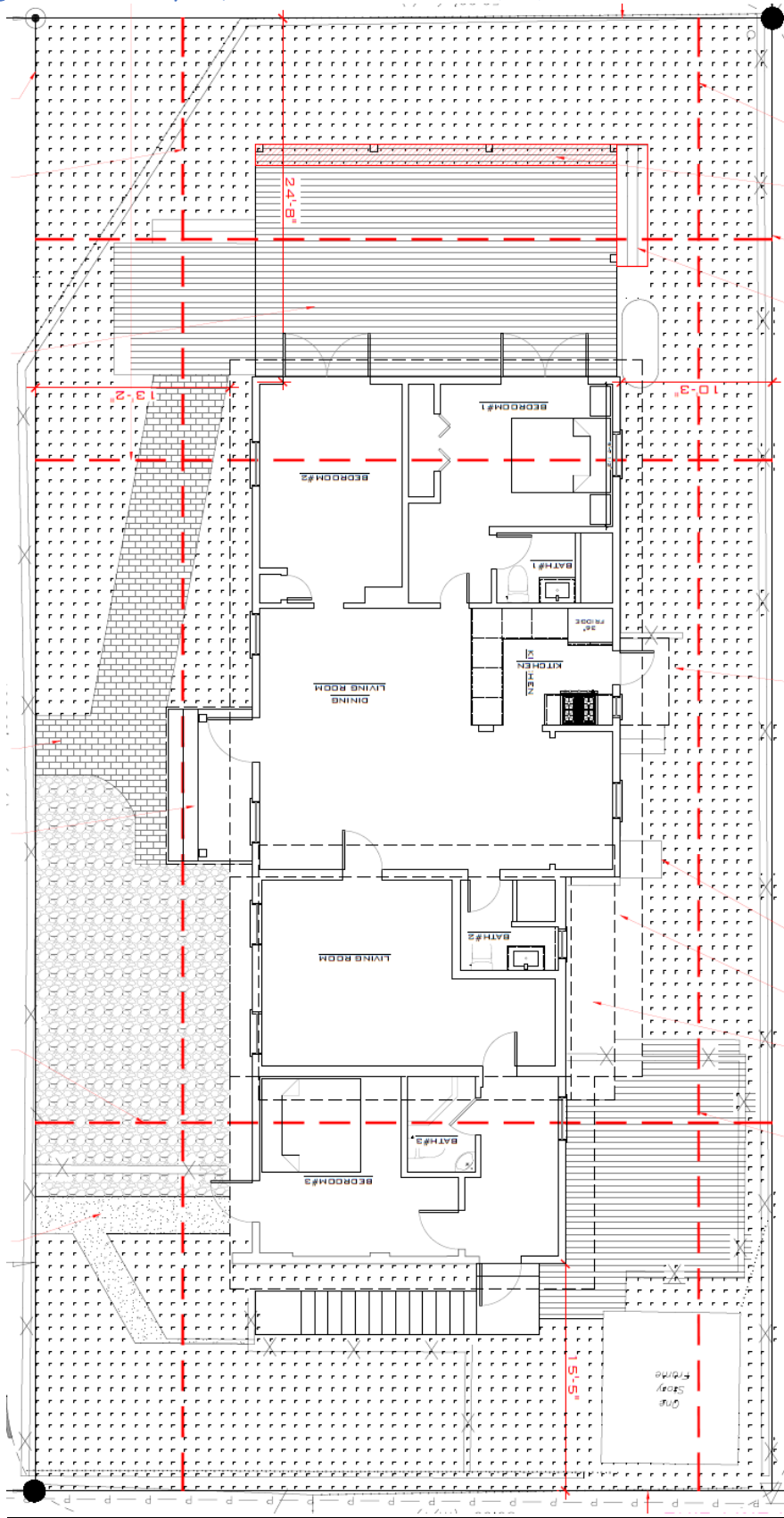
The property at 2121 Fogarty Avenue is a 5,000 square-foot lot in the Single-Family Residential zoning district. It contains one residential structure with 1,774 square feet of finished floor area and 1,008 square feet of uncovered decking. Two residential units are recognized by the City; an accessory dwelling unit was recognized via a lawful unit determination in 2006. The principal residence is on the first floor. The second floor contains a 308-square-foot accessory dwelling unit and a 308-square-foot uncovered deck. The minimum area for an accessory dwelling unit is 300 feet. Accessory dwelling units in the single-family district must comply with Section 122-233, which requires a deed restriction limiting the maximum rental rate, excluding utilities, to 25 percent of the median household income in the county.

The proposal is to construct roofs on the uncovered decks, as well as to enclose approximately 150 square feet of the upstairs deck to bring the accessory dwelling unit from 308 square feet to approximately 450 square feet.

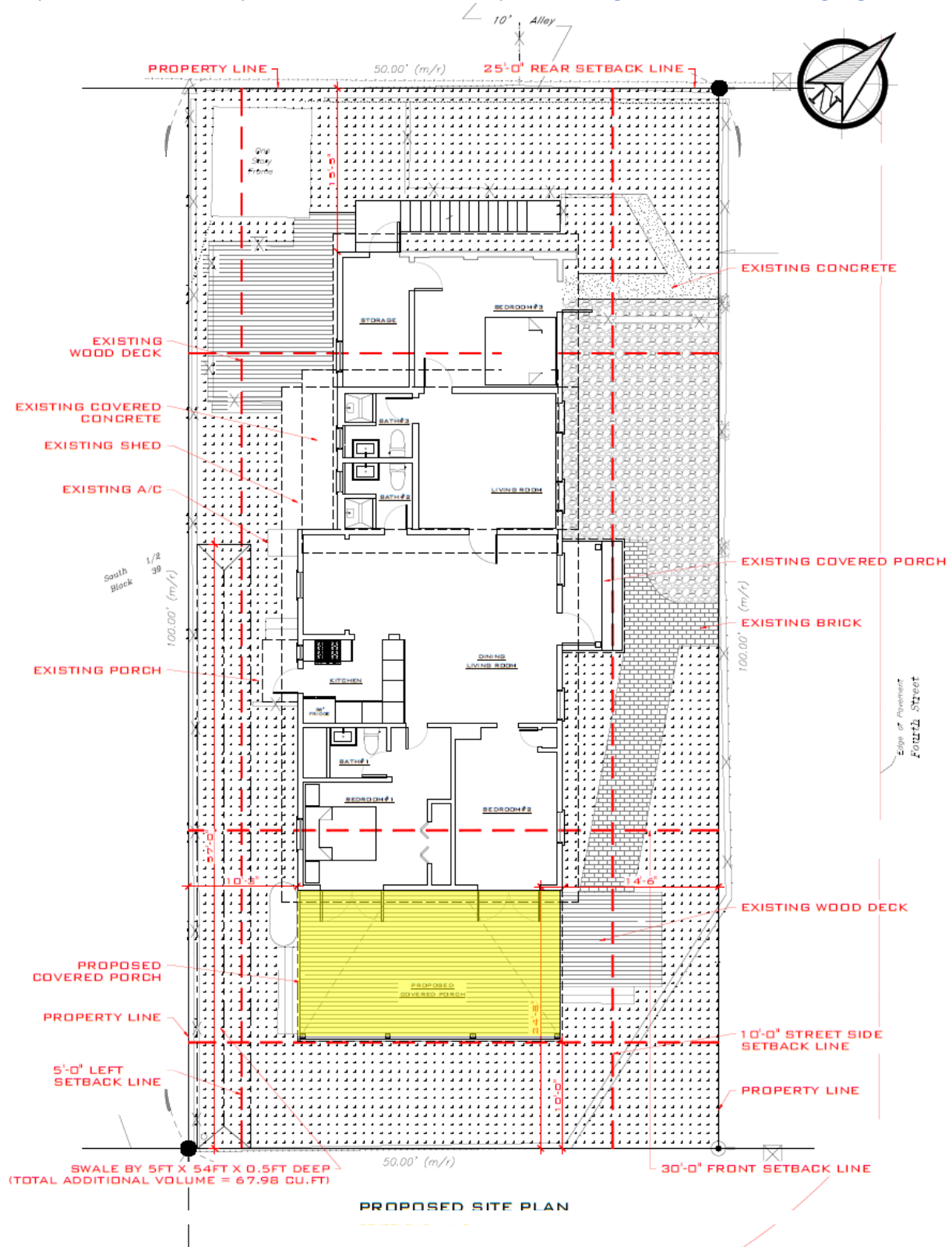
The principal structure has legal noncomplying front, rear, and side setbacks. The proposal would add a roof to the existing front yard deck, triggering a front setback variance. The proposal would also add a roof and partially enclose the existing rear second-floor deck, which triggers a rear setback variance. The site is legally noncomplying with regard to parking for both units; one designated parking space is required for each unit and there is no off-street parking on the property. Because the site is legally noncomplying and the proposal does not increase the number of units on the property, a parking variance is not required.



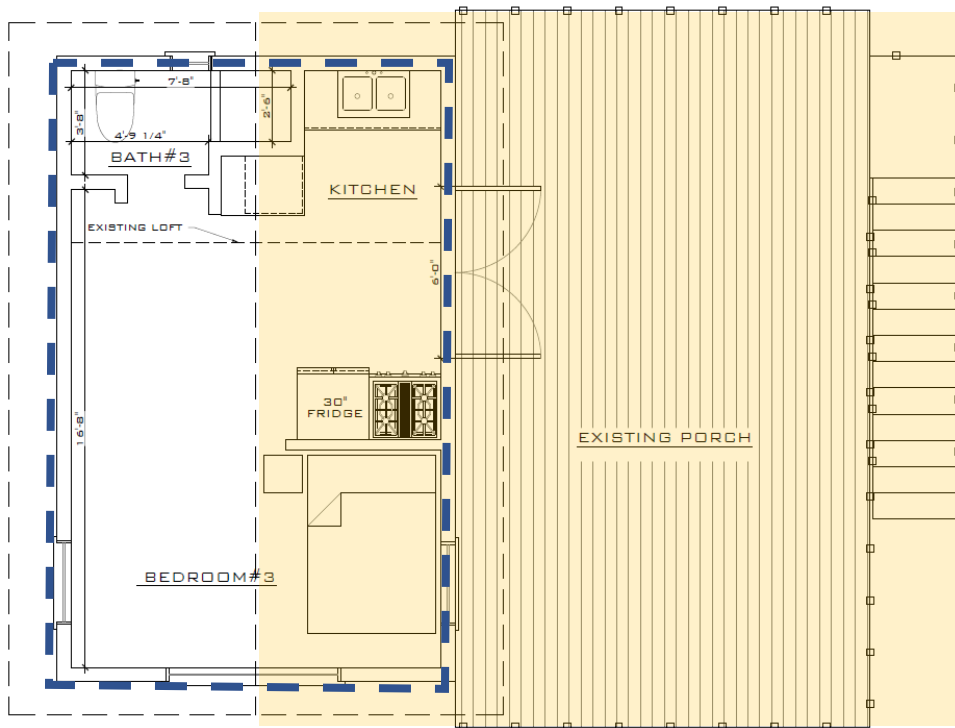
Existing first floor site plan, with setbacks dated 11/25/22



Proposed first floor site plan, dated 11/25/22. Proposed changes within setback highlighted.

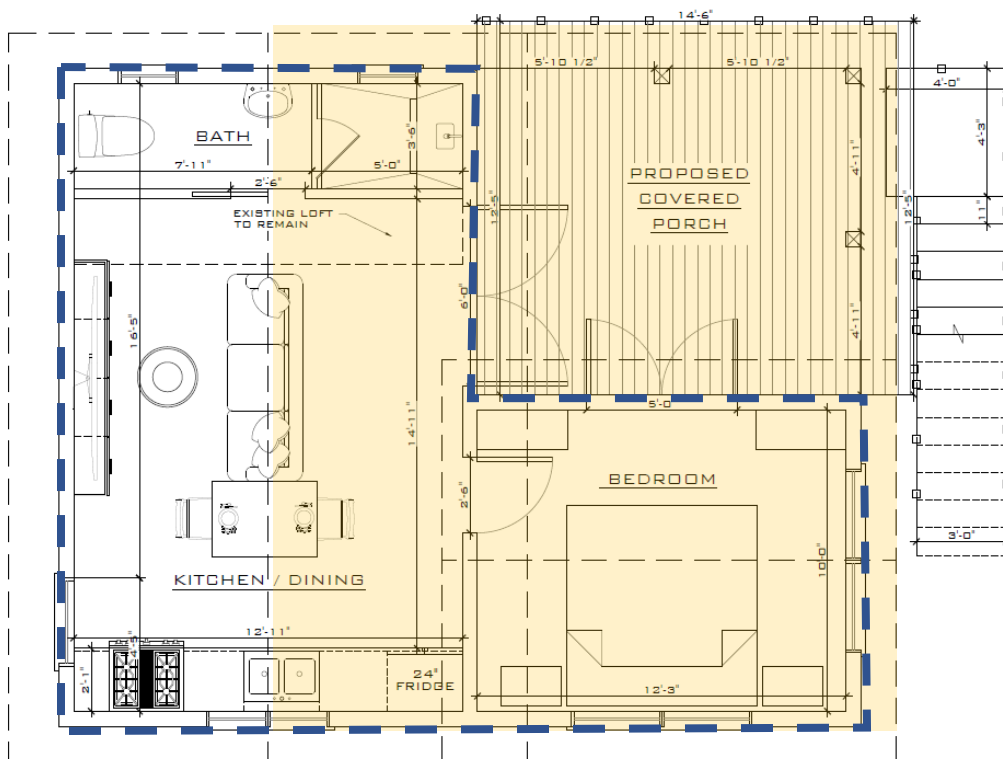


Existing and proposed second floor site plans, dated 11/25/22.



Existing:
 Porch floor area: 308 SF ADU
 floor area: 308 SF

Setback encroachment highlighted. ADU indicated with dashed line.



Proposed:
 Porch floor area: ±150 SF
 ADU floor area: ± 450 SF

Proposed work within setback highlighted. ADU indicated with dashed line.

Site Data Table

The site data table below provides the current and proposed site data for the property. Variances are proposed for front and rear setbacks, maximum building coverage, and the floor area ratio of the accessory dwelling unit.

Site Data Table:				
	Code Required	Existing	Proposed	Variance Request
Zoning	SF			
Flood Zone	AE7			
Minimum Lot Size/ Size of Site	6,000	5,000		
Front Setback	30'	24'8"	10'	Yes
Side Setback	5	10'3"	10'3"	No
Street Side Setback	10'	13'2"	13'2"	No
Rear Setback	25	15'5"	15'5"	Yes
Building Coverage	35% (1,750 SF)	33% (1,650 SF)	40.12% (2,006 SF)	Yes
Impervious Surface	50%	41.1%	48.2%	No
Open Space	35%	45.6%	46.3%	No
Parking	2	0	0	No

Based on the plans submitted, the proposed design would require variances to the following requirements:

- A variance for building coverage is required as a result of the addition of a roof on the existing front and rear porches. The existing decks are lower than 30" in height and do not currently count as building coverage. However, covered decks do count toward building coverage.
- Variances for front and rear setbacks are required as a result of the addition of a roof on the existing front and rear porches, as well as the enclosure of a portion of the rear deck. The decks currently exist within the setbacks.

Process:

Planning Board Meeting:	January 19, 2022
Local Appeal Period:	10 Days
Planning renders to DEO for review:	Up to 45 days

Staff Analysis - Evaluation:

The criteria for evaluating a variance are listed in Section 90-395 of the City Code. The Planning Board, before granting a variance, must find all the following:

1. *Existence of special conditions or circumstances. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other land, structures, or buildings in the same zoning district.*

No special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other land, structures, or buildings in the same zoning district.

NOT IN COMPLIANCE

2. *Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.*

While existing circumstances were not created by the applicant, there are no special conditions on the site and the proposed renovations are per the applicant.

NOT IN COMPLIANCE

3. *Special privileges not conferred. That granting the variance requested will not confer upon the applicant any special privileges denied by the land development regulations to other lands, buildings, or structures in the same zoning district.*

Granting the variance requested will confer upon the applicant special privileges denied by the land development regulations to other lands, buildings, or structures in the same zoning district, in terms of the right to develop within required setbacks, and in excess of required maximum building coverage.

NOT IN COMPLIANCE

4. *Hardship conditions exist. That literal interpretation of the provisions of the land development regulations would deprive the applicant of rights commonly enjoyed by other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.*

Hardship conditions do not exist.

NOT IN COMPLIANCE

5. *Only minimum variance granted. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.*

The variance requested is not the minimum variance that will make possible the reasonable use of the land, building, or structure.

NOT IN COMPLIANCE

6. *Not injurious to the public welfare. That the granting of the variance will be in harmony with the general intent and purpose of the land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public interest or welfare.*

Granting of the variance will not be in harmony with the general intent and purpose of the land development regulations, which specify requirements for setbacks and building coverage in furtherance of the public welfare. However, the proposal would support the improvement of the existing affordable housing stock, which is consistent with Comprehensive Plan Goal 3-1 to assist the private sector in providing affordable quality housing in neighborhoods protected from incompatible uses.

PARTIAL COMPLIANCE

7. *Existing nonconforming uses of other property not the basis for approval. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.*

No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures, or buildings in other districts is considered grounds for the issuance of a variance.

IN COMPLIANCE

Concurrency Facilities and Other Utilities or Service (Section 108-233):

It does not appear that the requested variance will trigger any public facility or utility service capacity issues.

The Planning Board shall make factual findings regarding the following:

That the standards established by Section 90-395 of the City Code have been met by the applicant for a variance.

The standards established by Section 90-395 of the City Code **have not** been fully met by the applicant for the front and rear setbacks and building coverage variance requests.

That the applicant has demonstrated a “good neighbor policy” by contacting or attempting to contact all noticed property owners who have objected to the variance application, and by addressing the objections expressed by these neighbors.

The Planning Department has received a letter of support from the neighboring property owners at 1300 4th Street. No objections have been received.

Recommendation:

The variance request to the required setbacks and building coverage does not meet all the criteria stated in Section 90-395.

The Planning Department recommends that the request for variances to required front and rear setbacks and maximum building coverage be **denied**.

If the Planning Board chooses to approve the variances, the Planning Department recommends the following conditions:

General Conditions:

1. The proposed design shall be consistent with the plans signed, sealed, and dated, November 25, 2022, by Serge Mashtakov, PE of Artibus Design for the property located at 2121 Fogarty Avenue.
2. The accessory dwelling unit shall comply with all requirements of Section 122-233 as noted below, with the exception of criteria (i) which is legally nonconforming:
 - a) The monthly rent for a rented accessory unit, not including utilities, shall not exceed 25 percent of that amount which represents 100 percent of the monthly median household income (adjusted for family size) for Monroe County. This affordability criteria shall be duly recorded as a deed restriction in perpetuity.
 - b) Accessory units shall be restricted to occupancy by permanent residents.
 - c) Accessory units shall not be sold separately as a condominium.
 - d) When an accessory unit permit is originally initiated, the principal unit must be owned and occupied by a permanent resident.
 - e) Accessory units shall not take up more than 40 percent of the principal structure.
 - f) Accessory units shall comply with maximum impervious surface regulation within the SF district. Parking surfaces shall not be counted as open space.
 - g) Accessory units shall comply with applicable landscaping requirements.
 - h) Accessory units shall comply with the maximum threshold for lot coverage by impervious surfaces.

- i) Parking requirements shall be satisfied by both the principal and accessory unit.
 - j) Density shall be calculated based only upon the number of principal units on a site.
 - k) Accessory units shall not exceed 600 square feet and the minimum size shall be 300 square feet.
 - l) Any application for accessory units shall include deed restrictions which shall be filed with the city and the clerk of the circuit court. The deed restrictions shall incorporate mandatory compliance with the criteria cited in subsection (a) of this section.
3. Prior to submittal of building permit application, applicant shall submit a recorded deed restriction in accordance with this Planning Board resolution to ensure compliance with City of Key West Code Section 122-233. The deed restriction shall be provided by the City Attorney and executed by the property owner.