

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:** November 16, 2023

**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 122 of the Land Development Regulations entitled "Zoning", Article IV. entitled "Districts", Division 3 entitled "Residential Districts", Subdivision III entitled "Single-Family Residential District (SF)", Section 122-232 entitled "Accessory Units", and Section 122-233 entitled "Special criteria applicable to accessory units" to amend the required setbacks for deed-restricted accessory units; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

**Request:** The text amendment seeks to reduce barriers for homeowners wishing to construct accessory dwelling units by reducing minimum setbacks to five feet from all property lines.

**Sponsor:** Commissioner Carey with support from the Chief Building Official

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**Background:**

The proposed code amendment seeks to modify the setback standards for "Accessory Units" within the Single-Family Residential District (SF) to five feet from all property lines. Property owners, elected officials, and other stakeholders have requested that the City reduce barriers to developing accessory dwelling units in order to contribute to the stock of workforce housing.

Accessory dwelling units ("ADUs") are permitted-by-right in the Single-Family (SF) zoning district, subject to BPAS allocation and performance criteria. Section 122-233 provides special criteria applicable to ADUs in the SF zoning district, including multiple prerequisites.

The Code currently requires that accessory dwelling units ("ADUs") meet the same setbacks as principal structures. The Building Department has developed an amendment to the Land Development Regulations

(the "LDRs") which would reduce the required setback to five feet. This would eliminate the need for a variance for properties that cannot accommodate an ADU within the principal structure setbacks, but otherwise meet all of the other dimensional requirements.

### **Existing Regulations**

Currently, ADU setback requirements in the SF zoning district are contained within Section 122-238 (6) of the City Code:

1. *Front: 30 feet or the average depth of front yards on developed lots within 100 feet each side, but not less than 20 feet.*
2. *Side: 5 feet.*
3. *Rear: 25 feet or 20 feet when abutting an alley.*
4. *Street side: 10 feet.*

Additional requirements related to prerequisite standards are outlined below:

#### ***Sec. 122-233. - Special criteria applicable to accessory units.***

*(a) Accessory units proposed within the single-family residential district (SF) shall met the following criteria:*

- (1) The monthly rent for a rented accessory unit, not including utilities, shall not exceed 25 percent of that amount which represents 100 percent of the monthly median household income (adjusted for family size) for Monroe County. This affordability criteria shall be duly recorded as a deed restriction in perpetuity.*
- (2) Accessory units shall be restricted to occupancy by permanent residents.*
- (3) Accessory units shall not be sold separately as a condominium.*
- (4) When an accessory unit permit is originally initiated, the principal unit must be owned and occupied by a permanent resident.*
- (5) Accessory units shall not take up more than 40 percent of the principal structure.*
- (6) Accessory units shall comply with maximum impervious surface regulation within the SF district. Parking surfaces shall not be counted as open space.*
- (7) Accessory units shall comply with applicable landscaping requirements.*
- (8) Accessory units shall comply with the maximum threshold for lot coverage by impervious surfaces.*
- (9) Parking requirements shall be satisfied by both the principal and accessory unit.*
- (10) Density shall be calculated based only upon the number of principal units on a site.*
- (11) Accessory units shall not exceed 600 square feet and the minimum size shall be 300 square feet.*

*(b) Any application for accessory units shall include deed restrictions which shall be filed with the city and the clerk of the circuit court. The deed restrictions shall incorporate mandatory compliance with the criteria cited in subsection (a) of this section.*

Further, pursuant to Section 122-1181, accessory uses or structures shall not be erected in any required front or side yard, and the accessory uses or structure shall not cover more than 30 percent of any required rear yard.

## Facilitating ADU Development

Setbacks are just one barrier to the development of ADUs. Other site design criteria identified in Section 122-233 also present barriers to property owners looking to develop an ADU. In addition, there are strategies unrelated to site design that also may ease the ADU development process. For example, elected officials have expressed a desire to develop pre-approved plans for ADUs, which would reduce design costs for property owners. Fully accomplishing the goal of facilitating ADU development warrants consideration of a number of strategies beyond setback requirements, whether they are related to site plan criteria or other requirements like permitting fees.

It's important to ensure that amended site design standards don't result in adverse impacts related to nuisance, property values and rights, and neighborhood character. The proposed amendment seeks to reduce all setback requirements for accessory units to 5 feet. While some flexibility from current setback requirements may be warranted, a reduction of all setback requirements for accessory units to 5 feet raises a number of concerns. Specifically, the modification or reduction of a rear yard setback by up to 80-83% (5 feet instead of the minimum required 25/30 feet) is inconsistent with the spirit and intent of Section 122-231 which seeks to "Protect the quality and character of existing single-family neighborhoods" and "Encourage densities which are compatible with existing and anticipated future developments."

For example, the construction of structures up to 600 square feet in size and 30 feet in height 5 feet from any property line represents a potentially significant adverse impact on surrounding property values and an impact to the quality of life for surrounding residents.

The proposed amendment also conflicts with Comprehensive Plan goals, objectives, and policies.

The Comprehensive Plan mandates in Policy 1-1.2.1 that:

*Land Development Regulations shall maintain and continue to 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.*

In light of the considerations described above, Planning staff offers two recommendations:

1. Staff recommends that the City engage in a community participation effort with homeowners in the SF district to enable the City to fully understand the barriers, concerns, goals, and priorities of property owners. The proposed changes have the potential to affect privacy, nuisance and property values for every property in the Single-Family zoning district. Community engagement may reveal that property owners place greater value on the open space and privacy provided by existing regulations, and may prefer that variances be required for the development of ADUs within five feet of property lines. Community outreach would also enable the City to better understand the existing barriers to ADU development and tailor this amendment to address those barriers.
2. Staff recommends coupling a reduced ADU setback requirement with site design standards that protect privacy, property values, and community character. These standards should be informed

by the insights provided by single-family property owners.

### **Beyond Setbacks: Land Use Strategies to Facilitate ADU Development**

There are a number of strategies that have been developed by other organizations and municipalities to facilitate and/or incentivize the development of ADUs in their communities.

Inclusion of any of the following strategies may maximize the impact of this amendment:

- Exemption from density calculations for ADUs in all zoning districts
- Elimination of ADU vehicular parking requirements
- Reduced restrictions on the maximum percentage of a rear yard an ADU can occupy
- Reduced restrictions on the maximum ratio between the size of the principal structure and an ADU
- Reduced permit fees for ADUs
- Allow for ADUs in required front yards, subject to design standards
- Allow ADUs as additions to, or conversions within existing structures to reduce cost burden and avoid conflicts with dimensional standards
- Provision of pre-approved construction drawings for ADUs to reduce engineering costs and reduce permitting time
- Reduced/waived impact fees for ADUs that provide deed restricted low-income housing
- ADU loan assistance program

Given the time constraints related to this amendment, Planning staff has not conducted an in-depth assessment of each of the above strategies and how they would integrate into the LDRs. Under the direction of the Planning Board and elected officials, Planning staff are available to look further into additional strategies to accomplish the goal of reducing barriers to ADU development.

### **Site Design Standards**

Staff recognizes that it may be difficult to construct ADUs utilizing the required setbacks for principal structures. However, staff also recognizes that existing setback requirements function to protect privacy, access to light and air, neighborhood character, and property values.

To balance these considerations, Planning staff recommend design standards to mitigate adverse impacts to neighboring property owners and advance Comprehensive Plan policies related to privacy, urban design, and land use compatibility.

Examples of such design criteria include:

- Requiring ingress/egress and any patio/decking to face the interior of the property
- Regulating the size/opacity of windows facing property lines
- Require perimeter landscaping screening and buffering techniques to protect privacy

Implementing some of the methods described above may support the goal of this amendment in reducing barriers for property owners to develop ADUs, while balancing concerns related to privacy and incompatible land uses. Planning Board members and elected officials may also consider allowing for ADUs

in required front yards, subject to design standards, for properties with larger front yards and smaller rear yards.

### **ADUs as Workforce Housing:**

The City's ADU criteria currently require the following in Section 122-233(1):

- (1) *The monthly rent for a rented accessory unit, not including utilities, shall not exceed 25 percent of that amount which represents 100 percent of the monthly median household income (adjusted for family size) for Monroe County. This affordability criteria shall be duly recorded as a deed restriction in perpetuity.*

The City Housing and Community Development Director manages deed restriction compliance through the Community Development Office. She has noted that existing ADU language does not clearly reserve tenancy of ADUs to households earning 100 percent Area Median Income. The current language above only limits the amount of rent that can be charged to tenants. Planning staff recommend subsection 122-233(1) be replaced to include provisions such as the following:

- (1) Occupancy in the ADU is reserved for family members of the owner of the principal unit or as workforce housing for households at moderate income which shall mean a rental dwelling unit whose monthly rent, not including utilities, does not exceed 25 percent of that amount which represents 120 percent of the monthly median household income (adjusted for family size) for Monroe County. This affordability criteria shall be duly recorded as a deed restriction in perpetuity.
- (2) During occupancy of an affordable housing (moderate income) rental unit, a household's annual income may increase to an amount not to exceed 160 percent of median household income for the county (adjusted for family size). In such event, the tenant's occupancy shall terminate at the end of the existing lease term.
- (3) The household or person shall derive at least 70 percent of its or his/her total income from gainful employment in the county. This section shall not disqualify an individual previously and continuously qualified who reaches the age of retirement, or becomes disabled, and is otherwise income qualified.

Given limited time, Planning staff have not been able to coordinate a review of this language by the City's Legal Department or Housing Director. Planning staff recommend that the Planning Board postpone this item to allow for further review of these recommendations.

### **Request / Proposed Amendment:**

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

### **Sec. 122-232. – Accessory units.**

The single-family residential district (SF) shall accommodate one accessory attached or detached unit per principal dwelling unit so long as the accessory unit is duly approved pursuant to the building permit allocation system, as provided in article IV of chapter 54, and meets the criteria cited in this subdivision. The building permit allocation methodology includes a permit formula in which one accessory unit equals 0.78 dwelling unit. Accessory units shall meet all size and dimension requirements of a principal structure excluding minimum setback requirements, as further described in Section 122-233(a)(12) of this Subdivision. ~~and~~ Accessory units shall not be excluded from impact fee provisions.

**Sec. 122-233. - Special criteria applicable to accessory units.**

(a) Accessory units proposed within the single-family residential district (SF) shall meet the following criteria:

- (1) The monthly rent for a rented accessory unit, not including utilities, shall not exceed 25 percent of that amount which represents 100 percent of the monthly median household income (adjusted for family size) for Monroe County. This affordability criteria shall be duly recorded as a deed restriction in perpetuity.
- (2) Accessory units shall be restricted to occupancy by permanent residents.
- (3) Accessory units shall not be sold separately as a condominium.
- (4) When an accessory unit permit is originally initiated, the principal unit must be owned and occupied by a permanent resident.
- (5) Accessory units shall not take up more than 40 percent of the principal structure.
- (6) Accessory units shall comply with maximum impervious surface regulation within the SF district. Parking surfaces shall not be counted as open space.
- (7) Accessory units shall comply with applicable landscaping requirements.

(8) Accessory units shall comply with the maximum threshold for lot coverage by impervious surfaces.

(9) Parking requirements shall be satisfied by both the principal and accessory unit.

(10) Density shall be calculated based only upon the number of principal units on a site.

(11) Accessory units shall not exceed 600 square feet and the minimum size shall be 300 square feet.

(12) Accessory units shall not be erected less than five feet from any lot line.

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(Ord. No. 97-10, § 1(2-5.2.2(A)(1)), 7-3-1997; Ord. No. 22-20, § 1, 7-6-2022)

**Land Development Regulations Text Amendment Process:**

Planning Board Meeting:	November 16, 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

**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:

- 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.

This action is consistent Comprehensive Plan Policy 3-1.7.5: *Continuing Housing Programs*. This policy directs the City to review and amend as necessary adopted plans and policies based on continuing analysis of problems and issues related to housing and other plan elements.

This amendment can be made more consistent with Comprehensive Plan policies related to privacy and land use compatibility by incorporating mitigative techniques described in this report. Planning staff recommend a public workshop prior to City Commission review of this proposed Code amendment.

- 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 impact every property in the Single-Family zoning district. The amendment can present privacy concerns for property owners in the Single-Family zoning district. These concerns can be mitigated using the strategies identified in this report.

Planning staff also recommend that the City conduct a public information campaign together with public workshops to allow single-family homeowners and renters to review these recommendations.

- 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 action is not related to spot zoning.

- 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 to the Planning Board that the request to amend the Land Development Regulations be **APPROVED**, provided that the City conducts a public information campaign and public workshops prior to first reading at the City Commission, to allow single-family homeowners and renters to review these recommendations, and to consider further measures to facilitate the development of ADUs.