AFFIDAVIT OF JAMES GILLERAN

STATE OF FLORIDA)
) **ss.**
COUNTY OF MONROE)

BEFORE ME, the undersigned authority duly authorized to administer oaths and take acknowledgements, personally appeared this day James Gilleran, who after first being duly cautioned and sworn, deposes and states as follows:

1. My name is James Gilleran. I am over eighteen (18) years of age, and I am qualified to execute this affidavit. I have personal knowledge of the facts set forth herein.

2. I previously served as member of the City of Key West Planning Board (the "Planning Board") for approximately 28 years.

3. During my tenure on the Planning Board, we regularly received variance applications involving nonconforming structures. Many of those applications sought approval for reconstruction, renovation, or other improvements that would reduce existing nonconformities (for example, by decreasing the degree of encroachment into a required setback). Even though the proposed work would decrease nonconformity and would not create any new noncompliant features, applicants were required to pursue formal variance relief.

4. Those variance applications imposed significant delays and costs on property owners, including application fees, professional fees, and related expenses, even when the proposals improved compliance with the land development regulations.

5. Based on that experience, I recommended and actively participated in the drafting, discussion, and adoption of an ordinance intended to address this situation, such ordinance was eventually adopted as Ordinance No. 22-25 by the City Commission of the City of Key West on May 19, 2022 attached as **Exhibit A** (the "Ordinance").

6. It was the intent of the Planning Board, at the time the Ordinance was supported and passed, that nonconforming structures could be reconstructed, renovated, or otherwise improved without the need for a variance, provided that the work reduced the noncompliance that made the structure nonconforming and no new noncompliant features or additional nonconformities would be created.

7. The Ordinance was designed and adopted for the purpose of allowing such improvements that decrease existing nonconformities to proceed without requiring variance applications, thereby reducing unnecessary costs and procedural burdens on applicants while still protecting the integrity of the zoning scheme.

8. It was my belief and intent that work that removed a structure that encroached onto another property to be built entirely on the property owner would be allowed under the Ordinance as it decreased a nonconformity.

9. I have reviewed the proposed plans for 712 Eaton Street which propose to move a noncompliant accessory structure encroaching on the adjacent property wholly on to 712 Eaton Street, but still located within the setback. This proposal meets the intent and purpose of the Ordinance to reduce non-conformities and should not require a variance.

FURTHER AFFIANT SAYETH NAUGHT.

JAMES GILLERAN, *Affiant*

Sworn and subscribed before me this 4th day of September, 2026, by ***James Gilleran***, who is ☑ personally known to me or ☐ who has produced N/A as identification, by means of ☑ physical presence or ☐ online notarization.

Notary Public

(Notary Seal)

Printed Name: Tori Solano

My Commission Expires: 4/8/2028

Notary Public State of Florida
Tori Elizabeth Solano
My Commission HH 490180
Expires 4/8/2028

ORDINANCE NO. 22-25

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 86 OF THE CODE OF ORDINANCES, ENTITLED "GENERAL PROVISIONS" BY AMENDING SECTION 86-9, ENTITLED "DEFINITION OF TERMS" TO AMEND THE DEFINITIONS '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

WHEREAS, the City of Key West finds that it is necessary to clarify when a variance is needed given that a variance request has been interpreted by City staff to be required at any time when a proposed structure or site improvement requires a relaxation of the terms of the Land Development Regulations due to a nonconformity with the Land Development Regulations even where such nonconformity is being reduced, albeit not coming into complete compliance; and,

WHEREAS, this interpretation of the Land Development Regulations has resulted in unnecessary and undue hardship to both applicants and City staff; and

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WHEREAS, the City of Key West finds that it is necessary to clarify that a variance is not needed when a proposed structure or site improvement is decreasing its existing nonconformity; and

WHEREAS, the City of Key West finds that it is necessary to facilitate the use of overhangs and gutters as stormwater management and rainwater catchment devices which should be allowed to protrude into required yards (setbacks) and should not be considered as building coverage; and

WHEREAS, the City of Key West further finds that land area beneath overhangs and gutters which is otherwise clear from ground to sky, should be considered open space and should not be included in impervious surface calculations; and

WHEREAS, the City of Key West finds that existing Land Development Regulations related to building coverage calculations are not well-suited to the island given that many historic and contemporary structures are elevated and the area beneath those structures, if kept clear, should be considered pervious given that they receive rainfall; and

WHEREAS, the City Commission for the City of Key West finds that all aforementioned changes to referenced Land Development Regulations serve the City's interests in

EXHIBIT A

promoting the health, safety and welfare of its residents, property owners and visitors alike.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 86-9 of the Code of Ordinances is hereby amended as follows*:

*(Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading. Added language is double underlined and ~~double struck through~~ at second reading.)

Sec. 86-9. - Definition of terms.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

{ . . . }

Building coverage means the percentage of lot area covered by buildings and including roofed porches, eaves, decks and similar structures as well as all structures, including structural elements such as raised decks, 30 inches or more

EXHIBIT A

above grade. 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. 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.

{ . . . }

Open space (green area) includes the gross area of the site less building coverage, parking surface, internal traffic circulation system, and other impervious surfaces, all of which should be open from the ground to the sky. Open space areas shall remain open and unobstructed to the sky that can be used for active or passive recreation purposes. For the calculation of open space, properties with structures that have overhangs and/or eaves may consider the areas beneath those overhangs and/or eaves, as open space, so long as these areas remain otherwise open and unobstructed to the sky. Parking and loading areas of any type shall not be allowed in any required open space.

{ . . . }

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Variance means a relaxation of the terms of the land development regulations where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the land development regulations would result in unnecessary and undue hardship. As used in the land development regulations a variance is authorized only for height, area, size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district. 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.

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Section 2: That Chapter 122 of the Code of Ordinances is hereby amended as follows*:

{ . . . }

Sec. 122-32. - Additional regulations.

(a) A nonconforming use, nonconforming 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.

{ . . . }

Sec. 122-1143. - Impervious surface requirements for all uses.

(a) *Definition; scope.* The term "impervious surface" is defined as that portion of the land which is covered by

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buildings, pavement, nonporous fill, or other cover through which water cannot penetrate. The impervious surface ratio requirement controls the intensity of development, by restricting the amount of the land covered by any type of impervious surface. The areas beneath elevated structures shall not be considered impervious, so long as those areas beneath the elevated structures are maintained fully permeable. Any skirting enclosing crawlspaces must be a fully permeable metal mesh or other material approved by the City Engineer. For the calculation of impervious surface, properties with structures that have overhangs and/or eaves may consider the areas beneath the overhangs and/or eaves, as pervious, so long as these areas remain otherwise free of buildings, pavement, nonporous fill, or other cover through which water cannot penetrate.

(b) *Calculation*. The impervious surface ratio (ISR) is calculated for the gross site by dividing the total impervious surface by the gross site area. Waterbodies are impervious and shall be included as such in the ISR calculation.

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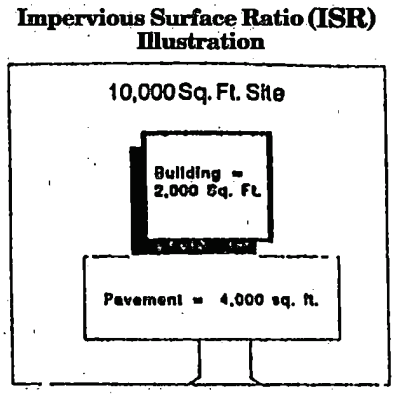

Impervious Surface Ratio (ISR) Illustration

ISR = Total Impervious Surface / Total Lot Area = 2,000 + 4,000 / 10,000 = 60%

{ . . . }

Sec. 122-1145. - Required yards.

{ . . . }

(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

EXHIBIT A

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

EXHIBIT A

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.

{ . . . }

Section 3: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 4: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

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Section 5: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission and approval by the Florida Department of Economic Opportunity, pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this 6th day of July, 2022.

Read and passed on final reading at a regular meeting held this 16th day of August, 2022.

Authenticated by the presiding officer and Clerk of the Commission on 25th day of August, 2022.

Filed with the Clerk August 25, 2022.

Mayor Teri Johnston	Yes
Vice Mayor Sam Kaufman	Yes
Commissioner Gregory Davila	Yes
Commissioner Mary Lou Hoover	Yes
Commissioner Clayton Lopez	Yes
Commissioner Billy Wardlow	Yes
Commissioner Jimmy Weekley	Yes

TERI JOHNSTON, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

EXHIBIT A

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)

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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.

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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.

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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.**

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PLANNING BOARD
RESOLUTION NO. 2022-026

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 '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

WHEREAS, the City of Key West finds that it is necessary to clarify when a variance is needed; and,

WHEREAS, the City also endeavors to facilitate the use of overhangs and gutters as stormwater management and rainwater catchment devices and provide appropriate credit with respect to building coverage, pervious surface, and open space vis a vis these devices; and

WHEREAS, the City observes that certain elevated structures allow for rainwater to permeate beneath their edges and pervious surface calculations should be modified and better suited to Key West architecture; and

WHEREAS, these amendments were reviewed pursuant to criteria in Section 90-522 of the Land Development Regulations; and

WHEREAS, these proposed amendments to the Land Development Regulations were presented to the Planning Board with a recommendation of approval, and some components postponed, at its regularly scheduled meeting on April 21, 2022; and

_____ Chairman

_____ Planning Director

EXHIBIT A

WHEREAS, components of these amendments postponed at the April 21, 2022, Planning Board hearing were subsequently discussed again and recommended for approval at the regularly scheduled May 19, 2022 Planning Board hearing; and

WHEREAS, the Planning Board finds that it is in the public's interest to amend the City's Land Development Regulations as proposed herein.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. That the proposed amendments to Chapter 86 and Chapter 122 of the Land Development Regulations are recommended for approval and the draft ordinance is attached.

Section 3. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Section 4. This Resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit or development order will be rendered to the Florida Department of Economic Opportunity. Pursuant to Chapter 73C-44, F.A.C., this permit or development order is not effective for forty-five (45) days after is has been properly rendered to the DEO with all exhibits and applications attached to or incorporated by reference to this approval; that within the forty-five (45) day review period the DEO can appeal the permit or development order to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement order.

_____ Chairman

_____ Planning Director

EXHIBIT A

Read and passed in part at a regular meeting held April 21, 2022, and additional components regarding variances read and passed this 19th day of May 2022.

Authenticated by the Chairman of the Planning Board and the Planning Director;

Sam Holland, Planning Board Chair — Date: 6/21/22

Attest:

Katie P. Halloran, Planning Director — Date: June 21, 2022

Filed with the Clerk:

Cheryl Smith, City Clerk — Date: 6-22-22

Chairman

Planning Director

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ORDINANCE NO._____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 86 OF THE CODE OF ORDINANCES, ENTITLED "GENERAL PROVISIONS" BY AMENDING SECTION 86-9, ENTITLED "DEFINITION OF TERMS" TO AMEND THE DEFINITIONS '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

WHEREAS, the City of Key West finds that it is necessary to clarify when a variance is needed given that a variance request has been interpreted by City staff to be required at any time when a proposed structure or site improvement requires a relaxation of the terms of the Land Development Regulations due to a nonconformity with the Land Development Regulations even where such nonconformity is being reduced, albeit not coming into complete compliance; and,

WHEREAS, this interpretation of the Land Development Regulations has resulted in unnecessary and undue hardship to both applicants and City staff; and

kpH 05/31/2022
6/21/22

EXHIBIT A

WHEREAS, the City of Key West finds that it is necessary to clarify that a variance is not needed when a proposed structure or site improvement is decreasing by at least 10% of the difference between the Code requirement and its existing nonconformity; and

WHEREAS, the City of Key West finds that it is necessary to facilitate the use of overhangs and gutters as stormwater management and rainwater catchment devices which should be allowed to protrude into required yards (setbacks) and should not be considered as building coverage; and

WHEREAS, the City of Key West further finds that land area beneath overhangs and gutters which is otherwise clear from ground to sky, should be considered open space and should not be included in impervious surface calculations; and

WHEREAS, the City of Key West finds that existing Land Development Regulations related to building coverage calculations are not well-suited to the island given that many historic and contemporary structures are elevated and the first clear eighteen (18) inches beneath those structures, if kept clear, should be considered pervious given that they receive rainfall; and

WHEREAS, the City Commission for the City of Key West

EXHIBIT A

finds that all aforementioned changes to referenced Land Development Regulations serve the City's interests in promoting the health, safety and welfare of its residents, property owners and visitors alike.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 86-9 of the Code of Ordinances is hereby amended as follows*:

*(Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading. Added language is double underlined and ~~double struck through~~ at second reading.)

Sec. 86-9. - Definition of terms.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

{ . . . }

Building coverage means the percentage of lot area covered by buildings and including roofed porches, eaves, decks and

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similar structures as well as all structures, including structural elements such as raised decks, 30 inches or more above grade. Overhangs/soffits that are no wider than 24 inches shall not be considered building coverage. 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.

{ . . . }

Open space (green area) includes the gross area of the site less building coverage, parking surface, internal traffic circulation system, and other impervious surfaces, all of which should be open from the ground to the sky. Open space areas shall remain open and unobstructed to the sky that can be used for active or passive recreation purposes except that permeable areas directly beneath overhangs/soffits that are no wider than 24 inches and are otherwise unobstructed to the sky shall also be considered open space.~~.~~ Parking and loading areas of any type shall not be allowed in any required open space.

{ . . . }

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Variance means a relaxation of the terms of the land development regulations where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the land development regulations would result in unnecessary and undue hardship. As used in the land development regulations a variance is authorized only for height, area, size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district. 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.

Section 2: That Chapter 122 of the Code of Ordinances is hereby amended as follows*:

{ . . . }

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Sec. 122-32. – Additional regulations.

(a) A nonconforming use, nonconforming 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 by at least 10% of the difference between the Code requirement and the existing condition.

{ . . . }

Sec. 122-1143. – Impervious surface requirements for all uses.

(a) *Definition; scope.* The term "impervious surface" is defined as that portion of the land which is covered by buildings, pavement, nonporous fill, or other cover through which water cannot penetrate. The impervious surface ratio requirement controls the intensity of development, by restricting the amount of the land covered by any type of impervious surface. The first eighteen (18") inches

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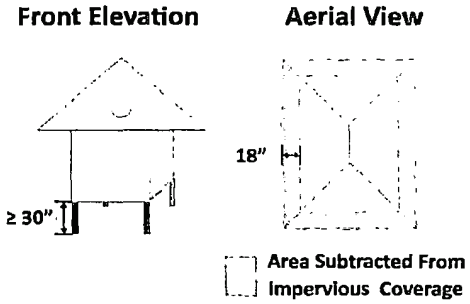
beneath structures elevated above 30" from finished grade shall not be considered impervious, so long as those eighteen inches are maintained fully permeable and open to receive rainfall. Any skirting enclosing crawlspaces must be a fully permeable metal mesh or other material approved by the City Engineer. Permeable areas directly beneath overhangs/soffits that are no wider than 24 inches shall not be included in impervious surface calculations.



Pervious surface beneath elevated structure illustration

(b) *Calculation.* The impervious surface ratio (ISR) is calculated for the gross site by dividing the total impervious surface by the gross site area. Waterbodies are

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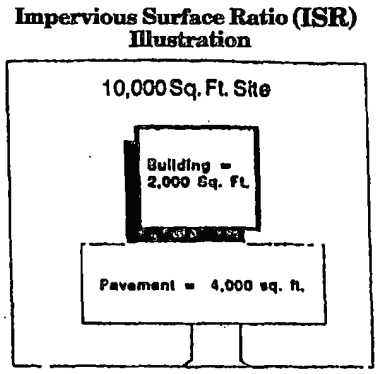
impervious and shall be included as such in the ISR calculation.



Impervious Surface Ratio (ISR) Illustration

ISR = Total Impervious Surface / Total Lot Area = 2,000 + 4,000 / 10,000 = 60%

{ . . . }

Sec. 122-1145. - Required yards.

{ . . . }

(b) *General encroachments into required yards.* Encroachments into required yards shall be in compliance with the following:

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(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.

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d. Accessory parking may be located in a required front, rear or side yard.

e. Overhangs/soffits that are no wider than 24 inches shall not be considered building coverage.

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.

{ . . . }

Section 3: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

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Section 4: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 5: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission and approval by the Florida Department of Economic Opportunity, pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2022.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2022.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2022.

Filed with the Clerk _____, 2022.

Mayor Teri Johnston	_____
Vice Mayor Sam Kaufman	_____
Commissioner Gregory Davila	_____
Commissioner Mary Lou Hoover	_____
Commissioner Clayton Lopez	_____

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Commissioner Billy Wardlow _____

Commissioner Jimmy Weekley _____

_____
TERI JOHNSTON, MAYOR

ATTEST:

_____
CHERYL SMITH, CITY CLERK

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THE CITY OF KEY WEST
PLANNING BOARD
Staff Report

To:	Chairman and Planning Board Members
From:	Katie P. Halloran, Planning Director
Meeting Date:	May 19, 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 "Variance"; by amending Chapter 122 of the Code of Ordinances entitled, "Zoning" by amending Section 122-32 by clarifying when a variance is needed; Providing for severability; Providing for repeal of inconsistent provisions; Providing for an effective date.
Request:	The proposed text amendments to the City's Code of Ordinances are intended to clarify the circumstances that require a variance.
Applicant:	City of Key West

Background:

Portions of this proposed ordinance were approved during the April Planning Board hearing. The variance component was postponed to this May hearing. New data and analysis is provided below in italicized font.

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 professional, and City staff. In addition, 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.

Multiple aspects of the City's Land Development Regulations (LDRs) 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

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hire an architect or planner to create site plans and shepherd their applicants through the review process, which can be costly and time consuming.

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

It is the opinion of Planning Staff that applicants seeking to alter site features that would effectively result in an improvement of non-compliance of dimensional standards by at least 25%, should not need a variance. Planning staff find that this percentage provides applicants an incentive to design site features in a manner more consistent with the LDRs. Also, this approach is likely to be perceived as more fair for neighbors that may be in compliance today, but are required to seek a variance for even a small exceedance of a site development standard. Others have opined that any improvement in noncompliant site features should be permitted without a variance. This matter should be discussed and final policy recommendations should be determined by the Planning Board.

In response to Planning Board member requests for additional data regarding the effect of the proposed variance amendments, Planning staff have calculated how proposed language would have affected variance items on the April Planning Board agenda. This data is provided on the following page in the graphic entitled, "2022 Variance Case Studies for Potential Code Amendment". In summary, given that most applicants were not improving setbacks, and the assumed meaning of the proposed text amendment is that all aspects of the site features altered must improve, the large majority of applications would not have been affected by either version of the proposed variance text amendments. For example, several applicants proposed to reduce the size (square footage) of noncompliant features, but did not endeavor to reduce their encroachment into setbacks. As shown below, both versions of the proposed Code change would only have taken one variance item off the April Planning Board agenda. However, if future applicants were to modify proposed designs to improve dimensional standards and setbacks, they could avoid variances.

Also, importantly, the text amendments recommended during the April 21, 2022, Planning Board meeting provide substantial additional flexibility for property owners and development industry professionals. For structures with overhangs (up to 24" wide), if the area below those overhangs is otherwise clear from ground to sky, the City would credit that area as open space and pervious, and would not consider that area to be building coverage.

> *For example: for a 5,000 square foot lot with a 20' by 50' structure with 24" wide overhangs, this results in a potential reduction (credit) of impervious surface and building coverage of 26.4% or 264 square feet. It also allows for an addition of 264 square feet of open space. This could allow for some projects to avoid variances.*

In addition, during the April 21, 2022, Planning Board meeting, the Board voted to include new Code language that would allow for the first eighteen inches beneath structures elevated at least thirty inches from grade, to count towards pervious surface. (These areas must be otherwise pervious and skirting cannot obstruct rain or stormwater). These provisions would reduce the impervious surface calculations for properties with elevated structures.

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For example: for a 5,000 square foot lot with a 20' by 50' structure, elevated at least 30" from grade, the impervious surface total would be reduced from 1,000 square feet to 799 square feet; this is a credit of more than 20%.

2022 Variance Case Studies for Potential Code Amendment

Yes	Variance Requirement **Eliminated**
No	Variance Requirement **Not Eliminated**
	Not a part of variance request

Any improvement eliminates variance requirement					
Project Address	**Variance Eliminated?**				
	Building Coverage	Impervious Surface	Open Space	Setbacks	**Project Overall**
111 Olivia Street	No	Yes	Yes	No	**No**
718 Southard Street	Yes	Yes	No	No	**No**
1103 Watson Street	No	Yes			**No**
205 Julia Street	No			No	**No**
1202 Royal Street	Yes	Yes		No	**No**
819 Georgia Street	Yes	Yes	Yes	No	**No**
529 Eaton Street	Yes	Yes	Yes	Yes	**Yes**
1010-1012 Olivia Street	No	No		No	**No**
1311 Grinnell Street	Yes	Yes	Yes	No	**No**
532 Margaret Street	Yes	Yes	Yes	No	**No**
Percent of projects that avoid variance with proposed change					**10%**

25% improvement eliminates variance requirement					
Project Address	**Variance Eliminated?**				
	Building Coverage	Impervious Surface	Open Space	Setbacks	**Project Overall**
111 Olivia Street	No	No	Yes	Yes	**No**
718 Southard Street	Yes	Yes	No	No	**No**
1103 Watson Street	No	Yes			**No**
205 Julia Street	No			No	**No**
1202 Royal Street	Yes	Yes		No	**No**
819 Georgia Street	Yes	Yes	Yes	No	**No**
529 Eaton Street	Yes	Yes	Yes	Yes	**Yes**

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1010-1012 Olivia Street	No	No		No	**No**
1311 Grinnell Street	Yes	No	Yes	No	**No**
532 Margaret Street	No	No	Yes	Yes	**No**
Percent of projects that avoid variance with proposed change					**10%**

In summary, if a 5,000 square foot property had a 20 by 50 foot structure, elevated at least 30" above grade, with 24" wide gutters, the credits provided given the April 21, 2022, Planning Board recommended Land Development Regulation amendments would be as follows. This is just an example, and does not contemplate other likely site features such as driveways sheds, or other accessory structures.

- *Building coverage credit of up to 26.4% (due to overhang amendment)*
- *Open space credit up to 26.4% (due to overhang amendment)*
- *Impervious surface credit up to 46.4% (26.4% for overhangs + 20% for elevated structure)*

Planning staff believe that many properties will be able to avoid variances given the combined credits to site development standards that would result from approval of the April Planning Board recommendations. *Planning staff would support a six month period to review the effects of the previously approved text amendments for overhangs and elevated structures that will provide substantial credits toward open space, pervious/impervious surface, and building coverage. This period could be used to analyze how these changes, if approved, affect the number of variances City-wide.*

Request / Proposed Amendment: **Coding: Added language is **underlined**; deleted language is ~~**struck through**~~ at first reading.* **Previously approved text amendments are not shown below but are provided in the draft ordinance which combines potential April and May Planning Board text amendment provisions.**

{ . . . }

Sec. 86-9. – Definition of terms.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

{ . . . }

Variance means a relaxation of the terms of the land development regulations where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the land development regulations would result in unnecessary and undue hardship. As used in the land development regulations a variance is authorized only for height, area, size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district. 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 site noncompliance by at least 25% of the difference between the Code requirement and the existing condition.

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{ . . . }

Sec. 122-32. – Additional regulations.

(a) A nonconforming use, nonconforming 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 site noncompliance by at least 25% of the difference between the Code requirement and the existing condition.

{ . . . }

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

Land Development Regulations Text Amendment Process:

Planning Board Meeting:	April 21, 2022 (postponed) May 19, 2022
City Commission (1st Reading):	TBD, 2022
Local Appeal Period:	30 days
City Commission (2nd Reading / Adoption):	TBD, 2022
Local Appeal Period:	30 days
DEO Review:	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.

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

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on the Comprehensive Plan. The zoning must be consistent with the Comprehensive Plan.

The proposed Land Development Regulation amendments will facilitate the preservation of historic structures and the provision of appropriate housing for existing and future City residents. These text amendments will also allow for orderly and efficient redevelopment of existing properties in the City of Key West. If a percentage of improvement is included in the variance component of these amendments, this ordinance may further incentive redevelopment to result in improving site compliance with existing dimensional standards in the Land Development Regulations. Also, encouragement of gutter systems and the elevation of structures *(related to text amendments recommend at the April 21, 2022, Planning Board hearing)* is consistent with multiple goals, objectives and policies in the Comprehensive Plan that seek to ensure the City is preparing for increased impacts associated with climate change, to include more intense rainfall events, additional flooding and sea level rise.

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.

Residential, commercial and mixed-use property owners will benefit from these proposed text amendments. The increased flexibility afforded through these changes will provide equal benefit property owners City-wide. There is no anticipated effect on infrastructure.

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 would be consistent with the Comprehensive Plan as outlined 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.

RECOMMENDATION:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land

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Development Regulations, recommends that Planning Board approve **Option 1.**

Option 1: Approve this text amendment as written herein : . . . *a structure or site improvement may be altered without the need for a variance if the alteration decreases site noncompliance by at least 25% of the difference between the Code requirement and the existing condition.*

Option 2: Approve this text amendment as originally proposed by Legal staff: . . . *a structure or site improvement may be altered without the need for a variance if the alteration decreases site noncompliance.*

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DEPARTMENT OF ECONOMIC OPPORTUNITY
Division of Community Development
DEO Final Order No. DEO-22-063

STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

In re: AMENDMENT TO THE CITY OF KEY WEST, FLORIDA, LAND DEVELOPMENT REGULATIONS ADOPTED BY CITY OF KEY WEST, FLORIDA ORDINANCE NO. 22-25

FINAL ORDER
APPROVING CITY OF KEY WEST ORDINANCE NO. 22-25

The Department of Economic Opportunity ("Department") hereby issues its Final Order, pursuant to Section 380.05(6), Florida Statutes, approving land development regulations adopted by the City of Key West, Florida ("City"), by Ordinance No. 22-25 ("Ordinance").

FINDINGS OF FACT

1. Section 380.0552, Florida Statutes, and Rule 28-36.002, Florida Administrative Code, designate the City as an area of critical state concern.

2. The City adopted the Ordinance on August 25, 2022 and rendered it to the Department on September 20, 2022.

3. The Ordinance amends the definitions of *Building coverage*, *Open space (green area)*, and *Variance* within Chapter 86 of the City's Land Development Regulations. The definition of *Building coverage* is amended to allow overhangs and/or eaves, gutters, and downspouts to be removed from consideration in determining building coverage and allow gutters and downspouts to protrude into setbacks so long as they remain within the parcel's property lines. The definition of *Open space (green area)* is amended to allow the unobstructed land area below overhangs and/or eaves to be considered open space. Finally, the definition of *Variance* is amended to clarify that variances are not needed when proposed structures or site improvements are being made to decrease an existing nonconformity; however, construction or alteration of structures that obstructs free passage of emergency responders or otherwise conflicts with the fire safety code is not permitted.

4. The Ordinance also amends Chapter 122 of the City's Land Development Regulations by revising the provisions related to the amended definitions of Chapter 86 for consistency. Additionally, the Ordinance amends the definition of "impervious surface" within Section 122-1143 to clarify that areas beneath elevated structures will not be considered impervious so long as they are kept fully permeable and to require that skirting or enclosing crawlspaces be a fully permeable material approved by the City Engineer.

CONCLUSIONS OF LAW

5. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. *See* Section 380.05(6), Florida Statutes.

6. "Land development regulations" include local zoning, subdivision, building, and other regulations controlling the development of land. Section 380.031(8), Florida Statutes. The regulations adopted by the Ordinance are land development regulations.

7. The Ordinance is consistent with the City's Comprehensive Plan generally, as required by Section 163.3177(1), Florida Statutes, and is specifically consistent with Objective 1-1.2.1 and Policy 1-1.2.1.

8. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for that area. *See* Section 380.05(6), Florida

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Statutes. The Principles for Guiding Development for the City are set forth in Rule 28-36.003, Florida Administrative Code.

9. The Ordinance is consistent with the Principles for Guiding Development for the City as a whole, and specifically furthers the following principles:

(1)(a) Strengthen local government capabilities for managing land use and development; and

(h) Protection of the public health, safety, welfare and economy of the City of Key West, and the maintenance of Key West as a unique Florida resource.

WHEREFORE, IT IS ORDERED that the Department finds that Ordinance No. 22-25 is consistent with the City's Comprehensive Plan and the Principles for Guiding Development for the City and is hereby APPROVED.

This Final Order becomes final 21 days after publication in the Florida Administrative Register unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.

/s/ James D. Stansbury

James D. Stansbury, Bureau Chief, Bureau of Community Planning and Growth, Department of Economic Opportunity

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS FINAL ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES.

FOR THE REQUIRED CONTENTS OF A PETITION CHALLENGING AGENCY ACTION, REFER TO SUBSECTIONS 28-106.104(2), 28-106.201(2), AND SECTION 28-106.301, FLORIDA ADMINISTRATIVE CODE.

DEPENDING ON WHETHER OR NOT MATERIAL FACTS ARE DISPUTED IN THE PETITION, A HEARING WILL BE CONDUCTED PURSUANT TO EITHER SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, OR SECTIONS 120.569 AND 120.57(2), FLORIDA STATUTES.

ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY: AGENCY CLERK, DEPARTMENT OF ECONOMIC OPPORTUNITY, OFFICE OF THE GENERAL COUNSEL, 107 EAST MADISON ST., MSC 110, TALLAHASSEE, FLORIDA 32399-4128, FAX: (850)921-3230

YOU WAIVE THE RIGHT TO ANY ADMINISTRATIVE PROCEEDING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the following persons by the methods indicated this 17 day of November, 2022.

/s/ Karis De Gannes, Agency Clerk, Department of Economic Opportunity, 107 East Madison Street, MSC 110, Tallahassee, FL 32399-4128

By U.S. Mail:

The Honorable Teri Johnston, Mayor, City of Key West, P.O. Box 1409, Key West, FL 33041-1409

Cheri Smith, City Clerk, City of Key West, P.O. Box 1409, Key West, FL 33041-1409

Katie Halloran, Director, City of Key West Planning Department, P.O. Box 1409, Key West, FL 33041-1409

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