



THE CITY OF KEY WEST
PLANNING BOARD
Staff Report

To: Chairman and Planning Board Members

From: Katie P. Halloran, Planning Director

Meeting Date: April 21, 2022

Agenda Item: **Text Amendment of the Land Development Regulations**– A Resolution of the City of Key West Planning Board recommending an Ordinance to the City Commission amending Chapter 86 of the Code of Ordinances entitled “General Provisions” by amending Section 86-9, entitled “Definition of Terms” to amend the definitions of “Building Coverage” and “Variance”; by amending Chapter 122 of the Code of Ordinances entitled, “Zoning” by amending Section 122-32 by clarifying when a variance is needed; and amending Section 122-1143 entitled, “Impervious surface requirements for all uses”, and Section 122-1145 entitled, “Required yards”; Providing for severability; Providing for repeal of inconsistent provisions; Providing for an effective date.

Request: The proposed text amendments to the City’s Code of Ordinances are intended to clarify the circumstances that require a variance. Other components of the proposed ordinance clarify that gutters and downspouts shall be not considered building coverage and can project into setbacks. Finally, these text amendments will also recognize that the first 18” beneath sufficiently elevated structures do commonly receive rainfall if maintained clear, and should not be considered impervious surface.

Applicant: City of Key West

Background:

The proposed ordinance to amend the City’s Land Development Regulations reflects a collaboration between City staff, Planning Board Chairman Sam Holland, and input from multiple members of the land development community including a builder, architects, and a landscape architect. Staff wishes to thank these design professionals for their assistance and feedback. The overall intent of these proposed text amendments is to facilitate the redevelopment process for property owners, development professional, and City staff. In addition, adoption of these amendments should reduce the number of less significant variances that appear on the Planning Board agenda, saving applicants, Planning Board members, and the City both time and expense.

Multiple aspects of the City’s Land Development Regulations are outdated and need improvement. Even when first adopted, these regulations rendered many properties noncompliant with respect to dimensional standards such as maximum building coverage, maximum impervious surface ratio, minimum open space,

and setbacks. In addition, many properties with contributing historic structures in the City’s historic district are legal nonconforming with respect to their small size. In many cases, property owners in New Town and Old Town struggle to accommodate arguably modest site improvements at noncompliant properties given that they must first seek a variance from the Planning Board. Most applicants must then hire an architect or planner to create site plans and shepherd their applicants through the review process, which can be costly and time consuming.

Anecdotally, in the past, site improvements that function to reduce noncompliance have not consistently been required to receive a variance. However at this time, City staff find that the Code is silent regarding staff’s capacity to authorize improvements for properties that would remain noncompliant. As a result, all applicants seeking to reconstruct accessory structures, including the construction or relocation of pools over 30”, that are working on a noncompliant property, are required to seek variances. This causes many Planning Board variance applications that involve arguably simple exterior improvements such as new decks, pools, and staircases, to crowd the Planning Board agenda.

It is the opinion of Planning Staff that applicants seeking to alter site features that would effectively result in an improvement of non-compliance of dimensional standards by at least 25%, should not need a variance. Planning staff find that this provides applicants an incentive to strive to design site features in a manner more consistent with LDRs. Also, that this approach is more fair for neighbors that may be in compliance today, but are required to seek a variance for even a small exceedance of a site standard. Others have opined that any improvement in noncompliant site features should be permitted without a variance. This matter should be discussed and final policy decisions should be issued by the Planning Board.

With respect to the gutter and overhang provisions in this proposed text amendment, City staff and development professionals recognize that gutters and overhangs/soffits have multiple benefits. Property owners utilize gutters to collect and utilize rainwater for landscaping, reducing water usage. Others construct overhangs/soffits and gutters to protect wooden siding, doors and windows. Gutters also help to manage stormwater and minimize runoff impacts to neighboring properties. Staff seeks to codify the practice of allowing gutters and downspouts to project into setbacks and to ensure these features are not counted toward building coverage.

Finally, this proposed ordinance offers amendments to reflect that many current structures are elevated and most future structures will be elevated. Structure elevation minimizes flood risk, and in many instances is required to comply with FEMA special flood hazard areas. Through conversations with design professionals, and common sense observation, it is apparent that permeable areas beneath structures elevated at least 30” from grade regularly receive direct rainfall and stormwater runoff within approximately 18” of vertical walls. There is collective agreement that this 18” strip should be considered impervious.

Request / Proposed Amendment: **Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading.*

Sec. 86-9. – Definition of terms.

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:

{ . . . }

Building coverage means the percentage of lot area covered by buildings and including roofed porches, eaves, decks and similar structures as well as all structures, including structural elements such as raised decks, 30 inches or more above grade. Overhangs/soffits that are no wider than 24 inches shall not be considered building coverage. Gutters and downspouts shall not be considered building coverage and shall be permitted to protrude into any setbacks as long as they remain within the property lines of the applicable parcel.

{ ... }

Variance means a relaxation of the terms of the land development regulations where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the land development regulations would result in unnecessary and undue hardship. As used in the land development regulations a variance is authorized only for height, area, size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district. Notwithstanding anything in the Code to the contrary, a structure or site improvement may be altered without the need for a variance if the alteration decreases respective noncompliance by at least 10% of the difference between the Code requirement and the existing condition.

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Sec. 122-32. – Additional regulations.

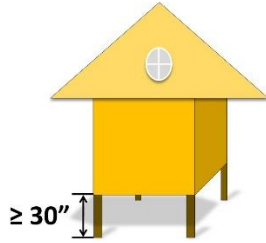
- (a) A nonconforming use, nonconforming density or a noncomplying building or structure may be continued, subject to this article. Notwithstanding anything in the Code to the contrary, a structure or site improvement may be altered without the need for a variance if the alteration decreases respective noncompliance by at least 10% of the difference between the Code requirement and the existing condition.

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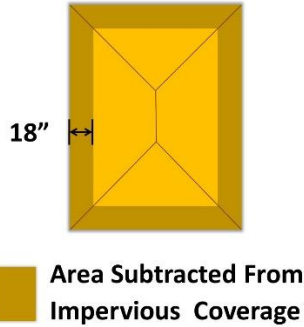
Sec. 122-1143. – Impervious surface requirements for all uses.

- (a) *Definition; scope.* The term “impervious surface” is defined as that portion of the land which is covered by buildings, pavement, nonporous fill, or other cover through which water cannot penetrate. The impervious surface ratio requirement controls the intensity of development, by restricting the amount of the land covered by any type of impervious surface. The first eighteen (18”) inches beneath structures elevated above 30” from finished grade shall not be considered impervious, so long as those eighteen inches are maintained fully permeable and open to receive rainfall. Any skirting enclosing crawlspaces must be a fully permeable metal mesh or other material approved by the City Engineer.

Front Elevation



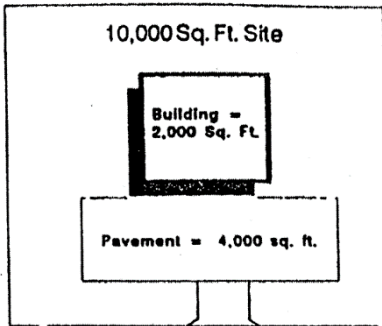
Aerial View



Pervious surface beneath elevated structure illustration

(b) *Calculation.* The impervious surface ratio (ISR) is calculated for the gross site by dividing the total impervious surface by the gross site area. Waterbodies are impervious and shall be included as such in the ISR calculation.

Impervious Surface Ratio (ISR) Illustration



Impervious Surface Ratio (ISR) Illustration

$$\text{ISR} = \text{Total Impervious Surface} / \text{Total Lot Area} = 2,000 + 4,000 / 10,000 = 60\%$$

{ ... }

Sec. 122-1145. – Required yards.

{ ... }

(b) *General encroachments into required yards.* Encroachments into required yards shall be in compliance with the following:

- (1) *Projections and obstructions.* Every part of every required yard shall be open and unobstructed from the ground to the sky except as follows or as otherwise permitted in divisions 2 through 14 of article IV of this chapter or in division 2 of this article or in this division:

- a. Movable awnings may project not over three feet into a required yard, provided that where the yard is less than five feet in width the projection shall not exceed one-half the width of the yard.
- b. Awnings, canopies, or marquees outside the historic district may not project over three feet into a required yard. The location of exterior open stairs must be approved by the building department, and such exterior open stairs can be no closer than 30 inches to an adjacent property line.
- c. Fences, walls and hedges shall be permitted in required yards subject to the land development regulations.
- d. Accessory parking may be located in a required front, rear or side yard.
- e. Overhangs/soffits that are no wider than 24 inches shall not be considered building coverage.
- f. Gutters and downspouts shall not be considered building coverage and shall be permitted to protrude into any setbacks as long as they remain within the property lines of the applicable parcel.

{ ... }

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Land Development Regulations Text Amendment Process:

Planning Board Meeting:	April 21, 2022
City Commission (1st Reading):	TBD, 2022
Local Appeal Period:	30 days
City Commission (2nd Reading / Adoption):	TBD, 2022
Local Appeal Period:	30 days
DEO Review:	Up to 45 days
DEO Notice of Intent (NOI):	Effective when NOI posted to DEO site

Analysis:

The purpose of Chapter 90, Article VI, Division 2 of the Land Development Regulations (the “LDRs”) of the Code of Ordinances (the “Code”) of the City of Key West, Florida (the “City”) is to provide a means for changing the text of the Land Development Regulations. It is not intended to relieve hardships nor to confer special privileges or rights to any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the Planning Board and the City Commission shall consider the consistency of the proposed amendment with the intent of the Comprehensive Plan.

Pursuant to Code Section 90-552, the Planning Board 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 in the LDRs to the City Commission for official action.

The Code provides criteria by which LDR amendments must be evaluated:

Section 90-520 (6) Justification. The need and justification for the proposed change shall be stated. The evaluation shall address but shall not be limited to the following issues:

a. Comprehensive Plan consistency. Identifying impacts of the proposed change in zoning on the Comprehensive Plan. The zoning must be consistent with the Comprehensive Plan.

The proposed Land Development Regulation amendments will facilitate the preservation of historic structures and the provision of appropriate housing for existing and future City residents. These text amendments will also allow for orderly and efficient redevelopment of existing properties in the City of Key West. If a percentage of improvement is included in the variance component of these amendments, this ordinance may further incentive redevelopment to result in improving site compliance with existing dimensional standards in the Land Development Regulations. Also, encouragement of gutter systems and the elevation of structures is consistent with multiple goals, objectives and policies in the Comprehensive Plan that seek to ensure the City is preparing for increased impacts associated with climate change, to include more intense rainfall events, additional flooding and sea level rise.

b. Impact on surrounding properties and infrastructure. The effect of the change, if any, on the particular property and all surrounding properties. Identify potential land use incompatibility and impacts on infrastructure.

Residential, commercial and mixed-use property owners will benefit from these proposed text amendments. The increased flexibility afforded through these changes will provide equal benefit property owners City-wide. There is no anticipated effect on infrastructure.

c. Avoidance of special treatment. The proposed change shall not constitute a spot zone change. Spot zoning occurs when:

1. A small parcel of land is singled out for special and privileged treatment:

The proposed amendment to the LDRs is not spot zoning or special treatment for any particular property.

2. The singling out is not in the public interest but only for the benefit of the landowner.

The proposed change does not affect the City's official zoning map nor the City's future land use map. The proposed amendment is directly in the public interest.

3. The action is not consistent with the adopted comprehensive plan.

The proposed amendment would be consistent with the Comprehensive Plan as outlined above.

d. Undeveloped land with similar comprehensive plan future land use map designation. The amount of undeveloped land in the general area and in the city having the same zoning classification as that requested shall be stated.

This proposed amendment is not associated with a particular Comprehensive Plan Future Land Use

designation or specific zoning district.

RECOMMENDATION:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends to the Planning Board that the request to amend the Land Development Regulations be **APPROVED**.