



THE CITY OF KEY WEST
PLANNING BOARD
Staff Report

To: Chairman and Planning Board Members

From: Katie P. Halloran, Planning Director

Meeting Date: May 19, 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 “Variance”; by amending Chapter 122 of the Code of Ordinances entitled, “Zoning” by amending Section 122-32 by clarifying when a variance is needed; 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.

Applicant: City of Key West

Background:

Portions of this proposed ordinance were approved during the April Planning Board hearing. The variance component was postponed to this May hearing. New data and analysis is provided below in italicized font.

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Multiple aspects of the City’s Land Development Regulations (LDRs) are outdated and need improvement.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 functioned 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 noncompliant accessory structures, including the construction or relocation of pools over 30", are required to seek variances. On a monthly basis this results in Planning Board variance applications that involve arguably simple exterior improvements such as new decks, pools, and staircases, to populate 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 percentage provides applicants an incentive to design site features in a manner more consistent with the LDRs. Also, this approach is likely to be perceived as 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 development 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 recommendations should be determined by the Planning Board.

In response to Planning Board member requests for additional data regarding the effect of the proposed variance amendments, Planning staff have calculated how proposed language would have affected variance items on the April Planning Board agenda. This data is provided on the following page in the graphic entitled, "2022 Variance Case Studies for Potential Code Amendment". In summary, given that most applicants were not improving setbacks, and the assumed meaning of the proposed text amendment is that all aspects of the site features altered must improve, the large majority of applications would not have been affected by either version of the proposed variance text amendments. For example, several applicants proposed to reduce the size (square footage) of noncompliant features, but did not endeavor to reduce their encroachment into setbacks. As shown below, both versions of the proposed Code change would only have taken one variance item off the April Planning Board agenda. However, if future applicants were to modify proposed designs to improve dimensional standards and setbacks, they could avoid variances.

Also, importantly, the text amendments recommended during the April 21, 2022, Planning Board meeting provide substantial additional flexibility for property owners and development industry professionals. For structures with overhangs (up to 24" wide), if the area below those overhangs is otherwise clear from ground to sky, the City would credit that area as open space and pervious, and would not consider that area to be building coverage.

For example: for a 5,000 square foot lot with a 20' by 50' structure with 24" wide overhangs, this results in a potential reduction (credit) of impervious surface and building coverage of 26.4% or 264 square feet. It also allows for an addition of 264 square feet of open space. This could allow for some projects to avoid variances.

In addition, during the April 21, 2022, Planning Board meeting, the Board voted to include new Code language that would allow for the first eighteen inches beneath structures elevated at least thirty inches from grade, to count towards pervious surface. (These areas must be otherwise pervious and skirting cannot obstruct rain or stormwater). These provisions would reduce the impervious surface calculations for properties with elevated structures.

For example: for a 5,000 square foot lot with a 20' by 50' structure, elevated at least 30" from grade, the impervious surface total would be reduced from 1,000 square feet to 799 square feet; this is a credit of more than 20%.

2022 Variance Case Studies for Potential Code Amendment

Yes	Variance Requirement Eliminated
No	Variance Requirement Not Eliminated
	Not a part of variance request

Any improvement eliminates variance requirement					
Project Address	Variance Eliminated?				
	Building Coverage	Impervious Surface	Open Space	Setbacks	Project Overall
111 Olivia Street	No	Yes	Yes	No	No
718 Southard Street	Yes	Yes	No	No	No
1103 Watson Street	No	Yes			No
205 Julia Street	No			No	No
1202 Royal Street	Yes	Yes		No	No
819 Georgia Street	Yes	Yes	Yes	No	No
529 Eaton Street	Yes	Yes	Yes	Yes	Yes
1010-1012 Olivia Street	No	No		No	No
1311 Grinnell Street	Yes	Yes	Yes	No	No
532 Margaret Street	Yes	Yes	Yes	No	No
Percent of projects that avoid variance with proposed change					10%

25% improvement eliminates variance requirement					
Project Address	Variance Eliminated?				
	Building Coverage	Impervious Surface	Open Space	Setbacks	Project Overall
111 Olivia Street	No	No	Yes	Yes	No
718 Southard Street	Yes	Yes	No	No	No
1103 Watson Street	No	Yes			No
205 Julia Street	No			No	No
1202 Royal Street	Yes	Yes		No	No
819 Georgia Street	Yes	Yes	Yes	No	No
529 Eaton Street	Yes	Yes	Yes	Yes	Yes

1010-1012 Olivia Street	No	No		No	No
1311 Grinnell Street	Yes	No	Yes	No	No
532 Margaret Street	No	No	Yes	Yes	No
Percent of projects that avoid variance with proposed change					10%

In summary, if a 5,000 square foot property had a 20 by 50 foot structure, elevated at least 30" above grade, with 24" wide gutters, the credits provided given the April 21, 2022, Planning Board recommended Land Development Regulation amendments would be as follows. This is just an example, and does not contemplate other likely site features such as driveways sheds, or other accessory structures.

- *Building coverage credit of up to 26.4% (due to overhang amendment)*
- *Open space credit up to 26.4% (due to overhang amendment)*
- *Impervious surface credit up to 46.4% (26.4% for overhangs + 20% for elevated structure)*

Planning staff believe that many properties will be able to avoid variances given the combined credits to site development standards that would result from approval of the April Planning Board recommendations. Planning staff would support a six month period to review the effects of the previously approved text amendments for overhangs and elevated structures that will provide substantial credits toward open space, pervious/impervious surface, and building coverage. This period could be used to analyze how these changes, if approved, affect the number of variances City-wide.

Request / Proposed Amendment: **Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading. Previously approved text amendments are not shown below but are provided in the draft ordinance which combines potential April and May Planning Board text amendment provisions.*

{ ... }

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:

{ ... }

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 site noncompliance by at least 25% of the difference between the Code requirement and the existing condition.

{ . . . }

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 site noncompliance by at least 25% of the difference between the Code requirement and the existing condition.

{ . . . }

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

Land Development Regulations Text Amendment Process:

Planning Board Meeting:	April 21, 2022 (postponed) May 19, 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 (*related to text amendments recommend at the April 21, 2022, Planning Board hearing*) 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 that Planning Board approve **Option 1**.

Option 1: Approve this text amendment as written herein : . . . a structure or site improvement may be altered without the need for a variance if the alteration decreases site noncompliance by at least 25% of the difference between the Code requirement and the existing condition.

Option 2: Approve this text amendment as originally proposed by Legal staff: . . . a structure or site improvement may be altered without the need for a variance if the alteration decreases site noncompliance.