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VIA ELECTRONIC DELIVERY

July 21, 2026

Taylor Brown, Planning Director
City of Key West Planning Department
1300 White Street
Key West, Florida 33040

RE: Memorandum Regarding the Variance Application submitted for 624 United Street, Key West, FL 33040:

Dear Mr. Brown:

This letter shall serve as the undersigned's memorandum regarding the Application for Variance (the "Application") submitted by the undersigned on behalf of the property owners of 624 United Street, Key West, Florida 33040 (the "Property").

By way of brief background, the property owner is seeking to relocate the existing structure, which is currently legally non-conforming with regard to the side setbacks, on the Property by shifting it forward 27' 5.5." In so doing, the structure will be repositioned in a way that allows for a slight reduction in the legal nonconformities. More specifically, moving the structure forward on the Property results in a decrease of the nonconforming side setbacks by ¼" on the Elizabeth Street side setback and by 3" on the West side setback. To be clear, the relocation of the existing structure forward on the Property actually decreases the existing nonconformity and there is no increase in intensity to density which results out of the relocation.

To clarify, the applicable setback data related to the structure and the proposed project are as follows:

| **FRONT & SIDE SETBACKS** | | |
|---|---|---|
| | Existing | Proposed |
| Front Setback | 33' 4 1/2" | 5' 11" |
| Elizabeth Street Side Setback | 3' 2" | 3' 2 1/4" |
| West Side Setback | 2' 10 1/2" | 3' 1 1/2" |

As the relocation of the existing structure is actually beneficial and does not, in fact, propose to increase density or intensity, but rather results in an improvement of an existing legal nonconformity, it is the undersigned's position that a variance is neither required nor necessary. However, the Planning Department for the City of Key West has taken the position that moving the structure forward creates a *new* nonconformity and therefore a variance is required, a position which the undersigned disputes. The Planning Department's position is not supported by the literal interpretation of the City of Key West's Code of Ordinances and appears to be a position taken with regard to reconstruction or replacement under Section 122-28, which would require that an involuntarily destroyed structure within the historic district be "reconstructed or replaced without a variance so long as it is to be rebuilt in the three-dimensional footprint of the original building."

The key difference with the proposed repositioning of the existing structure and Section 122-28 is that the existing structure has not been destroyed, whether voluntarily or involuntarily, and therefore it is not a rebuilding of the structure under the Code of Ordinances. The proposition presented in Section 122-28 is that if the *rebuilding* of the involuntarily destroyed structure creates a *new* nonconformity or otherwise increases a pre-existing nonconformity, then a variance would be required. However, in this situation there is neither a *rebuilding* nor a new or increased nonconformity. Rather, there is a reduction in an existing nonconformity, which it should be noted is a nonconformity that was not created by the property owner. Simply moving the existing structure forward does not in and of itself create a new nonconformity. It merely relocates an existing nonconformity on the same lot, and in this particular situation, doing so results in a reduction of a nonconformity which benefits the property owner, the City of Key West, and neighboring properties.

It is further significant to note that the proposed relocation of the structure on the lot conforms with City of Key West Code of Ordinances Section 122-32(a), which states:

> A nonconforming use, nonconforming density or a noncomplying building or structure may be continued, subject to this article. Notwithstanding anything in the Code to the contrary, **a structure or site improvement may be altered without the need for a variance if the alteration decreases respective noncompliance.** This provision shall not function to permit the construction, reconstruction, or alteration of any structure that obstructs clear and free passage of emergency responders or that otherwise conflicts with fire safety Code.
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> Sect. 122-32- Additional Regulations.

Therefore, in accordance with Section 122-32(a), the structure *can* in fact be altered by repositioning it on the lot because the alteration of repositioning it results in a decrease of the noncompliance. In other words, by moving the structure forward on the lot, the property owner is decreasing the extent of the nonconformity with regard to the current legally nonconforming side setbacks. The property owner's proposed plan is precisely the type of proposal that Section 122-32 contemplates.

For these reasons, a variance is not required under applicable Code of Ordinances. Despite the fact that a variance is not actually required in this situation, the property owner has submitted the Variance Application at the behest of the Planning Department and the undersigned will appear before the Planning Board to present both the Variance Application and the fact that a variance is not actually required. The undersigned would welcome the opportunity to discuss this matter with you in more detail in an effort to streamline this process and resolve the matters addressed herein.

Very Truly Yours,

Gregory S. Oropeza, Esq.