



**THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report**

**To:** Chairman and Planning Board Members

**From:** Jordan Mannix-Lachner, Planner II

**Through:** Katie P. Halloran, Planning Director

**Meeting Date:** March 12, 2024

**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 to amend Land Development Regulations Chapter 122 entitled "Zoning", Article II, entitled "Nonconformities" Section 122-28 entitled "Replacement or reconstruction" and Section 122-32 entitled "Additional regulations"; and Article V, entitled "Supplementary District Regulations", Division 3, entitled "Area Requirements", Section 122-1145, entitled "Required yards." to accommodate a housing supply that is responsive to the current and future projected populations needs by reducing regulatory barriers to the elevation of dwellings and the development of accessory dwelling units.

**Request:** The proposed text amendments to the City's Code of Ordinances are intended to reduce regulatory barriers to the elevation of residential structures or enhance resilience and post-disaster recovery.

**Applicant:** City of Key West

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**Background:**

Comprehensive Plan Policy 1-1.1.14: *Prepare for Future Sea Level Rise* calls on the City to take proactive steps to increase residential resiliency and adapt to sea level rise and storm surges. Elevating homes can reduce or avoid future flood losses, increase resilience and post-disaster recovery, and contribute to reduced flood insurance premiums.

Certain components of the Land Development Regulations ("LDRs") can pose a barrier to property owners who wish to elevate their homes. The addition of necessary retrofit improvements such as external

staircases can create or expand noncompliant setbacks, building coverage, and open space. Constructing these improvements may require a property owner to obtain a variance, which can be time consuming and costly.

This amendment is designed to reduce barriers to home elevation by waiving setback, building coverage, and open space requirements to accommodate the addition of ingress/egress structures (e.g. staircases, ramps) and elevated equipment platforms (e.g. HVAC platforms).

This amendment is modelled after a similar ordinance adopted by Monroe County. Drawing on that model, staff developed a draft ordinance tailored to the needs of the City. This draft which was further developed through a collaborative process which invited input from several City departments, divisions, boards, working groups, and public stakeholders, including:

- Utilities Department
- Sustainability Coordinator
- Building Department
- Floodplain Division
- Historic Preservation Division
- Legal Department
- Sustainability Team
- Fire Department
- Planning Board
- Monroe County
- Development Review Committee Staff
- Local contractors, architects, and land use professionals.

Staff also held a public workshop to solicit public input on the proposal. The workshop was attended by homeowners, contractors, engineers, county staff, City board members, and other stakeholders. This range of perspectives provided critical insight about the logistical, financial, site design, and other factors that influence the success of home elevation projects. The amendment proposed herein is the final product of this collaborative policy development process.

**Request / Proposed Amendment:** *\*Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading*

#### **Sec. 122-32. Additional regulations.**

- a) A noncomplying use, noncomplying 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. 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.

- b) A casual, intermittent, temporary or illegal use of land, building or structure shall not be sufficient to establish the existence of a noncomplying use, noncomplying density or noncomplying building or structure.
- c) Should any noncomplying building or structure be moved for any reason from its location, it shall thereafter conform to the regulations or the zoning district of its new location; provided, however, dwellings may be shifted within the boundaries of a lot of record to accommodate the elevation of a noncomplying building or structure to design flood elevation or higher.
- d) A noncomplying use shall not be extended, expanded, enlarged, or increased in intensity. This prohibition shall include but not be limited to the extension of a noncomplying use within a building or structure or to any other building or structure.
- e) A noncomplying use of a building or structure may be changed to another noncomplying use if the planning board finds that:
  - a. The new use is equally or more appropriate to the zoning district; and
  - b. The change of use would not intensify the use of the premises by increasing the need for parking facilities; increasing vehicular traffic to the neighborhood; increasing noise, dust, fumes or other environmental hazards; or by having an adverse impact on drainage.
- f) This article shall apply to signs, consistent with chapter 114.
- g) Enlargement and extensions: Noncomplying structures which are used in a manner conforming to the provisions of this chapter may be enlarged or expanded provided that the existing nonconformity is not further increased, nor any new nonconformity created.
- h) A lawfully-existing residential dwelling unit, not including mobile homes, may be retrofitted to elevate the structure above design flood elevation. Setback, building coverage, and open space requirements are waived to allow necessary improvements, in accordance with the following:
  - a. The lawfully-existing dwelling unit structure may maintain or improve its existing setbacks, provided the structure is elevated within the original (existing) footprint and three-dimensional building envelope of the structure or relocated to improve noncomplying setbacks.
  - b. Necessary improvements are limited to ingress/egress structures (stairs, ramps, landings, and elevators) and elevated accessory equipment platforms (mechanical, plumbing and electrical systems, appliances and components) and shall be constructed in accordance with Section 122-1145.

(Ord. No. 00-10, § 9, 6-6-2000; Ord. No. 08-04, § 26, 5-20-2008; Ord. No. 13-18, § 4, 10-16-2013; Ord. No. 22-25, § 2, 8-16-2022)

[...]

## Sec. 122-1145. Required yards.

- a) *Purpose, use and maintenance of yards.* The purpose of yards required in the land development regulations is to provide open space around and between structures for health, safety and aesthetic purposes. The purpose is also to prevent the location of structures within dedicated easements. All required yards and landscaped areas shall be planted and maintained in lawn, sod, or landscaping, including flower beds, shrubs, hedges or other generally accepted landscaping material approved by the city. Landscaping material, including trees, shall not obstruct the vision of the motoring public. The landscape requirements of article VI of chapter 108 shall further regulate development within all zoning districts, excepting single-family zoned districts.
- 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. For the calculation of building coverage, properties with structures that have overhangs and/or eaves may reduce building coverage by the width of the overhangs and/or eaves.
    - 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.
    - g. Encroachments into required yards are permitted to allow necessary improvements to a lawfully-existing dwelling unit being retrofitted by elevating the unit to meet or exceed design flood elevation. Setback, building coverage, and open space requirements are waived to allow necessary improvements. Necessary improvements are limited to:

1. Ingress/egress structures (stairs, ramps, landings, elevators, and similar.) The waiver provided shall be the minimum necessary to provide access to the structure that is in compliance with fire code requirements.
2. Accessory elevated platforms above base flood for equipment (mechanical, plumbing and electrical systems, appliances and components) situated at least two (2) feet from the side yard property line or at least five (5) feet from the rear yard property line. Accessory elevated platforms are limited to non-habitable space and shall not include elevated decks, patios, and similar structures.
3. The improvements shall be constructed to avoid off-site discharge of stormwater from the subject parcel in accordance with Article VIII of Chapter 108.

This provision shall not function to permit the construction alteration of any structure or improvement that obstructs clear and free passage of emergency responders or that otherwise conflicts with fire safety Code.

- 2) *Exceptions.* Typical play equipment, wires, lights, mailboxes, ornamental entry columns and gates, and outdoor furniture are not considered as encroachments.
- c) *Yards.* A yard shall be defined as an open space at grade between a building and the adjoining lot lines, unoccupied, open to the sky and unobstructed by any portion of a structure from the ground upward, except as otherwise provided in the land development regulations. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or the depth of a rear yard, the minimum horizontal distance between the lot line and the structure shall be used (a driveway or off-street parking area may be a portion of a "yard").
- 1) *Front yard.* Front yards shall be defined as the yard abutting a street (i.e., street frontage lot). The depth of required front yards shall be measured in such a manner that the yard established is a strip of at least the minimum width required by district regulations with its inner edge parallel with the front lot line. Such yard shall be measured from the nearest point of the building, including the roof, to the front (street frontage) property line. The front yard regulations shall apply to all lots fronting on a street.
  - 2) *Rear yard.* A rear yard is a yard extending across the rear of a lot between the side lot lines and which is the minimum horizontal distance between the rear of the main building or any projections thereof other than projections or encroachments specifically provided for in the land development regulations. For all corner lots, the rear yard shall be as indicated in subsection (c)(4) of this section for corner lots. The depth of required rear yards shall be measured in such a manner that the yard established is a strip of at least the minimum width required by district regulations with its inner edge parallel with the rear lot line. Such yard shall be measured from the nearest point of the building, including the roof, to the rear property line.
  - 3) *Side yard.* A side yard is a yard between the main building and the sideline of the lot and extending from the front lot line to the rear yard, which is the minimum horizontal distance between a side lot line and the side of the main building or any projections thereof. For all corner lots, the side yard shall be as

indicated in subsection (c)(4) of this section. The width of required side yards shall be measured in such a manner that the yard established is a strip of at least the minimum width required by district regulations with its inner edge parallel with the side lot line. Such yard shall be measured from the nearest point of the building, including the roof, to the side property line.

4) *Determining yards on corner lot.* On corner lots abutting two intersecting streets, the setbacks shall be measured as described in subsections (c)(1) through (3) of this section with the front, side and rear lot lines being determined as follows:

- a. One street frontage shall be declared a front yard.
- b. The other street frontage shall be a street side yard.
- c. The rear yard shall be the yard opposite the declared front yard.
- d. The remaining yard shall be the interior side yard.

(Ord. No. 97-10, § 1(2-5.9(E)), 7-3-1997; Ord. No. 22-25, § 2, 8-16-2022)

#### **Land Development Regulations Text Amendment Process:**

Planning Board Meeting:	March 12, 2024
City Commission (1st Reading):	TBD, 2022
Local Appeal Period:	30 days
City Commission (2nd Reading / Adoption):	TBD
Local Appeal Period:	30 days
DEO Review:	Up to 45 days
DEO Notice of Intent (NOI):	Effective when NOI posted to DEO site

#### **Analysis:**

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.

The Code 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.***

Comprehensive Plan Policy 1-1.1.14: Prepare for Future Sea Level Rise, calls on the City to take proactive steps to increase residential resiliency and adapt to sea level rise and storm surges. Policy 1-1.1.16 provides that the City shall adopt standards designed to regulate and to incentivize property owners to elevate structures, and adopt techniques in order to minimize risk to wind, flood, and storm surge damages.

This amendment would advance Comprehensive Plan Policies 1-1.1.14 and 1-1.1.16 by reducing barriers to home elevation.

Policy 1-1.11.4 provides the developer/owner of any site shall be responsible for managing on-site run-off. This amendment is consistent with that policy by requiring that necessary retrofit improvements be accompanied by a stormwater management plan that retains stormwater on-site.

***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.***

This amendment has the potential to impact every residential and residential-adjacent property in Key West.

The elevation of nonconforming structures can contribute shade/light impacts to adjacent properties. The construction of ingress/egress structures and elevated platforms within setbacks may also impact privacy, visual compatibility, and neighborhood character. However, the land use compatibility priorities must be balanced with the need to adapt to increasing flood risk.

The amendment requires that the construction of necessary retrofit improvements must be accompanied by stormwater management plans that retain stormwater on-site. This will minimize the impact of this amendment on stormwater infrastructure and neighborhood flooding.

***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 to the LDRs is not spot zoning or special treatment for any particular property.

***2. The singling out is not in the public interest but only for the benefit of the landowner.***

The proposed change does not affect the City's official zoning map nor the City's future land use map. The proposed amendment is directly in the public interest.

***3. The action is not consistent with the adopted comprehensive plan.***

The proposed amendment is consistent with Comprehensive Plan Policy 1-1.1.14: Prepare for Future Sea Level Rise.

***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 that proposed text amendment to the Land Development Regulations be APPROVED by the Planning Board.