

ORDINANCE NO. 12-18

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

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

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

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

FLORIDA:

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

Sec. 122-26. - Definitions.

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

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

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

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

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

*Dwelling unit.* See section 86-9.

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

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

*Noncomplying building or structure* means any building or other structure, for which the use is lawful (permitted or nonconforming), but the building or other structure does not comply with all applicable sections of the land development regulations, including but not limited to size and dimension regulations, off-street parking requirements, landscape requirements, nuisance

abatement standards, or height requirements, either on the effective date of the ordinance from which this section derives or as a result of any subsequent amendment.

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

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

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

Private Property Owner's successors in title.

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

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

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

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

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

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

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

(a) Applicability.

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

(2) Developed parcels. Where an eminent domain action or voluntary conveyance for public transportation or other public purpose reduces the lot size and creates a nonconforming remainder parcel but does not require the relocation of site features, said parcel shall be eligible for an eminent

domain/public purpose waiver from Land Development Regulations including, but not limited to, minimum lot size, setbacks, parking, open space, pervious versus impervious area, floor area ratios, density, landscaping and landscape buffers, and signage setbacks, pursuant to sections 122-33(C), (D) and (E).

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

(b) An Acquiring Authority, a Private Property Owner, and an Owner of a Remainder Parcel are each hereby granted the authority to apply for a waiver from the Land Development Regulations on a remainder parcel that has resulted or will result from an eminent domain action or voluntary conveyance for public transportation or other public purpose. The application may be made prior to or after the Acquiring Authority has obtained title to some part of the parent tract. The City Planner shall have authority to grant eminent domain/public purpose waivers pursuant to sections 122-33(C), (D) and E).

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

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

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

b. A site plan (a cure plan as defined herein) showing the parent tract and the remainder parcel with the proposed changes to the site including, but not limited to, buildings, parking, landscaping, stormwater facilities, topographic data and adjacent right-of-way. Submittal of a cure plan shall not be necessary on a vacant parcel but shall be required for those parcels described in Section 122-33(A)3, above.

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

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

(d) Procedure for an Owner of a Remainder Parcel to apply for an eminent domain/public purpose waiver.

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

shall be submitted with the following documents:

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

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

(2) The City Planner shall grant or deny a waiver pursuant to section 122-33(D) in accordance with the standards set forth in section 122-22(E) below. A certified letter (return receipt requested) shall be issued within thirty (30) days to the Owner of a Remainder Parcel following the decision.

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

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

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

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

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

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

Sec. 122-34. Status of parcels during or after acquisition

by eminent domain action or voluntary conveyance for public transportation or other public purpose.

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

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

(c) Where a Private Property Owner accepts a waiver based upon a cure plan, the physical changes to the remainder parcel, specified in the cure plan, shall occur within 2 years of the waiver and cure plan being approved. Future site plan and building permit approvals shall comply with all provisions in the Land Development Regulations except those listed in the waiver.

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

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

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

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

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

achieve the lawful purposes of this Ordinance.

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

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

Read and passed on first reading at a regular meeting held this 19 day of June, 2012.

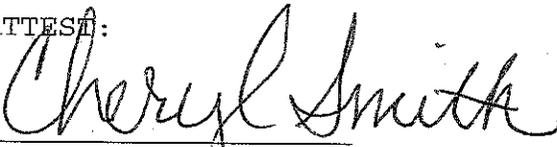
Read and passed on final reading at a regular meeting held this 17 day of July, 2012.

Authenticated by the presiding officer and Clerk of the Commission on 18 day of July, 2012.

Filed with the Clerk July 18, 2012.

  
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CRAIG CATES, MAYOR

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK

OFFICE OF THE CITY ATTORNEY

SHAWN D. SMITH  
LARRY R. ERSKINE  
RON RAMSINGH



PHONE: (305) 809-3770  
FAX: (305) 809-3771  
POST OFFICE BOX 1409  
KEY WEST, FL 33041-1409

**EXECUTIVE SUMMARY**

**To:** Mayor and City Commissioners

**From:** Larry R. Erskine, Chief Assistant City Attorney

**Meeting Date:** June 19, 2012

**Agenda Item:** **Zoning Ordinance Amendments** - Consideration of an ordinance of the City of Key West amending Chapter 122, of the Code of Ordinances titled "Zoning" of Article II, by amending Section 122-26 and adding Sections 122-33 and 122-34 to the Land Development Regulations of the City of Key West to provide for an exception for property affected by eminent domain or voluntary conveyance for public transportation or other public purpose; providing for severability; providing for the repeal of inconsistent provisions; providing for an effective date.

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**Request**

To minimize adverse impacts to private property owners affected by right-of-way or public purpose improvements by providing a waiver process for non-conformities which may result from eminent domain conveyances by an "acquiring authority" or an owner's voluntary conveyance of a portion of his or her property for public transportation or other public purposes.

**Background**

For a number of years, the Florida Department of Transportation (FDOT) has planned to completely reconstruct North Roosevelt Boulevard from Eisenhower Drive east to the "entrance triangle." Improvements are to include a new seawall and promenade, replacement of existing sewer and water lines and the addition of ADA accessible sidewalks on the south side of the roadway. To facilitate this project, FDOT indicated that it would be necessary for many of the owners of parcels abutting North Roosevelt Boulevard to execute quit claim deeds for portions of their property to FDOT to accommodate the ADA compliant sidewalks.

A number of the affected property owners expressed concern regarding the potential negative effects to their properties resulting from the reduction of the size and dimensions of their properties to the extent that non-conformities would be created. Accordingly, in order to encourage property owners to facilitate the project by conveying portions of their properties, the

City Planning and Legal Departments proposed a three-step approach to address the concerns of the property owners regarding the non-conformities created by conveyances to FDOT.

The first step in the process was the City Commission's passage of Resolution No. 11-041 on February 1, 2011. A copy of the Resolution is attached. The Resolution provides that in the event a conveyance to FDOT to facilitate the project results in the failure of the remaining parcel to comply with the City's Land Development Regulations for purposes including setbacks, parking, open space, impervious surface ratios, floor area ratios, landscaping, and signage setbacks, the remaining parcel shall be considered legally nonconforming. Stated another way, the conveyance shall not result in any detriment or limitation to the owner's existing rights. This Resolution was recorded in the Public Records of Monroe County.

The second step in the process was the April 20, 2011, Administrative Interpretation executed by the City Planner, Donald Craig, a copy of which is attached. You will note Mr. Craig indicates that the action by property owners on North Roosevelt Boulevard in "... providing the quit claim deeds to FDOT in order to allow the construction of sidewalks as a part of the project does not constitute a self imposed hardship situation if the results reduce the lot area or dimensions such that the resulting parcel retained by the adjacent landowners, their successors, assigns or heirs engenders or creates nonconformities relating to the existing or future buildings, parking, setbacks, lot coverage, impervious surface ratios, or required open spaces."

This proposed Ordinance is the third step in the process.

#### **Analysis**

Currently, there exists no mechanism other than a variance request to address non-conformities that are caused by the imposition of right-of-way improvements, particularly the reduction of landscape-buffer yard and front-yard setback requirements. The application of the proposed Ordinance is not limited to North Roosevelt Boulevard and anticipates future public improvements that may directly affect other property owners. This proposed Ordinance will codify the Administrative Interpretation and help alleviate potential burdens placed upon property owners due to necessary public improvements by establishing a procedure for affected property owners to obtain written waivers for nonconformities.

#### **Planning Board action**

On May 31, 2012, the Planning Board approved a Resolution recommending that the City Commission adopt the proposed Ordinance.

#### **Review Criteria**

In its deliberations the City Commission shall consider the criteria stated in section 90-521.

**(1) *Consistency with plan.* Whether the proposed Ordinance is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.**

Because the proposed Ordinance does not impact density or intensity, it will have no impact on minimum levels of service or concurrency determinations as established by the Comprehensive Plan. Further, this proposed Ordinance would permit the continued Floor Area Ratio calculations to remain for the purposes of redevelopment.

**(2) *Conformance with requirements.* Whether the proposed Ordinance is in conformance with all applicable requirements of the Code of Ordinances.**

The proposed Ordinance is in conformance with the Code and the procedures for amending the Land Development Regulations will be followed and are supported by this Executive Summary.

**(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed rezoning.**

This is not an act to rezone any particular zoning district, but, rather, will be effective city wide. This proposed Ordinance is intended to provide allowances for necessary improvements to avoid the effect of a "taking" of private property for the public welfare.

**(4) *Land use compatibility.* Whether, and the extent to which, the proposed Ordinance would result in any incompatible land uses, considering the type and location of uses involved.**

This proposed Ordinance is meant to address potential non-conforming setbacks, lot-coverage and other requirements such as buffer yards resulting from the conveyance of taking of private property for the public welfare.

**(5) *Adequate public facilities.* Whether, and the extent to which, the proposed Ordinance would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.**

Excessive demands on public facilities will not result from the proposed Ordinance.

**(6) *Natural environment.* Whether, and to the extent to which, the proposed Ordinance would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.**

In the case of North Roosevelt Boulevard, the road and other amenities do abut environmentally sensitive lands, waters or wildlife habitat, particularly the Gulf of Mexico.

**(7) *Economic effects.* Whether, and the extent to which, the proposed Ordinance would adversely affect the property values in the area or the general welfare.**

The proposed Ordinance is not expected to have an adverse effect on the property values in the area or the general welfare. In fact, this Ordinance is proposed to protect property values while allowing for improvements benefitting the public welfare.

**(8) *Orderly development.* Whether the proposed Ordinance would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.**

The proposed Ordinance will not have a negative effect on the existing land use pattern.

**(9) *Public interest; enabling act.* Whether the proposed Ordinance would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.**

The proposed Ordinance does not appear to be in conflict with the public interest. It will enhance the public welfare by providing ADA accessible sidewalks on both sides of North Roosevelt from Eisenhower Drive to the entrance triangle and other similarly affected properties.

**(10) *Other matters.* Other matters which the City Commission may deem appropriate.**

Other matters have not been identified at this time.

**Options / Advantages / Disadvantages:**

**Option 1.** Approval of the Ordinance as recommended by the Planning Board.

1. **Consistency with the City's Comprehensive Plan, Strategic Plan, Vision and Mission:** The adoption of this Ordinance will prevent adverse consequences to property owners and promote the orderly design and completion of sidewalks associated with transportation projects which protect the health, safety, and welfare of the public.
2. **Financial Impact:** Passage of the proposed Ordinance will not have a financial impact on the City.

**Option 2.** Deny passage of the proposed Ordinance.

1. **Consistency with the City's Strategic Plan, Vision and Mission:** Denial of the proposed Ordinance could result in adverse consequences to property owners and could inhibit the orderly design and completion of sidewalks associated with transportation projects which protect the health, safety, and welfare of the public.
2. **Financial Impact:** Denial of passage of the proposed Ordinance will not have a financial impact on the City.

**RECOMMENDATION**

To pass the proposed Ordinance.

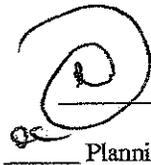
**PLANNING BOARD  
RESOLUTION No. 2012-22**

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

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

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

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

  
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Chairman  
\_\_\_\_\_  
Planning Director

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

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

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

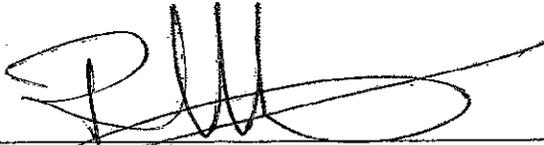
**Section 2.** Amending Chapter 122 of the Code of Ordinances entitled "Planning and Development" by amending Sections 122-26 and adding Sections 122-33 and 122-34 to provide modifications to the Land Development Regulations regarding the exception for property affected by eminent domain or voluntary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

**Section 3.** This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a special meeting held this 31st day of May, 2012.

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

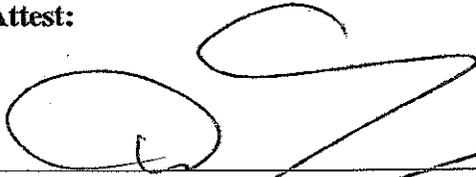
 Chairman  
 Planning Director



Richard Klitenick, Chairman  
Key West Planning Board

6/6/12  
Date

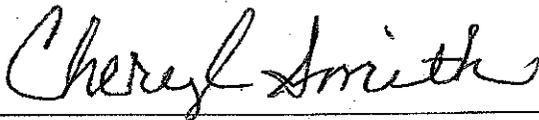
Attest:



Donald Leland Craig, AICP  
Planning Director

6.5.12  
Date

Filed with the Clerk:



Cheryl Smith, City Clerk

6-6-12  
Date

# Draft Ordinance

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ORDINANCE NO. \_\_\_\_\_

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

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

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

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

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

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

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

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

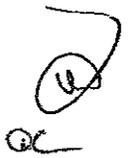
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Private Property Owner means the owner in fee simple title of a parent tract.

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

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

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



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

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

(a) Applicability.

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

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



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

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

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



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

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

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

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

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



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

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

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

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

an eminent domain/public purpose waiver.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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DC

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

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

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

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

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

①  
DC

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

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

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

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

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

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

Filed with the Clerk \_\_\_\_\_, 2012.

\_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:  
  
\_\_\_\_\_

CHERYL SMITH, CITY CLERK

Handwritten signature or initials, possibly "CS" or "SM", in cursive script.

# Administrative Interpretation



cc



## THE CITY OF KEY WEST

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

**Administrative Interpretation:**

Date: April 20, 2011

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

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

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

A handwritten signature in dark ink, appearing to be a stylized 'D' or similar character, located in the bottom right corner of the page.

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

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

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

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

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



Donald Leland Craig, AICP

4-20-11



Shawn Smith, City Attorney

5/2/11



OC

# Properties Affected

  
oc

Case No.	Company Name	Address	City	State	Zip	Phone	Fax	Website	Notes
100	SK II, Inc.	10000 150-000000	SK II, Inc.	NY	10000	212-6114000			See notes to page 1
101	SK III, Inc.	10000 150-000000	SK III, Inc.	NY	10000	212-6114000			The Old Diner Through
102	SK IV, Inc.	10000 150-000000	SK IV, Inc.	NY	10000	212-6114000			Very Pleasant
103	SK V, Inc.	10000 150-000000	SK V, Inc.	NY	10000	212-6114000			Very Pleasant
104	SK VI, Inc.	10000 150-000000	SK VI, Inc.	NY	10000	212-6114000			Very Pleasant
105	SK VII, Inc.	10000 150-000000	SK VII, Inc.	NY	10000	212-6114000			Very Pleasant
106	SK VIII, Inc.	10000 150-000000	SK VIII, Inc.	NY	10000	212-6114000			Very Pleasant
107	SK IX, Inc.	10000 150-000000	SK IX, Inc.	NY	10000	212-6114000			Very Pleasant
108	SK X, Inc.	10000 150-000000	SK X, Inc.	NY	10000	212-6114000			Very Pleasant
109	SK XI, Inc.	10000 150-000000	SK XI, Inc.	NY	10000	212-6114000			Very Pleasant
110	SK XII, Inc.	10000 150-000000	SK XII, Inc.	NY	10000	212-6114000			Very Pleasant
111	SK XIII, Inc.	10000 150-000000	SK XIII, Inc.	NY	10000	212-6114000			Very Pleasant
112	SK XIV, Inc.	10000 150-000000	SK XIV, Inc.	NY	10000	212-6114000			Very Pleasant
113	SK XV, Inc.	10000 150-000000	SK XV, Inc.	NY	10000	212-6114000			Very Pleasant
114	SK XVI, Inc.	10000 150-000000	SK XVI, Inc.	NY	10000	212-6114000			Very Pleasant
115	SK XVII, Inc.	10000 150-000000	SK XVII, Inc.	NY	10000	212-6114000			Very Pleasant
116	SK XVIII, Inc.	10000 150-000000	SK XVIII, Inc.	NY	10000	212-6114000			Very Pleasant
117	SK XIX, Inc.	10000 150-000000	SK XIX, Inc.	NY	10000	212-6114000			Very Pleasant
118	SK XX, Inc.	10000 150-000000	SK XX, Inc.	NY	10000	212-6114000			Very Pleasant
119	SK XXI, Inc.	10000 150-000000	SK XXI, Inc.	NY	10000	212-6114000			Very Pleasant
120	SK XXII, Inc.	10000 150-000000	SK XXII, Inc.	NY	10000	212-6114000			Very Pleasant

Source: City of Baltimore  
2-5-11

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

**To:** Chairman and Planning Board members

**From:** Brendon Cunningham, Senior Planner

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

**Meeting Date:** May 31, 2012  
May 17, 2012 – No quorum  
April 19, 2012 – Postponed by Board

**Agenda Item:** **Zoning Ordinance Amendments** - Consideration of an ordinance of the City of Key West amending Chapter 122, of the Code of Ordinances titled "Zoning" of Article II, by amending Section 122-26 and adding Section 122-33 to the Land Development Regulations of the City of Key West to provide for an exception for property affected by eminent domain or voluntary conveyance for public transportation or other public purpose; providing for severability; providing for the repeal of inconsistent provisions; providing for an effective date.

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**Request**

To minimize adverse impacts to private property owners affected by right-of-way / public purpose improvements by providing a waiver process for non-conformities which may result from eminent domain conveyances by an "acquiring authority" or an owner's voluntary conveyance of a portion of their property for public transportation or other public purposes.

**Background**

North Roosevelt Boulevard is scheduled to be completely reconstructed from Eisenhower Drive east to the "entrance triangle." Improvements will include a new seawall and promenade, replacement of existing sewer and water lines and the addition of ADA accessible sidewalks on its south side. This has necessitated many of the abutting property owners to grant quit claim deeds to portions of their property to the Florida Department of Transportation (FDOT) to accommodate the ADA compliant sidewalks.

When this matter was first heard at the April 19, 2012 Planning Board meeting the Planning Board requested language be added to the proposed ordinance. Their intent was to clarify that future owners of the affected properties would have the same opportunity to participate should the previous owner decline to proceed with the waiver process. The application for the waiver can be made prior to or after the "acquiring authority" has obtained title to that portion of the property needed for the intended public purpose.

### Analysis

Currently there is no mechanism other than a variance request to address any resulting non-conformities that are caused by the imposition of right-of-way improvements, particularly the reduction of landscape-buffer yard and front-yard setback requirements. Previously, as a first effort, an Administrative Interpretation was issued by the Planning Director that alleviated the property owners of the onus of reduced square footage calculations by allowing future redevelopment to include the portions of their property, ceded to FDOT, in their overall floor area ratio calculations. The second effort is the adoption of this proposed ordinance. The proposed ordinance anticipates future public improvements that may directly affect other property owners. This will codify the Administrative Interpretation and help alleviate potential encumbrances placed upon property owners due to necessary public improvements.

### Review Criteria

Section 90-522 of the Code outlines key review criteria for any changes to the Land Development Regulations. A review of the proposed ordinance relative to the criteria is provided below.

#### **Sec. 90-522. Planning board review of proposed changes in land development regulations.**

**(a) The planning board, regardless of the source of the proposed change in the land development regulations, shall hold a public hearing thereon with due public notice. The planning board shall consider recommendations of the city planner, city attorney, building official and other information submitted at the scheduled public hearing. The planning board shall transmit a written report and recommendation concerning the proposed change of zoning to the city commission for official action. In its deliberations the planning board shall consider the criteria stated in section 90-521.**

The City Planner and the City Attorney's office have worked together to craft this proposed ordinance amendment and recommend this change to the Land Development Regulations. The Planning Department staff report was prepared in support of procedural review criteria in the code and in support of Planning Board consideration.

#### **Sec. 90-521. Criteria for approving amendments to official zoning map.**

**In evaluating proposed changes to the official zoning map, the city shall consider the following criteria:**

**(1) *Consistency with plan.* Whether the proposal is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.**

Because the proposed amendments do not impact density or intensity, they will have no impact on minimum levels of service or concurrency determinations as established by the Comprehensive Plan. Further, this amendment allows the continued Floor Area Ratio calculations to remain for the purposes of redevelopment.

**(2) *Conformance with requirements.* Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.**

The proposed amendments are in conformance with the Code and the procedures for amending the Land Development Regulations will be followed and are supported by this report.

**(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed rezoning.**

This is not an act to rezone any particular zoning district but rather will be effective city wide. This amendment is intended to provide allowances to necessary improvements to avoid the effect of a "taking" of private property for the public welfare.

**(4) *Land use compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.**

This amendment is meant to address potential non-conforming setbacks, lot-coverages and other requirements such as buffer yards resulting from the necessity to take portions of private property for the public welfare.

**(5) *Adequate public facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to chapter 94.**

No zoning designation changes are proposed with the amendment. Excessive demands on public facilities will not result in these amendments.

**(6) *Natural environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.**

This is not a zoning district amendment. However, in the case of North Roosevelt Boulevard, the road and other amenities do abut environmentally sensitive lands, waters or wildlife habitat, particularly the Gulf of Mexico.

**(7) *Economic effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.**

These proposed amendments are not expected to have an adverse effect on the property values in the area or the general welfare. In fact, this amendment is proposed to protect property values while allowing for improvements to the public welfare.

**(8) *Orderly development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.**

The proposed amendments will not have a negative effect on the existing land use pattern.

**(9) *Public interest; enabling act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.**

The proposed amendments do not appear to be in conflict with the public interest. They will enhance the public welfare by providing ADA accessible sidewalks on both sides of North Roosevelt from Eisenhower Drive to the Triangle and other similarly affected properties.

**(10) *Other matters.* Other matters which the Planning Board and the City Commission may deem appropriate.**

Other matters have not been identified at this time.

**Recommendation**

Planning Staff recommends the Planning Board forward a recommendation of **approval** of the ordinance to the City Commission amending Section 122-26 and adding Section 122-33 of the LDRs of the City of Key West.

# **Draft Resolution**

**PLANNING BOARD  
RESOLUTION No. 2012-**

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

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

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

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

\_\_\_\_\_ Chairman

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

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

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

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

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

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

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

\_\_\_\_\_ Chairman

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

Richard Klitenick, Chairman  
Key West Planning Board

\_\_\_\_\_  
Date

**Attest:**

Donald Leland Craig, AICP  
Planning Director

\_\_\_\_\_  
Date

**Filed with the Clerk:**

Cheryl Smith, City Clerk

\_\_\_\_\_  
Date

\_\_\_\_\_ Chairman

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

# **Draft Ordinance**

ORDINANCE NO. \_\_\_\_\_

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

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

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

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

FLORIDA:

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

Sec. 122-26. - Definitions.

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

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

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

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

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

*Dwelling unit.* See section 86-9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Applicability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

an eminent domain/public purpose waiver.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Filed with the Clerk \_\_\_\_\_, 2012.

\_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:

\_\_\_\_\_

CHERYL SMITH, CITY CLERK

# **Administrative Interpretation**



## THE CITY OF KEY WEST

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

### Administrative Interpretation

Date: April 20, 2011

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

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

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

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

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

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

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

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



Donald Leland Craig, AICP

4-20-11



Shawn Smith, City Attorney

5/2/11

## **Properties Affected**

