

**PLANNING BOARD  
RESOLUTION No. 2013-07**

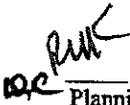
**A RESOLUTION OF THE KEY WEST PLANNING BOARD RECOMMENDING AN ORDINANCE TO THE CITY COMMISSION AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES ENTITLED "ADMINISTRATION" BY AMENDING SECTION 90-392 AND BY ADDING SECTION 90-398 TO AUTHORIZE THE PLANNING DIRECTOR TO ISSUE ADMINISTRATIVE VARIANCES; ESTABLISHING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

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

WHEREAS, the Planning Board at its meeting of February 21, 2013 found consistency with the Key West Comprehensive Plan; and

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

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

  
Chairman  
Planning Director

order may be issued. When appropriate, as prescribed in Section 90-398, the planning director may treat an application for variance as an application for administrative variance.

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

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

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

(b) The planning director is authorized to grant the following variances and waivers according to the standards of subsections (f) and (g) of this section:

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

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

(3) Reduction in all street and landscaping buffer yard width requirements in chapter 108, article VI by no more than 10 percent;

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

(c) An application for a variance or waiver under this section shall be submitted to the planning

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director on a form approved by the planning director.

- (d) The planning director shall normally complete his review of the entire application and render a proposed decision within 15 working days of receipt of the application.
- (e) The planning director's decision shall be in writing. Except for the special accessibility setback variance as provided for in subsection (h) of this section, a variance shall only be granted if all of the standards in subsection (f) of this section are met.
- (f) The planning director shall grant a variance under this section if the applicant demonstrates that all of the following standards are met:
- (1) The applicant shall demonstrate a showing of good and sufficient cause;
  - (2) Failure to grant the variance would result in exceptional hardship to the applicant;
  - (3) Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;
  - (4) Property has unique or peculiar circumstances, which apply to this property, but which do not apply to other properties in the same zoning district;
  - (5) Granting the variance will not give the applicant any special privilege denied to other properties in the immediate neighborhood in terms of the provisions of this chapter or established development patterns;
  - (6) Granting the variance is not based on disabilities, handicaps or health of the applicant or

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WHEREAS, the Planning Board wishes to definitively place all parties on notice that it is considering amending the LDRs and City Ordinances.

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

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

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

**Sec. 90-392. Application**

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

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

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members of her/his family;

(7) Granting the variance is not based on the domestic difficulties of the applicant or her/his family; and

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

(g) The planning director may approve a waiver that modifies the minimum front yard requirements set out in zoning districts in Chapter 122, Article IV provided the applicant demonstrates that:

(1) The existing setback average, as measured pursuant to the definition of "setbacks" in section 86-9, on the block of the street within the land use district in which the subject property is located is less than the land use district standard, as established in zoning districts in chapter 122, article IV; and

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

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

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

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

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household.

(i) Public notification of proposed approval. After determining that an application for a variance or a waiver complies with the requirements of this section, the planning director shall provide written notice of proposed approval and require posting as follows:

- (1) The planning director shall provide written notice by regular mail to owners of real property located within 300 feet of the property that is the subject of the proposed variance or waiver.
- (2) The applicant shall post the property of the proposed variance or waiver with a waterproof sign of at least four square feet in front surface area, which is lettered so as to be easily visible from all public streets and public ways abutting the property. The property shall remain posted for no less than 30 consecutive calendar days beginning within five working days of the date that the application is deemed to be in compliance by the planning director.
- (3) The notice and posting shall provide a brief description of the proposed variance or waiver and indicate where the public may examine the application. The cost of providing notice and posting shall be borne by the applicant.

(j) After 30 calendar days of proper posting, review of all public responses to the variance or waiver application and upon a finding that the proposed variance or waiver and application have or have not complied with the requirements and standards of this section, the planning director shall issue a written variance decision.

(k) Public hearing by the planning board. If requested in writing by the applicant, or an adversely affected

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owner or resident of real property located within 300 feet of the subject property during the required 30 calendar days of posting, a public hearing by the Planning Board shall be scheduled on the application for a variance or waiver after the 30th day of posting, but before the 60th day after posting. All costs of the public hearing shall be the responsibility of the applicant for the variance or waiver. The public hearing shall be conducted in accordance with provisions of section 108-199 and provisions of section 90-60 and shall be deemed an application for a variance pursuant to section 90-392 and shall be subject to procedures pertaining to variances as contained in section 90-391 and section 90-397 of the Code of Ordinances.

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

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

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

- (a) Applicability. This section applies both to voluntary reconstruction or replacement of dwelling units and involuntary reconstruction or replacement of dwelling units. Nothing in this section is intended to supersede applicable Federal Emergency Management Agency requirements for elevation in flood zones.
- (b) Dwelling units (residential). Residential dwelling units may be replaced at their existing nonconforming density, location and three-dimensional building envelope. ~~Except as provided in subsection (f) of this section,~~

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d Dwelling units involuntarily destroyed do not require variances in order to be reconstructed or replaced. If a voluntary reconstruction or replacement occurs and if the dwelling units exist or existed in a noncomplying building or structure, the reconstruction or replacement that ~~exceeds 66 percent of the assessed or appraised value~~ increases the non-conformity of the building or structure shall require a variance granted by the planning board. In a voluntary reconstruction of a structure on a corner lot, the property owner must apply to the planning board for all necessary setback variances. All noncomplying accessory structures to the principal building or structure (e.g., a shed, pool, fence, etc., but not including a condominium clubhouse) shall also require a variance in order to be enlarged, reconstructed, or replaced, either voluntarily or involuntarily. If a proposed reconstruction or replacement would not otherwise require a variance but would add a new building or structure to the site to accommodate allowed density, a variance shall be required for the additional building or structure. A residential building in which one or more units hold a residential transient use business tax receipt shall be deemed residential for the purposes of this section. Variances which would increase density or intensity beyond that maximum allowed on the particular property or lot by the Land Development Regulations shall be prohibited.

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

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

Section 5: Public Notice. The adoption of this Ordinance shall be evidenced by placement of a notice in a newspaper of general circulation within the City, in accordance with Chapter 50, Florida

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Statutes, within two weeks after adoption of this Ordinance. A copy of this Resolution shall also be posted at City Hall for the next one hundred and eighty (180) days.

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

Read and passed on first reading at a meeting held this 21<sup>TH</sup> Day of February, 2013.

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



Richard Klittenick, Chairman  
Key West Planning Board

3/5/2013  
Date

**Attest:**

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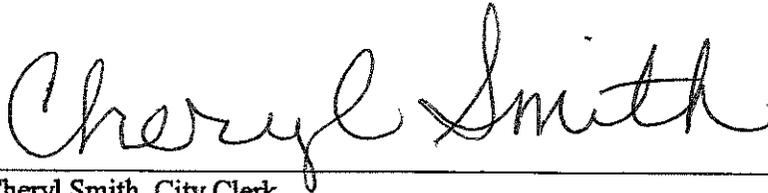


Donald Leland Craig, AICP  
Planning Director

3-1-13

Date

**Filed with Clerk**



3-6-2013

Cheryl Smith, City Clerk

Date

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Chairman  
Planning Director