

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: 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 Chapter 86 of the Land Development Regulations entitled "General Provisions", Section 86-9 entitled, "Definition of terms"; Chapter 122 entitled "Zoning", Article II entitled "Nonconformities"; Section 122-26 entitled "Definitions"; Section 122-27 entitled "Intent"; Section 122-28 entitled "Replacement or reconstruction"; and Section 122-29 entitled "Repairs and Maintenance", Section 122-30 entitled "Abandonment," Section 122-31 entitled "Noncomplying lots or building sites of record," Section 122-32 entitled "Additional regulations," Section 122-33 entitled "Eminent domain/public purpose waiver," and Section 122-34 entitled "Status of parcels during or after acquisition by eminent domain action or voluntary conveyance for public transportation or other public purpose"; providing for concurrent and conditional adoption upon adoption of Comprehensive Plan amendments; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Request: The text amendment would clarify and simplify the treatment of legal nonconforming uses and/or structures by amending Chapter 122, Article II – Nonconformities.

Sponsor: Commissioner Carey with support from Chief Building Official Ramsingh

Background

The Building Department initially drafted a series of amendments to Chapter 122, Article II – Nonconformities. This included the provision of definitions for the terms (1) reconstruction and (2) replacement along with a modification of the term “Repairs and Maintenance.” The Planning Board recommended approval of the proposed amendments at its meeting on December 12, 2023. Subsequently, the City Commission considered the proposed amendments at a public hearing on January 11, 2024. At that time, the City Commission directed Planning, Building and Legal Department staff to work together to address any potential concerns associated with the proposed amendments. Since that time, staff members from each department have worked diligently and cooperatively to address any potential concerns associated with the amendments. The resulting amendments are substantively different in scope than the previous amendments. As a result, the Legal Department has recommended that the Planning Board reconsider the revised ordinance amendments. It is anticipated that the amended ordinance will be considered at the April 11, City Commission meeting.

Staff Analysis:

After discussion among involved departments, it was decided to comprehensively review Article II – Nonconformities. The current ordinance had evolved over time and contained a series of general rules and exceptions that were organized in such a manner as to be confusing for members of the public and difficult for City staff to administer. The format or organization of the ordinance was also inconsistent with similar codes used throughout the region including in Monroe County, Marathon, and jurisdictions outside of the Keys.

Staff elected to follow a similar organizational framework to Monroe County which is simple to understand and easier to administer. Adopting a simple and straightforward format also eliminated the need for new definitions and, instead, allowed for the use of existing terms such as “substantial improvement” and “substantial damage.” Looking at the Ordinance holistically also allowed staff to incorporate floodproofing standards into the Ordinance. This will help to facilitate increased compliance for flood zone properties without any risk of losing a structure’s legal nonconforming status. The proposed amendments to Article II also enabled staff to distinguish between “legal” nonconforming structures, which warrant protection under the Code, and “illegal” structures that were simply built without the benefit of permits in violation of the code.

A “Registration” subsection has also been added to the ordinance, which will allow the City to better monitor legal nonconforming uses and structures moving forward. This will make the permitting and administration of such uses and structures easier for the public and avoid unnecessary anxiety during construction and damage events.

Provisions have also been added to clarify the administration of the Ordinance within the City’s Historic District. This was a significant concern with the original amendments and the Building Department and Historic Commission have been helpful and cooperative in successfully addressing any potential concerns.

Finally, three existing provisions from the current ordinance were retained associated with (1) noncomplying lots or building sites of record, (2) eminent domain/public purpose waivers, and (3) status of parcels during or after acquisition by eminent domain. These were all provisions protected substandard parcels that result from partial takings.

The proposed Ordinance is organized in a clear and easily understood format with subsections for legal nonconforming uses, legal nonconforming structures, and legal nonconforming accessory structures. The

revised draft ordinance contains the following subsections:

- Definitions
- Intent
- Registration
- Legal Nonconforming Uses
- Legal Nonconforming Structures
- Nonconforming Accessory Uses and Structures
- Historic District
- Noncomplying lots or building sites of record (existing provision)
- Eminent domain/public purpose waiver (existing provision)
- Status of parcels during or after acquisition by eminent domain action or voluntary conveyance for public transportation or other public purpose (existing provision)

Request / Proposed Amendment:

The proposed draft ordinance is attached.

Land Development Regulations Text Amendment Process:

Planning Board Meeting:	March 12, 2024
City Commission (1st Reading):	April 11, 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 intent of the proposed amendment is to simplify and clarify the regulation of both legal nonconforming structures and legal nonconforming structures, while safeguarding the protection of private property rights and minimizing potential impacts of such uses on surrounding property owners.

- 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 amendment is consistent with the goals, policies, and objectives of the comprehensive plan. Specifically, it is consistent with Chapter 1A – Historic Preservation, Chapter 3 – Housing, and Chapter 10 – Property Rights.

- 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 minimizes potential impacts on surrounding an adjacent properties consistent with similar approaches throughout the Keys region.

- 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 proposed action is consistent with the comprehensive plan as noted 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.

CONCLUSION

The proposed amendment successfully addresses the concerns of City staff across the Departments of Planning, Building, Historic Preservation and Legal. The cooperation among these departments has led to a more effective amendment of Article II – Nonconformities than originally envisioned. This new version of the Nonconformities Ordinance will be simpler for City staff to administer and easier for the public to understand. It will also add predictability and certainty to a regulatory process that has struggled with both of these goals.

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 recommended for **APPROVAL** to the City Commission.