

THE CITY OF KEY WEST
PLANNING BOARD
Staff Report



To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Jordan Mannix-Lachner, Planner II

Meeting Date: March 12, 2024

Application: **Text Amendment of the Land Development Regulations** - A Resolution of the City of Key West Planning Board recommending an Ordinance to the City Commission to amend Land Development Regulations Chapter 86 entitled "General Provisions", Section 86-9 entitled, "Definition of terms.", Chapter 122 entitled "Zoning", Article V. entitled "Supplementary District Regulations", Division 4 entitled "Accessory Uses and Structures", Section 122-1181 entitled "Permitted and restricted uses" and Section 122-1185 entitled "Swimming pools", and to create Section 122-1187 entitled "Covered patios, gazebos, and other roofed structures.", to provide for an amended definition of the terms "Building Coverage" and "Accessory Structure", amend the required setbacks for swimming pools, and create regulations for the construction of covered patios, gazebos and similar roofed structures; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Request: A request to amend the Land Development Regulations (the "LDRs") by changing the definitions of "building coverage" and "accessory structure;" by changing elevated deck setback requirements; and by creating regulations for covered patios, gazebos and similar structures.

Sponsor: Commissioner Carey with support from Chief Building Official Ramsingh

BACKGROUND:

This amendment was originally scheduled for the February 15, 2024 Planning Board meeting. It was postponed to March to allow for public notice of additional revisions. This section provides an update on progress since the February Planning Board date. The remainder of this document reflects an abbreviated and modified version of the staff report that was prepared for the February Planning Board meeting.

The Comprehensive Plan and elected officials have called for LDR amendments to reduce regulatory barriers to development of accessory dwelling units (“ADUs”). The City’s Comprehensive and Strategic Plans also call on the City to develop LDR amendments that facilitate home elevation. This is one of several amendments proposed by the Building Department to accomplish these goals.

Planning Department staff share and support these goals but recommend an alternative approach. The table below explains how the important goals of this amendment are better addressed through other amendments in progress.

| Amendment Goal | Proposed approach |
|---|--|
| Building coverage maximum is a barrier to ADU construction | City Commission approves item 47 at March 14 City Commission |
| ADU setbacks are barriers to construction | City Commission approves item 47 on second reading at March 14 City Commission |
| Various barriers to home elevation | Planning Board approves item 11 on the March 12 agenda |

Planning staff analysis indicates that if adopted, this proposed amendment would allow for a significant shift in City-wide development patterns that would increase stormwater runoff, and may cause water quality degradation, nuisance, and land use incompatibility. This proposed amendment would also cause internal conflict in the Code, as explained in the section entitled “Code Consistency”, and would create a more burdensome regulatory process that will be difficult for staff to administer.

In summary, the Planning Department recommends that this draft code amendment be set aside, provided that several other currently proposed ordinance amendments will accomplish stated workforce housing goals, while avoiding unintended negative consequences of the currently proposed language.

ADUs:

The proposed amendment addresses ADU barriers by excluding certain structures from building coverage calculations. The amendment would redefine “building coverage” so that it only captures structures with a fully-secured, impervious roof. Structures such as patios, pergolas, and elevated decks would be excluded. This amendment would apply to all properties, whether residential or commercial, regardless of whether an ADU is sought for that property. This would allow for a significant shift in City-wide development patterns that would increase stormwater runoff, and may cause water quality degradation, nuisance, and land use incompatibility. Therefore, staff recommends an approach that provides relief to all ADU applicants by directly waiving building coverage and impervious surface (ISR) requirements for legal, licensed ADUs, subject to a stormwater management plan.

Staff is proposing to waive ADU building coverage and ISR as part of a related amendment regarding accessory structure setbacks, which is being heard at second reading at the March 14, 2024 City Commission meeting. If these exemptions are approved by the City Commission later this week, the proposed definition of building coverage in this amendment would not provide any additional relief to property owners seeking to develop ADUs, as building coverage constraints would be waived entirely.

HOME ELEVATION:

Elevation of an existing structure generally requires the addition of an exterior staircase. Many Key West homeowners may seek home elevation as flood risks increase across the city. Properties that meet or exceed maximum building coverage would require a variance to accommodate an exterior staircase. The “home elevation amendment” would exclude external staircases from building coverage calculations. The amendment would also benefit property owners to avoid setback variances for staircases required due to home elevation.

There are a number of other barriers to elevation. The impact of this amendment could be maximized by providing the following allowances for all sites seeking to elevate existing dwellings:

- Include setback and open space exceptions to allow for elevated mechanical platforms and external staircases.
- Allow for variance-free elevation of all nonconforming dwellings.

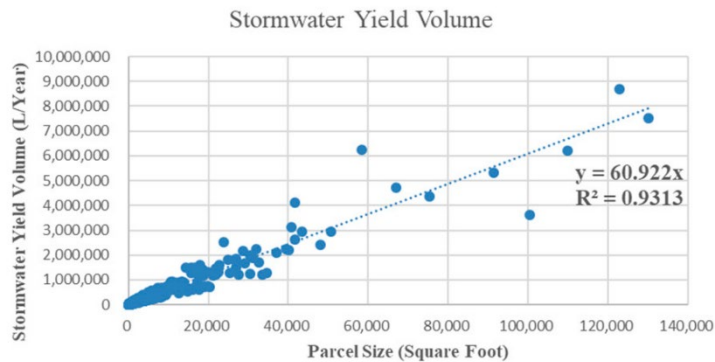
Providing these benefits would require changes to additional sections of Code, which requires a separate ordinance. Staff has provided a proposed amendment that addresses these Code sections in another item on this agenda. The language was developed following a public workshop on the proposed amendment, in collaboration with several City departments and other stakeholders.

ACCESSORY STRUCTURES

The Code provides criteria regarding the use, size and placement of accessory structures. This amendment proposes a definition for revised “accessory structure” that excludes all structures that do not have two or more outside rigid walls and a roof.

These structures would no longer be subject to regulations governing accessory structures, which are listed in the figure below. This amendment would apply to all properties in the City, whether residential or commercial.

The proposed alternations to building coverage and accessory structure regulations would increase the percentage of the island that can be covered in buildings and other structures. This will allow for increases stormwater discharge and contribute to increased flooding and nuisance, and degraded water quality.



Studies show that higher building footprints are correlated with higher stormwater yield volume. (Zhou, L. 2019. Correlations of Stormwater Runoff and Quality: Urban Pavement and Property Value by Land Use at the Parcel Level in a Small Sized American City. Water. 11:2369.)

Proposed Changes

Items excluded from Accessory Structure definition:

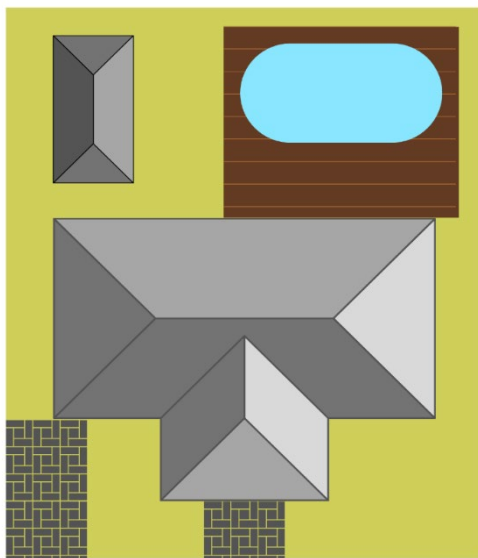
- Decks & Patios
- Gazebos & Pergolas
- Pools & Hot Tubs
- Pavilions & Outdoor Stages
- Open Air Buildings
- Docks & Piers
- Any non-principal structure without 2 rigid walls and a fully secured roof

The following provisions of Sec. 122-1181 would no longer apply to undefined structures:

- Accessory structures shall be allowed in all districts.
- Accessory structures shall be permitted by right in a subject district if the principal use is a permitted use;
- Accessory structures shall be a conditional use if the principal use is a conditional use.
- No accessory structure shall be erected in any required front or side yard.
- Accessory structures shall not cover more than 30% of any required rear yard.
- Accessory structures shall be erected less than five feet of any lot line.
- Accessory buildings must be constructed simultaneously with, or following, the construction of the main building and shall not be used until after the principal structure has received a certificate of occupancy.

Recent and proposed changes in site data calculations significantly affect the way that lot coverage is reflected in site data. Using an example lot, the table below shows how site data was calculated in 2021; in 2022 following the passage of Ordinance 22-25; and how site data would be calculated following passage of the proposed amendment, and the amendment approved by the Planning Board in January that changes impervious surface calculations for pools.

As this example shows, the proposed amendment would allow for substantial increases in lot coverage throughout the City. While the City has not studied the city-wide impact of anticipated increase development activity, it appears these changes will negatively affect the City’s capacity to adapt to the impacts of sea level rise and climate change.



| | 2021 | 2022 | Proposed | Change |
|---------------------------|------|------|----------|--------|
| Building Coverage | 60% | 53% | 40% | -20% |
| Impervious Surface | 81% | 15% | 15% | -66% |
| Open Space | 19% | 19% | 19% | 0% |

Example Lot Site Data:

| | |
|--------------------------|----------|
| Lot: | 4,000 SF |
| Dwelling (Elevated 30"): | 1800 SF |
| Deck (Elevated 30") : | 500 SF |
| Brick Pavers: | 500 SF |
| Gazebo: | 100 SF |
| Pool: | 350 SF |

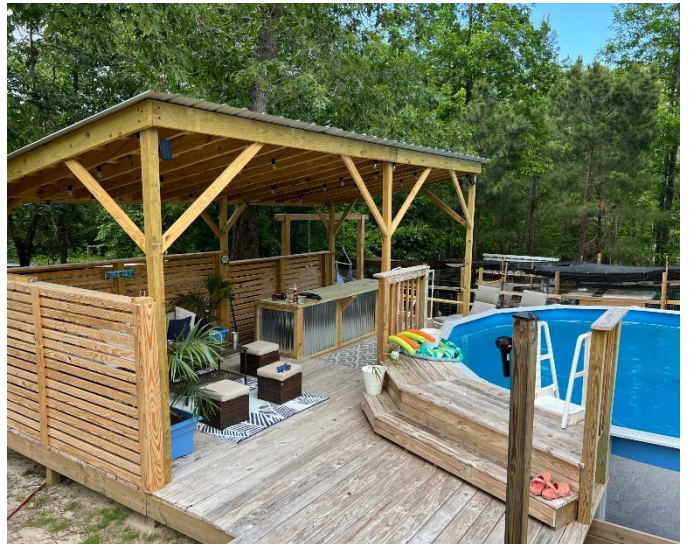
The following pages provide a table illustrating the existing and proposed regulations, as well as three pages of images that depict the types of structures that would and would not be captured under the proposed regulations.

| SUMMARY TABLE: ACCESSORY STRUCTURE PROVISIONS | |
|---|--|
| EXISTING CODE | PROPOSED LANGUAGE |
| <p>Accessory structure:</p> <ul style="list-style-type: none"> ▪ Detached, subordinate and incidental in use to principal structure. | <p>Accessory structure:</p> <ul style="list-style-type: none"> ▪ Detached, subordinate and incidental to principal structure ▪ Two or more rigid walls ▪ Secured nonpermeable roof |
| <p>Accessory structures include:</p> <ul style="list-style-type: none"> ▪ Decks ▪ Carports ▪ Sheds ▪ Fences/Walls ▪ Gazebos/Pergolas ▪ Pools/Hot Tubs ▪ All other detached structures built, constructed or assembled with a fixed location on the ground <p>Accessory structures are subject to the following:</p> <ul style="list-style-type: none"> ▪ Five foot setback ▪ Limited to 30% of required rear yard ▪ Cannot be constructed in front or side yard | <p>Accessory structures include:</p> <ul style="list-style-type: none"> ▪ Sheds/Pool Houses ▪ ADUs ▪ Detached structures with two rigid walls and a roof <p>Accessory structures DO NOT include:</p> <ul style="list-style-type: none"> ▪ Decks including elevated and covered decks ▪ Covered detached patios ▪ Gazebos/Pergolas ▪ Pools/Hot Tubs ▪ Any detached subordinate structure without 2 rigid walls and a secured nonpermeable roof <p>Undefined Structures: There will be a lack of direction in the Code for structures that are neither principal nor accessory structures. These undefined structures are:</p> <ul style="list-style-type: none"> ▪ Not subject to 30% rear yard coverage ▪ Not subject to 5’ setback exception <ul style="list-style-type: none"> ○ Except for permanent roofed structures (5’ setback) and decks 30” and higher (3’ setback) ▪ Allowed in front, rear and side yards <ul style="list-style-type: none"> ○ Except for permanent roofed structures |
| <p style="text-align: center;">Notes</p> <ul style="list-style-type: none"> ▪ There is a lack of clarity about what constitutes a “rigid wall” and “fully secured roof.” ▪ Impervious, elevated decks and patios will not contribute to building coverage or impervious surface, and will be allowed in front, side and rear yards with no size restriction. ▪ Creates a regulatory void for structures that are neither principal nor accessory structures; unless otherwise noted they will be subject to greater setback requirements. It’s unclear how this would impact the right to develop undefined structures that are incidental to conditional uses. | |

NON-ACCESSORY STRUCTURES

These images depict the type of non-principal structures that would not be “accessory structures” and would be exempt from the 30% maximum yard coverage limit.

Development standards such as lot coverage limits, minimize adverse development impacts such as stormwater flooding, privacy, open/green space, and quality of life.



BUILDING COVERAGE EXEMPTION

This images on this page show the types of structures that would be exempt from building coverage requirements.

The proposed amendment would redefine “building coverage” to require that a structure has a fully secured, impermeable roof.

In terms of stormwater management, structures with roofs and without roofs both contribute to stormwater runoff equally if the footprint is impervious.

Elevated unroofed structures may function similarly to structures with roofs, like elevated decks.

The proposed definition of building coverage was developed for flood insurance purposes, but may not be appropriate as a measure of development intensity for land use planning purposes.

The deck pictured here would no longer contribute to building coverage or impervious surface.



The structure in the photo above uses removable, heavy-duty fabric awning material and thus is not “fully secured nonpermeable roofs.”

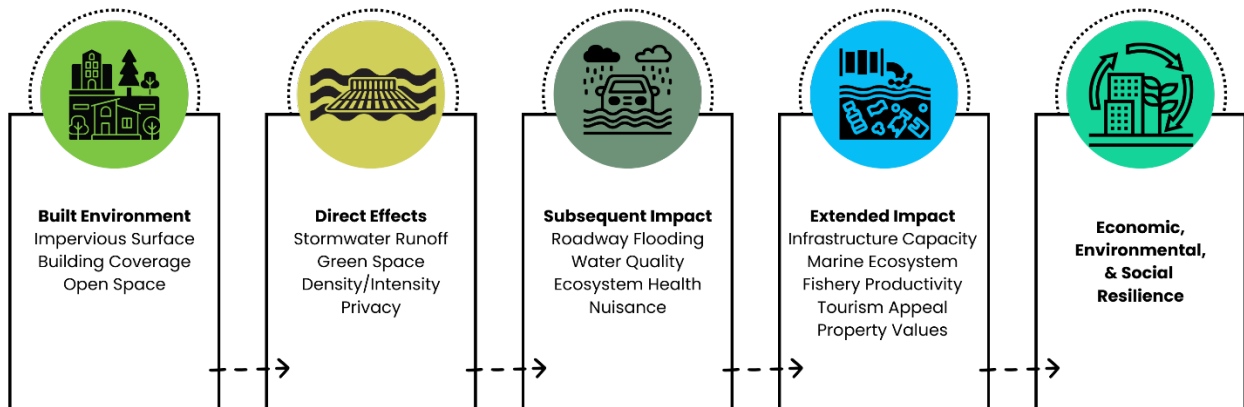


“INVISIBLE” STRUCTURES

The images below depict structures that would be **exempt** the following performance standards under the proposed amendment:

- Building coverage
- Impervious surface
- Accessory structures

This would allow for a substantial increase in the intensity of both residential and commercial development in the City, none of which would be reflected in any site data. This could exacerbate stormwater flooding, nuisance, and hamper the ability of the City to respond and adapt to climate change.



LAND DEVELOPMENT REGULATIONS TEXT AMENDMENT PROCESS:

| | |
|---|---------------------------------------|
| Planning Board Meeting: | January 18, 2023 |
| Planning Board Meeting: | February 15, 2023 |
| City Commission (1st Reading): | TBD, 2023 |
| Local Appeal Period: | 30 days |
| DEO Review (1st Reading): | Up to 60 days |
| City Commission (2nd Reading / Adoption): | TBD, 2023 |
| 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 |

CODE ANALYSIS

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 justification for the proposed change is to ease barriers to ADU development and home elevation. As proposed, this amendment presents limited benefits to property owners to facilitate ADU development and home elevation but is likely to cause increased stormwater flooding, nuisance, and land use incompatibility.

90-520(6)(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 Comprehensive Plan calls for LDRs that facilitate accessory unit infill development and home elevation. It also calls for regulations that:

- “Incorporate concepts for managing land, water, and the built environment which are responsive to climate change issues including but not limited to sea level rise and increased frequency of intense rainfall events.” (Objective 1-1.12)
- “Update standards and/or review criteria for mandating retention of open space and for regulating building design, including setbacks, building placement on site, and building orientation. These provisions shall be directed toward protecting privacy, as well as access to light, air and open space.” (Policy 1-1.2.1)
- “Maintaining or improving coastal environmental quality by improving stormwater management” (Objective 5-1.1).

These policies require a development framework that preserves open space and promotes site design that reflect the City’s infrastructure capacity, topographical constraints, and responsibility to conserve unique natural and cultural resources. Increased development of residential and commercial properties without accompanying stormwater mitigation can directly lead to neighborhood flooding, increased runoff of polluted stormwater, and degradation of marine resources.

Staff proposes additional and revised language that would meet the ADU and home elevation policy goals

while advancing Comprehensive Plan policies and remaining consistent with Area of Critical State Concern Principles for Guiding Development.

90-520(6)(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 amendment would revise development standards for every lot in the City to allow for greater lot coverage. Resulting development patterns present the potential for increased stormwater flooding, nuisance, and land use incompatibility.

Under Ordinance 22-25, elevated structures are excluded from impervious surface calculations, but there is no verification component to ensure that structure has no impact on a site's capacity to absorb rainwater. For instance, yards may slope away from an elevated structure, or the area underneath may be compacted gravel and dirt that does not readily absorb water. As a result, impervious surface ratios may not accurately reflect the capacity of a site to absorb rather than discharge stormwater. Therefore, changes that increase allowable lot coverage must also be understood to create the potential for more stormwater runoff that is not captured in impervious surface ratios.

The City's municipal stormwater system is permitted under the National Pollutant Discharge Elimination System (NPDES) Stormwater Program, which requires compliance with the permit conditions which provide that the City shall:

- Incorporate stormwater quality considerations into land-use planning and development activities.
- Determine where changes can be made to reduce the stormwater impact of new development and areas of significant redevelopment.
- Focus on changes to code that will promote:
 - Reductions in impervious surfaces
 - The incorporation of low-impact development principles
 - Reduction in flow and volume of stormwater

F.S. § 163.3202 mandates that local governments shall amend and enforce LDRs that are consistent with and implement their adopted Comprehensive Plan. The Comprehensive Plan calls for Land Development Regulations that:

- "Protect the natural functions of floodplain areas so that flood carrying, and storage capacity areas are maintained." (Policy 6-1.3.1)
- "Ensure the compatibility of adjacent land uses, and provide for open space" (Policy 1-1.9.2)
- "Maintain and continue to update standards... directed toward protecting privacy, as well as access to light, air and open space."

This amendment would allow for increased lot coverage which contributes to increased stormwater runoff and water quality degradation. It would allow for increased lot coverage, smaller setbacks, and reduced buffers for both residential and commercial sites, which can result in nuisance related to privacy, access to light, air, open space, and stormwater discharge. This is inconsistent with the Comprehensive Plan, City of

Key West Strategic Plan, Area of Critical State Concern Principles for Guiding Development, and the conditions of the City's MS4 NPDES permit.

The City recently funded a bond survey to understand residents' infrastructure priorities. It surveyed a random, representative sample of likely Key West voters. Respondents were asked to indicate how likely they would be to support the issuance of a bond for 14 different infrastructure objectives:

- "Reduce flooding in local roadways and properties" had the highest support, with 79% of likely voters supporting it.
- "Prepare for sea level rise" was close behind, supported by 73% of likely voters.

These results provide important insight into the public's development priorities. Maintaining the existing building coverage and accessory structure definitions would more closely align with these priorities. Staff recommends an alternative approach that more fully meets the goals of this amendment while avoiding adverse impacts.

90-520(6)(c) and (d): The proposed amendment is not in conflict with these criteria.

CONCLUSION

This amendment seeks to facilitate ADU development and home elevation. However, as written, these amendments create a more burdensome regulatory process that will be difficult for staff to administer and more challenging for the public to navigate. At the same time, the proposed amendments may not go far enough in facilitating the development of ADUs and too far in connection with other properties, including commercial land use categories. Finally, the amendments may also not go far enough in addressing non-conforming setbacks, open space and coverage requirements.

Planning staff recommends a more streamlined, direct approach that waives building coverage requirements for new ADUs, and waives dimensional standards needed to accommodate home elevation to minimize flood risk. This approach would more fully accomplish the goals of this amendment in a way that is clear, direct, and effective. This more comprehensive approach to relaxing site restrictions for ADUs is proposed as part of the second reading of a related ordinance later this week. Additionally, an expanded approach to home elevation barriers is included through an additional ordinance on this agenda.

Therefore, staff recommends that the Planning Board approve the "home elevation" ordinance (Item 11) on this meeting's agenda that includes and builds on the home elevation components of this amendment. Additionally, staff recommends that the Planning Board support a more comprehensive relaxation of ADU regulations, by tabling this ordinance and continuing to support City Commission approval of item 47 on the March 14 City Commission agenda.

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 request to amend the Land Development Regulations be **DENIED**, so that the objectives of this ordinance may be more fully addressed with expanded ordinances that have been presented for approval.