

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES ENTITLED "ADMINISTRATION" BY AMENDING SECTION 90-392 AND BY ADDING SECTION 90-398 TO AUTHORIZE THE CITY PLANNER TO ISSUE ADMINISTRATIVE VARIANCES, ESTABLISH PROCEDURES FOR AN APPLICATION FOR ADMINISTRATIVE VARIANCES, ESTABLISH A PROCEDURE FOR PROVIDING NOTICE TO ADJOINING PROPERTY OWNERS OF THE CITY PLANNER'S INTENT TO ISSUE AN ADMINISTRATIVE VARIANCE, TO ESTABLISH CRITERIA FOR THE ISSUANCE OF ADMINISTRATIVE VARIANCES AND ESTABLISH A PROCEDURE FOR PUBLIC HEARINGS ON APPLICATIONS FOR ADMINISTRATIVE VARIANCES; AMENDING CHAPTER 122 ENTITLED "ZONING" BY AMENDING SECTION 122-28 AND ADDING SECTION 122-32 (G) TO ESTABLISH PROCEDURES FOR NONCONFORMITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Key West Planning Department has recommended a formal procedure for the consideration and granting of administrative variances; and

WHEREAS, the Planning Board at its meeting of June 20, 2013 found consistency with the City of Key West Comprehensive Plan; and

WHEREAS, the City Commission finds that an administrative variance procedure would promote the health, safety and welfare of the citizens of Key West.

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

Section 1: That Section 90-392 of the Code of Ordinances  
is hereby amended as follows\*:

**Sec. 90-392. Application**

(a) All applications for variances from the land development regulations shall be in the form required and provided by the city planner. Such application shall be submitted to the city planning office together with the fee established by resolution of the city commission. A completed application shall include the application form, the fee and all required supplemental information necessary to render determinations related to the variance request.

(b) Upon receipt of an application for a variance, the planning board shall hold a public hearing upon the application in accordance with the procedures cited in section 90-393 and shall render an order granting or denying such application. In granting such application the planning board must make specific affirmative findings respecting each of the matters specified in

\*(Coding: Added language is underlined; deleted language is ~~struck through~~. Language added after first reading of this Ordinance is double underlined; language deleted after first reading of this Ordinance is ~~double struck through~~.)

section 90-394 and may prescribe appropriate conditions and safeguards, including requirements in excess of those otherwise required by these land development regulations, which shall become a part of the terms under which a development order may be issued. When appropriate, as prescribed in section 90-398, the city planner may treat an application for variance as an application for administrative variance.

Section 2: That Section 90-398 is hereby added to the Code of Ordinances as follows:

**Sec.90-398. Administrative Variances.**

(a) The purpose of this section is to establish authority, procedures and standards for the granting of administrative variances and waivers from certain requirements of this chapter.

(b) Subject to the provisions contained herein below, the city planner is authorized to grant the following variances and waivers according to the standards contained in subsections (~~h~~) and (~~i~~) of this section:

(1) Reduction in the front, rear yard, and non-shoreline setback requirements in chapter 122, article IV, by no more than ten feet and side yard setback by no more than 20 percent;

~~(2) Reduction in the off street parking requirements in chapter 108, article VII by no more than 20 percent;~~

(~~2~~) Reduction in all street and landscaping buffer

yard width requirements in chapter 108, article VI by no more than ten percent;

(43) Reduction in the total area of landscaping required for off-street parking and loading in chapter 108, article VII, subdivision II by no more than ten percent.

(c) An application for an administrative variance or waiver under this section shall be submitted to the city planner on a form approved by the city planner.

~~(d) The fee structure for an administrative variance or waiver will be \$750.00, plus \$50.00 fee for Fire Department review, and \$100.00 advertising fee, and the fee structure for an after-the-fact administrative variance or waiver will be \$1,500.00, plus \$50.00 fee for Fire Department review, and \$100.00 advertising fee.~~

(ed) All applications for administrative variances or waivers shall be considered by the Development Review Committee pursuant to its customary process.

(fe) The city planner will shall complete his or her review of the entire application and render a proposed decision within three (3) weeks of the Development Review Committee meeting.

(gf) The city planner's proposed decision shall be in writing.

(hg) Prior to rendering a proposed decision, the city planner shall consult with and obtain concurrence of his or her

decision by the City Manager, or the City Manager's designee.  
With the exception of the special accessibility setback variance  
as provided for in subsection (k) of this section, approval of  
an administrative variance shall only be proposed or granted if  
all of the standards in subsection (h) and (i) of this section  
are met.

(h) The city planner shall recommend approval or approve  
an administrative variance under this section if the applicant  
demonstrates that all of the following standards are met:

(1) The applicant shall demonstrate a showing of good  
and sufficient cause, as follows:

a. the request deals solely with the physical  
characteristics of the property, subdivision lot or  
land parcel under question; and

b. the request is not based on the character of  
the planned construction or substantial improvement,  
the personal characteristics of the owner or  
inhabitants; and

c. the request is not based on inconvenience,  
aesthetic considerations, physical handicaps, personal  
preferences, the disapproval of neighbors or  
homeowners' association restrictions;

(2) Failure to grant the administrative variance would  
result in exceptional hardship to the applicant;

(3) Granting the administrative variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;

(4) The property has unique or peculiar circumstances, which apply to the subject property, but which do not apply to other properties in the same zoning district;

(5) Granting the administrative variance will not give the applicant any special privilege denied to other properties in the immediate neighborhood in terms of the provisions of this chapter or established development patterns;

(6) Granting the administrative variance is not based on disabilities, handicaps or health of the applicant or members of her/his family; and

(7) The administrative variance is the minimum necessary to provide relief to the applicant.

(8) The city planner may recommend approval or approve an administrative variance or waiver that modifies the minimum front yard requirements set out in zoning districts in Chapter 122, Article IV, provided the applicant demonstrates that:

(1) The existing setback average, as measured pursuant to the definition of "setbacks" in section 86-9, on the block of the street within the land use district in which

the subject property is located is less than the land use district standard, as established in zoning districts in chapter 122, article IV; and

(2) The waiver will not result in a setback that is less than the existing front yard setback to the furthestmost projection of the main building that is closest to the front lot line on a contiguous lot on either side of the subject property; and

(3) The waiver is for an amount not greater than 20 percent of the land use district standard as established in the zoning districts in chapter 122, article IV; and

(4) In the event that a contiguous lot on either side of the subject property is vacant, the land use district standard shall apply.

(~~h~~) Notwithstanding the standards in subsections (~~h~~) (~~h~~) (1), (4), (5), (6) and (7) of this section, an administrative variance from ~~the~~ any yard setback requirements may be granted for an elevator or wheelchair lift or ramp required to allow access to the elevated dwelling unit of a disabled applicant or disabled member of ~~her/his~~ the applicant's household.

(~~k~~) Public notification of proposed approval. In the event the city planner determines that an application for an administrative variance or a waiver complies with the requirements of this section, the city planning department shall

provide written notice of proposed approval and require posting as follows:

(1) The planning department shall provide written notice by regular mail to owners of real property located within 300 feet of the property which is the subject of the proposed administrative variance or waiver.

(2) Planning Staff shall post the property which is the subject of the proposed administrative variance or waiver with a waterproof sign of at least four square feet in front surface area, which is lettered so as to be easily visible from all public streets and public ways abutting the property.

(3) The notice and posting shall provide a brief description of the proposed administrative variance or waiver; indicate where the public may examine the application; and indicate the 30-working day period within which to request a public hearing pursuant to subsection (n) below or submit a written response. The cost of providing notice and posting shall be borne by the applicant.

(m) In the event a public hearing is not requested within the period provided in subsection (n) below, the city planner shall review all public responses to the application for administrative variance or waiver ~~application~~ with respect to



whether the proposed administrative variance or waiver—and  
complies with the requirements and standards of this section,  
and, thereafter, the city planner shall issue a written decision  
approving or denying the administrative variance.

(am) In the event the city planner issues a written  
decision denying a requested administrative variance, the  
applicant may file a written objection to the denial, which  
shall be deemed an application for a variance pursuant to  
section 90-392, which shall be subject to procedures pertaining  
to variances as contained in sections 90-391 through 90-397 of  
the Code of Ordinances.

(en) Public hearing by the Planning Board. If requested in  
writing by an aggrieved or adversely affected party, as defined  
by section 163.3215(2), Florida Statutes, during the required 30  
working days of posting, a public hearing by the Planning Board  
shall be scheduled at the next available hearing date. The  
public hearing shall be conducted in accordance with the  
procedures pertaining to variances as contained in sections 90-  
391 through 90-397 of the Code of Ordinances.

(po) Reapplication for the same or similar piece of  
property requesting the same or a similar administrative  
variance from the land development regulations cannot be made  
within two years from the date the application was originally  
denied by the Planning Board or city planner. An applicant may,

however, submit a substantially different application or reapply based on changed conditions and/or the advent of new information which have a substantial impact on material issues.

Section 3: That Section 122-28 of the Code of Ordinances is hereby amended as follows:

**Sec.122-28. Replacement or reconstruction.**

(a) Applicability. This section applies both to voluntary reconstruction or replacement of dwelling units and involuntary reconstruction or replacement of dwelling units. Nothing in this section is intended to supersede applicable Federal Emergency Management Agency requirements for elevation in flood zones.

(b) Dwelling units (residential). Residential dwelling units may be replaced at their existing nonconforming density, location and three-dimensional building envelope. ~~Except as provided in subsection (f) of this section,~~ dwelling units involuntarily destroyed do not require variances in order to be reconstructed or replaced. If a voluntary reconstruction or replacement occurs and if the dwelling units exist or existed in a noncomplying building or structure, the reconstruction or replacement that ~~exceeds 66 percent of the assessed or appraised value~~ increases the non-conformity of the building or structure shall require a variance granted by the planning board. In a voluntary reconstruction of a structure on a corner lot, the property owner must apply to the planning board for all

necessary setback variances. All noncomplying accessory structures to the principal building or structure (e.g., a shed, pool, fence, etc., but not including a condominium clubhouse) shall also require a variance in order to be enlarged, reconstructed, or replaced, either voluntarily or involuntarily. If a proposed reconstruction or replacement would not otherwise require a variance but would add a new building or structure to the site to accommodate allowed density, a variance shall be required for the additional building or structure. A residential building in which one or more units hold a residential transient use business tax receipt shall be deemed residential for the purposes of this section. Variances which would increase density or intensity beyond that maximum allowed on the particular property or lot by the Land Development Regulations shall be prohibited.

Section 4: That Section 122-32(g) is hereby added to the Code of Ordinances as follows:

**Sec. 122-32. Additional Regulations**

\* \* \* \* \*

(g) Enlargement and Extensions: Non-conforming structures which are used in a manner conforming to the provisions of this chapter may be enlarged or expanded provided that the existing non-conformity is not further increased, nor any new non-conformity created.

Section 5: Public Notice. The adoption of this Ordinance shall be evidenced by placement of a notice in a newspaper of general circulation within the City, in accordance with Chapter 50, Florida Statutes, within two weeks after adoption of this Ordinance. A copy of this Resolution shall also be posted at City Hall for the next one hundred and eighty (180) days.

Section 6: 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 7: 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 8: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 2nd day of October, 2013.

Read and passed on final reading at a regular meeting held this 16 day of October, 2013.

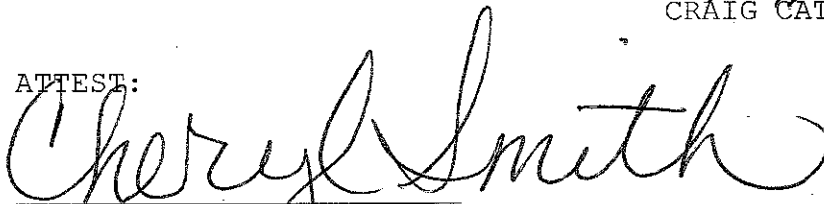
Authenticated by the presiding officer and Clerk of the Commission on 17 day of October, 2013.

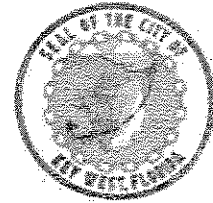
Filed with the Clerk October 17, 2013.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>No</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>

  
CRAIG CATES, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK



## EXECUTIVE SUMMARY

**To:** Bogdan Vitas, Jr., City Manager

**From:** Donald Leland Craig, AICP, Planning Director

**Meeting Date:** October 16, 2013

**RE:** Administrative Variances Ordinance

**Action Statement:** **ADOPTION OF AN ORDINANCE AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES ENTITLED "ADMINISTRATION" BY AMENDING SECTION 90-392 AND BY ADDING SECTION 90-398 TO AUTHORIZE THE CITY PLANNER TO ISSUE ADMINISTRATIVE VARIANCES; ESTABLISHING PROCEDURES FOR AN APPLICATION FOR ADMINISTRATIVE VARIANCES; ESTABLISHING A PROCEDURE FOR PROVIDING NOTICE TO ADJOINING PROPERTY OWNERS OF THE CITY PLANNER'S INTENT TO ISSUE AN ADMINISTRATIVE VARIANCE; ESTABLISHING CRITERIA FOR THE ISSUANCE OF ADMINISTRATIVE VARIANCES; ESTABLISHING A PROCEDURE FOR PUBLIC HEARINGS ON APPLICATIONS FOR ADMINISTRATIVE VARIANCES; AMENDING CHAPTER 122 ENTITLED "ZONING" BY AMENDING SECTION 122-28 AND ADDING SECTION 122-32 (G) FOR ESTABLISHING PROCEDURES FOR NONCONFORMITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE**

**Request:** Approval an Ordinance to amend Chapter 90 of the City's Land Development Regulations (LDRs) to permit the Planning Director to issue administrative variances; and to amend Section 122-28 establishing procedures for replacement or reconstruction of structures, and adding Section 122-32(g) on the enlargement and extension of non-conformities.

**Location:** City wide

**Strategic Plan:** The proposed Ordinance is consistent with the Strategic Plan's directive to the City Government to provide excellent, efficient and timely service while reducing the cost of governing, inclusive of the amount of time need to obtain permits from the City.

**Background:**

In a letter dated July 26, 2011, the City Planner recommends to the City Manager that the Planning Department initiate a new approach to variance applications. In the letter, the City Planner states that the current procedure is cumbersome in execution and administration and often confusing to the public since the majority of variance applications are recommended for denial by Staff, while the Planning Board often approves the requests. The number of variance applications received is up significantly since 2011. A search of the Planning Department variance requests shows for the years 2011 and 2012:

- In 2011, of the twenty-two (22) variance or waiver requests heard by the Planning Board, eleven (11) could have been administrative variances or waivers;
- In 2012, through November, of the thirteen (13) variance or waiver requests heard by the Planning Board, seven (7) could have been administrative variances or waivers.

In order to deal with these issues, the Planning Department proposes an amendment to the Code of Ordinances (the “Code”) that will reduce the number of variances heard by the Planning Board by offering a mechanism that permits the Planning Director to administratively grant certain variances to the Land Development Regulations. The proposed amendment makes it easier for property owners requiring minimal relief to attain approval without going through the long process of a public hearing and Planning Board approval.

The proposed Ordinance, as revised after first reading by City Commission on October 2, 2013, would authorize the City Planner to grant the following types of variances or waivers based on the proposed standards in subsections 90-398 (h) and (i):

1. Reduction of front and rear yard setback requirements by no more than 10 feet; and side yard setbacks by no more than 20%. For example:

<b>HMDR</b>		<b>SF</b>	
<b>Required Setback</b>	<b>Maximum Reduction</b>	<b>Required Setback</b>	<b>Maximum Reduction</b>
Front – 10’	(N/A)	Front – 30’	Front – 10’
Side – 5’	Side – 1’	Side – 5’	Side – 1’
Rear – 15’	Rear – 10’	Rear – 25’	Rear – 10’
Street Side – 7.5’	Street Side – 1.5’	Street Side – 10’	Street Side – 2’

2. Reduction in buffer yard requirements by no more than 10%;
3. Reduction in landscaping required for off-street parking areas by no more than 20%.

Additionally, the Planning Department proposes that Code Section 122-28 be amended concerning the voluntary and involuntary reconstruction or replacement of dwelling units by adding language and deleting the 66% rule; and Code Section 122-32(g) for establishing procedures for nonconformities.

On October 2, 2013, the City Commission passed the proposed Ordinance on first reading with three main changes:

1. The administrative variance for off-street parking requirements was deleted from Section 90-398(b).
2. Language was added to elaborate on the “good and sufficient cause” standard for administrative variance approval in Section 90-398(h)(1).
3. The public notice period was changed from 10 working days to 30 calendar days in Section 90-398(k) and (n).

Additionally, Staff deleted what was Section 90-398(d), which listed application fees for administrative variance applications. It is not necessary to codify application fees because the adopted City Code already provides for these fees to be established by resolution of the City Commission, pursuant to Code Section 90-392(a). This deletion necessitated the relettering of the subsections in Section 90-398.

All of the changes made after first reading are reflected in the proposed Ordinance with double strikethroughs and double underlines. Staff’s analysis below is also revised to reflect these changes.

**Previous City Actions:**

City Commission	October 2, 2013, Passed on first reading
Planning Board	June 20, 2013, PB Res 2013-32
Planning Board	February 21, 2013, PB Res 2013-07

**Planning Staff Analysis:**

The Planning Department recommends a formal procedure for the consideration and granting of administrative variances and waivers. The highlights of the proposed procedure are:

- The applicant submits an application on form approved by the city planner;
- The city planner reviews the application and has three weeks from the DRC meeting to render a proposed decision;
- Planning Staff will notice the proposed decision by regular mail to property owners within 300 feet of the subject property;
- Planning Staff shall post notice on the property;
- After 30 calendar days of posting, review of all public responses, and the finding that the proposed variance application has complied, the city planner shall issue a written decision;
- Except for special accessibility setback variances as provided for in Section 90-398(j), an administrative variance shall only be granted if all of the standards in Sections 90-398(h) and (i) are met;
- A public hearing can be requested in writing by the applicant or an adversely affected property owner or resident during the required 30 calendar days of noticing.



The attached Exhibit 1 is a flow chart titled “Administrative Variance,” which shows the timeline of the proposed review procedure.

The criteria for the proposed administrative variance and waiver in Section 90-398(h) are:

- 1) The applicant shall demonstrate a showing of good and sufficient cause, which is defined in the proposed Ordinance;
- 2) Failure to grant the variance would result in exceptional hardship to the applicant;
- 3) Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;
- 4) The property has unique or peculiar circumstances, which apply to this property, but which do not apply to other properties in the same zoning district;
- 5) Granting the variance will not give the applicant any special privilege denied to other properties in the immediate neighborhood in terms of the provisions of the Land Development Regulations or established development patterns;
- 6) Granting the variance is not based on disabilities, handicaps or health of the applicant or members of her/his family; and
- 7) The variance is the minimum necessary to provide relief to the applicant.

**Options / Advantages / Disadvantages:**

**Option 1: Adoption of the proposed Ordinance.**

1. **Consistency with the City’s Strategic Plan, Vision, and Mission:** The proposed Ordinance is consistent with the Strategic Plan’s directive to the City Government to provide excellent, efficient and timely service while reducing the cost of governing, inclusive of the amount of time need to obtain permits from the City.
2. **Financial Impact:** No direct cost to the City. Over time the city will see a decline in the costs, staff time and processing fees, because the cost of the administrative variance is less for the applicant.

**Option 2: Do not adopt the proposed Ordinance.**

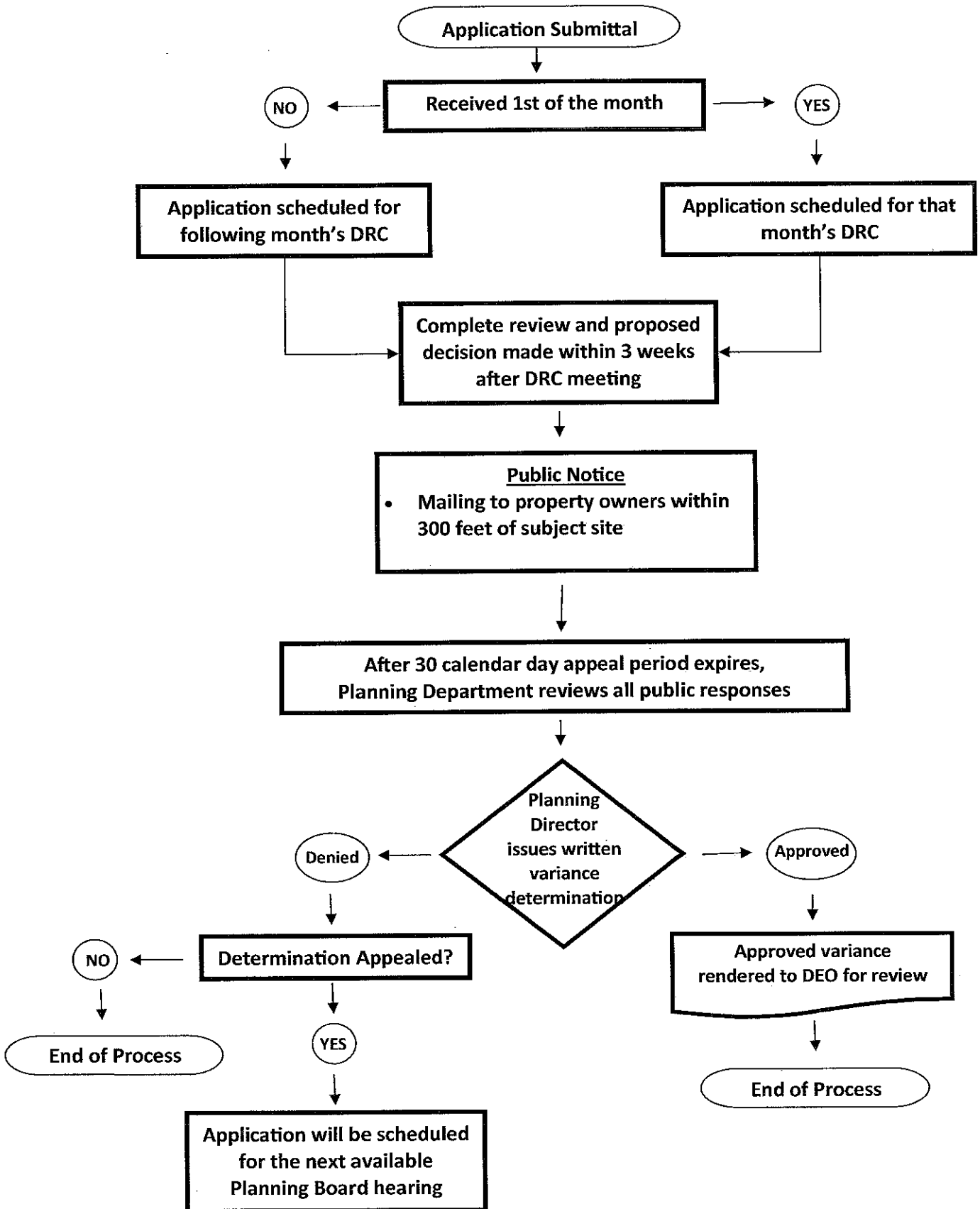
1. **Consistency with the City’s Strategic Plan, Vision, and Mission:** Does not allow for the timely processing of applications, and therefore is inconsistent with the strategic plan.
2. **Financial Impact:** No direct impact to the City.

**Recommendation:**

The Planning Department recommends **adoption** of the proposed Ordinance on second reading.

# Administrative Variance

Exhibit 1



**PLANNING BOARD  
RESOLUTION No. 2013-32**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD RECOMMENDING AN ORDINANCE TO THE CITY COMMISSION AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES ENTITLED "ADMINISTRATION" BY AMENDING SECTION 90-392 AND BY ADDING SECTION 90-398 TO AUTHORIZE THE CITY PLANNER TO ISSUE ADMINISTRATIVE VARIANCES; ESTABLISHING PROCEDURES FOR AN APPLICATION FOR ADMINISTRATIVE VARIANCES; ESTABLISHING A PROCEDURE FOR PROVIDING NOTICE TO ADJOINING PROPERTY OWNERS OF THE CITY PLANNER'S INTENT TO ISSUE AN ADMINISTRATIVE VARIANCE; ESTABLISHING CRITERIA FOR THE ISSUANCE OF ADMINISTRATIVE VARIANCES; ESTABLISHING A PROCEDURE FOR PUBLIC HEARINGS ON APPLICATIONS FOR ADMINISTRATIVE VARIANCES; AMENDING CHAPTER 122 ENTITLED "ZONING" BY AMENDING SECTION 122-28 AND ADDING SECTION 122-32 (G) FOR ESTABLISHING PROCEDURES FOR NONCONFORMITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Key West Planning Department has recommended a formal procedure for the consideration and granting of administrative variances; and

**WHEREAS**, the Planning Board at its meeting of June 20, 2013 found consistency with the City of Key West Comprehensive Plan; and

**WHEREAS**, the Planning Board recommends planning staff to continue developing proposed criteria for City Commission review and adoption; and

**WHEREAS**, the Planning Board wishes to definitively place all parties on notice that it is

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considering amending the LDRs and City Ordinances.

WHEREAS, the Planning Board finds that an administrative variance procedure promotes the health, safety and welfare of the citizens of Key West.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING BOARD OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That Section 90-392 of the Code of Ordinances is hereby amended as follows\*:

**Sec. 90-392. Application**

(a) All applications for variances from the land development regulations shall be in the form required and provided by the city planner. Such application shall be submitted to the city planning office together with the fee established by resolution of the city commission. A completed application shall include the application form, the fee and all required supplemental information necessary to render determinations related to the variance request.

(b) Upon receipt of an application for a variance, the planning board shall hold a public hearing upon the application in accordance with the procedures cited in section 90-393 and shall render an order granting or denying such application. In granting such application the planning board must make specific affirmative findings respecting each of the matters specified in section 90-394 and may prescribe appropriate conditions and safeguards, including requirements in excess of those otherwise required by these land development regulations, which shall become a part of the terms under which a development order may be issued. When appropriate, as prescribed in Section

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

90-398, the city planner may treat an application for variance as an application for administrative variance.

Section 2: That Section 90-398 is hereby added to the Code of Ordinances as follows:

**Sec.90-398. Administrative Variances.**

- (a) The purpose of this section is to establish authority, procedures, and standards for the granting of administrative variances and waivers from certain requirements of this chapter.
- (b) Subject to the provisions contained herein below, the city planner is authorized to grant the following variances and waivers according to the standards contained in subsections (i) and (j) of this section:
- (1) Reduction in the front, rear yard, and non-shoreline setback requirements in chapter 122, article IV, by no more than ten feet and side yard setback by no more than 20 percent;
  - (2) Reduction in the off-street parking requirements in chapter 108, article VII by no more than 20 percent;
  - (3) Reduction in all street and landscaping buffer yard width requirements in chapter 108, article VI by no more than 10 percent;
  - (4) Reduction in the total area of landscaping required for off-street parking and loading in chapter 108, article VII, subdivision II by no more than ten percent.
- (c) An application for an administrative variance or waiver under this section shall be submitted to the city planner on a form approved by the city planner.

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

- (d) The fee structure for an administrative variance or waiver will be \$750.00, plus \$50.00 fee for Fire Department review, and \$100.00 adverting fee; and the fee structure for an after-the-fact administrative variance or waiver will be \$1,500.00, plus \$50.00 fee for Fire Department review, and \$100.00 adverting fee.
- (e) All applications for administrative variances or waivers shall be considered by the Development Review Committee pursuant to its customary process.
- (f) The city planner will complete his or her review of the entire application and render a proposed decision within three (3) weeks of the Development Review Committee meeting.
- (g) The city planner's proposed decision shall be in writing.
- (h) Prior to rendering a proposed decision, the city planner shall consult with and obtain concurrence of his or her decision by the City Manager, or the City Manager's designee. With the exception of the special accessibility setback variance as provided for in subsection (k) of this section, approval of an administrative variance shall only be proposed or granted if all of the standards in subsection (i) of this section are met.
- (i) The city planner shall recommend approval or approve an administrative variance under this section if the applicant demonstrates that all of the following standards are met:
- (1) The applicant shall demonstrate a showing of good and sufficient cause;
  - (2) Failure to grant the administrative variance would result in exceptional hardship to the applicant;
  - (3) Granting the administrative variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud

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or victimization of the public;

- (4) The property has unique or peculiar circumstances, which apply to the subject property, but which do not apply to other properties in the same zoning district;
- (5) Granting the administrative variance will not give the applicant any special privilege denied to other properties in the immediate neighborhood in terms of the provisions of this chapter or established development patterns;
- (6) Granting the administrative variance is not based on disabilities, handicaps or health of the applicant or members of her/his family; and
- (7) The administrative variance is the minimum necessary to provide relief to the applicant.

(j) The city planner may recommend approval or approve an administrative variance or waiver that modifies the minimum front yard requirements set out in zoning districts in Chapter 122, Article IV provided the applicant demonstrates that:

- (1) The existing setback average, as measured pursuant to the definition of "setbacks" in section 86-9, on the block of the street within the land use district in which the subject property is located is less than the land use district standard, as established in zoning districts in chapter 122, article IV; and
- (2) The waiver will not result in a setback that is less than the existing front yard setback to the further most projection of the main building that is closest to the front lot line on a contiguous lot on either side of the subject property; and
- (3) The waiver is for an amount not greater than 20 percent of the land use district standard as established in the zoning districts in chapter 122, article IV; and

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

(4) In the event that a contiguous lot on either side of the subject property is vacant, the land use district standard shall apply.

(k) Notwithstanding the standards in subsections (i)(4), (5), (6) and (7) of this section, an administrative variance from the yard setback requirements may be granted for an elevator or wheelchair lift or ramp required to allow access to the elevated dwelling unit of a disabled applicant or disabled member of her/his household.

(l) Public notification of proposed approval. In the event the city planner determines that an application for an administrative variance or a waiver complies with the requirements of this section, the city planning department shall provide written notice of proposed approval and require posting as follows:

- (1) The planning department shall provide written notice by regular mail to owners of real property located within 300 feet of the property which is the subject of the proposed administrative variance or waiver.
- (2) Planning Staff shall post the property which is the subject of the proposed administrative variance or waiver with a waterproof sign of at least four square feet in front surface area, which is lettered so as to be easily visible from all public streets and public ways abutting the property.
- (3) The notice and posting shall provide a brief description of the proposed administrative variance or waiver; indicate where the public may examine the application; and indicate the 10-day period within which to request a public hearing pursuant to section (n) below or submit a written response. The cost of providing notice and posting shall be borne by the applicant.

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



(m) In the event a public hearing is not requested within the period provided in section (o) below, the city planner shall review all public responses to the application for administrative variance or waiver application with respect to whether the proposed administrative variance or waiver and complies with the requirements and standards of this section, and, thereafter, the city planner director shall issue a written decision approving or denying the administrative variance.

(n) In the event the city planner issues a written decision denying a requested administrative variance, the applicant may file a written objection to the denial, which shall be deemed an application for a variance pursuant to section 90-392, which shall be subject to procedures pertaining to variances as contained in sections 90-391 through 90-397 of the Code of Ordinances.

(o) Public hearing by the Planning Board. If requested in writing by an aggrieved or adversely affected party, as defined by section 163.3215(2), Florida Statutes, during the required 10 working days of posting, a public hearing by the Planning Board shall be scheduled at the next available hearing date. The public hearing shall be conducted in accordance with the procedures pertaining to variances as contained in sections 90-391 through 90-397 of the Code of Ordinances.

(p) Reapplication for the same or similar piece of property requesting the same or a similar administrative variance from the land development regulations cannot be made within two years from the date the application was originally denied by the Planning Board or city planner. An applicant may, however, submit a substantially different application or reapply based on changed conditions and/or the advent of new information which have a substantial impact on material issues.

Section 3: That Section 122-28 is hereby added to the Code of Ordinances as follows:

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

Sec.122-28. Replacement or reconstruction.

- (a) Applicability. This section applies both to voluntary reconstruction or replacement of dwelling units and involuntary reconstruction or replacement of dwelling units. Nothing in this section is intended to supersede applicable Federal Emergency Management Agency requirements for elevation in flood zones.
- (b) Dwelling units (residential). Residential dwelling units may be replaced at their existing nonconforming density, location and three-dimensional building envelope. ~~Except as provided in subsection (f) of this section, d~~ Dwelling units involuntarily destroyed do not require variances in order to be reconstructed or replaced. If a voluntary reconstruction or replacement occurs and if the dwelling units exist or existed in a noncomplying building or structure, the reconstruction or replacement that exceeds 66 percent of the assessed or appraised value increases the non-conformity of the building or structure shall require a variance granted by the planning board. In a voluntary reconstruction of a structure on a corner lot, the property owner must apply to the planning board for all necessary setback variances. All noncomplying accessory structures to the principal building or structure (e.g., a shed, pool, fence, etc., but not including a condominium clubhouse) shall also require a variance in order to be enlarged, reconstructed, or replaced, either voluntarily or involuntarily. If a proposed reconstruction or replacement would not otherwise require a variance but would add a new building or structure to the site to accommodate allowed density, a variance shall be required for the additional building or structure. A residential building in which one or more units hold a residential transient use business tax receipt shall be deemed residential for the purposes of this section. Variances which would increase density or intensity beyond that maximum allowed on the particular property or lot by the Land Development

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

Regulations shall be prohibited.

Section 4: That Section 122-32(g) is hereby added to the Code of Ordinances as follows:

(g) Enlargement and Extensions: Non-conforming structures which are used in a manner conforming to the provisions of this chapter may be enlarged or expanded provided that the existing non-conformity is not further increased, nor any new non-conformity created.

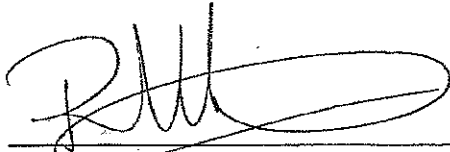
Section 5: Public Notice. The adoption of this Ordinance shall be evidenced by placement of a notice in a newspaper of general circulation within the City, in accordance with Chapter 50, Florida Statutes, within two weeks after adoption of this Ordinance. A copy of this Resolution shall also be posted at City Hall for the next one hundred and eighty (180) days.

Section 6: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a meeting held this 20<sup>TH</sup> Day of June, 2013.

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

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

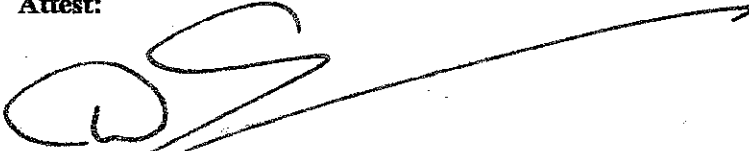


Richard Klitenick, Chairman  
Key West Planning Board

8/5/2013

Date

Attest:



Donald Leland Craig, AICP  
Planning Director

8.5.2013

Date

Filed with Clerk



Cheryl Smith, City Clerk

8-12-2013

Date

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

**THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report**



**To:** Chairman and Planning Board Members  
**From:** Ginny Haller, Planner II  
**Through:** Donald Leland Craig, AICP, Planning Director  
**Meeting Date:** June 20, 2013

**Agenda Item:** **Administrative Variance Ordinance** - A resolution of the Key West Planning Board recommending an ordinance to the City Commission amending Chapter 90 of the Code of Ordinances entitled "Administration" by amending Section 90-392 and by adding Section 90-398 to authorize the city planner to issue administrative variances; establishing procedures for an application for administrative variances; establishing a procedure for providing notice to adjoining property owners of the city planner's intent to issue an administrative variance; establishing criteria for the issuance of administrative variances; establishing a procedure for public hearings on applications for administrative variances; amending Chapter 122 entitled "Zoning" by amending Section 122-28 and adding Section 122-32 (g) for establishing procedures for nonconformities; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

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**Request:** Approval of a resolution for an ordinance to amend Chapter 90 of the City's Land Development Regulations (LDRs) to permit the Planning Director to issue administrative variances; and to amend Section 122-28 establishing procedures for replacement or reconstruction of structures, and adding Section 122-32(g) on the enlargement and extension of non-conformities.

**Location:** Citywide

**Background:**

In a letter dated July 26, 2011, the Planning Director recommended to the City Manager that the Planning Department initiate a new approach to variance applications. Mr. Craig states that the current procedure is cumbersome in execution and administration and often confusing to the public since 99% of staff reports recommend denial of the variance, while the Planning Board approves 98% of the those variances. The number of variances being heard is up approximately 35% since 2011. A search of the Planning Department variance requests shows for the years 2011 and 2012:

- In 2011 of the twenty-two (22) variance or waiver requests heard by the Planning Board, eleven (11) could have been administrative variances or waivers;
- In 2012, through November, of the thirteen (13) variance or waiver requests heard by the Planning Board, seven (7) could have been administrative variances or waivers.

In order to deal with these issues, the Planning Department proposes an amendment to the Code of Ordinances that will reduce the number of variances heard by the Planning Board by offering a mechanism that permits the Planning Director to administratively grant certain variances to the LDRs. The proposed amendment makes it easier for property owners requiring minimal relief to attain approval without going through the long process of a public hearing and Planning Board approval.

Additionally, the Planning Department proposes that Section 122-28 be amended concerning the voluntary and involuntary reconstruction or replacement of dwelling units by adding language and deleting the 66% rule; and Section 122-32(g) for establishing procedures for nonconformities.

**Summary:**

The Planning Department recommends a formal procedure for the consideration and granting of administrative variances and waivers. The highlights of the proposed procedure are:

- The applicant submits application on form approved by the city planner;
- The city planner reviews the application and has three weeks from the DRC meeting to render a proposed decision;
- Planning staff will notice the proposed decision by regular mail to property owners within 300 feet of the subject property;
- Planning Staff shall post the property;
- After 10 working days of posting, review of all public responses, and the finding that the proposed variance application have complied, the city planner shall issue a written decision;
- Except for special accessibility setback variance as provided for in subsection (h) of this section, a variance shall only be granted if all of the standards in subsection 398(f) of this section are met;
- A public hearing can be requested in writing by applicant or adversely affected owner or resident during required 10 working days of noticing.

The attached Exhibit 1 is a flow chart titled “Administrative Variance” which shows the timeline of the administrative variance procedure.

The proposed, the criteria for the proposed administrative variance and waiver in Section 90-398(f) are:

- The applicant shall demonstrate a showing of good and sufficient cause;
- Failure to grant the variance would result in exceptional hardship to the applicant;
- Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;

- Property has unique or peculiar circumstances, which apply to this property, but which do not apply to other properties in the same zoning district;
- Granting the variance will not give the applicant any special privilege denied other Properties in the immediate neighborhood in terms of the provisions of this chapter or established development patterns;
- Granting the variance is not based on disabilities, handicaps or health of the applicant or members of her/his family;
- Granting the variance is not based on the domestic difficulties of the applicant or her/his family; and
- The variance is the minimum necessary to provide relief to the applicant.

The following table shows the typical administrative maximum variance in the HMDR and SF zoning districts with the proposed reductions in front and rear yard setbacks by no more than ten (10) feet and side yard setback of no more than 20 percent:

HMDR		SF	
Required Setback	Maximum Reduction	Required Setback	Maximum Reduction
Front – 10’	(N/A)	Front – 30’	Front – 10’
Side – 5’	Side – 1’	Side – 5’	Side – 1’
Rear – 15’	Rear – 10’	Rear – 25’	Rear – 10’
Street Side – 7.5’	Street Side – 1.5’	Street Side – 10’	Street Side – 2’

**Recommendation:**

The Planning Department recommends approval of the resolution for an ordinance amending Chapter 90 and Chapter 122 of the Land Development Regulations.

## VARIANCES AND JUDICIAL REVIEW

A Continuing Legal Education (CLE) Program presentation by

Henry Lee Morgenstern, Attorney, Gainesville Florida  
As updated by Ralf Brookes, Attorney (2004)

### A. Introduction to Variances

A variance is, generally, permission for a landowner to go outside the limits of the zoning code, and to build something which would otherwise be illegal under the terms of the zoning code or land development regulations.

The reason or rationale behind the law allowing variances at all is that in some situations, the literal application of the zoning code would create such a "hardship", that it would not allow any use of certain parcels of property whatsoever.

Without the flexibility to allow some reasonable use of the property, such totally prohibitive zoning would constitute inverse condemnation, subjecting the zoning authority to liability for a "taking". Askew v. Gables-by-the-Sea, Inc., 333 So.2d 56 (1 DCA 1976). Thus, the legal justifications for variances, and the threshold criteria for determination of a "taking", are closely related. (See, below, criteria for granting variances, when is it a taking not to allow a variance).

A variance is sometimes mistakenly believed to be simply a tool for allowing a more intense use than would otherwise be allowed. As such, it needs to be distinguished from a special exception or conditional use.

A "special exception" or conditional use is specifically authorized in that zone, but will be allowed only if specific, listed criteria for that special exception or conditional use are met. A variance is specifically prohibited in that zone, but will be allowed only if necessary to prevent a "taking", i.e., if no authorized use is reasonably possible in its place.

Boards of adjustment have sometimes been unclear on this distinction, granting variances as a convenient expedient to avoiding the zoning and land development regulations. The criteria for obtaining variances are theoretically very strict, and the grounds for overturning illegal variances relatively easy to prove if sufficient facts and discussion of a legal hardship is not placed in the record.

An Applicant's variance request must be reviewed on its own merits, rather than on the basis of previously approved variances in the jurisdiction. See City of Jacksonville v. Taylor, 721 So.2d 1212 (Fla. 1<sup>st</sup> DCA 1998). Previously issued variances do not establish controlling precedent or constitute a basis to sustain other variance applications.



## **B. Criteria for Granting Variances - Generally**

Ordinances authorizing variances may be worded in different ways, and you should always read your specific language carefully. The standards must be definite, City of Miami v. Save Brickell Ave., 426 So.2d 1100 (3 DCA 1983), and the criteria must be mandatory, and not permissive (i.e., "shall consider criteria" means "must comply with criteria"), id.; Drexel v. City of Miami Beach, 64 So.2d 317 (Fla. 1953).

In 1985, local governments were given express authority to adopt variance criteria in their codes (most City's and County's adopted codifications of the existing law of variances with slight modifications in each locality). The repeal and replacement of Florida's standard zoning enabling act in 1985 when Florida's Growth Management Act of 1985 was adopted<sup>1</sup> did not diminish or substantially change the authority of local government or Florida law regarding variances, in fact previous Florida Law was codified in many local governments by ordinance. Both before and after 1985, the courts have followed long-established Florida law that a variance cannot be granted for self-created actions – and this requirement is codified in most city and county codes in Florida. Even after 1985, the courts have been very strict in their review of the hardship required to obtain a variance.

Generally, a variance is authorized if due to circumstances **unique to the applicant's property itself** and not shared by other property in the area, there exists an undue and unnecessary hardship created by the zoning regulations

### **1. The hardship cannot have been self-created.**

The hardship criteria found in variance provisions has a long line of cases and has been strictly construed by the courts. Josephson v. Autrey, 96 So.2d 784 (Fla. 1957).

The criteria has been interpreted to mean three things:

a. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. Burger King v. Metropolitan Dade County, 349 So.2d 210 (3 DCA 1977); Metropolitan Dade County v. Reineng, 399 So.2d 379 (3 DCA 1981); Nance, supra; Crossroads Lounge v. City of Miami, 195 So.2d 232 (DCA 1967). If, however, the only allowable uses are economically impossible, then a variance would be allowed. Nance II.

b. Neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. Friedland v. Hollywood, 130 So.2d 306 (DCA 1961); Elwyn v. Miami, 113 So.2d 849 (3 DCA 1959).

c. If a purchaser buys land with a condition creating a hardship upon it, the owner

is only entitled to such variance as his predecessor in title was entitled. If the owner participated in an affirmative act which created the hardship (such as by purchasing only a substandard piece of a larger lot), then the hardship should be ruled self-created. Coral Gables v. Geary, 383 So.2d 1127 (3 DCA 1980).

The requirement that a variance hardship cannot be self-created is required by most codes and Florida case law. In Re Kellogg, 197 F. 3<sup>rd</sup> 1116, 1121 (11<sup>th</sup> Cir. 1999). Josephson v. Autrey, 96 So.2d 784 (Fla. 1957) (superseded by statute *on other grounds* in Grace v. Town of Palm Beach 656 So.2d 945 (Fla. DCA 1995); Town of Ponce Inlet v Rancourt, 627 So.2d 586, 588 (Fla. DCA 1993).

Case law, as well as the Land Development Regulations control the degree of showing needed to support the approval of a variance from the express requirements of local regulations. The days of the "weeping variance" have been replaced by strict interpretation of what is required to show entitlement to a variance from local Code provisions under the case law. Town of Indiatlantic v. Nance, 400 So.2d 37 (5 DCA 1981), affd. 419 So.2d 1041; appealed again at 485 So.2d 1318 (5 DCA 1986), rev. den. 494 So.2d 1152.

Post 1985, the First District Court of Appeals in City of Jacksonville v. Taylor, 721 So.2d 1212 (Fla. 1<sup>st</sup> DCA 1998) Bernard v. Town Council of Palm Beach, 569 So.2d 853 (Fla. 4<sup>th</sup> DCA, 1990); Metropolitan Dade County v. Betancourt, 559 So. 2d 1237; Town of Indiatlantic v. Nance, 485 So.2d 1318 (Fla. 5<sup>th</sup> DCA 1986), and Town of Indiatlantic v. Nance ("Nance I"), 400 So.2d 2137 (Fla. 5<sup>th</sup> DCA 1981); Maturo v. City of Coral Gables, 619 So.2d 455 (Fla. 3<sup>rd</sup> DCA 1993); Herrara v. City of Miami, 600 So.2d 561 (Fla 3<sup>rd</sup> DCA 1992) rev. denied 613 So.2d 2 (Fla. 3<sup>rd</sup> DCA 1992). In Re Kellogg, 197 F. 3d 1116, 1121 (11<sup>th</sup> Cir. 1999).

Pre 1985 cases had similar holdings and include Blount v. City of Coral Gables, 312 So. 2d 208 (Fla. 3<sup>rd</sup> DCA 1975) ("Nor are the Blounts entitled to a variance from the above zoning ordinance...as the hardship was self-created because they knew of the restricted zoning ordinance.") (*citing other Florida cases on this issue*); Clarke v. Morgan, 327 So.2d 769 (Fla. 1975); Friedland v. Hollywood, 130 So.2d 306 (DCA 1961); Elwyn v. Miami, 113 So.2d 849 (3 DCA 1959); Coral Gables v. Geary, 383 So.2d 1127 (3 DCA 1980).

The purchase of property with zoning restrictions on the property will normally not constitute a hardship. Friedland v. Hollywood, 130 So.2d 306 (DCA 1961); Elwyn v. Miami, 113 So.2d 849 (3 DCA 1959). Namon v. DER 558 So. 2d 504 (Fla 3<sup>rd</sup> DCA 1990) and the cases cited therein address cases where property is purchased AFTER adoption of prohibitory regulations. The court in Namon recognized such pre-existing notice as applied to takings analysis in Florida cases, as follows:

"Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not

*as if it were so*

translate into a vested right to develop the subject property. See *Graham v. Estuary Properties, Inc.*, 399 So.2d 1374, 1382, 1383 (Fla.), cert. denied sub nom. *Taylor v. Graham*, 454 U.S. 1083, 102 S. Ct. 640, 70 L. Ed. 2d 618 (1981)

'...[a]n owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it was unsuited in its natural state and which [injures] the rights of others." *Namon* at 505, (original citation omitted) see also *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1005, 104 S. Ct. 2862, 2874, 81 L.E.2d 815, 834 (1984).

"A 'reasonable investment-backed expectation' must be more than a 'unilateral expectation or an abstract need'"; *Namon* citing *Claridge v. New Hampshire Wetlands Board*, 125 N.H. 745, 485 A.2d 287, 291 (1984)

"A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of constitutionally protected property rights"; cf. *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA) "One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.", cert. denied, 116 849 (Fla. 1959).

Case law also indicates that a mere economic "disadvantage" or the owner's mere preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. *Burger King v. Metropolitan Dade County*, 349 So.2d 210 (3 DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (3 DCA 1981); *Crossroads Lounge v. City of Miami*, 195 So.2d 232 (DCA 1967).

Neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. *Friedland v. Hollywood*, 130 So.2d 306 (DCA 1961); *Elwyn v. Miami*, 113 So.2d 849 (3 DCA 1959).

If the owner participated in an affirmative act which created the hardship (such as by purchasing a substandard size lot), then the hardship should be ruled self-created. *Coral Gables v. Geary*, 383 So.2d 1127 (3 DCA 1980).

## **2. Consistency with neighborhood and scheme of regulations.**

Granting the variance must not adversely affect the zoning scheme as a whole. Granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not "in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations." *Troup v. Bird*, 53 So.2d 717 (Fla. 1951).

"A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property."

Elwyn v. City of Miami, 113 So.2d 849 (Fla. 3rd DCA 1959).

### **3. No reasonable legal use can be made of the property without the variance.**

Some cases go so far as to say no variance can be granted if the property can still be used without the variance. This approach incorporates, to some extent, the law of taking of property without just compensation, i.e., a variance can be granted and will not be overturned if no other reasonable use can be made of the property without a variance.

"The requisite hardship may not be found unless there is a showing that under present zoning, no reasonable use can be made of the property." Thompson v. Planning Commission, 464 So.2d 1231 (1 DCA 1985). Herrera v. Miami, 600 So.2d 561 (3DCA 1992).

The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." Hemisphere Equity v. Key Biscayne, 369 So.2d 996 (3 DCA 1979).

It is the land, and not the nature of the project, which must be unique and create a hardship. Nance, supra; Ft. Lauderdale v. Nash, 425 So.2d 578 (4 DCA 1982) (many other common violations in the neighborhood do not constitute a hardship); City of Miami v. Franklin Leslie, 179 So.2d 622 (3 DCA 1965).

### **When is Denial of a Variance a Taking?**

A reasonable use of the property under existing zoning, requiring a denial of the variance, does not mean the owner's preferred use, or a use that will bring the owner an economic return. All that is required is a use beneficial to the owner and consistent with the zone. Metropolitan Dade Co. v. Betancourt, 559 So.2d 1237 (3 DCA 1990).

An extensive discussion of similar coastal setback beach ordinances and denial of a variance for construction seaward of such a setback appears under two, separate McNulty takings cases – the federal takings case of McNulty v. Town of Indialantic, 727 F Supp 604 (M.D. Fla. 1989) and the state court takings case of Town of Indialantic v McNulty, 400 So. 2d 1227 (Fla. 5<sup>th</sup> DCA 1981). The cases share common facts, the Town of Indialantic denied McNulty a variance for a 12-unit condominium on the beach under a similar coastal setback provision to the

line at bar resulting in both state and federal review.

"[A] diminution of property value does not, by itself, establish a taking .... Inability to use the property for production of an income stream or to make the highest and best use does not render the property without economically viable use". 727 F Supp 611.

The court found that when regulations seek to protect natural resources, the court should "hesitate to find a taking", comparing such regulations to "restraining... [a] public nuisance". 727 F Supp 614.

The McNulty state court decision noted that the "harm to be prevented [by beachfront construction] is substantial" and held that McNulty made an insufficient showing that a taking would occur if he were denied the variance. 400 So.2d 1227. In discussing the harm to be prevented, the state appellate court noted that:

"Through sad experience Florida has learned the importance of the barrier sand dunes which face its "high energy" beaches. The 'high energy beach' is a shore fronting the open ocean and dominated by sand and dunal features." Maloney and O'Donnell, Drawing the Line at the Oceanfront, 30 Fla. L. Rev. 383, 385 n.19 (1978). Sand beaches and dunes comprise a very small and unstable part of Florida's coastal zone.

Forming a narrow band along the shores of the Atlantic Ocean and the Gulf of Mexico, they offer some of the state's most attractive and most hazardous locations for real estate development. Without adequate controls on construction and excavation, oceanfront development could destroy not only man-made structures but also beaches and dunes. Maloney and O'Donnell, Drawing the Line at the Oceanfront, 30 Fla. L. Rev. 383, 389 (1978).

Various local communities, like Indialantic, have adopted similar set back ordinances to protect the dunes, bluffs and natural vegetation of their beaches, and Chapter 161, Florida Statutes (1979), the "Beach and Shore Preservation Act," has as one of its stated purposes the protection and preservation of the "beach dune system. The "construction line" drawn pursuant to this State law was west or landward of the setback line of the Town as applied to McNulty's land. In any event, the State law contemplated that cities and counties could establish stricter setback lines than those set by the State. Sections 161.052(2)(b), 161.053(4), Fla. Stat. (1979). See § 163.3177(6)(d), (f) and (g), Fla. Stat. (1979).


There can no longer be any question that the "police power" may be exercised to protect and preserve the environment. Florida's Constitution expressly provides: It shall be the policy of the State to conserve and protect its natural resources and scenic beauty. Adequate provisions shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise. Art. V, § 7, Fla. Const. Other jurisdictions have reached a similar conclusion, without the benefit of an express constitutional provision.

The wetlands and coastal areas are places of critical concern because of their important role in protecting the inland regions against flooding and storm danger."

The leading case on regulatory takings for environmental purposes is Graham v Estuary Properties, Inc., 399 So.2d 1374 (Fla. 1981). It states six criteria for considering "[w]hether a regulation is a valid exercise of the police power or a taking", and specifically holds that protection of the environment is a legitimate use of the police power. 399 So.2d at 1380-1381.

Graham has recently been applied in Lee County v Morales, 557 So.2d 652, 655-656 (2 DCA 1990) (rezoning not a taking unless no beneficial and reasonable uses remain); and Namon v DER, 558 So.2d 504 (3 DCA 1990) (no taking where owner was aware of development restrictions [fill permit], even if no construction or economic use can be made of the property; "if you bought a swamp you must have wanted a swamp").

4. **Other Code criteria.** Various codes may also include the following criteria (See, e.g., prior F.S. 163.170(8), repealed 1985):

- 
- a. The granting of the variance will not accord applicant any special privileges;
  - b. The variance is the minimum one for the reasonable use of the applicant's land;
  - c. The grant of the variance will be harmonious and noninjurious to the surrounding land; and
  - d. The variance will not be contrary to the public interest.

Most court cases have focused on the hardship (whether it is the result of unique physical characteristics of the land in question or whether it is really an impermissible self-created hardship). However, all variance standards must be met. The standards themselves must be definite, City of Miami v. Save Brickell Ave., 426 So.2d 1100 (3 DCA 1983), and the criteria must be mandatory, and not permissive (i.e., "shall consider criteria" means "must comply with criteria"), id.; Drexel v. City of Miami Beach, 64 So.2d 317 (Fla. 1953).

5. **Police Power Limits.** One case says that under the "arbitrary and unreasonable" test, where there is "no reasonably debatable relation to public health, safety or welfare" the court may be required to compel that a variance be granted. Metropolitan Dade County v. Reineng, 399 So.2d 379 (3 DCA 1981). The case's reasoning, moreover, is at odds with the clear holding of the Supreme Court one year later:

The "fairly debatable" test should be used to review legislative-type zoning enactments, while a variance seeker must demonstrate a "unique hardship" in order

to qualify for a variance."

Nance v. Town of Indialantic, 419 So.2d 1041 (Fla. 1982).

### Amendments to Regulations that no longer make sense.

If the land development regulation no longer has a valid public purpose, or should be changed, the proper method is to *amend the zoning code or land development regulations* rather than grant numerous variances from the offending provision. Therefore, in some instances amending (or a recommendation to amend) the code may be more appropriate than granting variances each time the issue comes up.

### 6. Consistency with Comprehensive Plan.

Granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not "in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations." Troup v. Bird, 53 So.2d 717 (Fla. 1951). All development orders, including variances, must be consistent with duly adopted Comprehensive Plan policies, objectives and goals under Florida Statutes 163.3215 (which also establishes procedures to challenge variances on the grounds of consistency with comprehensive plan policies). Machado v. Musgrove, 519 So. 629 (Fla. 3<sup>rd</sup> DCA 1987). And the remedy awarded by courts if a development order is found to be inconsistent with a comprehensive plan policy can include demolition of offending structures. Pinecrest Lakes v Shidel, 795 So. 2d 191 (Fla. 4<sup>th</sup> DCA).

### C. Use-Variances vs. Non-Use Variances

Some codes distinguish between "use" variances, and "non-use" or "area" variances. A "use" variance would be one where application was made for a non-permitted use, while "non-use" or "area" variances would apply to a permitted use, but allow laxity of a height, setback, lot size, or other dimensional rule.

Use variances are often expressly disallowed by code.

#### Use-Variances

The Florida Supreme Court, sitting en-banc, clearly set the limits on use variances in Josephson v. Autrey, 96 So.2d 784 (Fla. 1957). The court held that, while zoning boards could make adjustments in height, setback, side lot, and other area problems unique to the parcel, use variances would be improper if they created a wholly inconsistent use in the zone:

"To endow such a board with the authority to amend the zoning ordinance in particular instances by authorizing a use of property prohibited by the ordinance

itself would be to convey to the appeals board the authority to enact legislation, nullify the decision of the municipal legislative body, and in effect destroy the beneficent results to be obtained by comprehensive zoning. When circumscribed by reasonable bounds the appeals board serves a valid and useful purpose. If granted unrestricted power to amend the zoning ordinance by changing completely the authorized uses of the particular land, the effect would be to transfer the legislative powers of the municipality to this non-legislative administrative agency."

Although the strictness of this position was questioned in Clarke v. Morgan, 327 So.2d 769,772 (Fla. 1975), Josephson still is good law. See Walgreen v. Polk, 524 So.2d 1119 (2 DCA 88).

The cases which have allowed use variances have abided by the Josephson admonition. In addition to other variance criteria applicable to all variances (discussed below), an applicant for a use variance must also show that the proposed use is basically consistent with the neighboring uses in the area. Troup v. Bird, 53 So.2d 717 (Fla. 1951) (a lake in a residential area did not change the residential character of the area); Josephson v. Autrey, 96 So.2d 784 (Fla. 1957) (filling station not a consistent use in a motel zone); Metropolitan Dade Co v. Reineng Corp, 399 So.2d 379 (3 DCA 1981) (liquor store would "harmonize" with neighborhood); Monterey Development Co. v. Stuart Marine Center, Inc., 305 So.2d 245 (4 DCA 1974) (dry-dock boat storage consistent with marine area); Dade Co. v. Pepper, 168 So.2d 198 (3 DCA 1964) (junkyard consistent with industrial area).

## II - THE ADMINISTRATIVE PROCEEDINGS BEFORE LOCAL GOVERNMENT

Typically, the applicant land owner will fill out a variance application. It will be reviewed by staff, and set for a hearing before whatever body is empowered to grant or deny variances in that jurisdiction, usually a Board of Adjustment.

A. Exhaustion of Administrative Remedies. To challenge a variance, someone with standing needs to appear and object, not only at the hearing on the variance application, but, if the variance is granted and being appealed, they must also object and use every "extra-judicial and administrative remedy which may provide the relief sought", or the later judicial appeal may be dismissed for failure to exhaust administrative remedies. City of Miami v. F.O.P., 378 So.2d 20 (3 DCA 1980).

Even parties with standing will lose their right to appeal if they do not personally appear and object at the administrative hearing. Battaglia Fruit Co. v. City of Maitland, 530 So.2d 940 (5 DCA 1988). A written objection entered into the record should suffice.



The Applicant must also exhaust his administrative remedies by asking for a variance before claiming a taking. Mackay v DER. Under Herrera, this should mean that the owner needs to prove that he has been denied the minimum economically viable use.

Burden of Proof. The burden to prove the existence of the required hardship and unique conditions is always on the applicant. Gomez v. City of St. Petersburg, 550 So.2d 7 (2 DCA 1989). Therefore, if the owner presents no evidence that the property cannot be used without the variance, there must be a denial. Herrera v. Miami, 600 So.2d 561 (3DCA 1992). The burden is more extensive than for a party seeking a permissible use by special exception. Cf. Gomez with Pollard v. Palm Beach City, 560 So.2d 1358 (4DCA 1990).

### III- JUDICIAL REVIEW OF VARIANCE DECISIONS

#### A. Jurisdiction.

The Circuit Court has jurisdiction to review the action of the Board of Adjustment under the authority of Florida Constitution 1968, Article V, Section 5; Florida Rules of Appellate Procedure 9.030(c)(3) and 9.100; and Florida Rules of Civil Procedure 1.630.

#### B. Procedure.

A petition is filed under RAP 9.100 and RCP 1.630, within 30 days of the "rendition of the matter sought to be reviewed". "Rendition" is the date of the filing of the order of the zoning board in which it makes its findings, not the date of the hearing. RAP 9.020(g)

##### 1. Petition. The Petition should contain:

- a. Statement of Jurisdiction
- b. Statement of Standing
- c. Statement of facts, all of which must be in the record
- d. Grounds of Objection
- e. All authorities and arguments of law
- f. Statement of relief sought

g. An appendix containing the record under Rule of Appellate Procedure 9.220 or the Rules of Civil Procedure 1.630 must be attached

**Additional Information  
Variance Requests from 2011**

2011  
Grouped - 11  
Stand alone - 11

X

RESOLUTION NO- 2011-001

A RESOLUTION OF THE KEY WEST PLANNING BOARD FOR THE REPLACEMENT OF AN EXISTING PATIO WITH A SWIMMING POOL FOR PROPERTY WHICH EXCEEDS THE REQUIRED 60% IMPERVIOUS SURFACE RATIO FOR PROPERTY LOCATED AT 816-818 WHITE STREET (RE#00022250-000000), PURSUANT TO SECTION 122-810 (4)b. UNDER THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 122-810(4) b, of the Code of Ordinances provides that the maximum impervious surface ratio is 60% in the HNC-2 zoning district; and

WHEREAS, the applicant requested a variance to the required impervious surface ratio to replace an existing patio with a swimming pool and composite decking; and

WHEREAS, the applicant proposes to reduce the amount of impervious surface by seven percent from the existing 91.6% to 84.4%; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on January 20, 2011; and

WHEREAS, the Planning Board finds that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other

TWK Vice Chairman

DC Interim Planning Director

\* Side yard  
5'

RESOLUTION NO- 2011-004

A RESOLUTION OF THE KEY WEST PLANNING BOARD TO ALLOW THE CONSTRUCTION OF A STAIRCASE AND WALKWAY BY GRANTING VARIANCES TO BUILDING COVERAGE, IMPERVIOUS SURFACE RATIO, AND SIDE YARD SETBACK REQUIREMENTS FOR PROPERTY LOCATED AT 328 TRUMAN AVENUE (RE#00025490-000000), PURSUANT TO SECTION 122-600 (4) AND (6) UNDER THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 122-600 (4) a. & b. and 122-600(6) b. of the Code of Ordinances provides that the maximum dimensional requirements for building coverage is 40%, maximum impervious surface ratio is 60% and the side-yard setback is five feet in the HMDR zoning district; and

WHEREAS, the applicant requested variances to building coverage, impervious surface ratio and a side yard setback to allow the construction of an exterior staircase for a non-conforming, historically contributing structure; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on January 20, 2011; and

WHEREAS, the Planning Board finds that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other

 Vice Chairman  
 Interim Planning Director

X

**RESOLUTION NO- 2011-007**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD  
TO ALLOW THE CONSTRUCTION OF A ROOM ADDITION  
AND STAIRCASE BY GRANTING A VARIANCE TO  
BUILDING COVERAGE REQUIREMENTS FOR PROPERTY  
LOCATED AT 630 EATON STREET (RE#00006290-000000),  
PURSUANT TO SECTION 122-840(4) UNDER THE CODE OF  
ORDINANCES OF THE CITY OF KEY WEST, FLORIDA;  
PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS, Section 122-840 (4) a. of the Code of Ordinances provides that the maximum dimensional requirements for building coverage is 40%; and**

**WHEREAS, the applicant requested a variance to increase building coverage to allow improvements including a room addition and exterior staircase for a non-conforming, historically contributing residential structure; and**

**WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on January 25, 2011; and**

**WHEREAS, the Planning Board finds 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 district; and**

**WHEREAS, the Planning Board finds that the special conditions do not result from the**

  
Chairman

 Interim Planning Director

\*

- 66% of value
- 10' front setback
- 5' side setback

RESOLUTION NO. 2011-008

A RESOLUTION OF THE KEY WEST PLANNING BOARD TO ALLOW THE RENOVATION AND CONSTRUCTION OF A NON-CONFORMING STRUCTURE WHICH EXCEEDS 66% OF THE VALUE OF THE EXISTING STRUCTURE BY GRANTING VARIANCES TO BUILDING COVERAGE, IMPERVIOUS SURFACE RATIO AND FRONT AND SIDE YARD SETBACK REQUIREMENTS FOR PROPERTY LOCATED AT 319 AMELIA STREET (RE#00026130-000000), PURSUANT TO SECTION 122-600 (4) (5) AND (6) UNDER THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 122-28(b) of the Code of Ordinances provides that if voluntary reconstruction of non-conforming residential structures exceeds 66% of the appraised value of the structure variances are required; and

WHEREAS, Section 122-600 (4) a. and b. and 122-600(6) a. and b. of the Code of Ordinances provides that the maximum dimensional requirements for building coverage is 50%, maximum impervious surface ratio is 60% and building setbacks in the HHDR zoning district are ten feet in the front, and five feet on each side; and

WHEREAS, the applicant requested variances to building coverage, impervious surface ratio and front and side yard setbacks to allow improvements to a non-conforming, historically contributing, residential structure which exceed 66% of the value of that structure; and

*Ruk*

Chairman

*DC*

Interim Planning Director

✓  
- 66% value  
- Front + side  
Setback

**RESOLUTION NO- 2011-009**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD TO ALLOW THE RENOVATION AND CONSTRUCTION OF A NON-CONFORMING STRUCTURE WHICH EXCEEDS 66% OF THE VALUE OF THE EXISTING STRUCTURE BY GRANTING VARIANCES TO FRONT AND SIDE YARD SETBACK REQUIREMENTS FOR PROPERTY LOCATED AT 1415 OLIVIA STREET (RE#00023940-000000), PURSUANT TO SECTION 122-600 (6) UNDER THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, Section 122-28(b) of the Code of Ordinances provides that if voluntary reconstruction of non-conforming residential structures exceeds 66% of the appraised value of the structure variances are required; and

WHEREAS, Section 122-600(6) a. and b. of the Code of Ordinances provides that the building setbacks in the HMDR zoning district are ten feet in the front, and five feet on each side; and

WHEREAS, the applicant requested variances to front and side yard setbacks to allow improvements to a non-conforming, historically contributing, residential structure which exceed 66% of the value of that structure; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on

Runk Chairman  
OC Interim Planning Director

\* - Front + side yard  
- rear yard

**PLANNING BOARD RESOLUTION  
2011-012**

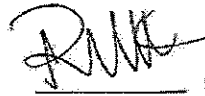
**A RESOLUTION OF THE KEY WEST PLANNING BOARD TO ALLOW AFTER-THE-FACT VARIANCES FOR REQUIRED BUILDING COVERAGE, IMPERVIOUS SURFACE RATIO, FRONT YARD SETBACK, REAR YARD SETBACK, AND SIDE YARD SETBACKS, FOR AN ADDITION OF 77.3 SQUARE FEET PROPERTY LOCATED AT 3308 DUCK AVENUE IN THE SINGLE FAMILY (SF) ZONING DISTRICT PER SECTION 122-238(4)A. AND B(1), SECTION 122-238(6)A.(1), (2) AND (3), 122-1182 OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA (RE 00052960-000500)**


WHEREAS, Section 90-391 of the Code of Ordinances allows applicants to request variances to provisions of the land development regulations; and

WHEREAS, the applicant requested after-the-fact variances for an addition of 91 square feet; and

WHEREAS, the applicant revised the site plan to request an addition of 77.3 square feet to allow the fire department access of 3' from the side of the building; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on February 17, 2011; and

  
Chairman

 Interim Planning Director



✓ - 66% value  
- side yard

**RESOLUTION NO- 2011-015**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD TO ALLOW THE RENOVATION AND CONSTRUCTION OF A NON-CONFORMING STRUCTURE WHICH EXCEEDS 66% OF THE VALUE OF THE EXISTING STRUCTURE BY GRANTING VARIANCES TO SIDE YARD SETBACK REQUIREMENTS FOR PROPERTY LOCATED AT 607-609 ASHE STREET (RE#00010270-000000), PURSUANT TO SECTION 122-630 (6) b. UNDER THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Section 122-28(b) of the Code of Ordinances provides that if voluntary reconstruction of non-conforming residential structures exceeds 66% of the appraised value of the structure variances are required; and

**WHEREAS**, Section 122-630 (6) b. of the Code of Ordinances provides that the minimum side-yard building setback in the HHDR zoning district is five feet on each side; and

**WHEREAS**, the applicant requested a variance to side yard setbacks to allow improvements to a non-conforming, historically contributing, residential structure which exceeds 66% of the value of that structure; and

**WHEREAS**, this matter came before the Planning Board at a duly noticed public hearing on March 17, 2011; and

  
Chairman

 Interim Planning Director

\*

-Side yard

**PLANNING BOARD RESOLUTION  
NO- 2011-016**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD TO ALLOW AFTER-THE-FACT GRANTING OF VARIANCES TO BUILDING COVERAGE, IMPERVIOUS SURFACE RATIO, AND SIDE-YARD SETBACK REQUIREMENTS TO MAINTAIN EXISTING DETACHED HABITABLE SPACE FOR PROPERTY LOCATED AT 825 ASHE STREET (RE#00022300-000000), PURSUANT TO SECTIONS 122-630 (4) a. AND b., 122-630 (6) b. AND 122-1078 UNDER THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, Section 122-630 (4) a. and b. and 122-630(6) b. of the Code of Ordinances provides that the maximum dimensional requirements for building coverage is 50%, maximum impervious surface ratio is 60%, and side-yard setback in the HHDR zoning district is five feet; and

WHEREAS, the existing building coverage is 56.6%, the existing impervious surface ratio is 76% and the existing side-yard setback is 2 feet 2 inches; and

WHEREAS, Section 122-1078 provides that all habitable space shall be accessible from the interior of exterior walls; and

WHEREAS, the applicant requests variances to building coverage, impervious surface ratio, and side-yard setback requirements to allow after the fact approval for a non-conforming accessory

TW Vice Chairman  
DE Interim Planning Director

✓ - Parking

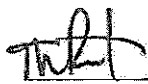

**RESOLUTION NUMBER 2011-18**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD GRANTING A PARKING VARIANCE FOR PROPERTY IN THE HISTORIC NEIGHBORHOOD COMMERCIAL (HNC-3) ZONING DISTRICT, UNDER THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF KEY WEST, FLORIDA, PURSUANT TO SECTIONS 108-572 (9) AND 108-574 OF THE CODE OF ORDINANCES, ALLOWING THE WAIVER OF PARKING REQUIREMENTS FOR 20 AUTOMOBILE SPACES; OF WHICH 6 AUTOMOBILE SPACES ARE REQUESTED TO BE WAIVED THROUGH BICYCLE SUBSTITUTION FOR PROPERTY LOCATED AT 305 PETRONIA STREET, 309 PETRONIA STREET, 729 THOMAS STREET, (RE# 00013250-000000, 00013270-000000, 00013260-000000), KEY WEST FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, 108-572 (9) of the Land Development Regulations provides that restaurants within the City must provide 1 off-street parking space per 45 square feet of serving and/or consumption area; and

WHEREAS, the subject property is located in the HNC-3 zoning district, which is within the historic commercial pedestrian-oriented area pursuant to Land Development Regulation Section 108-573; and

WHEREAS, the applicant is increasing consumption and floor area on the site, which pursuant to Section 108-573 (c)(2) requires that off-street parking regulations apply; and

 Vice-Chairman  
 Planning Director

\* - front / side yard

**PLANNING BOARD RESOLUTION  
NO- 2011-019**

**A VARIANCE APPROVAL FOR FRONT AND SIDE-YARD  
SETBACK REQUIREMENTS, BUILDING COVERAGE AND  
IMPERVIOUS SURFACE RATIO FOR A SECOND STOREY  
ADDITION AND EXPANSION OF A CONTRIBUTING  
STRUCTURE FOR PROPERTY LOCATED AT 1125 VON  
PHISTER STREET (RE NUMBER 00038550-000000) IN THE  
HMDR ZONING DISTRICT PER SECTION 90-391 OF THE  
LAND DEVELOPMENT REGULATIONS OF THE CODE OF  
ORDINANCES OF THE CITY OF KEY WEST, FLORIDA**

WHEREAS, Section 122-600 (4) a. and b. and 122-600(6) a. and b. of the Code of Ordinances provides that the maximum dimensional requirements for building coverage is 40%, maximum impervious surface ratio is 60% and building setbacks in the HHDR zoning district are ten feet in the front, and five feet on each side; and

WHEREAS, the applicant requested variances to building coverage (41% (1,923s.f)), impervious surface ratio (11% (508 S.F)), and front (9' 11") and side yard setbacks (1') to allow improvements to a historically contributing single family structure, and;

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on May 19, 2011; and

WHEREAS, the Planning Board finds that special conditions and circumstances exist

 Vice Chairman  
 Interim Planning Director



- existing non-conforming front yard

**RESOLUTION NO- 2011-020**



**A RESOLUTION OF THE KEY WEST PLANNING BOARD FOR A VARIANCE APPROVAL FOR BUILDING COVERAGE FOR A REAR COVERED PORCH ASSOCIATED WITH AN ADDITION AND NEW POOL AND TO AN EXISTING NON-CONFORMING FRONT YARD SETBACK FOR A SINGLE FAMILY CONTRIBUTING STRUCTURE FOR PROPERTY LOCATED AT 321 CATHERINE STREET (RE# 00026350-000000) IN THE HMDR ZONING DISTRICT PER SECTION 90-391 AND SECTIONS 122-600(4) A. AND (6) A. OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST.**

WHEREAS, Section 122-600 (4) a. and 122-600(6) a. of the Code of Ordinances provides that the maximum dimensional requirements for building coverage is 40%, and front yard building setbacks in the HHDR zoning district are ten feet, and

WHEREAS, the applicant requested variances to building coverage (7.5% (360 s.f)), and front (3' 3") yard setbacks to allow improvements to a historically contributing single family structure, and;

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on May 19, 2011; and

WHEREAS, the Planning Board finds that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other

 Vice Chairman  
 Interim Planning Director

- ✓ 66% value  
side, front &  
rear yard

**RESOLUTION NO- 2011-021**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD TO ALLOW THE RENOVATION AND CONSTRUCTION OF A NON-CONFORMING STRUCTURE WHICH EXCEEDS 66% OF THE VALUE OF THE EXISTING STRUCTURE PER SECTION 122-28 (b) BY GRANTING VARIANCES TO FRONT, SIDE AND REAR YARD SETBACK REQUIREMENTS FOR PROPERTY LOCATED AT 313 TRUMAN AVENUE (RE#00014940-000000), PURSUANT TO SECTION 122-600 (4) a. & (6) a, b & c. UNDER THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, Section 122-28(b) of the Code of Ordinances provides that if voluntary reconstruction of non-conforming residential structures exceeds 66% of the appraised value of the structure variances are required; and

WHEREAS, Section 122-600 (4) a. and (6)a, b & c. of the Code of Ordinances provides that the maximum building coverage is 40%, the minimum front-yard setback is 10 feet, side-yard setback is 5 feet and the rear yard setback is 15 feet in the HMDR zoning district; and

WHEREAS, the applicant requested variances to building coverage and setbacks to allow improvements to a non-conforming, historically contributing, residential structure which exceeds 66% of the value of that structure; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing

 Vice Chairman  
 Interim Planning Director

✓ Front yard

**RESOLUTION NO- 2011-022**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD TO ALLOW THE CONSTRUCTION OF A TWO ROOM ADDITION BY GRANTING VARIANCES TO THE FRONT-YARD SETBACK REQUIREMENTS FOR PROPERTY LOCATED AT 611 GRINNELL STREET #1 (RE#00010810-000000), PURSUANT TO SECTION 122-630 (6) a. UNDER THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Section 122-630(6) a. of the Code of Ordinances provides that the front-yard setback is 10 feet in the HEDR zoning district; and

**WHEREAS**, the applicant requested variances to the front-yard setback to allow the construction of a two-room addition; and

**WHEREAS**, this matter came before the Planning Board at a duly noticed public hearing on May 19, 2011; and

**WHEREAS**, the Planning Board finds 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 district; and

**WHEREAS**, the Planning Board finds that the special conditions do not result from the

 Vice Chairman  
 Interim Planning Director

X

**PLANNING BOARD RESOLUTION  
2011-025**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD GRANTING VARIANCES TO IMPERVIOUS SURFACE RATIO IN THE HPS ZONING DISTRICT PER SECTION 122-960(4)b. OPEN SPACE REQUIREMENTS PER SECTION 108-346(b), AND COASTAL CONSTRUCTION CONTROL LINE SETBACK REQUIREMENTS PER SECTION 122-1148(2) FOR PROPERTY LOCATED AT MALLORY SQUARE (RE# 00072082-001100, 00072082-001400 and 0072082-003700), UNDER THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.**

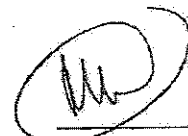
**WHEREAS**, Code Section 90-391 allows applicants to request variances from the Planning Board; and

**WHEREAS**, Section 122-960 (4)b. of the Code of Ordinances provides that the maximum dimensional requirements for impervious surface ratio in the HPS zoning district is 50%; and

**WHEREAS**, the applicant requested a variance to impervious surface ratio to allow redevelopment of proposed leasehold portions of Mallory Square; and

**WHEREAS**, Section 108 -346(b) of the Code of Ordinances provides that minimum open space requirements for a commercial property are 20%; and

**WHEREAS**, the applicant requested a variance to open space requirements to allow redevelopment of proposed leasehold portions of Mallory Square; and



Chairman

 Planning Director



\* Front, side rear yard



PLANNING BOARD RESOLUTION  
2011-026

**A RESOLUTION OF THE KEY WEST PLANNING BOARD TO ALLOW VARIANCES FOR FRONT AND SIDE YARD SETBACKS, IMPERVIOUS SURFACE RATIO, NEW REAR YARD SETBACK, BUILDING COVERAGE, AND OPEN SPACE FOR PROPERTY LOCATED AT 921 EATON STREET (RE# 00002710-000000) IN THE HMDR ZONING DISTRICT PER SECTION 122-600(6)(A.), (B.), AND (C.) AND SECTION 122-600(4)(A.) AND (B.), AND SECTION 108-346(B.) AND FOR DETACHED HABITABLE SPACE FOR A GUEST ROOM ADDITION PER SECTION 122-1078 OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA**

WHEREAS, Code Section 90-391 allows applicants to request variances from the Planning Board; and

WHEREAS, Section 122-600 (4) (a.) and (b.) and 122-600(6) (a.), (b.) and (c.) of the Code of Ordinances provides that the maximum dimensional requirements for building coverage is 40% and maximum impervious surface ratio of 50%, and front yard building setbacks are 10' feet, and side yard building setbacks are 5' and, rear yard building setbacks are 15' in the HMDR zoning district; and

WHEREAS, the applicant requested variances to building coverage (18% (501 s.f)) and impervious surface (11% (306 s.f)), and front yard setbacks (10'), side yard setbacks (5' and 3' 10") and rear yard setbacks (10'), and open space (15% 9417s.f)) to allow improvements to a historically

  
Chairman  
  
Planning Director

\* Front, Side  
+ rear yard

PLANNING BOARD RESOLUTION  
2011-027

A RESOLUTION OF THE KEY WEST PLANNING BOARD FOR A VARIANCE APPROVAL FOR BUILDING COVERAGE, FRONT YARD, REAR YARD AND SIDE YARD SETBACK REQUIREMENTS FOR AN EXTERIOR STAIRCASE AND SECOND STOREY PORCH FOR A MULTI-FAMILY CONTRIBUTING STRUCTURE FOR PROPERTY LOCATED AT 313 AMELIA STREET (RE# 00026100-000000) IN THE HMDR ZONING DISTRICT PER SECTION 90-391 AND SECTIONS 122-600(4) (a.) AND (6) (a.), (b.), AND (c.), OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA

WHEREAS, Section 122-600 (4)(a.) and 122-600(6) (a.), (b.), and (c.) of the Code of Ordinances provides that the maximum dimensional requirements for building coverage is 40%, and front yard building setbacks in the HMDR zoning district are 10 feet, and side yard building setbacks in the HMDR zoning district are 5 feet, and rear yard building setbacks in the HMDR zoning district are 15 feet; and

WHEREAS, the applicant requested variances to building coverage (20% (413 s.f.)); and front yard setback (3' 10") and; side yard setbacks (North Side: 1' 3" and Southside 3"); and rear yard setback (9'), to allow improvements to a historically contributing multi-family structure, and;

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on June 16, 2011; and

 Chairman

 Planning Director

\* 66% value  
Front + side yard  
impervious

RESOLUTION NO- 2011-033

A RESOLUTION OF THE KEY WEST PLANNING BOARD TO ALLOW THE RENOVATION AND CONSTRUCTION OF A NON-CONFORMING STRUCTURE WHICH EXCEEDS 66% OF THE VALUE OF THE EXISTING STRUCTURE BY GRANTING VARIANCES TO THE IMPERVIOUS SURFACE RATIO AND FRONT AND SIDE YARD SETBACK REQUIREMENTS FOR PROPERTY LOCATED AT 711 BAKERS LANE (RE#00011880-000000), PURSUANT TO SECTION 122-630 (4) b. and (6) a. & b. UNDER THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 122-28(b) of the Code of Ordinances provides that if voluntary reconstruction of a non-conforming residential structure exceeds 66% of the appraised value, variances are required; and

WHEREAS, Section 122-630 (4) b. and (6) a. & b. of the Code of Ordinances provides that the maximum impervious surface ratio is 60% and the minimum front yard setback is 10 feet and the minimum side-yard building setback is 5 feet in the HHDR zoning; and

WHEREAS, the applicant requested a variance to the impervious surface ratio and the front and side-yard setbacks to allow improvements to a non-conforming, historically contributing, residential structure which exceeds 66% of the value of that structure; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on

RLK Chairman  
DC Planning Director

✓ - 66% value  
- Side + rear yard

**RESOLUTION NO- 2011-034**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD TO ALLOW THE RENOVATION AND RECONSTRUCTION OF A NON-CONFORMING STRUCTURE WHICH EXCEEDS 66% OF THE VALUE OF THE EXISTING STRUCTURE BY GRANTING VARIANCES TO SIDE AND REAR-YARD SETBACK REQUIREMENTS FOR PROPERTY LOCATED AT 616 VIRGINIA STREET (RE#00027560-000000), PURSUANT TO SECTION 122-810 (6) b. & c. UNDER THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Section 122-28(b) of the Code of Ordinances provides that if voluntary reconstruction of a non-conforming residential structure exceeds 66% of the appraised value, variances are required; and

**WHEREAS**, Section 122-810 (6) b. & c. of the Code of Ordinances provides that the minimum side-yard setback is 5 feet and the minimum rear-yard setback is 15 feet in the HNC-1 zoning district; and

**WHEREAS**, the applicant requested a variance to the side and rear-yard setbacks to allow improvements to a non-conforming, historically contributing, residential structure which exceeds 66% of the value of that structure; and

**WHEREAS**, this matter came before the Planning Board at a duly noticed public hearing on June 29, 2011; and

RWK Chairman  
OC Planning Director

\* Side + rear yard

PLANNING BOARD RESOLUTION 2011-036

A RESOLUTION OF THE KEY WEST PLANNING BOARD DENYING AFTER-THE-FACT VARIANCES TO BUILDING COVERAGE, IMPERVIOUS SURFACE RATIO, SIDE, AND REAR YARD SETBACK REQUIREMENTS FOR PROPERTY LOCATED AT 908 TRINITY DRIVE #4 (RE#00065570-001010), PURSUANT TO SECTION 122-238 (4) a. AND b.(1) AND (6) a. 2. AND 3. UNDER THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 122-238 (4) a. and b.(1) and 122-238(6) a. 2, and 3. of the Code of Ordinances provides that the maximum dimensional requirements for building coverage is 35%, maximum impervious surface ratio is 50%, and building setbacks in the SF zoning district are 25 feet in the rear and five feet on each side; and

WHEREAS, the applicant requested variances to building coverage, impervious surface ratio, rear and side yard setbacks to allow after the fact approval to a non-conforming, accessory residential structure; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on July 21, 2011; and

TWP Vice Chairman

OC Planning Director

X

PLANNING BOARD RESOLUTION 2011-038

A VARIANCE APPROVAL FOR, BUILDING COVERAGE REQUIREMENTS FOR A SCREENED PORCH ADDITION FOR PROPERTY LOCATED AT 1621 BAHAMA STREET (RE NUMBER 00070230-000000) IN THE SF SPECIAL ZONING DISTRICT PER SECTION 122-238 (4) a. OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA

WHEREAS, Section 122-238 (4) a. of the Code of Ordinances provides that the maximum dimensional requirements for building coverage is 30% in the single-family special zoning district; and

WHEREAS, the applicant requested variances to building coverage (39%) for a screened porch addition to a single family structure, and;

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on July 21, 2011; and

WHEREAS, the Planning Board finds 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 district; and

  
Chairman  
  
Planning Director

\* front + rear yard

PLANNING BOARD RESOLUTION 2011- 039

**A VARIANCE APPROVAL FOR BUILDING COVERAGE, IMPERVIOUS SURFACE RATIO, FRONT AND REAR-YARD SETBACK REQUIREMENTS FOR A ROOM ADDITION FOR PROPERTY LOCATED AT 1315 THIRD STREET (RE NUMBER 00047640-000000) IN THE SF ZONING DISTRICT PER SECTION 122-238 (4)a. AND (6)1.&3. OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA**

WHEREAS, Section 122-238 (4) a. and 122-238(6) 1. & 3. of the Code of Ordinances provides that the maximum dimensional requirements for building coverage is 35%, and building setbacks in the single-family zoning district are 30 feet in the front, and 25 feet at the rear; and

WHEREAS, the applicant requested variances to building coverage (50%) and front (14'4") and rear yard setbacks (3' 4") for a room addition to a single family structure, and;

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on July 21, 2011; and

WHEREAS, the Planning Board finds 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 district; and

WHEREAS, the Planning Board finds that the special conditions do not result from the

  
Chairman  
  
Planning Director

✓ side yard

RESOLUTION 2011- 040

A RESOLUTION OF THE KEY WEST PLANNING BOARD TO ALLOW ~~AFTER-THE-FACT~~ GRANTING OF VARIANCES TO SIDE-YARD SETBACK REQUIREMENTS TO MAINTAIN EXISTING AIR CONDITIONING AND POOL EQUIPMENT FOR PROPERTY LOCATED AT 512 MARGARET STREET (RE#00008230-000000), PURSUANT TO SECTIONS 122-630 (6) b. AND 122-1078 UNDER THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 122-630(6) b. of the Code of Ordinances provides that the side-yard setback in the HHDR zoning district is five feet; and

WHEREAS, the existing side-yard setback is 2 feet 8 inches; and

WHEREAS, the applicant requests a variance to side-yard setback requirements to allow after the fact approval for non-conforming air conditioning and pool equipment; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on August 18, 2011; and

WHEREAS, the Planning Board finds that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other

Tah Vice Chairman  
Sc Planning Director



✓ - 66% value  
- side, rear  
+ street side

RESOLUTION 2011- 042

**A RESOLUTION OF THE KEY WEST PLANNING BOARD TO ALLOW THE RENOVATION OF A NON-CONFORMING STRUCTURE WHICH EXCEEDS 66% OF THE VALUE OF THE EXISTING STRUCTURE BY GRANTING VARIANCES TO SIDE, REAR AND STREETSIDE YARD SETBACK REQUIREMENTS FOR PROPERTY LOCATED AT 730 SOUTHARD STREET (RE#00011690-000000), PURSUANT TO SECTION 122-630 (6) b. c. & d. UNDER THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, Section 122-28(b) of the Code of Ordinances provides that if voluntary reconstruction of non-conforming residential structures exceeds 66% of the appraised value of the structure variances are required; and

WHEREAS, Section 122-630 (6) b. c. & d. of the Code of Ordinances provides that in the HHDR zoning district the minimum side-yard building setback is five feet, the rear-yard setback is 20 feet and the street side setback is five feet; and

WHEREAS, the applicant requested variances to allow improvements to a non-conforming, historically contributing, residential structure which exceeds 66% of the value of that structure; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on August 18, 2011; and

  
Chairman  
  
Planning Director

✓ Front yard

**PLANNING BOARD RESOLUTION  
2011- 046**


**A RESOLUTION OF THE KEY WEST PLANNING BOARD GRANTING VARIANCES TO THE FRONT-YARD SETBACK REQUIREMENT AND PROHIBITION ON ILLUMINATED SIGNAGE TO REPLACE AN EXISTING NON-CONFORMING SIGN FOR PROPERTY LOCATED AT 2318 FOGARTY AVENUE / 1311 FIFTH STREET (RE#00048900-000000), PURSUANT TO DIVISION 2 SECTION 114-71 UNDER THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Division 2, Section 114-71 of the Code of Ordinances provides that the front-yard setback for signs in the Single Family (SF) zoning district is twelve feet; and

**WHEREAS**, the proposed replacement sign has an illuminated changing-copy electronic display with the existing setback of zero feet; and

**WHEREAS**, the applicant requests a variance to the front-yard setback requirement and prohibition on illuminated signage to allow for the replacement of an existing non-conforming sign; and

**WHEREAS**, this matter came before the Planning Board at a duly noticed public hearing on September 15, 2011; and

 Acting Chairman

 Planning Director

✓ Front + rear yard

PLANNING BOARD RESOLUTION  
2011- 047



**A VARIANCE APPROVAL FOR FRONT AND REAR-YARD SETBACK REQUIREMENTS FOR THE CONSTRUCTION OF A SINGLE FAMILY DWELLING FOR PROPERTY LOCATED AT 2801 VENETIAN DRIVE (RE# 00070990-000000) IN THE SF ZONING DISTRICT PER SECTION 122-238 (6) 1. & 3. OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA**

WHEREAS, Section 122-238(6) 1. & 3. of the Code of Ordinances provides that the maximum dimensional requirements for building setbacks in the single-family zoning district are 30 feet in the front, and 25 feet at the rear; and

WHEREAS, the applicant requested variances to front (14') and rear yard (5') setbacks for the construction of a single family dwelling; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on September 15, 2011; and

WHEREAS, the Planning Board finds 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 district; and

 Acting Chairman  
 Planning Director

✓ rear + side

**PLANNING BOARD RESOLUTION  
2011-060**

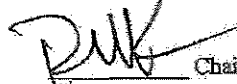

**A RESOLUTION OF THE KEY WEST PLANNING BOARD FOR A VARIANCE APPROVAL FOR AN 8' FENCE IN THE REAR AND SIDE YARD OF PROPERTY LOCATED AT 1210 WASHINGTON STREET IN THE HMDR ZONING DISTRICT PER SECTION 90-391 AND SECTIONS 122-1183(D)(1)(C) OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST.**

WHEREAS, Section 122-1183(D)(1)(C) of the Code of Ordinances provides that the maximum height of a fence may be 6' in height if the top 2' has openings of at least 50% or more; and

WHEREAS, the applicant requested variances to the fence height restrictions to allow for an 8' fence in the side and rear yards, beginning 24' from the front property line; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on November 17, 2011; and

WHEREAS, the Planning Board finds 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 district; and

  
Chairman  
  
Planning Director

**Additional Information  
Variance Requests from 2012**

Grouped - 6  
Stand alone - 7

X

PLANNING BOARD  
RESOLUTION NO. 2012-01

through 11/12

A RESOLUTION OF THE KEY WEST PLANNING BOARD FOR A VARIANCE APPROVAL FOR AN 11' FENCE IN THE SIDE YARD OF PROPERTY LOCATED AT 400 SOUTH STREET IN THE HCT ZONING DISTRICT PER SECTION 90-391, SECTION AND SECTION 122-1183(D.)(1)(C) OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST.

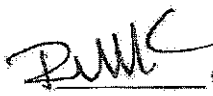

WHEREAS, Section 122-1183(d)(1)(c) of the Code of Ordinances provides that the maximum height of a fence may be 6' in height if the top 2' has openings of at least 50% or more; and

WHEREAS, the applicant requested a variance to the fence height restrictions to allow for an 11' fence in the side yard; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on January 19, 2012; and

WHEREAS, the Planning Board finds 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 district; and

WHEREAS, the Planning Board finds that the special conditions do not result from the

 Chairman  
 Planning Director

X

**PLANNING BOARD  
RESOLUTION NO. 2012-10**

A RESOLUTION OF THE KEY WEST  
PLANNING BOARD FOR APPROVAL  
VARIANCES APPROVAL TO CONSTRUCT A  
FIXED ROOF OVER AN EXISTING PATIO  
ON PROPERTY LOCATED AT 2718 HARRIS  
AVENUE (RE#00067640-000000) IN THE  
SINGLE FAMILY ZONING DISTRICT  
EXCEEDING BUILDING COVERAGE AND  
REAR-YARD SETBACK REQUIREMENTS PER  
SECTIONS 90-391 AND 122-238(4.)a. AND 122-  
238(6)a.3. OF THE LAND DEVELOPMENT  
REGULATIONS OF THE CODE OF  
ORDINANCES OF THE CITY OF KEY WEST.

WHEREAS, Section 122-238(4)a. and 122-238 (6)a.3. of the Code of Ordinances provides that the maximum building coverage shall be 35% and the allowed rear-yard setback shall be 25 feet ; and

WHEREAS, the applicant requested variances to the allowed building coverage for a total of 45% and a rear-yard setback of 20 feet; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on March 15, 2012; and

WHEREAS, the Planning Board finds that special conditions and circumstances exist

TWK Vice Chairman

SC Planning Director

✓ Stand alone

PLANNING BOARD  
RESOLUTION NO. 2012-12

A RESOLUTION OF THE KEY WEST PLANNING BOARD FOR VARIANCE APPROVAL TO RENOVATE AND RECONSTRUCT A TWO UNIT RESIDENTIAL BUILDING ON PROPERTY LOCATED AT 812-814 BAPTIST LANE (RE#00014520-000000) IN THE HISTORIC MEDIUM DENSITY RESIDENTIAL ZONING DISTRICT, REAR AND SIDE-YARD SETBACK REQUIREMENTS PER SECTIONS 90-391 AND 122-600(6) b. & c. OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST.

WHEREAS, Section 122-600 (6) b. & c. of the Code of Ordinances provides that the minimum allowed rear-yard setback shall be 15 feet and the minimum side-yard setback shall be 5 feet; and

WHEREAS, the applicant requested variances to the existing rear and side-yard setbacks; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on March 27, 2012; and

WHEREAS, the Planning Board finds that special conditions and circumstances exist

 Chairman  
 Planning Director





**PLANNING BOARD  
RESOLUTION NO. 2012-15**

**A VARIANCE APPROVAL FOR BUILDING  
COVERAGE AND IMPERVIOUS SURFACE  
RATIO FOR A CARPORT ON PROPERTY  
LOCATED AT 906 JOHNSON STREET RE#  
00058740-0000000) IN THE SINGLE FAMILY  
ZONING DISTRICT PER SECTIONS 90-391  
AND 122-238(4.)a.2. AND 122-238(4)b.1. OF THE  
LAND DEVELOPMENT REGULATIONS OF  
THE CODE OF ORDINANCES OF THE CITY  
OF KEY WEST.**

**WHEREAS**, Section 122-238(4)a.2, and 122-238 (4)b.1, of the Code of Ordinances provides that the maximum building coverage shall be 30% and the allowed impervious surface ratio shall be 50%; and

**WHEREAS**, the applicant requested a variances to the allowed building coverage for a total of 40% and impervious surface ratio of 70%; and

**WHEREAS**, this matter came before the Planning Board at a duly noticed public hearing on April 19, 2012; and

**WHEREAS**, the Planning Board finds that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other

  
Chairman  
  
Planning Director

✓

**PLANNING BOARD  
RESOLUTION NO. 2012-17**

**A VARIANCE APPROVAL FOR A REAR YARD  
SETBACK FOR AN ADDITION ON PROPERTY  
LOCATED AT 617 MICKENS LANE (RE#  
(RE#00012810-000000) IN THE HRO ZONING  
DISTRICT PER SECTIONS 90-391 AND 122-  
930(6)(c) OF THE LAND DEVELOPMENT  
REGULATIONS OF THE CODE OF  
ORDINANCES OF THE CITY OF KEY WEST.**

WHEREAS, Section 122-930(6)(c.) of the Code of Ordinances provides that the rear yard setback in the HRO zoning district is 10'; and

WHEREAS, the applicant requested a variances to the allowed rear yard setback from the 10' required to 6'; and

WHEREAS, this matter came before the Planning Board at a special meeting on April 23, 2012; and

WHEREAS, the Planning Board finds 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 district; and

TJK Vice Chairman

OC Planning Director

\* grouped

PLANNING BOARD  
RESOLUTION No. 2012- 21

A RESOLUTION OF THE KEY WEST PLANNING BOARD FOR VARIANCES TO A REAR YARD SETBACK OF TWELVE FEET AND BUILDING COVERAGE FOR 1.7% FOR PROPERTY LOCATED AT 1107 GRINNELL STREET (RE#00031760-000100) IN THE HMDR ZONING DISTRICT PER SECTION 90-391, SECTION 122-600(4)A. AND SECTION 122-600(6)C. OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 122-660(6) c. of the Code of Ordinances provides that the rear-yard setback in the HMDR zoning district is fifteen feet; and

WHEREAS, the existing side-yard setback is three feet; and

WHEREAS, the applicant requested a variance to rear-yard setback requirements to allow a two storey addition of approximately 340 square feet; and

WHEREAS, this matter came before the Planning Board at various duly noticed public hearings on February 16, 2012, and again on March 15, 2012 where the applicant requested postponement and on April 19, 2012 the Planning Board requested postponement to resolve concerns from the neighbor; and

  
Chairman  
  
Planning Director

PLANNING BOARD  
RESOLUTION No. 2012-27

X



A RESOLUTION OF THE KEY WEST  
PLANNING BOARD GRANTING VARIANCES  
TO THE COASTAL CONSTRUCTION  
CONTROL LINE SETBACK REQUIREMENTS  
FOR A MINOR DEVELOPEMNT PLAN FOR A  
FEMA COMPLIANT BUILDING PER SECTION  
122-1148(2) FOR PROPERTY LOCATED AT 202  
WILLIAM STREET (RE# 00072082-003900),  
UNDER THE CODE OF ORDINANCES OF THE  
CITY OF KEY WEST, FLORIDA; PROVIDING  
FOR AN EFFECTIVE DATE.

WHEREAS, Code Section 90-391 allows applicants to request variances from the Planning Board; and

WHEREAS, Section 122-1148(2) of the Code of Ordinances provides that the maximum dimensional requirements for the Coastal Control Line setback requirements at 202 William Street is 30 feet; and

WHEREAS, the applicant requested a variance to Coastal Control Line setback requirements to allow redevelopment of proposed leasehold portions of the Key West Bight; and

WHEREAS, this matter came before the Planning Board at a special public hearing on May 31, 2012; and

  
Chairman  
  
Planning Director

✓

**PLANNING BOARD  
RESOLUTION No. 2012-31**

**A VARIANCE APPROVAL FOR FRONT-YARD SETBACK REQUIREMENTS ON PROPERTY LOCATED AT 1021 FLEMING STREET RE# 00005060-000000) IN THE HISTORIC MEDIUM DENSITY RESIDENTIAL ZONING DISTRICT PER SECTIONS 122-28 (b), 90-391 AND 122-600 (6) a. OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST.**

WHEREAS, Section 122-28 (b) requires that if reconstruction or replacement of a non-conforming building or structure exceeds 66% of its assessed value, a variance is required to any non-conformity; and

WHEREAS, Section 90-391 allows an applicant to request a variance if the literal enforcement of the LDR's will cause unnecessary hardship; and

WHEREAS, Section 122-600 (6) a. of the Code of Ordinances provides that the minimum front-yard setback is to be 10 feet; and

WHEREAS, the applicant requested a variance to the allowed front-yard setback of 6.5 feet to the existing 3.5 feet; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on June 21, 2012; and

  
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de  
\_\_\_\_\_  
Planning Director

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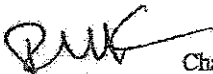
PLANNING BOARD  
RESOLUTION No. 2012-32

A RESOLUTION OF THE KEY WEST  
PLANNING BOARD FOR AFTER-THE-FACT  
VARIANCE APPROVAL FOR PROPERTY  
LOCATED AT 1101 SIMONTON STREET  
(RE#00027480-000000) IN THE HISTORIC  
NEIGHBORHOOD COMMERCIAL ZONING  
DISTRICT, PER SECTION 122-810 (4) a. & b.  
BUILDING COVERAGE AND IMPERVIOUS  
SURFACE RATIO AND SECTION 122-810 (6) b.  
& c. REAR AND SIDE-YARD SETBACK  
REQUIREMENTS AND SECTION 122-1078 OF  
THE LAND DEVELOPMENT REGULATIONS  
OF THE CODE OF ORDINANCES OF THE  
CITY OF KEY WEST.

WHEREAS, Section 122-810 (4) a. & b. and Section 122-810 (6) b. & c. of the Code of Ordinances provides that the maximum building coverage is 50% and maximum impervious surface ratio is 60% and the minimum allowed side-yard setback shall be 5 feet and the minimum rear-yard setback shall be 15 feet for detached habitable space; and

WHEREAS, the applicant requested variances to the existing building coverage and impervious surface ratio and to the existing side and rear-yard setbacks; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on July 19, 2012; and

  
Chairman

  
Planning Director

✓

**PLANNING BOARD  
RESOLUTION No. 2012-33**

**A VARIANCE APPROVAL FOR SIDE-YARD SETBACK  
REQUIREMENTS ON PROPERTY LOCATED AT 517  
ELIZABETH STREET (RE# 00008800-000000) IN THE  
HISTORIC MEDIUM DENSITY RESIDENTIAL ZONING  
DISTRICT PER SECTIONS 122-28 (b), 90-391 AND 122-600 (6)  
b. OF THE LAND DEVELOPMENT REGULATIONS OF THE  
CODE OF ORDINANCES OF THE CITY OF KEY WEST.**


**WHEREAS**, Section 122-28 (b) requires that if reconstruction or replacement of a non-conforming building or structure exceeds 66% of its assessed value, a variance is required to any non-conformity; and

**WHEREAS**, Section 90-391 allows an applicant to request a variance if the literal enforcement of the LDR's will cause unnecessary hardship; and

**WHEREAS**, Section 122-600 (6) b of the Code of Ordinances provides that the minimum side-yard setback is to be 5 feet; and

**WHEREAS**, the applicant requested a variance to the allowed side-yard setback of 2.7 feet to the existing 2.7 feet; and

**WHEREAS**, this matter came before the Planning Board at a duly noticed public hearing on July 19, 2012; and

  
Chairman

  
Planning Director

✓

PLANNING BOARD  
RESOLUTION No. 2012-37

**A RESOLUTION OF THE KEY WEST PLANNING BOARD  
FOR A VARIANCE APPROVAL FOR FRONT-YARD AND  
SIDE-YARD SETBACK REQUIREMENTS ON PROPERTY  
LOCATED AT 411 GRINNELL STREET (RE# 00005240-  
000000) IN THE HISTORIC MEDIUM DENSITY  
RESIDENTIAL ZONING DISTRICT PER SECTIONS 122-28  
(b), 90-391, 122-600 (6) a AND 122-600 (6) b. OF THE LAND  
DEVELOPMENT REGULATIONS OF THE CODE OF  
ORDINANCES OF THE CITY OF KEY WEST.**

WHEREAS, Section 122-28 (b) requires that if reconstruction or replacement of a non-conforming building or structure exceeds 66% of its assessed value, a variance is required to any non-conformity; and

WHEREAS, Section 90-391 allows an applicant to request a variance if the literal enforcement of the LDR's will cause unnecessary hardship; and



WHEREAS, Section 122-600 (6) a of the Code of Ordinances provides that the minimum front-yard setback is to be 10 feet; and

WHEREAS, Section 122-600 (6) b of the Code of Ordinances provides that the minimum side-yard setback is to be 5 feet; and

WHEREAS, the applicant requested a variance to the allowed front-yard setback of 4.62 feet to the existing 4.62 feet; and

WHEREAS, the applicant requested a variance to the allowed side-yard setback of 2.54 feet to the existing 2.54 feet; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing

  
Chairman  
  
Planning Director



✓

**PLANNING BOARD  
RESOLUTION No. 2012-40**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD GRANTING A ~~PARKING VARIANCE~~ ON PROPERTY LOCATED AT 825 DUVAL STREET (RE# 00016830-000000) IN THE HISTORIC NEIGHBORHOOD COMMERCIAL CORE ZONING DISTRICT, ALLOWING THE WAIVER OF PARKING REQUIREMENTS FOR 9 AUTOMOBILE SPACES REQUIRED FOR NEW COMMERCIAL FLOOR AREA AS PER SECTION 108-572 (9), AND ALLOWING ONLY 8 SPACES; WAIVING 1 SPACE FOR BICYCLE SUBSTITUTION AS PER SECTION 108-574 OF THE OF THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF KEY WEST, FLORIDA.**

WHEREAS, Section 108-572(9) of the Land Development Regulations provides that restaurants within the City must provide 1 off-street parking space per 45 square feet of serving and/or consumption area; and

WHEREAS, the subject property is located in the HRCC-3 zoning district, which is within the historic commercial pedestrian-oriented area pursuant to Land Development Regulation Section 108-573; and

WHEREAS, the applicant is increasing consumption and floor area on the site, which pursuant to Section 108-573(c)(1) requires that off-street parking regulations apply; and

WHEREAS, the applicant has requested to waive 9 off-street automobile parking spaces and

  
Chairman

  
Planning Director

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**PLANNING BOARD  
RESOLUTION No. 2012-42**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD  
FOR VARIANCE APPROVAL FOR BUILDING COVERAGE,  
IMPERVIOUS SURFACE RATIO, FRONT AND SIDE-YARD  
SETBACK REQUIREMENTS ON PROPERTY LOCATED AT  
1315 UNITED STREET (RE# 00035460-000000) IN THE  
HISTORIC MEDIUM DENSITY RESIDENTIAL ZONING  
DISTRICT PER SECTIONS 122-600 (4) AND (6) a. & b. OF  
THE LAND DEVELOPMENT REGULATIONS OF THE  
CODE OF ORDINANCES OF THE CITY OF KEY WEST.**

**WHEREAS,** Section 90-391 allows an applicant to request a variances if the literal enforcement of the LDR's will cause unnecessary hardship; and

**WHEREAS,** Section 122-600 (4) of the Code of Ordinances provides that the building coverage allowed is 40% and the impervious surface ratio not exceed 60%; and

**WHEREAS,** Section 122-600 (6) a. & b. of the Code of Ordinances provides that the minimum front-yard setback is to be 10 feet and the side-yard setback be 5 feet; and

**WHEREAS,** the applicant requested variances to the allowed front-yard setback to 3 feet and the side-yard setback to 4.4 feet; and

**WHEREAS,** this matter came before the Planning Board at a duly noticed public hearing on September 20, 2012; and

Page 1 of 6  
Resolution Number 2012-42

PWK Chairman

QC Planning Director

X

**PLANNING BOARD  
RESOLUTION No. 2012-50**

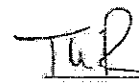

**A RESOLUTION OF THE KEY WEST PLANNING BOARD FOR A VARIANCE APPROVAL FOR IMPERVIOUS SURFACE RATIO IN THE HNC-1 ZONING DISTRICT PER SECTION 122-810(4)B; AND FOR IMPERVIOUS SURFACE RATIO, OPEN SPACE, LANDSCAPE BUFFER, AND LANDSCAPE WAIVER AT 616 SIMONTON STREET IN THE HPS ZONING DISTRICT AS PER SECTIONS 122-960(3), 122-960(4)B, AND 108-346(B) OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST.**

**WHEREAS**, the subject property is located in the Historic Neighborhood Commercial District – Truman/Simonton (HNC-1) and the Historic Public and Semipublic Services (HPS) zoning districts; and

**WHEREAS**, Section 90-391 allows an applicant to request a variance if the literal enforcement of the LDR's will cause unnecessary hardship; and

**WHEREAS**, Section 122-810(4) b of the Code of Ordinances provides that the minimum impervious surface ratio is to be 60 percent in the HNC-1 zoning district; the applicant requested a variance of 7% to the existing 98.6%; and

**WHEREAS**, Section 122-960(4) b of the Code of Ordinances provides that the minimum impervious surface ratio is to be 50 percent in the HPS zoning district; the applicant requested 36.68% to the existing and


 Chairman  
 Planning Director

**WHEREAS**, Section 108-346(b) of the Code of Ordinances provides that the minimum open space be 20 percent; the applicant requested 6.68% to the 4.94% existing; and

**WHEREAS**, the applicant requested a variance to the allowed minimum impervious surface ratio of 36.68% to the existing 95.03%; and

**WHEREAS**, the Planning Board finds that the existing conditions of the City Hall and Fire Station pre-dates the dimensional requirements of the current LDRs, and therefore is legally non-conforming to some dimensional requirements in the HNC-1 and HPS zoning district. The applicant is proposing to demolish the building and replace it with a new Fire Station, public restrooms, transportation facility options, and on-site public parking that lessens the existing nonconformities. The HPS zoning district is unique in that the surrounding zoning districts allow greater density and height; and

**WHEREAS**, the Planning Board finds that the applicant's request to expand the existing non-conformity is creating the need for the variance requests. Therefore, this is a condition created by the applicant. However, the response time for emergency services by the fire department limits the location of reconstruction to this parcel. Also a public facility cannot be built below the 100 year flood zone requirements, so it must be in the "X" flood zone, which this parcel is. There are no other feasible locations; and

 Chairman

 Planning Director



PLANNING BOARD  
RESOLUTION No. 2012-52

A RESOLUTION OF THE KEY WEST  
PLANNING BOARD GRANTING VARIANCES  
TO BUILDING COVERAGE, IMPERVIOUS  
SURFACE RATIO, FRONT AND STREETSIDE  
SETBACK REQUIREMENTS AND PARKING  
REQUIREMENTS FOR PROPERTY LOCATED  
AT 951 CAROLINE STREET (RE# 00002970-  
000000), UNDER THE CODE OF ORDINANCES  
OF THE CITY OF KEY WEST, FLORIDA;  
PROVIDING FOR AN EFFECTIVE DATE.


WHEREAS, Code Section 90-391 allows applicants to request variances to the Land  
Development Regulations through the Planning Board; and

WHEREAS, Section 122-720 of the Code of Ordinances provides for the maximum and  
minimum dimensional requirements for property located in the HRCC-2 zoning district; and

WHEREAS, the applicant requested variances to Section 122-720 (4) a. & b.: building  
coverage and impervious surface ratio; and

WHEREAS, the applicant requested variances to Section 122-720 (6) a. & d.: front and side-  
yard setbacks; and

WHEREAS, the applicant requested a variance to parking requirements per Section 108-572  
(16): one parking space per 300 square feet of commercial floor area; and

 Chairman

 Planning Director

✓

**PLANNING BOARD  
RESOLUTION No. 2012-53**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD  
FOR A VARIANCE APPROVAL FOR REAR-YARD  
SETBACK REQUIREMENTS ON PROPERTY LOCATED AT  
617 FLEMING STREET (RE# 00006260-000108) IN THE  
HISTORIC MEDIUM DENSITY RESIDENTIAL ZONING  
DISTRICT PER SECTION 122-600 (6) c. OF THE LAND  
DEVELOPMENT REGULATIONS OF THE CODE OF  
ORDINANCES OF THE CITY OF KEY WEST.**

**WHEREAS**, Section 90-391 allows an applicant to request a variance if the literal enforcement of the LDR's will cause unnecessary hardship; and

**WHEREAS**, Section 122-600 (6) c of the Code of Ordinances provides that the minimum rear-yard setback is to be 15 feet; and

**WHEREAS**, the applicant requested a variance to the allowed rear-yard setback of 4.5 feet to the existing 4.5 feet; and

**WHEREAS**, this matter came before the Planning Board at a duly noticed public hearing on November 29, 2012; and

**WHEREAS**, the Planning Board finds that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other

  
Chairman  
  
Planning Director

\*

**PLANNING BOARD  
RESOLUTION No. 2012-54**

**A RESOLUTION OF THE CITY OF KEY WEST  
PLANNING BOARD FOR VARIANCE  
APPROVAL FOR PROPERTY LOCATED AT  
1304 TRUMAN AVENUE (RE#00033890-000000)  
IN THE HISTORIC PUBLIC SERVICE ZONING  
DISTRICT, PER SECTION 122-960 (4) a. & b.  
BUILDING COVERAGE AND IMPERVIOUS  
SURFACE RATIO AND SECTION 122-960 (6) c.  
REAR-YARD SETBACK REQUIREMENTS OF  
THE LAND DEVELOPMENT REGULATIONS  
OF THE CODE OF ORDINANCES OF THE  
CITY OF KEY WEST.**

**WHEREAS**, Section 122-960 (4) a. & b. and Section 122-960 (6) c. of the Code of Ordinances provides that the maximum building coverage is 40% and maximum impervious surface ratio is 50% and the minimum allowed rear-yard setback shall be 20 feet; and

**WHEREAS**, the applicant requested variances to the existing building coverage and impervious surface ratio and to the existing rear-yard setback; and

**WHEREAS**, this matter came before the Planning Board at a duly noticed public hearing on November 29, 2012; and

**WHEREAS**, the Planning Board finds that special conditions and circumstances exist

RWK Chairman  
DC Planning Director

X

**PLANNING BOARD  
RESOLUTION No. 2012-55**

**A RESOLUTION OF THE CITY OF KEY WEST  
PLANNING BOARD FOR VARIANCE  
APPROVAL FOR PROPERTY LOCATED AT  
1114 MARGARET STREET (RE#00029920-  
000000) IN THE HISTORIC MEDIUM DENSITY  
RESIDENTIAL ZONING DISTRICT, PER  
SECTION 122-600 (4) a. & b. BUILDING  
COVERAGE AND IMPERVIOUS SURFACE  
RATIO REQUIREMENTS OF THE LAND  
DEVELOPMENT REGULATIONS OF THE  
CODE OF ORDINANCES OF THE CITY OF  
KEY WEST.**

**WHEREAS**, Section 122-600 (4) a. & b. of the Code of Ordinances provides that the maximum building coverage is 40% and maximum impervious surface ratio is 60%; and

**WHEREAS**, the applicant requested variances to the existing building coverage and impervious surface ratio; and

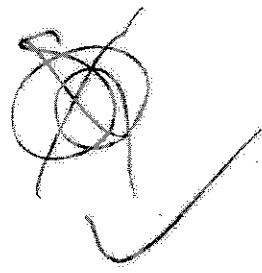
**WHEREAS**, this matter came before the Planning Board at a duly noticed public hearing on November 29, 2012; and

**WHEREAS**, the Planning Board finds that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other

*RWK* Chairman  
*OC* Planning Director



PLANNING BOARD  
RESOLUTION No. 2012-56





A RESOLUTION OF THE CITY OF KEY WEST  
PLANNING BOARD DENYING AFTER-THE-  
FACT VARIANCES FOR PROPERTY  
LOCATED AT 2310 PATTERSON AVENUE  
(RE#00050260-000000) IN THE SINGLE  
FAMILY RESIDENTIAL ZONING DISTRICT,  
PER SECTION 122-238 (4) BUILDING,  
COVERAGE AND IMPERVIOUS SURFACE  
RATIO AND SECTION 122-238 (6) a. 2. & a. 3.  
REAR AND SIDE-YARD SETBACK  
REQUIREMENTS OF THE LAND  
DEVELOPMENT REGULATIONS OF THE  
CODE OF ORDINANCES OF THE CITY OF  
KEY WEST.

WHEREAS, Section 122-238 (4) and Section 122-238 (6) a. 2. & a. 3. of the Code of Ordinances provides that the maximum building coverage is 35% and maximum impervious surface ratio is 50% and the minimum allowed side-yard setback shall be 5 feet and the minimum rear-yard setback shall be 20 feet; and

WHEREAS, the applicant requested variances to the existing building coverage and impervious surface ratio and to the existing side and rear-yard setbacks; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on November 29, 2012; and

 Chairman  
 Planning Director

Key West, Florida, Code of Ordinances >> Subpart B - LAND DEVELOPMENT REGULATIONS >>  
Chapter 90 - ADMINISTRATION >> ARTICLE V. - PERMITS, CERTIFICATE OF OCCUPANCY,  
VARIANCES, APPEALS >> DIVISION 3. - VARIANCES >>

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### DIVISION 3. - VARIANCES

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Sec. 90-391. - Variances.

Sec. 90-392. - Application.

Sec. 90-393. - Notice and hearing procedure.

Sec. 90-394. - Action.

Sec. 90-395. - Standards, findings.

Sec. 90-396. - Effect and limitation.

Sec. 90-397. - Reapplication.

Secs. 90-398—90-425. - Reserved.

#### **Sec. 90-391. - Variances.**

An owner or his authorized agent may request a variance from the land development regulations as provided for in this division. The planning board shall have the quasi-judicial power necessary to grant such variances that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the land development regulations would result in unnecessary hardship. A variance from the terms of the land development regulations shall not be granted by the planning board unless and until the requirements of this division are met.

*(Ord. No. 97-10, § 1(1-2.6), 7-3-1997; Ord. No. 08-04, § 5, 5-20-2008)*

#### **Sec. 90-392. - Application.**

- (a) All applications for variances from the land development regulations shall be in the form required and provided by the city planner. Such application shall be submitted to the city planning office together with the fee established by resolution of the city commission. A completed application shall include the application form, the fee and all required supplemental information necessary to render determinations related to the variance request.
- (b) Upon receipt of an application for a variance, the planning board shall hold a public hearing upon the application in accordance with the procedures cited in section 90-393 and shall render an order granting or denying such application. In granting such application the planning board must make specific affirmative findings respecting each of the matters specified in section 90-394 and may prescribe appropriate conditions and safeguards, including requirements in excess of those otherwise required by these land development regulations, which shall become a part of the terms under which a development order may be issued.

*(Ord. No. 97-10, § 1(1-2.6(A)), 7-3-1997; Ord. No. 08-04, § 6, 5-20-2008)*

#### **Sec. 90-393. - Notice and hearing procedure.**

In considering and acting upon applications for a variance from the land development regulations, the following procedures shall be observed:

- (1) *Date of hearing.* The hearing shall be held by the planning board at a date and time fixed by the chairperson of the planning board.
- (2) *Notice.* Notice shall be provided as required by division 2 of article VIII of this chapter.
- (3) *Appearance and presentation.* At any hearing upon any matter subject to this division, the applicant or his authorized representative seeking action by the planning board and any other party desiring to be heard upon the application may appear in person, by agent or by attorney. The applicant shall be entitled to make an initial presentation respecting the application and, at the conclusion of presentations or statements by all other parties, shall be entitled to offer a statement in rebuttal to such presentations if the applicant so desires. The chairperson of the planning board may, at the commencement of the hearing upon each application or at any time during such hearing, require that parties desiring to make a presentation identify themselves and may specify the time to be allowed each such party within which to make such presentation.

(Ord. No. 97-10, § 1(1-2.6(B)), 7-3-1997; Ord. No. 00-04, § 3, 2-1-2000; Ord. No. 08-04, § 7, 5-20-2008)

#### **Sec. 90-394. - Action.**

Action by the planning board upon any matter subject to the provisions of this division shall be announced by the chairperson of the board immediately following the vote determining such action and shall thereafter be embodied in a written order prepared by the planning director and executed by the chairperson of the planning board and filed with the city clerk. Such written order shall be incorporated into the minutes of the meeting at which such action occurred. The board shall enter its order denying such application, specifying the reasons therefore, or granting such application, in whole or in part, under such terms and conditions as the board shall determine appropriate.

The planning board shall not grant a variance to permit a use not permitted by right or as a conditional use in the zoning district involved or any use expressly or by implication prohibited by the terms of the ordinance in the zoning district. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and no permitted use of lands, structures, or buildings in other zoning districts shall be considered grounds for the authorization of a variance. No variance shall be granted that increases or has the effect of increasing density or intensity of a use beyond that permitted by the comprehensive plan or these LDRs.

(Ord. No. 97-10, § 1(1-2.6(C)), 7-3-1997; Ord. No. 02-01, § 1, 1-2-2002; Ord. No. 08-04, § 8, 5-20-2008)

#### **Sec. 90-395. - Standards, findings.**

- (a) Standards for considering variances. Before any variance may be granted, the planning board must find all of 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.
  - (2) Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.

- (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.
  - (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.
  - (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.
  - (6) Not injurious to the public welfare. That the grant 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.
  - (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.
- (b) The planning board shall make factual findings regarding the following:
- (1) That the standards established in subsection (a) have been met by the applicant for a variance.
  - (2) 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.

An order permitting a variance may prescribe appropriate conditions and safeguards, including visual screening, and may also prescribe a reasonable time limit within which construction or occupancy of the premises for the proposed use shall have begun or have been completed or both. Upon entry of an order granting a variance, the administrative official shall not issue any development order for the subject property unless and until all of the conditions and requirements of the order granting the variance are met. Violation of those conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the land development regulations and shall render the variances revoked.

(Ord. No. 97-10, § 1(1-2.6(D)), 7-3-1997; Ord. No. 02-01, § 1, 1-2-2002; Ord. No. 03-09, § 1, 3-4-2003; Ord. No. 08-04, § 9, 5-20-2008)

#### **Sec. 90-396. - Effect and limitation.**

An order granting a variance from the land development regulations shall be deemed applicable to the parcel for which it is granted and not to the individual applicant, provided that no order granting a variance shall be deemed valid with respect to any use of the premises other than the use specified in the application for a variance.

(Ord. No. 97-10, § 1(1-2.6(E)), 7-3-1997)

#### **Sec. 90-397. - Reapplication.**

Reapplication for the same or similar piece of property requesting the same or similar variance from the land development regulations cannot be made within two years from the date the application was originally denied by the board of adjustment or planning board. An applicant may,

however, submit a substantially different application or reapply based on changed conditions and/or the advent of new information which have a substantial impact on material issues.

*(Ord. No. 97-10, § 1(1-2,6(G)), 7-3-1997; Ord. No. 03-09, § 2, 3-4-2003; Ord. No. 08-04, § 10, 5-20-2008)*

**Secs. 90-398—90-425. - Reserved.**

**Sec. 102-186. - Variances granted by the planning director.**

- (a) **Purpose.** The purpose of this section is to establish authority, procedures, and standards for the granting of variances and waivers from certain requirements of this chapter.
- (b) **Authority and scope of authority.** The planning director is authorized to grant the following variances and waivers according to the standards of subsections (f) and (g) of this section:
  - (1) Reduction in the front, and rear yard, nonshoreline setback requirements in chapter 130, article VI by no more than ten feet and side yard setback by no more than 20 percent;
  - (2) Reduction in the off-street parking requirements in chapter 114, article III by no more than 20 percent;
  - (3) Reduction in the bufferyard width requirements for class C, D, E, and F district boundaries, major streets, and scenic corridors in chapter 114, article V by no more than ten percent; and
  - (4) Reduction by no more than ten percent in the total area of landscaping required for off-street parking and loading in chapter 114, article III.
- (c) **Application.** An application for a variance or waiver under this section shall be submitted to the planning director on a form approved by the planning director.
- (d) **Procedures.** The planning director shall normally complete his review of the entire application and render a proposed decision within 15 working days of receipt of the application.
- (e) **Decision.** The planning director's decision shall be in writing. Except for the special accessibility setback variance as provided for in subsection (h) of this section, a variance shall only be granted if all of the standards in subsection (f) of this section are met.
- (f) **Standards for variances.** The planning director shall grant a variance under this section if the applicant demonstrates that all of the following standards are met:
  - (1) The applicant shall demonstrate a showing of good and sufficient cause;
  - (2) Failure to grant the variance would result in exceptional hardship to the applicant;
  - (3) Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;
  - (4) Property has unique or peculiar circumstances, which apply to this property, but which do not apply to other properties in the same zoning district;
  - (5) Granting the variance will not give the applicant any special privilege denied other properties in the immediate neighborhood in terms of the provisions of this chapter or established development patterns;
  - (6) Granting the variance is not based on disabilities, handicaps or health of the applicant or members of his family;
  - (7) Granting the variance is not based on the domestic difficulties of the applicant or his family; and
  - (8) The variance is the minimum necessary to provide relief to the applicant.
- (g) **Standards for waivers.**

The director of planning may approve a waiver that modifies the minimum front yard requirements set out in section 130-186 provided the applicant demonstrates that:

- (1) The existing setback average, as measured pursuant to the definition of "setbacks" in section 101-1, on the street within the land use district in which the subject property is located is less than the land use district standard, as established in section 130-186
  - (2) The waiver will not result in a setback that is less than the existing front yard setback to the further most projection of the main building that is closest to the front lot line on a contiguous lot on either side of the subject property;
  - (3) The waiver is for an amount not greater than 20 percent of the land use district standard as established in section 130-186; and
  - (4) In the event that a contiguous lot on either side of the subject property is vacant, the land use district standard shall apply.
- (h) **Special accessibility setback variance.** Notwithstanding the standards in subsections (f) (4), (5), (6) and (7) of this section, a variance from the yard setback requirements may be granted for an elevator or wheelchair lift or ramp required to allow access to the elevated dwelling unit of a disabled applicant or disabled member of his household.
- (i) **Public notification of proposed approval.** After determining that an application for a variance or a waiver complies with the requirements of this section, the planning director shall provide written notice of proposed approval and require posting as follows:
- (1) The planning director shall provide written notice by regular mail to owners of real property located within 300 feet of the property that is the subject of the proposed variance or waiver.
  - (2) The applicant shall post the property of the proposed variance or waiver with a waterproof sign of at least four square feet in front surface area, which is lettered so as to be easily visible from all public streets and public ways abutting the property. The property shall remain posted for no less than 30 consecutive calendar days beginning within five working days of the date that the application is deemed to be in compliance by the planning director.
  - (3) The notice and posting shall provide a brief description of the proposed variance or waiver and indicate where the public may examine the application. The cost of providing notice and posting shall be borne by the applicant.
- (j) **Decision by the planning director.** After 30 calendar days of proper posting, review of all public responses to the variance or waiver application, and upon a finding that the proposed variance or waiver and application have or have not complied with the requirements and standards of this section, the planning director shall issue a written variance decision.
- (k) **Public hearing by the planning commission.** If requested in writing by the applicant, or an adversely affected owner or resident of real property located in the county during the required 30 calendar days of posting, a public hearing shall be scheduled on the application for a variance or waiver after the 30th day of posting, but before the 60th day after posting. All costs of the public hearing shall be the responsibility of the applicant for the variance or waiver. The public hearing shall be conducted in accordance with section 110-5 and provisions of section 102-187

(Code 1979, § 9.5-523; Ord. No. 40-1988, § 190; Ord. No. 19-1993, § 16; Ord. No. 034-2003, § 1; Ord. No. 040-2007, § 3)

### Sec. 102-187. - Variances granted by planning commission.

- (a) **Purpose.** The purpose of this section is to authorize procedures and standards for the granting of variances from certain provisions of this chapter.
- (b) **Authority and scope of authority.** The planning commission is authorized to grant the following variances in accordance with the standards in section 102-186(f):
- (1) Front, back, side, and rear yard setback requirements in chapter 130, article VI;
  - (2) District boundary, major street and scenic corridor bufferyard requirements in chapter 114, article V;
  - (3) Off-street parking and loading space requirements in chapter 114, article III;
  - (4) Landscaping requirements in chapter 114, article IV; and
  - (5) Access standards in chapter 114, article VII.
- (c) **Application and procedures.** An application for a variance shall be submitted to the planning director. The planning director shall review the entire application and all public responses thereto and prepare a staff report with recommendations for the planning commission. The variance application shall be heard at a regularly scheduled meeting of the planning commission. Notice, posting and hearing requirements shall be in accordance with section 110-5.
- (d) **Decision.** The planning commission's decision shall be in writing in accordance with section 101-1. Except for the special accessibility setback variance provided for in section 102-186(g), a variance shall only be granted if the standards in section 102-186(f) are met.

(Code 1979, § 9.5-524; Ord. No. 034-2003, § 3)



County of Monroe  
Growth Management Division



Planning & Environmental Resources

Department

2798 Overseas Highway, Suite 410  
Marathon, FL 33050  
Voice: (305) 289-2500  
FAX: (305) 289-2536



Board of County Commissioners

Mayor David Rice, Dist. 4  
Mayor Pro Tem Kim Wigington, Dist. 1  
Heather Carruthers, Dist. 3  
George Neugent, Dist. 2  
Sylvia J. Murphy, Dist. 5

*We strive to be caring, professional and fair*

July 9, 2012

**Subject: Surrounding Property Owner Notification Letter, Setback Variance Request Square 24, Lots 1 through 20, Maloney Subdivision, PB1-55, Real Estate (RE) #00124090.000000 (File #2012-070)**

Dear Madam or Sir,

Boos Development Group, Inc. has applied to the Planning & Environmental Resources Department for approval of a setback variance at the above-referenced property.

The applicant is requesting approval of a variance of 5' from the required 15' front yard setback along the US 1 right-of-way (northern property line) in order to receive permit approval to construct 39 parking spaces as part of a proposed redevelopment of the site with a commercial retail use, in the form of a CVS Pharmacy. As a result, the front yard setback along US 1 would be 10'.

As set forth in §102-86 of the Monroe County Code, the Director of Planning & Environmental Resources has the authority to grant variances for the reduction of non-shoreline setback requirements for front and rear yards by no more than ten (10) feet and side yards by no more than twenty (20) percent after determining that an application complies with the requirements and standards set forth in §102-86(f).

After determining that an application for a variance complies with the requirements and standards, the Planning & Environmental Resources Department provides written notice of the proposed approval to owners of real property located within three hundred (300) feet of the property. This letter is to notify you of pending approval of this application. If requested in writing by the applicant or an adversely affected owner or resident of real property located in Monroe County during the required thirty (30) calendar days of posting, a public hearing by the Monroe County Planning Commission shall be scheduled on the application.

You may examine this application at our office, located at 2798 Overseas Highway, Marathon, Florida. In addition, please feel free to contact Timothy Finn, Planner, at (305) 289-2589 with any questions.

Respectfully,

Townsley Schwab, Senior Director of Planning & Environmental Resources

Attachment

**Compliance with the Land Development Regulations:**

§102-86(f) provides the following eight (8) standards for setback variances:

- 1) The applicant shall demonstrate a showing of good and sufficient cause;
- 2) Failure to grant the variance would result in exceptional hardship to the applicant;
- 3) Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;
- 4) Property has unique or peculiar circumstances, which apply to this property, but which do not apply to other properties in the same zoning district;
- 5) Granting the variance will not give the applicant any special privilege denied other properties in the immediate neighborhood in terms of the provisions of this chapter or established development patterns;
- 6) Granting the variance is not based on disabilities, handicaps or health of the applicant or members of his family;
- 7) Granting the variance is not based on the domestic difficulties of the applicant or his family; and;
- 8) The variance is the minimum necessary to provide relief to the applicant

**Staff Recommendation:**

Staff recommends approval of a variance of five (5) feet with the following conditions (if necessary, following the consideration of public input, staff reserves the right to request additional conditions):

- 1) This variance is based on the design and placement of the parking spaces as shown on the site plan by CPH Engineers Inc., signed and sealed May 18, 2012, included with the application. Work not specified or alterations to the site plan may not be carried out without additional Planning & Environmental Resources Department approval.
- 2) This variance is to allow the placement of parking spaces as shown on the site plan submitted with the variance application within the required front yard setback along Overseas Highway. It does not waive any other required setbacks and it does not waive the required front yard setback for any future structures. In no case shall the major street buffer be reduced or waived.
- 3) The required major street buffer, a class "B", shall be the 10' width as shown in Section 114-128 of the Monroe County Code. The buffer shall be installed prior to or concurrently with the construction of the parking spaces subject to this variance request. In no case shall the required major street buffer be reduced or waived.
- 4) In no case shall the required parking lot landscaping be reduced or waived.