

EXECUTIVE SUMMARY



To: Patti McLauchlin, City Manager

From: Katie P. Halloran, Planning Director

Meeting Date: July 6, 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 “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.

Action Statement:

Portions of the proposed text amendments to the City’s Code of Ordinances are intended to clarify the circumstances that require a variance to accessory structures such as sheds, patios and pools. Other proposed amendments are intended to provide homeowners with credits related to building coverage, impervious surface and open space, where warranted.

Background:

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 professionals, and City staff. Specifically, 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. These amendments also encourage the use of gutters and overhangs/eaves as stormwater management features.

Request / Proposed Amendment: *Full text of the proposed text amendments are provided in the attached draft ordinance.*

Land Development Regulations Text Amendment Process:

Planning Board: April 21, 2022 (initial discussion and approvals)

Planning Board: May 17, 2022 (Planning Board Res. 2022-026)

City Commission:	July 6, 2022 (first reading)
City Commission:	TBD (second reading)
Local Appeal Period:	30 Days
City Clerk renders to DEO:	10 working Days
DEO Review:	Up to 45 Days
DEO Final Order:	LDR amendment becomes effective when the final order is received

Analysis:

Variance amendments

Multiple aspects of the City’s Land Development Regulations 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 applications through the review process, which can be costly and time consuming.

Anecdotally, in the past, site improvements that function to reduce noncompliance have not consistently been required to receive a variance. However at this time, City Planning staff find that the City’s Code is silent regarding staff’s capacity to authorize improvements for properties that would remain noncompliant. As a result, all applicants seeking to reconstruct accessory structures, including the construction or relocation of pools over 30”, that are working on a noncompliant feature, are required to seek variances. This causes many Planning Board variance applications that involve arguably simple exterior improvements such as new decks, pools, and staircases, to crowd the Planning Board agenda.

The Planning Board discussed these potential variance text amendments during both their April and May meetings. The Planning Board is recommending the following language:

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.

This overall provision is designed to minimize the number of variances that must be reviewed by Planning Board and facilitate renovations to noncompliant properties. The ten percent reduction provides applicants an incentive to strive to design site features in a manner more consistent with the Land Development Regulations. The Planning Department understands that this language would mean that all aspects of the site features altered must improve. For example, an applicant may desire to reconstruct a noncompliant shed that is both encroaching into the setbacks and is causing overages to impervious surface and building cover limits. This applicant would need to decrease the square footage of the shed by at least 10% of the difference between the Code required dimensions and existing conditions. They would also need to reduce the shed’s encroachments into setbacks by at least ten percent to bypass a variance from the Planning Board.

For reference, the Code already provides in Section 122-28(b) that voluntary reconstruction of noncompliant *dwelling units* does not require a variance unless that reconstruction increases the nonconformity of the building or structure.

Planning staff have also coordinated with the Fire Department and the proposed language below reflects staff's efforts to ensure no reconstruction or alteration would obstruct site safety or conflict with Fire Code.

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.

Overhangs/eaves, gutters, and elevated structure related amendments

With respect to the gutter and overhang/eaves provisions in this proposed text amendment, City staff and development professionals recognize that gutters and overhangs/eaves have multiple benefits. Property owners utilize gutters to collect and utilize rainwater for landscaping, reducing water usage. Others construct overhangs/eaves and gutters to protect wooden siding, doors and windows. Gutters also help to manage stormwater and minimize runoff impacts to neighboring properties. Staff seeks to codify the practice of allowing gutters and downspouts to project into setbacks and to ensure these features are not counted toward building coverage. Proposed text amendments would also establish that if land area directly beneath overhangs/eaves (up to 24" wide) is uncovered and can receive rainfall, it can also be considered pervious area and open space.

Further language being proposed by staff would clarify that property owners with overhangs wider than 24" would get credit for 24". The remaining width of deep overhangs would count against building coverage, impervious surface, and open space. The 24" dimension was utilized as an average that reflects historic properties and the functional need to protect siding, windows and doors from rain.

Finally, this proposed ordinance offers amendments to reflect that many current structures are elevated and most future structures will be elevated. Structure elevation minimizes flood risk, and in many instances is required to comply with FEMA special flood hazard areas. Through conversations with design professionals, and common sense observation, it is apparent that permeable areas beneath structures elevated at least 30" from grade regularly receive direct rainfall and stormwater runoff within approximately 18" of vertical walls. There is collective agreement that this 18" strip should be considered impervious.

It should be noted that some industry professionals do not recommend providing impervious surface credit for area beneath elevated structures at 30" from grade. They have opined that this provision would incentivize the trapping of moisture beneath structures, which may lead to structural problems and wood rot. Other industry professionals support the language as written, and suggest future considerations such as subtracting the square footage of appropriately designed exfiltration systems under structures to from impervious surface calculations (the City has some historic precedent of this approach with cisterns).

Code Compliance:

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 particular hardships nor to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the City Commission shall consider, in addition to the factors set forth in this subdivision, the consistency of the proposed amendment with the intent of the Comprehensive Plan.

Strategic Plan:

Proposed text amendments that provide credit for or incentivize the use of overhangs and gutters to manage stormwater may help property owners to renovate structures and private property to be more resilient to rainfall events. Structural elevation assists to reduce risk from anticipated increased flood events. These amendments are related to the Key West Forward Strategic Plan, Priority 2- Sea Level Rise.

Options / Advantages / Disadvantages:

Option 1:

Approve the proposed text amendments to Chapter 86 and Chapter 122 of the Land Development Regulations, as recommended by the Planning Board through Resolution No. 2022-026, and with further language modifications proposed by staff through red font in the attached draft ordinance.

a. Financial Impact:

There will be no cost to the City if this request is approved.

Option 2:

Approve the proposed text amendments to Chapter 86 and Chapter 122 of the Land Development Regulations, as recommended by the Planning Board through Resolution No. 2022-026.

b. Financial Impact:

There will be no cost to the City if this request is approved.

Option 3:

Deny the proposed text amendments to Chapter 86 and Chapter 122 of the Land Development Regulations.

a. Financial Impact:

There will be no cost to the City if this request is denied.

Recommendation:

Staff supports Planning Board Resolution No. 2022-026, with additional language, and further recommends approval of these amendments as stated in **OPTION 1**.