

**PLANNING BOARD  
RESOLUTION NO. 2024-016**

**A RESOLUTION OF THE CITY OF KEY WEST  
PLANNING BOARD RECOMMENDING APPROVAL OF  
AN ORDINANCE TO THE CITY COMMISSION TO  
AMEND LAND DEVELOPMENT REGULATIONS  
CHAPTER 122 ENTITLED "ZONING", ARTICLE II,  
ENTITLED "NONCONFORMITIES" SECTION 122-28  
ENTITLED "REPLACEMENT OR RECONSTRUCTION"  
AND SECTION 122-32 ENTITLED "ADDITIONAL  
REGULATIONS"; AND ARTICLE V, ENTITLED  
"SUPPLEMENTARY DISTRICT REGULATIONS",  
DIVISION 3, ENTITLED "AREA REQUIREMENTS",  
SECTION 122-1145, ENTITLED "REQUIRED YARDS."  
TO REDUCE REGULATORY BARRIERS TO THE  
ELEVATION OF DWELLINGS; PROVIDING FOR  
SEVERABILITY, PROVIDING FOR REPEAL OF  
INCONSISTENT PROVISIONS; PROVIDING FOR AN  
EFFECTIVE DATE.**

**WHEREAS**, Comprehensive Plan Policy 1-1.1.14: Prepare for Future Sea Level Rise calls on the City to take proactive steps to increase residential resiliency and adapt to sea level rise and storm surges; and

**WHEREAS**, elevating homes to design flood elevation can reduce or avoid future flood losses, increase resilience and post-disaster recovery, and contribute to reduced flood insurance premiums; and

**WHEREAS**, certain provisions of the Land Development Regulations ("LDRs") can pose barriers to property owners who wish to elevate their homes; and

**WHEREAS**, the Planning Boards finds it is in the best interest of the City to reduce regulatory barriers to the elevation of residential properties; and

WSM Chairman  
KPA Planning Director

**WHEREAS**, the proposed amendment to LDRs would reduce barriers to home elevation by waiving setback, building coverage, and open space requirements to accommodate the addition of ingress/egress structures and elevated equipment platforms for properties being elevated to design flood elevator or higher; and


**WHEREAS**, in accordance with Section 90-522, the Planning Board held a noticed public hearing on March 12, 2024, where based on the consideration of recommendations of city planner, city attorney, building official and other information submitted at the scheduled public hearing, the Board recommended approval of the proposed amendments through Planning Board Resolution 2024-016 ; and

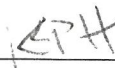
**WHEREAS**, the Planning Board has also determined, in accordance with the criteria of Code Section 90-520(6) that the proposed amendments: are consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional demand on public facilities; will have no impact on the natural environment; will not negatively impact 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 fully set forth herein.

Section 2 : That Chapter 122 entitled “Zoning”, Article II, entitled “Nonconformities” Section 122-28 entitled “Replacement or reconstruction” and Section 122-32 entitled “Additional regulations”; and

  
\_\_\_\_\_  
Chairman

  
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Planning Director

Article V, entitled “Supplementary District Regulations”, Division 3, entitled “Area Requirements”,  
Section 122-1145, entitled “Required yards.” are hereby amended as follows:

**Sec. 122-32. Additional regulations.**

- a) A noncomplying use, noncomplying density or a noncomplying building or structure may be continued, subject to this article. Notwithstanding anything in the Code to the contrary, a structure or site improvement may be altered without the need for a variance if the alteration decreases respective noncompliance. This provision shall not function to permit the construction, reconstruction, or alteration of any structure that obstructs clear and free passage of emergency responders or that otherwise conflicts with fire safety Code.
- b) A casual, intermittent, temporary or illegal use of land, building or structure shall not be sufficient to establish the existence of a noncomplying use, noncomplying density or noncomplying building or structure.
- c) Should any noncomplying building or structure be moved for any reason from its location, it shall thereafter conform to the regulations or the zoning district of its new location; provided, however, dwellings may be shifted within the boundaries of a lot of record to accommodate the elevation of a noncomplying building or structure to design flood elevation or higher.

\*(Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading. Added language is double underlined and ~~double struck through~~ at second reading.)

WSR Chairman  
KPH Planning Director

- d) A noncomplying use shall not be extended, expanded, enlarged, or increased in intensity. This prohibition shall include but not be limited to the extension of a noncomplying use within a building or structure or to any other building or structure.
- e) A noncomplying use of a building or structure may be changed to another noncomplying use if the planning board finds that:
- a. The new use is equally or more appropriate to the zoning district; and
  - b. The change of use would not intensify the use of the premises by increasing the need for parking facilities; increasing vehicular traffic to the neighborhood; increasing noise, dust, fumes or other environmental hazards; or by having an adverse impact on drainage.
- f) This article shall apply to signs, consistent with chapter 114.
- g) Enlargement and extensions: Noncomplying structures which are used in a manner conforming to the provisions of this chapter may be enlarged or expanded provided that the existing nonconformity is not further increased, nor any new nonconformity created.
- h) A lawfully-existing residential dwelling unit, not including mobile homes, may be retrofitted to elevate the structure above design flood elevation. Setback, building coverage, and open space requirements are waived to allow necessary improvements, in accordance with the following:
- a. The lawfully-existing dwelling unit structure may maintain or improve its existing setbacks, provided the structure is elevated within the original (existing) footprint and three-dimensional building envelope of the structure or relocated to improve noncomplying setbacks.

WAL Chairman

KPH Planning Director

- b. Necessary improvements are limited to ingress/egress structures (stairs, ramps, landings, and elevators) and elevated accessory equipment platforms (mechanical, plumbing and electrical systems, appliances and components) and shall be constructed in accordance with Section 122-1145.

(Ord. No. 00-10, § 9, 6-6-2000; Ord. No. 08-04, § 26, 5-20-2008; Ord. No. 13-18, § 4, 10-16-2013; Ord. No. 22-25, § 2, 8-16-2022)

[...]

**Sec. 122-1145. Required yards.**

- a) *Purpose, use and maintenance of yards.* The purpose of yards required in the land development regulations is to provide open space around and between structures for health, safety and aesthetic purposes. The purpose is also to prevent the location of structures within dedicated easements. All required yards and landscaped areas shall be planted and maintained in lawn, sod, or landscaping, including flower beds, shrubs, hedges or other generally accepted landscaping material approved by the city. Landscaping material, including trees, shall not obstruct the vision of the motoring public. The landscape requirements of article VI of chapter 108 shall further regulate development within all zoning districts, excepting single-family zoned districts.
- 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. For the calculation of building coverage, properties with structures that have overhangs and/or eaves may reduce building coverage by the width of the overhangs and/or eaves.
  - 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.

 Chairman  
 Planning Director

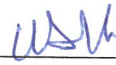

g. Encroachments into required yards are permitted to allow necessary improvements to a lawfully-existing dwelling unit being retrofitted by elevating the unit to meet or exceed design flood elevation. Setback, building coverage, and open space requirements are waived to allow necessary improvements. Necessary improvements are limited to:

1. Ingress/egress structures (stairs, ramps, landings, elevators, and similar.) The waiver provided shall be the minimum necessary to provide access to the structure that is in compliance with fire code requirements.
2. Accessory elevated platforms above base flood for equipment (mechanical, plumbing and electrical systems, appliances and components) situated at least five (5) feet from the rear and side property lines, or the minimum required setback for the zoning district, whichever is less. Accessory elevated platforms are limited to non-habitable space and shall not include elevated decks, patios, and similar structures.
3. The improvements shall be constructed to avoid off-site discharge of stormwater from the subject parcel in accordance with Article VIII of Chapter 108.

WOL Chairman  
KPH Planning Director

This provision shall not function to permit the construction alteration of any structure or improvement that obstructs clear and free passage of emergency responders or that otherwise conflicts with fire safety Code.

- 2) *Exceptions.* Typical play equipment, wires, lights, mailboxes, ornamental entry columns and gates, and outdoor furniture are not considered as encroachments.
- c) *Yards.* A yard shall be defined as an open space at grade between a building and the adjoining lot lines, unoccupied, open to the sky and unobstructed by any portion of a structure from the ground upward, except as otherwise provided in the land development regulations. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or the depth of a rear yard, the minimum horizontal distance between the lot line and the structure shall be used (a driveway or off-street parking area may be a portion of a "yard").
- 1) *Front yard.* Front yards shall be defined as the yard abutting a street (i.e., street frontage lot). The depth of required front yards shall be measured in such a manner that the yard established is a strip of at least the minimum width required by district regulations with its inner edge parallel with the front lot line. Such yard shall be measured from the nearest point of the building, including the roof, to the front (street frontage) property line. The front yard regulations shall apply to all lots fronting on a street.
- 2) *Rear yard.* A rear yard is a yard extending across the rear of a lot between the side lot lines and which is the minimum horizontal distance between the rear of the main building or any projections thereof other than projections or encroachments specifically provided for in the

 Chairman  
 Planning Director



land development regulations. For all corner lots, the rear yard shall be as indicated in subsection (c)(4) of this section for corner lots. The depth of required rear yards shall be measured in such a manner that the yard established is a strip of at least the minimum width required by district regulations with its inner edge parallel with the rear lot line. Such yard shall be measured from the nearest point of the building, including the roof, to the rear property line.

- 3) *Side yard.* A side yard is a yard between the main building and the sideline of the lot and extending from the front lot line to the rear yard, which is the minimum horizontal distance between a side lot line and the side of the main building or any projections thereof. For all corner lots, the side yard shall be as indicated in subsection (c)(4) of this section. The width of required side yards shall be measured in such a manner that the yard established is a strip of at least the minimum width required by district regulations with its inner edge parallel with the side lot line. Such yard shall be measured from the nearest point of the building, including the roof, to the side property line.
- 4) *Determining yards on corner lot.* On corner lots abutting two intersecting streets, the setbacks shall be measured as described in subsections (c)(1) through (3) of this section with the front, side and rear lot lines being determined as follows:
  - a. One street frontage shall be declared a front yard.
  - b. The other street frontage shall be a street side yard.
  - c. The rear yard shall be the yard opposite the declared front yard.

 Chairman  
 Planning Director

d. The remaining yard shall be the interior side yard.

(Ord. No. 97-10, § 1(2-5.9(E)), 7-3-1997; Ord. No. 22-25, § 2, 8-16-2022)


**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.

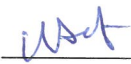

**Section 4.** This Resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit or development order will be rendered to the Florida Department of Commerce (DOC). Pursuant to Chapter 73C-44, F.A.C., this permit or development order is not effective for forty-five (45) days after it has been properly rendered to the DOC with all exhibits and applications attached to or incorporated by reference to this approval; that within the forty-five (45) day review period the DOC can appeal the permit or development order to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement order.

Read and passed on first reading at a regular meeting held this 12<sup>th</sup> day of March, 2024.

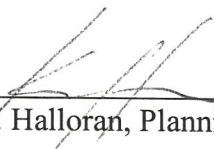
Authenticated by the Chairman of the Planning Board and the Planning Director;

  
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Sam Holland, Planning Board Chair

  
\_\_\_\_\_  
Date

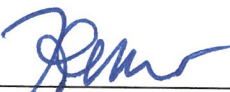
 Chairman  
 Planning Director

**Attest:**



  
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Katie P. Halloran, Planning Director

4/3/2024  
\_\_\_\_\_  
Date

**Filed with the Clerk:**

  
\_\_\_\_\_  
Keri O'Brien, City Clerk

4/4/2024  
\_\_\_\_\_  
Date

 Chairman  
 Planning Director