



THE CITY OF KEY WEST PLANNING BOARD  
Staff Report

**To:** Chairman and Planning Board Members

**Through:** Katie P. Halloran, Planning Director

**From:** Kathryn Lyon, Corradino

**Meeting Date:** December 16, 2021

**Agenda Item:** **Variance- 2719 Staples Avenue (RE# 00067790-000000)** A request for variances to construct an Accessory Unit which would exceed the permitted square footage, number of bedrooms, and other features in the Single-Family Residential (SF) zoning district pursuant to Section 122-233, 122-234, and 108-986 of the City of Key West Land Development Regulations.

**Request:** A request for variances to construct a two-bedroom Accessory Unit which exceeds the permitted square footage and exceeds the maximum number of bedrooms and exceeds the building coverage. The request is also to increase the maximum permitted rent for an accessory unit in the Single-Family zoning district.

**Property Owners/  
Applicant:**

Craig Cates

**Location:** 2719 Staples Avenue (RE# 00067790-000000)

**Zoning:** Single-Family Residential (SF)

**Background/Request:** The subject parcel is currently one lot of record, approximately 9,059 square feet total, and is located within the Single Family Residential (SF) zoning district facing Staples Avenue. The lot includes a two-story structure. The applicant purchased and built a home on the property in 2015. The applicant is proposing to construct a nine-hundred and sixty (960) square foot two-bedroom accessory unit on the existing adjacent half lot purchased by the property owner in 2021. The proposed unit would need a variance as the applicant is proposing a two-bedroom unit. Section 122-234 states, “No accessory unit in the single-family residential district (SF) shall have more than one bedroom unless an additional bedroom is approved as a variance by the planning board. If such variance is approved, the total square footage shall not exceed 600 square feet.” Additionally, Section 122-233(a)(11) states, “Accessory units shall not exceed 600 square feet and the minimum size shall be 300 square feet.”

Section 108-986 Definitions states the following:

*Accessory units and single room occupancies (SROs) means units that must be deed-restricted as affordable: restricted to occupancy by permanent residents, and cannot be sold separately as a condominium. When an accessory unit occupancy permit is originally initiated, the principal unit must be owned and occupied by a permanent resident. An accessory unit or SRO cannot take up more than 40 percent of the principal structure **nor can it exceed 600 square feet and the minimum size shall be 300 square feet.** SROs by definition shall be restricted to one-room efficiencies. **No accessory unit shall have more than one bedroom unless an additional bedroom is approved as a variance by the planning board. If such variance is approved, the total square footage shall not exceed 600 square feet.***

The City of Key West Comprehensive Plan has language stating that accessory units in Low Density Residential shall not exceed 700 square feet, and Planning staff opine that the Planning Board cannot issue variances for Comprehensive Plan language. This proposed unit is located in the Single Family zoning district, however this section states, “Accessory units . . .” and does not clearly restrict the statement to Low Density.

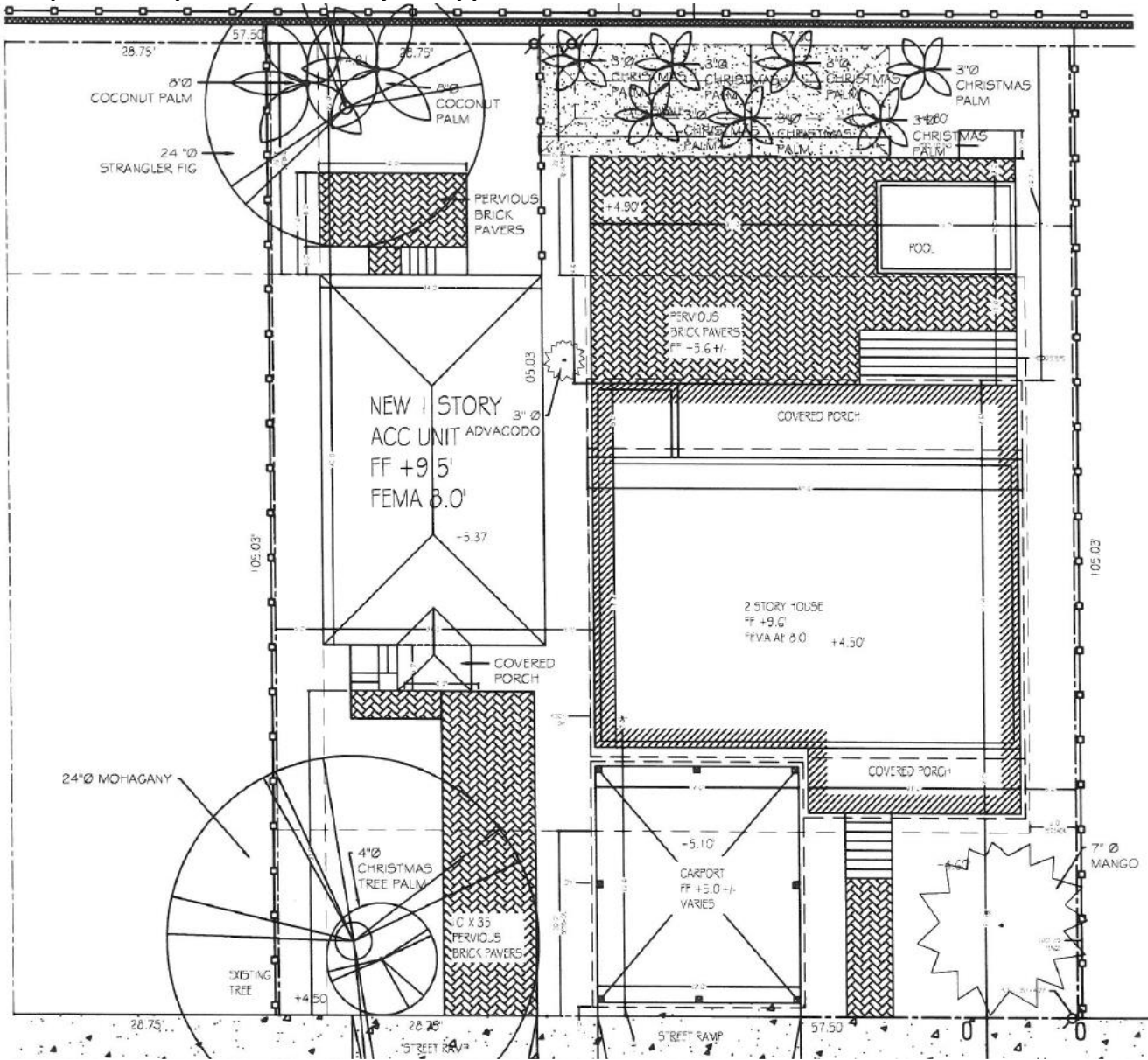
Policy 1-1.1.7 Accessory Units in Low Density Residential of the City of Key West Comprehensive Plan states the following:

*Accessory units must be affordable; restricted to occupancy by permanent residents; and cannot be sold separately as a condominium. When an accessory unit occupancy permit is originally initiated, the principal unit must be owned and occupied by a permanent resident; if the principal unit is under construction, occupancy is not a requirement. An accessory unit or Single Room Occupancy (SRO) cannot take up more than 40 percent of the principal structure nor can it exceed 600 square feet. No accessory unit shall have more than one bedroom unless an additional bedroom is approved as a variance by the Planning Board. **If such variance is approved, the total unit square footage shall not exceed 700 square feet.***

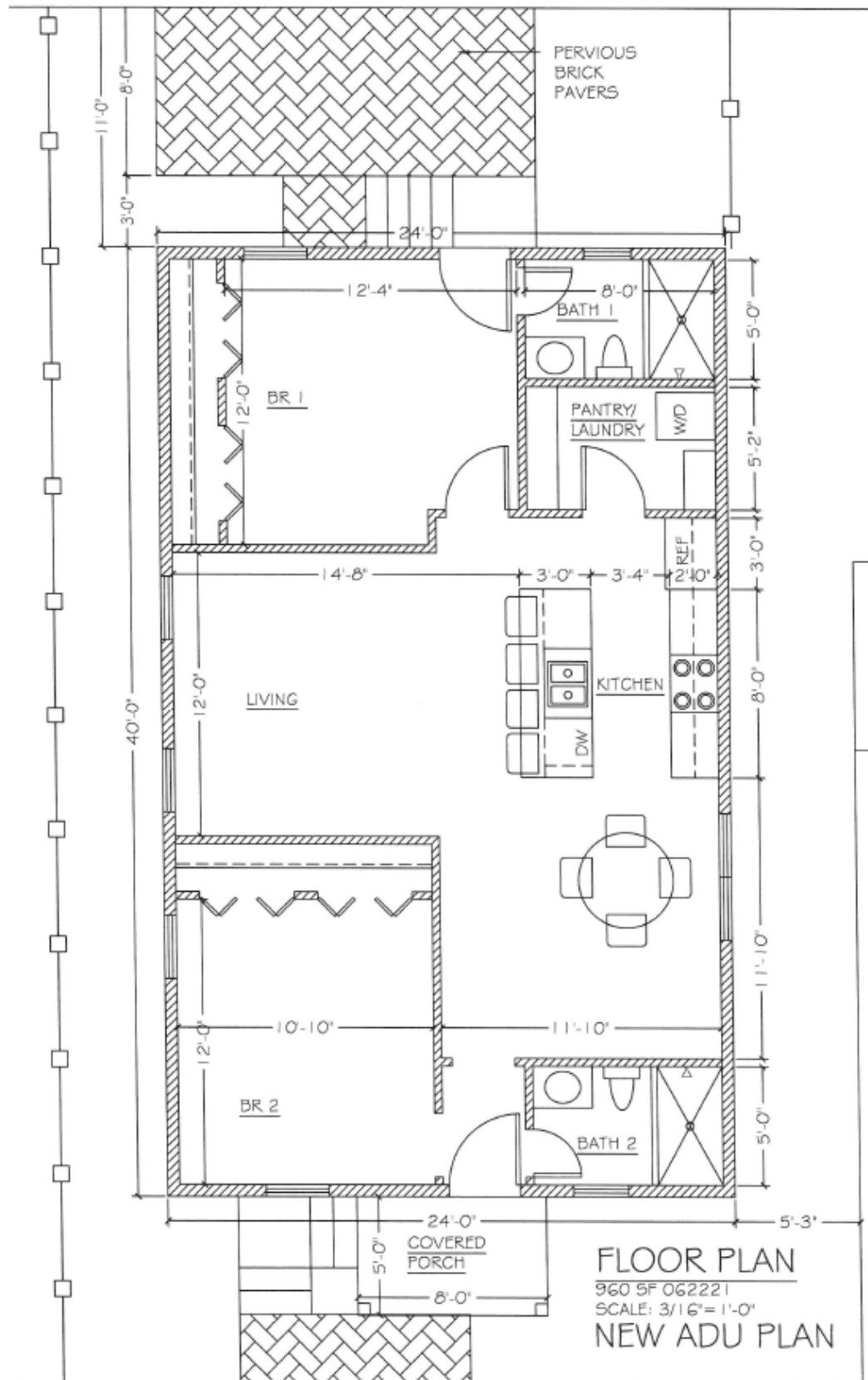
The Applicant is also requesting that rent for the unit could be up to 25% of that amount which represents median household income (100% AMI). However, accessory unit Code requirements are more strict and require the following, Section 122-233, - Special criteria applicable to accessory units, states, "(a) Accessory units proposed within the single-family residential district (SF) shall met [sic] the following criteria: (1) each unit shall have a rental rate, including utilities, not exceeding 15 percent of the median household income in the county. This affordability criteria shall be duly recorded as a deed restriction in perpetuity." Planning staff and the Assistant City Attorney opine that there is no provision in the code to provide for departure from these income requirements.



**Proposed site plan, submitted by the applicant**



Proposed Floor Plan, submitted by the applicant



**Site Table Data submitted by applicant**

Site Data Table for:	New Accessory Unit on combined half lot, 28.75'x105.03'=3,020 sf			
	Both units combined			
	Code Requirement	Existing	Proposed	Variance Requested
Address	2719 Staples Ave			
RE Number	00067790-000000			
Zoning	SF-Single Family			
Flood Zone	AE 8'		9.5'	No
Building Height	25'+5'=30'		16.5'	No
Front Setback	30' or St avg 20'	20'	40'	No
Side Setback	5'	5'	5'	No
Rear Setback	25'	36.2'	25'	No
Lot Size Combined 86.25'x105.03'	6,000 sf	6,039 sf	9,059 sf	No
Residential Floor Area ADU 960+House 3,556 sf	9059 sf	3,556 sf	4,516 sf	No
Density 1+.55=1.55 du, 8 du/acre=1 per 5,445 sf	9,059/5,445=1.66 du	1 du	1.55 du	No
Building Coverage (960+2,661)/9,059=40%	35% Max	2,661 sf - 44%	3,621 sf - 40%	Exist Variance
Impervious Surface 960+2,706=.318	50% Max	2,706 sf - 44%	3,666-40%	No
Parking 1 per du, w/ acc unit 1.55 spaces	2 spaces	2 spaces	3 spaces	No
Open space (2,417+2,055)/9,059	35% Min	2,417 sf - 40%	4,472 sf-49%	No

	Required/Allowed	Existing	Proposed	Change/Variance Required
Zoning	SF	SF		
Flood Zone		AE8		
Size of Site	9,059 sq ft	9,059 sq ft	9,059 sq ft	
Building Coverage	35% max (3,171 sqft)	29% (2,661 sq ft for existing building)	40% (3,621 sq ft for both buildings)	Yes, 5% or 450 sqft*
Impervious Surface	50% (4,530 sqft)	30% (2,706 sqft)	40% (3,666 sqft)	No
Open Space Requirement	35% min (3,171 sqft)	70% (6,353 sqft)	60% (5,393 sqft)	No

\*Applicant claims pre-existing variance approval prior to additional lot being purchased for 2,661 square feet of building coverage on pre-existing 6,039 square foot lot (44%). Staff acknowledges the previous variance for the principal structure, however the new proposed building coverage on the 9,059 square foot lot would require a variance for building coverage.

Currently the applicant is proposing a nine-hundred and sixty (960) square foot two-bedroom accessory unit. Without the granting of the variance, the size of the accessory unit will have to be reduced to six hundred (600) square feet.

The applicant is requesting a variance pursuant to Section 122-234 which states no accessory unit in the single-family residential district (SF) shall have more than one bedroom unless an additional bedroom is approved as a variance by the planning board.

Pursuant to *Section 122-232 Accessory units*, the single-family residential zoning district (SF) shall accommodate one accessory attached or detached unit per principal dwelling unit so long as the accessory unit is duly approved pursuant to the building permit allocation system and meets the criteria cited in Subdivision III Single-Family Residential District (SF). The applicant has an existing building permit allocation system application on file for an affordable accessory unit, however, Article X, Building Permit Allocation System code also requires that these smaller units be no larger than 600 square feet (Section 108-986) among other criteria.

City of Key West Code states in *Section 122-233(a) Special criteria applicable to accessory units*,

(a) Accessory units proposed within the single-family residential district (SF) shall met the following criteria:

- (1) Each unit shall have a rental rate, including utilities, not exceeding 15 percent of the median household income in the county. This affordability criteria shall be duly recorded as a deed restriction in perpetuity.
- (2) Accessory units shall be restricted to occupancy by permanent residents.
- (3) Accessory units shall not be sold separately as a condominium.

- (4) When an accessory unit permit is originally initiated, the principal unit must be owned and occupied by a permanent resident.
  - (5) Accessory units shall not take up more than 40 percent of the principal structure.
  - (6) Accessory units shall comply with maximum impervious surface regulation within the SF district. Parking surfaces shall not be counted as open space.
  - (7) Accessory units shall comply with applicable landscaping requirements.
  - (8) Accessory units shall comply with the maximum threshold for lot coverage by impervious surfaces.
  - (9) Parking requirements shall be satisfied by both the principal and accessory unit.
  - (10) Density shall be calculated based only upon the number of principal units on a site.
  - (11) Accessory units shall not exceed 600 square feet and the minimum size shall be 300 square feet.
- (b) Any application for accessory units shall include deed restrictions which shall be filed with the city and the clerk of the circuit court. The deed restrictions shall incorporate mandatory compliance with the criteria cited in subsection (a) of this section.

The request does not meet the requirements of Section 122-233(a)(11) as the proposed accessory unit at nine-hundred and sixty (960) square feet exceeds the six hundred (600) square foot maximum size permitted. The proposed unit is requested for rental at a higher rate than is permitted and staff disagree that the Code provides relief through the variance process for this requirement.

**Process:**

**Planning Board Meeting:** December 16, 2021  
**HARC:** N/A  
**Local Appeal Period:** 30 days  
**DEO Review Period:** up to 45 days

**Staff Analysis- Evaluation:**

The criteria for evaluating a variance are listed in Sections 90-391 through 397 of the City of Key West Land Development Regulations. The Planning Board before granting a variance must find all the following:

1. *Existence of special conditions or circumstances. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other land, structures, or buildings in the same zoning district.*

The main house was built in 2015 with the owner purchasing the adjacent half lot in 2021. The owner's intent for the half lot was to construct a two-bedroom accessory unit as a median family affordable rental unit. There are no special conditions or circumstances that exist.

**NOT IN COMPLIANCE**



2. *Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.*

Home was constructed in 2015. Applicant purchased adjacent lot in 2021. The proposal of the two-bedroom accessory unit is a condition created by the applicant. The applicant intends to build a nine hundred and sixty (960) square foot two-bedroom accessory unit. The applicant could build a six hundred (600) square foot one-bedroom accessory unit.

**NOT IN COMPLIANCE**

3. *Special Privileges not conferred. That granting the variance requested will not confer upon the applicant any special privileges denied by the land development regulations to other lands, buildings, or structures in the same zoning district.*

The Land Development Regulations permit accessory dwelling units in the SF district with certain standards. These same Land Development Regulations, particularly Section 122-234, permits accessory dwelling units with more than one bedroom so long as a variance is approved by the planning board. However, the size of the ADU is not to exceed 600 square feet.

**NOT IN COMPLIANCE**

4. *Hardship Conditions Exist. That literal interpretation of the provisions of the land development regulations would deprive the applicant of rights commonly enjoyed by the other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.*

The applicant could adjust their proposal to reduce the ADU to a one-bedroom 600 square foot structure without seeking a variance.

**NOT IN COMPLIANCE**

5. *Only minimum variance granted. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.*

The variance is not needed for reasonable use of the land, buildings and structures.

**NOT IN COMPLIANCE**

6. *Not injurious to the public welfare. That the granting of the variance will be in harmony with the general intent and purpose of the land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public interest or welfare.*

Although the intended use is for the applicant's backyard, the variance will not be in harmony with the general intent of the land development regulations and may be injurious to the area involved as it exceeds the 600 square feet permitted by code.

#### **NOT IN COMPLIANCE**

7. *Existing nonconforming uses of other property shall not be considered as the basis for approval. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.*

Existing non-conforming uses of other properties, use of neighboring lands, structures, or buildings in the same district, or other zoning districts, are not the basis for this request.

#### **IN COMPLIANCE**

##### **Concurrency Facilities and Other Utilities or Service (Section 108-233):**

It does not appear that the requested variance will trigger any public facility or utility service capacity issues.

##### **The Planning Board shall make factual findings regarding the following:**

***That the standards established by the City Code have been met by the applicant for a variance.***

The standards established by the City Code have not been fully met by the applicant for the variance requested.

***That the applicant has demonstrated "Good Neighbor Policy" by contacting or attempting to contact all noticed property owners who have objected to the variance application, and by addressing the objections expressed by these neighbors.***

The Planning Department has received public comment for the variance request via a letter of support from property owner located at 2709 Staples Avenue.

***The Planning Board shall not grant a variance to permit a use not permitted by right or as a conditional use in the zoning district involved or any use expressly or by implication prohibited by the terms of the ordinance in the zoning district.***

No use not permitted by right or as a conditional use in the zoning district involved or any use expressly or by implication prohibited by the terms or the ordinance in the zoning district would be permitted. However, the use of a two-bedroom ADU over the allowed 600 square foot maximum is not permitted.

***No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and no permitted use of lands, structures, or buildings in other zoning districts shall be considered grounds for the authorization of a variance.***

No such grounds were considered.

***No variance shall be granted that increase or has the effect of the increasing density or intensity of a use beyond that permitted by the comprehensive plan or these LDRs.***

No density or intensity of a use would be increased beyond that permitted by the comprehensive plan or these LDRs.

**RECOMMENDATION:**

The proposed construction of a 960 square foot two-bedroom accessory dwelling unit would not be in compliance with respect to Section 122-233, Section 122-234, and 108-986 of the Land Development Regulations. The variance request does not meet all the criteria stated in Section 90-395. The Planning Department recommends **DENIAL**.

If the Planning Board chooses to approve the variance, the Planning Department recommends the following conditions:

1. The proposed two-bedroom accessory dwelling unit shall not exceed 600 square feet.
2. Revised signed and sealed plans must be submitted to the Planning Department for review and approval in accordance with the terms of this Planning Board resolution.
3. Associated BPAS application must be revised (and ESFU calculation must be reviewed) in accordance with the terms of this Planning Board resolution.
4. The accessory unit at 2719 shall comply with all requirements of Section 122-233 as noted below, except criteria (11) if approved herein:
  - (a) Accessory units proposed within the single-family residential district (SF) shall meet the following criteria:
    - (1) Each unit shall have a rental rate, including utilities, not exceeding 15 percent of the median household income in the county. This affordability criteria shall be duly recorded as a deed restriction in perpetuity.
    - (2) Accessory units shall be restricted to occupancy by permanent residents.
    - (3) Accessory units shall not be sold separately as a condominium.
    - (4) When an accessory unit permit is originally initiated, the principal unit must be owned and occupied by a permanent resident.
    - (5) Accessory units shall not take up more than 40 percent of the principal structure.
    - (6) Accessory units shall comply with maximum impervious surface regulation within the SF district. Parking surfaces shall not be counted as open space.
    - (7) Accessory units shall comply with applicable landscaping requirements.
    - (8) Accessory units shall comply with the maximum threshold for lot coverage by impervious surfaces.
    - (9) Parking requirements shall be satisfied by both the principal and accessory unit.
    - (10) Density shall be calculated based only upon the number of principal units on a site.
    - (11) Accessory units shall not exceed 600 square feet and the minimum size shall be 300 square feet.

(b) Any application for accessory units shall include deed restrictions which shall be filed with the city and the clerk of the circuit court. The deed restrictions shall incorporate mandatory compliance with the criteria cited in subsection (a) of this section.

5. Prior to submittal of building permit application, applicant shall submit a recorded deed restriction in accordance with this Planning Board resolution to ensure compliance with City of Key West Code Section 122-233.

