



THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report

To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Dan Gulizio, Senior Planner

Meeting Date: February 9, 2024

Application: **\*Text Amendment of the Land Development Regulations** - A Resolution of the City of Key West Planning Board recommending an amendment of the Land Development Regulations, entitled Chapter 90 – Administration, Division 3 – Variances, Section 90-395, entitled Standards, Findings to amend the criteria for evaluating variance applications; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Request: The text amendment would amend the application of variance criteria contained within Chapter 90 (Administration) of the City Code.

Sponsor: City Attorney Ronald J. Ramsingh with support from Katie P. Halloran, Planning Director

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**Background**

Chapter 90, Article V, Division 3 of the City Code provides guidance on the review and evaluation of variances. Pursuant to Sec. 90-391 (Variances):

*“An owner or his authorized agent may request a variance from the land development regulations as provided for in this division. The planning board shall have the quasi-judicial power necessary to grant such variances that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the land development regulations would result in unnecessary hardship. A variance from the terms of the land development regulations shall not be granted by the planning board unless and until the requirements of this division are met.”*

Sec. 90-395 (Standards, Findings) provides a series of criteria or standards that must be considered by the Planning Board. It states:

*(a) Standards for considering variances. Before any variance may be granted, the planning board must find all of 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.*

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

*(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.*

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

*(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.*

*(6) Not injurious to the public welfare. That the grant 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.*

*(7) Existing nonconforming uses of other property not 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.*

*(b) The planning board shall make factual findings regarding the following:*

*(1) That the standards established in subsection (a) have been met by the applicant for a variance.*

*(2) That the applicant has demonstrated a "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.*

**Staff Analysis:**

State law requires that the Planning Board, in considering variance requests, must determine that the applicant meets in absolute terms each of the seven (7) criteria. As a result, the strict application of the above-referenced variance criteria makes it exceedingly difficult for the average applicant to secure approval of even de minimis variance requests. Based upon the strict application of the variance criteria, Planning Department staff must typically recommend denial of virtually every variance application. Subsequently, Planning Board approval of a variance application, as a result, is often at odds with the record of the hearing. This creates legal exposure for the City and Planning Board, creates conflicts with staff, and most importantly ill serves the public.

The proposed amendments adhere to case law which details the types of criteria that must be considered by the Planning Board. In addition, the amendment continues to compel the Board to determine that the applicant meets all seven (7) of the criteria contained within Section 90-395. However, the proposed language provides both Planning staff and the Planning Board with the ability to balance *the “benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the community by such grant.”*

This type of balancing test is used in other jurisdictions and, when combined with the standards contained in Sec. 90-395, provides a more reasonable and rational approach to the consideration of individual variance requests.

**Request / Proposed Amendment:**

\*Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading.

**Sec. 90-395. Standards, findings.**

- (a) ~~Standards for considering variances. Before any variance may be granted, the planning board must find all of the following:~~ In making its determination, the Planning Board shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Before any variance may be granted, the planning board must consider the following factors:
- (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.
  - (2) Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.
  - (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.
  - (4) Hardship conditions exist. That literal interpretation of the provisions of the land development regulations would deprive the applicant of rights commonly enjoyed by other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.
  - (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.~~
  - (~~5~~6) Not injurious to the public welfare. That the grant 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.
  - (~~6~~7) Existing nonconforming uses of other property not 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.
- (b) The planning board shall make factual findings regarding the following:

- (1) That the standards established in subsection (a) have been met by the applicant for a variance.
- (2) That the applicant has demonstrated a "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.

(c) The Planning Board, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

An order permitting a variance may prescribe appropriate conditions and safeguards, including visual screening, and may also prescribe a reasonable time limit within which construction or occupancy of the premises for the proposed use shall have begun or have been completed or both. Upon entry of an order granting a variance, the administrative official shall not issue any development order for the subject property unless and until all of the conditions and requirements of the order granting the variance are met. Violation of those conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the land development regulations and shall render the variances revoked.

(Ord. No. 97-10, § 1(1-2.6(D)), 7-3-1997; Ord. No. 02-01, § 1, 1-2-2002; Ord. No. 03-09, § 1, 3-4-2003; Ord. No. 08-04, § 9, 5-20-2008)

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**Land Development Regulations Text Amendment Process:**

Planning Board Meeting:	February 15, 2024
City Commission (1st Reading):	TBD, 2024
Local Appeal Period:	30 days
DEO Review (1st Reading):	Up to 60 days
City Commission (2nd Reading / Adoption):	TBD, 2024
Local Appeal Period:	30 days
DEO Review (2nd Reading):	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.

Code Section 90-520 (6) 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:**

The proposed amendment helps to clarify the application of variance criteria contained within Sec. 90-395 of the City Code. It will also enable more consistent recommendations between staff and the Planning board while, most importantly providing a more balanced and fair review process for individual applicants.

**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 modification is consistent with existing goals, policies, and objectives contained in the Comprehensive Plan.

**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.***

The proposed amendments are not expected to have any impact on surrounding properties or infrastructure as the variance criteria remain unchanged.

**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 is not specific to a single parcel.

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

The proposed amendment is not specific to a single parcel.

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

The action is consistent with the adopted comprehensive plan and is carefully tailored to remain consistent with applicable case law.

**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.

**CONCLUSION**

The proposed Ordinance is a reasonable application of the city's police powers and properly mitigates potential impacts between individual applicants and surrounding property owners.

**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 proposed Ordinance be recommended for APPROVAL to the City Commission. Respectfully submitted to the Board for use in making its determination.