PLANNING BOARD
RESOLUTION No. 2013-32

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

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

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

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

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

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_____ Chairman
_____ Planning Director

considering amending the LDRs and City Ordinances.

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

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

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

Sec. 90-392. Application

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

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

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Chairman
Planning Director

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

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

Sec.90-398. Administrative Variances.

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

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

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

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

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

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

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

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

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

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

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

(h) Prior to rendering a proposed decision, the city planner shall consult with and obtain concurrence of his or her decision by the City Manager, or the City Manager's designee. With the exception of the special accessibility setback variance as provided for in subsection (k) of this section, approval of an administrative variance shall only be proposed or granted if all of the standards in subsection (i) of this section are met.

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

(1) The applicant shall demonstrate a showing of good and sufficient cause;

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

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

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RWK Chairman
Planning Director

or victimization of the public;

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The notice and posting shall provide a brief description of the proposed administrative variance or waiver; indicate where the public may examine the application; and indicate the10-day period within which to request a public hearing pursuant to section (n) below or submit a written response . The cost of providing notice and posting shall be borne by the applicant.

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

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

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

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

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

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Chairman
Planning Director

Sec.122-28. Replacement or reconstruction.

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

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

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Chairman
Planning Director

Regulations shall be prohibited.

Section 4: That Section 122-32(g) is hereby added to the Code of Ordinances as follows: (g) Enlargement and Extensions: Non-conforming structures which are used in a manner conforming to the provisions of this chapter may be enlarged or expanded provided that the existing non-conformity is not further increased, nor any new non-conformity created.

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

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

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

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

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Chairman
Planning Director

8/5/2013

Richard Klitenick, Chairman — Date
Key West Planning Board

Attest:

8.5.2013

Donald Leland Craig, AICP — Date
Planning Director

Filed with Clerk

8-12-2013

Cheryl Smith, City Clerk — Date

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_____ Chairman
_____ Planning Director