

**PLANNING BOARD
RESOLUTION NO. 2022-026**

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 'BUILDING COVERAGE' AND 'OPEN SPACE' 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

WHEREAS, the City of Key West finds that it is necessary to clarify when a variance is needed; and,

WHEREAS, the City also endeavors to facilitate the use of overhangs and gutters as stormwater management and rainwater catchment devices and provide appropriate credit with respect to building coverage, pervious surface, and open space vis a vis these devices; and

WHEREAS, the City observes that certain elevated structures allow for rainwater to permeate beneath their edges and pervious surface calculations should be modified and better suited to Key West architecture; and

WHEREAS, these amendments were reviewed pursuant to criteria in Section 90-522 of the Land Development Regulations; and

WHEREAS, these proposed amendments to the Land Development Regulations were presented to the Planning Board with a recommendation of approval, and some components postponed, at its regularly scheduled meeting on April 21, 2022; and

 Chairman

 Planning Director

WHEREAS, components of these amendments postponed at the April 21, 2022, Planning Board hearing were subsequently discussed again and recommended for approval at the regularly scheduled May 19, 2022 Planning Board hearing; and

WHEREAS, the Planning Board finds that it is in the public's interest to amend the City's Land Development Regulations as proposed herein.

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 if fully set forth herein.

Section 2. That the proposed amendments to Chapter 86 and Chapter 122 of the Land Development Regulations are recommended for approval and the draft ordinance is attached.

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 Economic Opportunity. 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 DEO with all exhibits and applications attached to or incorporated by reference to this approval; that within the forty-five (45) day review period the DEO 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.

 Chairman

 Planning Director

Read and passed in part at a regular meeting held April 21, 2022, and additional components regarding variances read and passed this 19th day of May 2022.

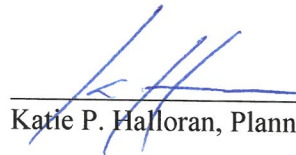
Authenticated by the Chairman of the Planning Board and the Planning Director;



Sam Holland, Planning Board Chair

6/21/22
Date


Attest:



Katie P. Halloran, Planning Director


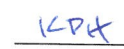
June 21, 2022
Date

Filed with the Clerk:



Cheryl Smith, City Clerk

6-22-22
Date

 Chairman
 Planning Director

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 86 OF THE CODE OF ORDINANCES, ENTITLED "GENERAL PROVISIONS" BY AMENDING SECTION 86-9, ENTITLED "DEFINITION OF TERMS" TO AMEND THE DEFINITIONS 'BUILDING COVERAGE' AND 'OPEN SPACE' 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

WHEREAS, the City of Key West finds that it is necessary to clarify when a variance is needed given that a variance request has been interpreted by City staff to be required at any time when a proposed structure or site improvement requires a relaxation of the terms of the Land Development Regulations due to a nonconformity with the Land Development Regulations even where such nonconformity is being reduced, albeit not coming into complete compliance; and,

WHEREAS, this interpretation of the Land Development Regulations has resulted in unnecessary and undue hardship to both applicants and City staff; and

KPCH 5/21/2022
WAL 6/21/22

WHEREAS, the City of Key West finds that it is necessary to clarify that a variance is not needed when a proposed structure or site improvement is decreasing by at least 10% of the difference between the Code requirement and its existing nonconformity; and

WHEREAS, the City of Key West finds that it is necessary to facilitate the use of overhangs and gutters as stormwater management and rainwater catchment devices which should be allowed to protrude into required yards (setbacks) and should not be considered as building coverage; and

WHEREAS, the City of Key West further finds that land area beneath overhangs and gutters which is otherwise clear from ground to sky, should be considered open space and should not be included in impervious surface calculations; and

WHEREAS, the City of Key West finds that existing Land Development Regulations related to building coverage calculations are not well-suited to the island given that many historic and contemporary structures are elevated and the first clear eighteen (18) inches beneath those structures, if kept clear, should be considered pervious given that they receive rainfall; and

WHEREAS, the City Commission for the City of Key West

finds that all aforementioned changes to referenced Land Development Regulations serve the City's interests in promoting the health, safety and welfare of its residents, property owners and visitors alike.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 86-9 of the Code of Ordinances is hereby amended as follows*:

*(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.)

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.

{ . . . }

Open space (green area) includes the gross area of the site less building coverage, parking surface, internal traffic circulation system, and other impervious surfaces, all of which should be open from the ground to the sky. Open space areas shall remain open and unobstructed to the sky that can be used for active or passive recreation purposes except that permeable areas directly beneath overhangs/soffits that are no wider than 24 inches and are otherwise unobstructed to the sky shall also be considered open space.—Parking and loading areas of any type shall not be allowed in any required open space.

{ . . . }

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.

Section 2: That Chapter 122 of the Code of Ordinances is hereby amended as follows*:

{ . . . }

Sec. 122-32. - Additional regulations.

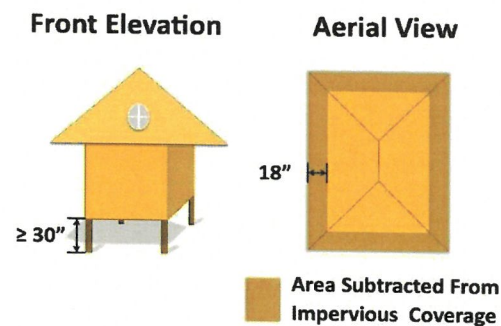
(a) A nonconforming use, nonconforming density or a noncomplying building or structure may be continued, subject to this article. Notwithstanding anything in the Code to the contrary, a structure or site improvement may be altered without the need for a variance if the alteration decreases respective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

{ . . . }

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

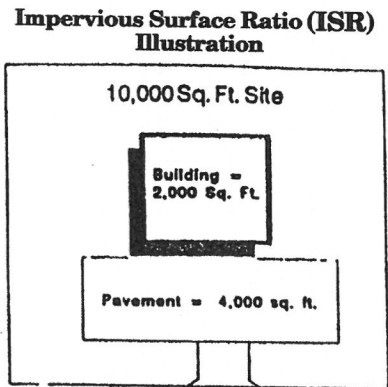
beneath structures elevated above 30" from finished grade shall not be considered impervious, so long as those eighteen inches are maintained fully permeable and open to receive rainfall. Any skirting enclosing crawlspaces must be a fully permeable metal mesh or other material approved by the City Engineer. Permeable areas directly beneath overhangs/soffits that are no wider than 24 inches shall not be included in impervious surface calculations.



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

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

{ . . . }

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.

{ . . . }

Section 3: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 4: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 5: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission and approval by the Florida Department of Economic Opportunity, pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2022.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2022.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2022.

Filed with the Clerk _____, 2022.

Mayor Teri Johnston _____
Vice Mayor Sam Kaufman _____
Commissioner Gregory Davila _____
Commissioner Mary Lou Hoover _____
Commissioner Clayton Lopez _____

Commissioner Billy Wardlow _____

Commissioner Jimmy Weekley _____

TERI JOHNSTON, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK