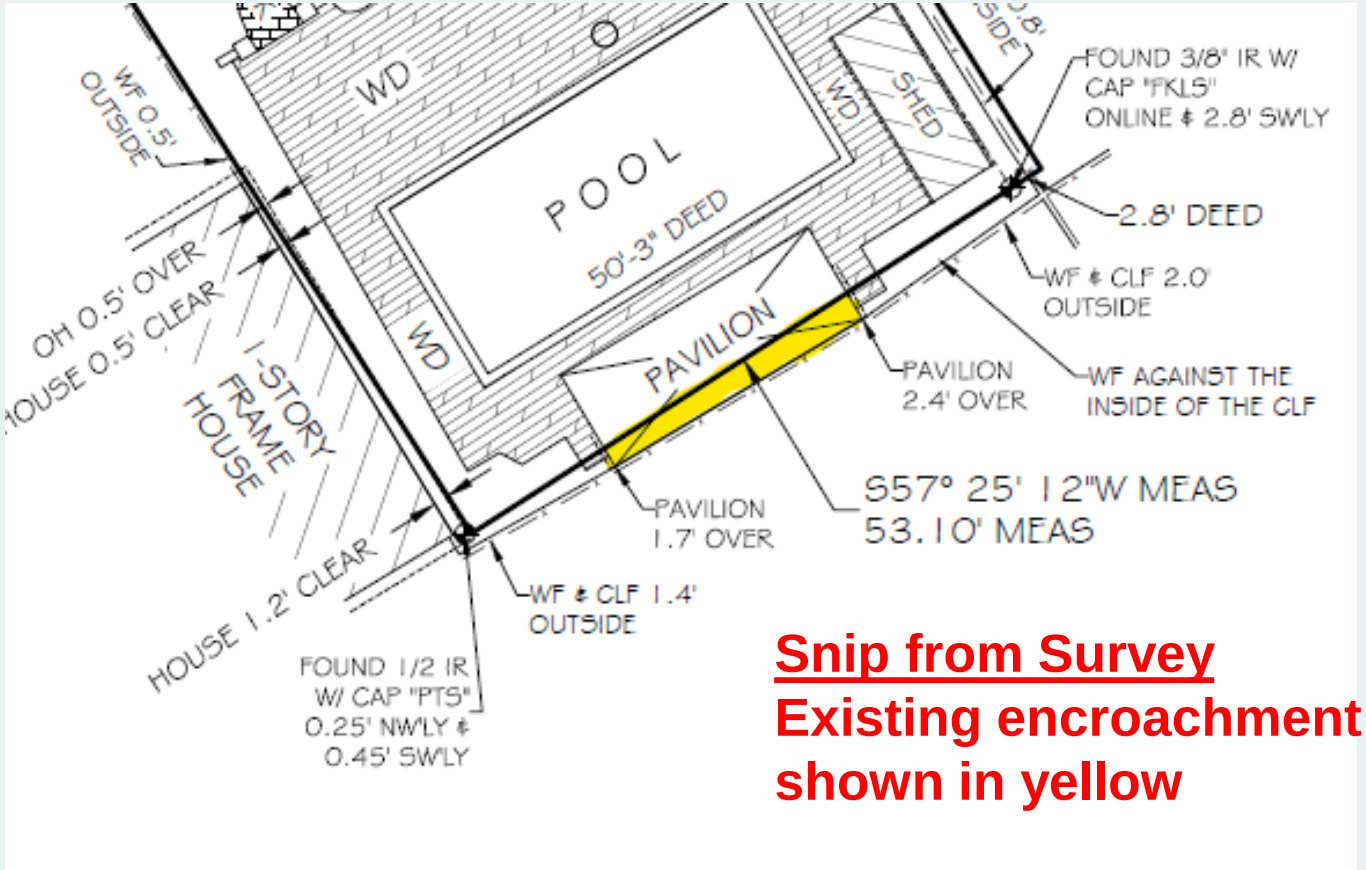
712 Eaton Street

Appeal of Denial of Building Permit No. 2025-1822

Building Permit No. 2025-1822

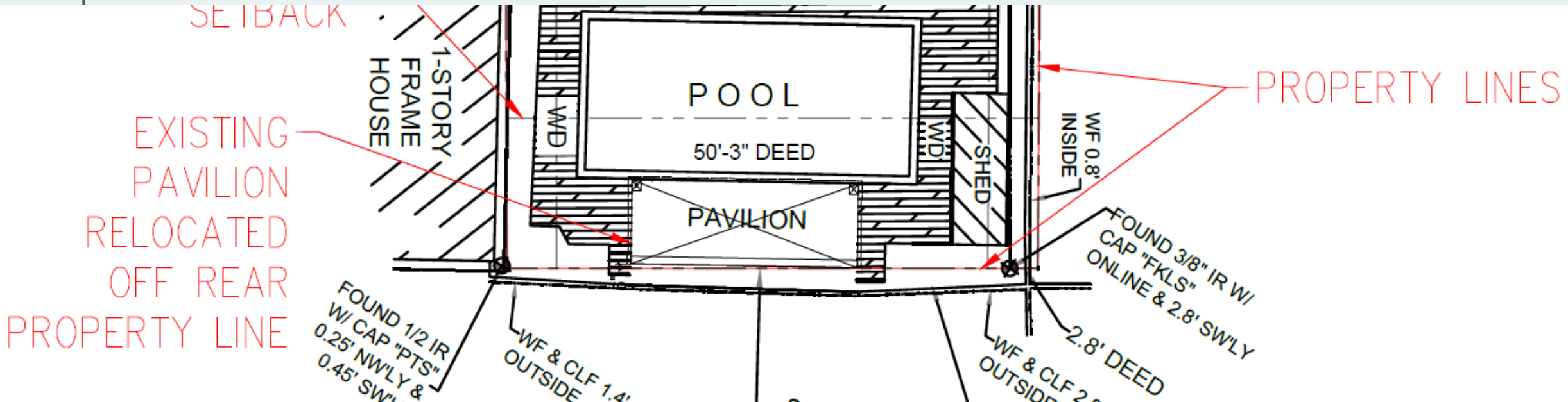
- The building permit application is to modify an existing accessory structure that currently encroaches 2 feet 4 inches onto a neighboring property, so the structure is located entirely on the applicant's property.



Building Permit No. 2025-1822

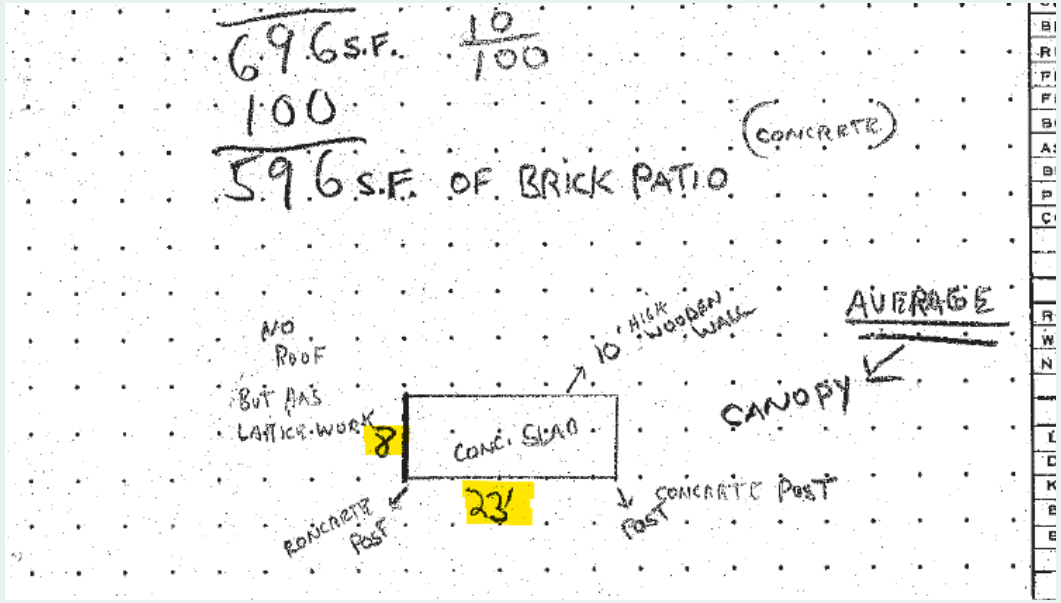
- The building permit application is to modify an existing accessory structure that currently encroaches 2 feet 4 inches onto a neighboring property, so the structure is located entirely on the applicant's property.

Snip from Site Plans for Building Permit
Structure modified to eliminate encroachment



History of the Structure

Snip from 1976 MCPA Green Card
Shows structure 23 ft. x 8 ft.



- The structure has been in existence in its same dimensions since at least 1976, when the Monroe County Property Appraiser first kept a Green Card on each property (now called Property Record Cards)
- In the 1976 Green Card, the structure is shown as 23 ft. x 8 ft., the same dimensions that exist today

History of the Structure

Snip from 1992 MCPA Property Record Card

PT2	BRIC	1806.00	SF	50	1979	4	0.0	0.0	3,248
FN2	FENC	66.00	SF	30	1979	4	33.0	2.0	83
PO4	RES	528.00	SF	50	1979	3	0.0	0.0	10,628
WD2	WOOD	982.00	SF	40	1979	2	0.0	0.0	2,938
UB3	LC U	52.00	SF	30	1979	1	13.0	4.0	81
TK2	TIKI	184.00	SF	40	1979	5	23.0	8.0	1,156
UB3	LC U	30.00	SF	30	1979	1	6.0	5.0	47
								TOTAL	22,721

APPRAISER NOTES **********

Snip from 2000 MCPA Property Record Card

MISCELLANEOUS IMPROVEMENTS

NBR	TYPE	X	NUMBER	UNITS	TYPE	LENGTH	WIDTH	YEAR	GRADE	LIFE	RCN	VALUE	DEPR VALUE	
2	PT2		1,806.00	SF		0.0	0.0	1979	4	50	6,447		3,739	
4	PO4		528.00	SF		0.0	0.0	1979	3	50	13,057		7,573	
5	WD2		982.00	SF		0.0	0.0	1979	2	40	3,928		1,885	
6	UB3		52.00	SF		13.0	4.0	1979	1	30	130		52	
7	TK2		184.00	SF		23.0	8.0	1979	5	40	1,546		742	
8	UB3		30.00	SF		6.0	5.0	1979	1	30	75		30	
9	UB2		75.00	SF		15.0	5.0	1992	3	50	900		756	
10	HT2		1.00	UT		0.0	0.0	1993	3	50	4,200		3,612	
11	UB2		75.00	SF		0.0	0.0	1993	3	50	900		774	
12	WF2		1.00	UT		0.0	0.0	1979	1	20	2,000		800	
13	FN2		429.00	SF		143.0	3.0	1998	2	30	558		519	
14	FN2		2,338.00	SF		334.0	7.0	1998	2	30	3,039		2,826	
	TOTAL DEPRECIATED VALUE:												23,308	62,932

APPRAISER NOTES
712 EATON ST

Snip from 2012 MCPA Property Record Card

Miscellaneous Improvements

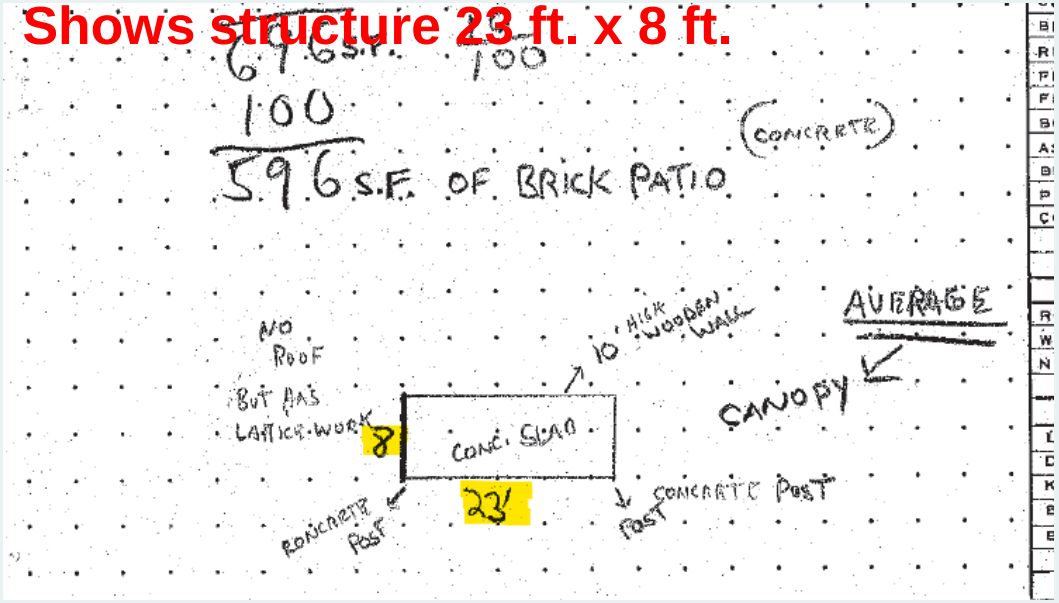
Nbr	Impr Type	# Units	Type	SOH %	Length	Width	Year Built	Roll Year	Grade	Life	RCN	Depr Value
2	PT2:BRICK PATIO	320	SF	0.00	64	5	1978	1979	4	50	3,360	1,344
1	PT2:BRICK PATIO	279	SF	0.00	93	3	1978	1979	4	50	2,930	1,172
7	TK2:TIKI	184	SF	0.00	23	8	1978	1979	5	40	2,760	1,104
6	UB3:LC UTIL BLDG	52	SF	0.00	13	4	1978	1979	1	30	234	94
4	PO4:RES POOL	528	SF	0.00	0	0	1978	1979	3	50	39,917	15,967

- We have reviewed and have provided the Monroe County Property Record Card for every year that the Property Appraiser has on file, covering 50 years, from 1976 to 2026
- **In every single Property Record Card, there is a 23 ft. x 8 ft. (184 square feet)** yard structure, along with an allocated improvement value on which the owner of the 712 Eaton Street property has paid ad valorem property taxes on since 1976.

History of the Structure

Snip from 1976 MCPA Green Card

Shows structure 23 ft. x 8 ft.



- Even if no building permits on file from original construction, a structure that predates the applicable land development regulations is considered lawfully established if its existence is documented by reliable secondary sources such as property appraiser property record cards
- Since the structure was duly documented, it is considered legally non-conforming

Snip from 2026 MCPA Property Record Card

Reflects same 23 ft. x 8 ft. (184 sf) structure

PO4	RES POOL	N	1	528	3	1978	99.79	99.79	60	0100	1.00	6108	1.00	1.00	52,689	21,076	21,076
UB3	LC UTIL BLDG	N	1	52	1	1978	6.69	6.69	60	0100	1.00	6108	1.00	1.00	348	139	139
TK2	TIKI	N	1	184	5	1978	24.00	24.00	60	0100	1.00	6108	1.00	1.00	4,416	1,766	1,766
PT2	BRICK PATIO	N	1	279	4	1978	18.28	18.28	60	0100	1.00	6108	1.00	1.00	5,100	2,040	2,040
PT2	BRICK PATIO	N	1	320	4	1978	18.28	18.28	60	0100	1.00	6108	1.00	1.00	5,850	2,340	2,340

Section 122-32(a) of the Land Development Regulations provides (emphasis added): “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.”

Building Permit Application No. 2025-1822 is proposing an alteration to a structure that decreases noncompliance. Therefore, the alteration is allowed under Section 122-32(a) without a variance.

The proposed alteration to the structure decreases rear setback non-compliance from -2* feet 4 inches to 0 and entirely on own property.

Analysis

* Negative number because encroaching on neighbor property

Section 122-32(a) of the Land Development Regulations provides (emphasis added): "… **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**. …"

Existing (since at least 1976) Rear Setback	Proposed Rear Setback	Improvement
-2'4"*	**0'**	**2'4"**

Building Permit Application No. 2025-1822 is proposing an alteration to a structure that decreases noncompliance. Therefore, the alteration is allowed under Section 122-32(a) without a variance.

Analysis

* Negative number because encroaching on neighbor property

City Commission Ordinance No. 22-25 was unanimously passed in August 2022 to make clear that a variance is not needed when a nonconforming structure is becoming less nonconforming.

Snip from City Commission Ordinance No. 22-25

WHEREAS, this interpretation of the Land Development Regulations has resulted in unnecessary and undue hardship to both applicants and City staff; and

WHEREAS, the City of Key West finds that it is necessary to clarify that a variance is not needed when a proposed structure or site improvement is decreasing its existing nonconformity; and

Analysis

Section 122-32(a) (revised by Ordinance 22-25) of the Land Development Regulations provides (emphasis added): "…**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**…."

"Notwithstanding in the Code to the contrary" clearly states that this provision supersedes other provisions of the Code that may be in apparent conflict.

Because Ordinance 22-25 was enacted after the other relevant Code sections, the City Commission was on notice of those preexisting provisions and, by including the language "[n]otwithstanding anything in the Code to the contrary," clearly intended the new provisions of Ordinance 22-25 to supersede any conflicting provisions of the Code.

Analysis

Section 122-32(a) (revised by Ordinance 22-25) of the Land Development Regulations provides (emphasis added): "…**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**…."

Potential Counterargument under Section 122-32(b): "A casual, intermittent, temporary or illegal use of land, building or structure shall not be sufficient to establish the existence of a nonconforming use, nonconforming density or noncomplying building or structure."

Response: The footprint of the structure in question has existed for at least 50 years. The fact that the structure encroaches across the platted property line does not render it "illegal." The Code employs the term "illegal" with particularity, and a long-standing structure that encroaches does not fall within that use.

Analysis

Section 122-32(a) (revised by Ordinance 22-25) of the Land Development Regulations provides (emphasis added): "…**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**…."

Potential Counterargument: work on structure exceeds 50% of value of the structure**.**

Response: The plain language of City Commission Ordinance 22-25 does not limit alterations (that improve nonconformity) to only work that does not exceed an amount of the existing value. Additionally, the only example given in the staff report for the Ordinance mentioned the "reconstruction" of a shed that was in the rear setback being allowed to be reconstructed within the setback so long as the new shed improved the existing nonconformity.

Analysis

Section 122-32(a) (revised by Ordinance 22-25) of the Land Development Regulations provides (emphasis added): "…**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**…."

Potential Counterargument under Section 122-32(c): "Should any noncomplying building or structure be moved for any reason from its location, it shall thereafter conform to the regulations or the zoning district of its new location."

Response: City Commission Ordinance 22-25 does not limit allowable improvements to when nonconformity is being reduced in every way. The "[n]otwithstanding anything in the Code to the contrary" qualifier clearly allows improvements that reduce noncompliant site features. Additionally, the only example given in the staff report for the Ordinance mentioned the "reconstruction" of a shed that was in the rear setback being allowed to be reconstructed within the setback so long as the new shed improved the existing nonconformity.

Analysis

Section 122-32(a) (revised by Ordinance 22-25) of the Land Development Regulations provides (emphasis added): "…**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**…."

Potential Counterargument that building permit was originally denied in 2025 making this appeal untimely.

Response: The original building permit application did not propose an improvement to the encroachment/nonconformity. A 2026 revision to the building permit application under the same permit number revised plans that included removing the encroachment and reducing the rear setback nonconformity. The 2026 denial of the building permit application, as revised, was timely appealed.

Analysis

Section 122-32(a) (revised by Ordinance 22-25) of the Land Development Regulations provides (emphasis added): "…**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**…."

"Notwithstanding in the Code to the contrary" clearly states that this provision supersedes other provisions of the Code that may be in apparent conflict.

Because Ordinance 22-25 was enacted after the other relevant Code sections, the City Commission was on notice of those preexisting provisions and, by including the language "[n]otwithstanding anything in the Code to the contrary," clearly intended the new provisions of Ordinance 22-25 to supersede any conflicting provisions of the Code.

Analysis

Provided Affidavit of long-serving Planning Board member Jim Gilleran regarding the intent behind Ordinance 22-25: to reduce variance applications when Code improvements were proposed. The plain language of the Ordinance effectuates that intent clearly.

AFFIDAVIT OF JAMES GILLERAN

STATE OF FLORIDA)
) **ss.**
COUNTY OF MONROE)

BEFORE ME, the undersigned authority duly authorized to administer oaths and take acknowledgements, personally appeared this day James Gilleran, who after first being duly cautioned and sworn, deposes and states as follows:

1. My name is James Gilleran. I am over eighteen (18) years of age, and I am qualified to execute this affidavit. I have personal knowledge of the facts set forth herein.

2. I previously served as member of the City of Key West Planning Board (the "Planning Board") for approximately 28 years.

3. During my tenure on the Planning Board, we regularly received variance applications involving nonconforming structures. Many of those applications sought approval for reconstruction, renovation, or other improvements that would reduce existing nonconformities (for example, by decreasing the degree of encroachment into a required setback). Even though the proposed work would decrease nonconformity and would not create any new noncompliant features, applicants were required to pursue formal variance relief.

4. Those variance applications imposed significant delays and costs on property owners, including application fees, professional fees, and related expenses, even when the proposals improved compliance with the land development regulations.

5. Based on that experience, I recommended and actively participated in the drafting, discussion, and adoption of an ordinance intended to address this situation, such ordinance was eventually adopted as Ordinance No. 22-25 by the City Commission of the City of Key West on May 19, 2022 attached as **Exhibit A** (the "Ordinance").

6. It was the intent of the Planning Board, at the time the Ordinance was supported and passed, that nonconforming structures could be reconstructed, renovated, or otherwise improved without the need for a variance, provided that the work reduced the noncompliance that made the structure nonconforming and no new noncompliant features or additional nonconformities would be created.

7. The Ordinance was designed and adopted for the purpose of allowing such improvements that decrease existing nonconformities to proceed without requiring variance applications, thereby reducing unnecessary costs and procedural burdens on applicants while still protecting the integrity of the zoning scheme.

8. It was my belief and intent that work that removed a structure that encroached onto another property to be built entirely on the property owner would be allowed under the Ordinance as it decreased a nonconformity.

Conclusion

- Building Permit No. 2025-1822 proposed to make a structure that is at least 50 years old less noncompliant by eliminating encroachment onto neighbor’s property and reducing the rear setback.
- Building Permit No. 2025-1822 was denied by the Planning Director stating that a variance was required.
- City Commission Ordinance No. 22-25 clearly stated the intention to allow construction to noncomplying structures without a variance if the nonconformity was being decreased.
- The plain language of Section 122-32(a) allows structures to be altered without a variance if the alteration decreases noncompliance.
- The work proposed in Building Permit No. 2025-1822 does not require a variance and therefore should not have been denied.

Thank you