

**PLANNING BOARD
RESOLUTION No. 2012-22**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD
RECOMMENDING APPROVAL OF AN ORDINANCE OF
THE CITY OF KEY WEST, FLORIDA, AMENDING
CHAPTER 122 OF THE CODE OF ORDINANCES
ENTITLED "ZONING" BY AMENDING SECTION 122-26
AND ADDING SECTIONS 122-33 AND 122-34 TO PROVIDE
FOR AN EXCEPTION FOR PROPERTY AFFECTED BY
EMINENT DOMAIN OR VOLUNTARY CONVEYANCE
FOR PUBLIC TRANSPORTATION OR OTHER PUBLIC
PURPOSES; PROVIDING FOR SEVERABILITY;
PROVIDING FOR REPEAL OF INCONSISTENT
PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Planning Department initiated the proposed amendments to the ordinance as a result of the need to install ADA compliant sidewalks on North Roosevelt Boulevard specifically and throughout the city at large; and

WHEREAS, the Planning Board held a noticed public hearing on May 31, 2012, where based on the consideration of recommendations by the City Planner and City Attorney, the Planning Board recommended approval of the proposed amendments; and

WHEREAS, the Planning Board determined that the proposed amendments are: consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional public demand on public facilities; will have no impact on the built environment; will not negatively impact



Chairman


Planning Director

property values or the general welfare; will result in more orderly and compatible land use patterns; and are in the public interest.

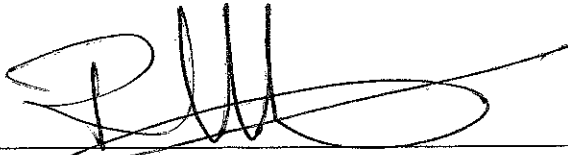
NOW THEREFORE BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. Amending Chapter 122 of the Code of Ordinances entitled “Planning and Development” by amending Sections 122-26 and adding Sections 122-33 and 122-34 to provide modifications to the Land Development Regulations regarding the exception for property affected by eminent domain or voluntary conveyance for public transportation or other public purpose is hereby recommended for approval; a copy of the recommended amendments to the Code is attached.

Section 3. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.
Read and passed on first reading at a special meeting held this 31st day of May, 2012.

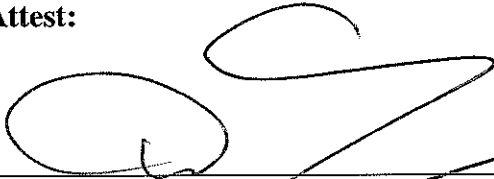
Authenticated by the Chairman of the Planning Board and the Planning Director;



Richard Klitenick, Chairman
Key West Planning Board

6/6/12
Date

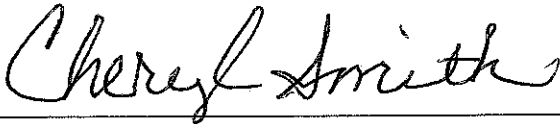
Attest:



Donald Leland Craig, AICP
Planning Director

6.5.12
Date

Filed with the Clerk:



Cheryl Smith, City Clerk

6-6-12
Date

Draft Ordinance

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 122 OF THE CODE OF ORDINANCES ENTITLED "ZONING", ARTICLE II, ENTITLED "NONCONFORMITIES" BY AMENDING SECTION 122-26 TO ADD DEFINITIONS; ADDING SECTION 122-33 TO PROVIDE FOR AN EXCEPTION FOR PROPERTY AFFECTED BY EMINENT DOMAIN OR VOLUNTARY CONVEYANCE FOR PUBLIC TRANSPORTATION OR OTHER PUBLIC PURPOSE; ADDING SECTION 122-34 REGARDING STATUS OF PARCELS DURING OR AFTER ACQUISITION BY EMINENT DOMAIN OR VOLUNTARY CONVEYANCE FOR PUBLIC TRANSPORTATION OR OTHER PUBLIC PURPOSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission finds that certain public transportation or other public purpose construction on and along any public rights-of-way located within the City of Key West may affect the development of private property in a manner that is beyond the control of the private property owners so affected; and

WHEREAS, the City Commission seeks to minimize adverse impacts on private property owners affected by rights-of-way/public purpose improvements by providing a waiver process for nonconformities which may result from eminent domain conveyances or a private property owner's voluntary conveyance of any portion of private property to an acquiring authority for public transportation or other public purpose;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST,

FLORIDA:

Section 1: That section 122-26 of the Code of Ordinances is hereby amended as follows*:

Sec. 122-26. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Acquiring Authority means the governmental entity proposing to acquire private property for a public transportation or other public purpose, pursuant to eminent domain action or by voluntary conveyance. Acquiring Authorities include, but are not limited to, Monroe County, the City of Key West, and the Florida Department of Transportation ("FDOT").

Cure plan means a site plan submitted by an Acquiring Authority or a Private Property Owner for a site subject to an eminent domain action or a voluntary conveyance for public transportation or other public purpose. The cure plan shall show proposed changes to structures or other features of the remainder parcel necessary to make the remainder parcel comply with the

* (Coding: Added language is underlined; deleted language is ~~struck through~~.)


applicable land development regulations or, comply to the degree feasible.

Dwelling unit. See section 86-9.

Eminent domain action means one or a series of actions taken by an Acquiring Authority to obtain fee simple title to all or some part of privately held real property for a public use.

Eminent domain/public purpose waiver means authorization from the City of Key West for the continued use and enjoyment of a remainder parcel subsequent to an eminent domain action or a voluntary conveyance for public transportation or other public purpose. An eminent domain/public purpose waiver shall not be issued where the remainder parcel and the existing structures located thereon conform with the applicable zoning district land development regulations as of the date that title transferred to an Acquiring Authority under an eminent domain action or through a voluntary conveyance.

Noncomplying building or structure means any building or other structure, for which the use is lawful (permitted or nonconforming), but the building or other structure does not comply with all applicable sections of the land development regulations,



including but not limited to size and dimension regulations, off-street parking requirements, landscape requirements, nuisance abatement standards, or height requirements, either on the effective date of the ordinance from which this section derives or as a result of any subsequent amendment.

Nonconforming density means the number of dwelling or living units per acre greater than the number allowed by the land development regulations, which were legally established or licensed prior to the effective date of the ordinance from which this section derives.

Nonconforming use means a use of a building or structure or a tract of land which does not, on the effective date of the ordinance from which this section derives or amendment thereto, conform to any one of the current permitted uses of the zoning district in which it is located, but which was legally established in accordance with the zoning in effect at the time of its inception or which use predates all zoning codes and which use has not changed or been abandoned. This definition shall not operate to make legal an unlicensed transient rental accommodation located in a residential structure.

Owner of a Remainder Parcel means the owner in fee simple title of a remainder parcel who is a successor in interest to a Private Property Owner's interest in the remainder parcel; or, the

owner in fee simple title of a remainder parcel whose title to the remainder parcel is derived from the Private Property Owner or the Private Property Owner's successors in title.

Parent Tract means the parcel of land that existed prior to an Acquiring Authority's acquisition of some portion of the parcel through eminent domain action or voluntary conveyance for public transportation or other public purpose.

Private Property Owner means the owner in fee simple title of a parent tract.

Remainder parcel means that portion of the parent tract remaining in private ownership following an eminent domain action or a voluntary conveyance for public transportation or other public purpose.

Voluntary conveyance means the transfer of title to any portion of a parent tract by the Private Property Owner to an Acquiring Authority for public transportation or other public purpose in lieu of an eminent domain action.

Section 2. That section 122-33 is hereby added to the code of ordinances as follows:

Sec. 122-33. Eminent Domain/Public Purpose Waiver

An eminent domain/public purpose waiver is intended to provide Private Property Owners and Owners of Remainder Parcels a viable and fair alternative to the adverse impact on their real property, as a result of an eminent domain action or voluntary conveyance to an Acquiring Authority. It allows the continued use of the remainder parcel in a manner similar to its pre-acquisition, pre-taking, or pre-conveyance condition. Waivers provided pursuant to this section 122-33 can be obtained for nonconforming lots and structures. Waivers cannot be granted for nonconforming uses.

(a) Applicability.

(1) Vacant parcels, whether conforming or nonconforming lots, shall be eligible for an eminent domain/public purpose waiver from Land Development Regulations including, but not limited to, minimum lot size, setbacks, parking, open space, pervious versus impervious area, density, floor area ratios, landscaping and landscape buffers, and signage setbacks, pursuant to sections 122-33(C), (D), and (E).

(2) Developed parcels. Where an eminent domain action or voluntary conveyance for public transportation or other



public purpose reduces the lot size and creates a nonconforming remainder parcel but does not require the relocation of site features, said parcel shall be eligible for an eminent domain/public purpose waiver from Land Development Regulations including, but not limited to, minimum lot size, setbacks, parking, open space, pervious versus impervious area, floor area ratios, density, landscaping and landscape buffers, and signage setbacks, pursuant to sections 122-33(C), (D) and (E).

(3) Developed parcels. Where an eminent domain action or voluntary conveyance for public transportation or other public purpose requires the relocation of site features including, but not limited to, buildings, parking spaces, landscaping, stormwater facilities, dumpsters, light poles and signs, such a parcel shall be eligible for an eminent domain/public purpose waiver, pursuant to sections 122-33(C) and (E).

(b) An Acquiring Authority, a Private Property Owner, and an Owner of a Remainder Parcel are each hereby granted the authority to apply for a waiver from the Land Development Regulations on a remainder parcel that has resulted or will result from an eminent domain action or voluntary conveyance for public transportation or other public purpose. The application may be made prior to or after the Acquiring Authority has obtained title



to some part of the parent tract. The City Planner shall have authority to grant eminent domain/public purpose waivers pursuant to sections 122-33(C), (D) and E).

(c) Procedure for an Acquiring Authority or Private Property Owner to apply for an eminent domain/public purpose waiver.

(1) An Acquiring Authority or a Private Property Owner may apply in writing to the City Planner for a waiver pursuant to sections 122-33(C) and (E). The applicable fee, established by resolution, shall be submitted with the following documents:

a. An as-built drawing of the parent tract and a legal description of the portion to be acquired by or transferred to the Acquiring Authority and the remainder parcel shall be submitted for those circumstances described in sections 122-33(A)1, 2 and 3 above. The as-built drawing must show the parent tract and the remainder parcel with the proposed changes to the site including, but not limited to, buildings, parking, landscaping, stormwater facilities, topographic data and adjacent right-of-way; and

b. A site plan (a cure plan as defined herein) showing the parent tract and the remainder parcel with the proposed changes to the site including, but not limited to,

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buildings, parking, landscaping, stormwater facilities, topographic data and adjacent right-of-way. Submittal of a cure plan shall not be necessary on a vacant parcel but shall be required for those parcels described in Section 122-33(A)3, above.

(2) If an application for a waiver is submitted by an Acquiring Authority, the Private Property Owner shall be notified via certified mail (return receipt requested) by the City Planner within ten (10) days of the application submittal date. Likewise if the Private Property Owner applies for a waiver, the Acquiring Authority shall be notified via certified mail (return receipt requested) by the City Planner within ten (10) days of the application submittal date.

(3) The City Planner shall grant or deny a waiver pursuant to section 122-33 (C) in accordance with the standards set forth in section 122-33(E) below. A certified letter (return receipt requested) shall be issued within thirty (30) days to the Acquiring Authority and the Private Property Owner following the decision. The Private Property Owner shall not be required to accept the waiver or implement a cure plan, as approved by the City Planner.

(d) Procedure for an Owner of a Remainder Parcel to apply for



an eminent domain/public purpose waiver.

(1) An Owner of a Remainder Parcel may apply in writing to the City Planner for a waiver pursuant to sections 122-33(D) and (E). The applicable fee, established by resolution, shall be submitted with the following documents:

a. An as-built drawing depicting the remainder parcel and that portion of the parent tract previously acquired by or transferred to the Acquiring Authority following an eminent domain action or as a result of a voluntary conveyance shall be submitted for those circumstances described in section 122-33(A)1 and 2 above; and

b. A certified copy of the recorded document evidencing the Acquiring Authority's acquisition of a portion of the parent tract following an eminent domain action or a certified copy of the deed of conveyance wherein the Private Property Owner conveyed a portion of the parent tract to the Acquiring Authority as a result of a voluntary conveyance for public transportation or other public purpose.

(2) The City Planner shall grant or deny a waiver pursuant to section 122-33(D) in accordance with the standards set forth in section 122-22(E) below. A certified letter (return

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receipt requested) shall be issued within thirty (30) days to the Owner of a Remainder Parcel following the decision.

(d) Standards for issuance of eminent domain/public purpose waivers.

(1) If an existing lot, parcel or structure becomes nonconforming (or an existing nonconformity becomes less conforming) as a result of a voluntary conveyance to an acquiring authority or an eminent domain action, a waiver may be granted by the City Planner, provided a determination is made by the City Planner that:

a. The requested waiver will not adversely affect safety, aesthetic or environmental conditions of neighboring properties; and

b. The requested waiver shall not adversely affect the safety of pedestrians or operations of motor vehicles; and

c. The requested waiver will not encourage or promote the continuation of existing uses of the property which have been or will be rendered unfeasible or impractical due to the impacts of the taking, conveyance, and/or construction of the roadway or other facility including, but not limited to, aesthetic, visual noise, dust, vibration safety, land use compatibility, environmental or other impacts.

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Section 3. That section 122-34 is hereby added to the code of ordinances as follows:

Sec. 122-34. Status of parcels during or after acquisition by eminent domain action or voluntary conveyance for public transportation or other public purpose.

(a) Where a waiver is issued pursuant to section 122-33(C) and (D), the waiver shall become effective and the remainder parcel shall be considered compliant to the degree feasible after an Acquiring Authority takes title to any portion of real property subject to an eminent domain action or voluntary conveyance for public transportation or other public purpose.

(b) Where a Private Property Owner accepts a waiver on a remainder parcel that was also a vacant parcel or where no cure plan was necessary, the waiver shall remain valid and applicable to the remainder parcel indefinitely. However, future site plan and building permit approvals shall comply with all provisions in the Land Development Regulations except those listed in the waiver.

(c) Where a Private Property Owner accepts a waiver based upon a cure plan, the physical changes to the remainder

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parcel, specified in the cure plan, shall occur within 2 years of the waiver and cure plan being approved. Future site plan and building permit approvals shall comply with all provisions in the Land Development Regulations except those listed in the waiver.

(d) Waivers issued pursuant to this section may be appealed in the manner provided for appeals of administrative interpretations of the City Planner pursuant to section 90-430.

(e) The City Planner shall cause waivers issued pursuant to this section to be filed with the City Clerk and recorded in the Public Records of Monroe County no later than 30 days from the effective date of the waiver.

(f) The provisions of sections 122-33(C), (D), and (E) shall not be interpreted to allow for the continued existence of building or safety code violations that are determined to be an immediate threat to the public health, safety or welfare.

(g) The appropriate City staff are hereby authorized to take any necessary steps to enforce all applicable building and safety codes though the subject property is part of a pending governmental acquisition.

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Section 4. If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3. All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4. This Ordinance shall go into effect immediately upon its passage, adoption and authentication by the signature of the presiding officer and the Clerk of the Commission and is subject to all applicable time periods upon being rendered to the Florida Department of Community Affairs.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2012.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2012.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2012.

Filed with the Clerk _____, 2012.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

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Administrative Interpretation



cc



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

Administrative Interpretation

Date: April 20, 2011

Issue: The Florida Department of Transportation (FDOT) will begin a major renovation of North Roosevelt Boulevard to improve the travel lanes, bayside promenade and provide or upgrade of sidewalks on the south side of the Boulevard adjacent to existing commercial properties. For a number of properties along the Boulevard east of the Salt Run Channel the existing FDOT right of way is not sufficiently wide to accommodate the planned and State approved roadway improvements, specifically the sidewalks planned for the south side of the Boulevard. To remedy this situation, FDOT recently agreed to accept quit claim deeds for a portion of the affected properties to accommodate the planned sidewalks. The City and these same owners are concerned that the land given for this public improvement, required for public safety, may have an inadvertent negative effect on the landowners' properties by reducing the size and dimensions of their properties to the extent that non-conformities are created. If owners of such properties cannot be assured that their properties will not become non-conforming and perhaps subject to restrictions on development or re-development, they will be hesitant to grant the quit claim deeds necessary for the transfer of the needed property.

Introduction: In order to prevent the unintended consequences identified above and to promote the orderly design and completion of the sidewalks associated with the North Roosevelt Boulevard improvements and to protect the health, safety and welfare of the public, it is necessary to waive any non-conformities that may be created in the voluntary quit claim or eminent domain conveyance of property. To accomplish the waiver, it is also necessary to implement a two step process within the City Planning and Legal Departments for which the property owners, interested and affected citizens, and ultimately the City Commission can rely.

The first step is this determination. This determination identifies the specific properties which are eligible for consideration of a waiver to non-conformities created by granting a quit claim deed for the North Roosevelt Boulevard improvement project. It also provides, for the record, recognition that the presentation of a quit claim deed to FDOT is not in and of itself a voluntary action, but a response to the actions of a public agency completing a project that is required to have sidewalks to meet minimum engineering, health and safety standards. The attached list of properties compiled by the Key West Planning Department and the Key West Engineering Departments list those properties subject to this determination. In the future, other properties may also be subject to this determination as new public construction projects are undertaken where quit claims or other conveyances of lands are requested to accommodate the public works construction. The purpose of this first step is to identify the fact that providing quit claim deeds does not constitute a self imposed hardship situation if the result of the quit claim deed presentation reduces the lot area or dimensions such that the resulting parcel retained by the adjacent landowners, their

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successors, assigns or heirs engenders or creates non-conformities relating to the existing or future buildings, parking, setbacks, lot coverage, impervious surface ratios, or required open spaces.

The second part of this process is the creation and passage of an ordinance which provides for an exception to the Land Development Regulations applicable to non-conformities relating to properties affected by eminent domain or voluntary conveyance for public transportation or other public purpose. This ordinance will be drafted shortly for review by the Planning Board and City Commission.

In the interim, this determination will be applicable to the properties on North Roosevelt Boulevard affected by the current FDOT construction project and any other similar public works projects which meet the same circumstances as those on North Roosevelt Boulevard.

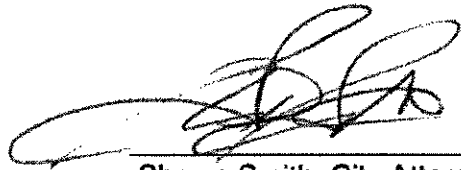
Determination The action by property owners on North Roosevelt Boulevard, within the described project area of the FDOT road improvements, providing the quit claim deeds to FDOT in order to allow the construction of sidewalks as a part of the project does not constitute a self imposed hardship situation if the results reduce the lot area or dimensions such that the resulting parcel retained by the adjacent landowners, their successors, assigns or heirs engenders or creates non conformities relating to the existing or future buildings, parking, setbacks, lot coverage, impervious surface ratios, or required open spaces. Further, for the purpose of determining lot area and lot dimensions for any request for a building or other permit for the affected properties until the passage of the ordinance discussed above, the area shall be that of the properties before the granting of the quit claim deeds to FDOT. This determination does not apply in any fashion or manner to non-conforming uses of buildings or land.

Authority Section 90-301(b) of the City of Key West Land Development Regulations provides the Planning Director the administrative responsibility to interpret the land development regulations.



Donald Leland Craig, AICP

4-20-11



Shawn Smith, City Attorney

5/2/11



cc

Properties Affected


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