

ORDINANCE NO. 08-04

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 90 "ADMINISTRATION", SECTIONS 90-52, SECTIONS 90-~~5596~~, 90-97 90-182, 90-391, 90-392, 90-393, 90-394, 90-395, 90-397, 90-426, 90-427, 90-487 AND 90-641; AMENDING CHAPTER 102 "HISTORIC PRESERVATION", SECTION 102-3; AMENDING CHAPTER 106 "PERFORMANCE STANDARDS", SECTIONS 106-51 AND 106-52; AMENDING CHAPTER 108 "PLANNING AND DEVELOPMENT", SECTIONS 108-574, 108-987, AND 108-1061; AMENDING CHAPTER 110 "RESOURCE PROTECTION", SECTIONS 110-260 AND 110-337; AMENDING CHAPTER 114 "SIGNS", SECTION 114-140; AMENDING CHAPTER 122, SECTIONS 122-28, 122-30, 122-32, 122-234, 122-1440, 122-1469, AND 122-1470; PROVIDING FOR THE REVIEW AND DETERMINATION OF CERTAIN VARIANCE REQUESTS TO BE ADMINISTERED BY THE PLANNING BOARD; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Board of Adjustment has recommended the review and determination of variance requests be administered by the Planning Board; and

WHEREAS, the Key West Planning Board at its meeting of February 21, 2008, found consistency with the Key West Comprehensive Plan; and

WHEREAS, the City Commission finds that an administrative variance procedure promotes the health, safety and welfare of the citizens of Key West.

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

Section 1: That section 90-52 of the Code of Ordinances is hereby amended as follows:

Sec. 90-52 Membership, terms and removal.

(a) The planning board shall consist of ~~five~~ seven members. The five members serving on the board upon adoption of this ordinance shall continue in office, subject to the other provisions in this code, until the expiration of their term. The five members serving on the planning board upon adoption of this ordinance and the two additional members shall be assigned to individual Commission members via a lottery system. The two commission members drawing the two new board seats shall expeditiously appoint a member to comprise the new seven person board. Thereafter the appointments shall be as specified in paragraph (b) below. All planning board members must be residents of the city and shall remain city residents for the duration of their memberships on the board.

(b) The mayor and each city commissioner shall appoint one member of the board. The term of the board member shall be for a period of three years except that appointments to

*(Coding: Added language is underlined; deleted language is ~~struck through~~. Added language based on changes from the first reading is double underlined and deleted language based upon first reading is ~~struck through twice~~.)
replace a member vacating before the expiration of the term

~~shall be for the unexpired term of that member. Board members may be reappointed at the expiration of their term. Members shall be appointed by the mayor with the advice and consent of the city commission. Appointments shall be for a term of three years and shall be made on a staggered basis with no more than two appointments per year, except that appointments to replace a vacating member, who is vacating midterm, shall be for the unexpired term of the member. The terms of all appointments to the planning board shall expire on the last day of February of the applicable year. The terms of board members sitting as of January 1, 2004, shall be extended to the last day of February following the normal expiration date.~~

Section 2: That section 90-55 of the Code of Ordinances is hereby amended as follows*:

Sec. 90-55. Functions and powers.

(a) The planning board shall have the power and authority to carry out the duties and responsibilities conferred upon it by the land development regulations consistent with F.S. § 163.3174 and shall perform these duties in the best interests of the health, safety, and welfare of the citizens of the city. The planning board shall have the following functions:

* * * *

(7) Review and authorize in specific cases a

variance from the terms of the land development regulations where the requirements of section 90-394 are met.

~~(7)~~(8) Review subdivision proposals submitted pursuant to chapter 118 and street dedication and reconfiguration proposals and make recommendations to the city commission regarding compliance with applicable laws and ordinances;

~~(8)~~(9) Conduct such public hearings as may be required to carry out the functions set forth in this subsection; and

~~(9)~~(10) Pursuant to F.S. § 163.3174(4)(d), perform any other duties which are assigned to the planning board by the city commission or by general or special law.

Section ~~23~~: That section 90-97 of the Code of Ordinances is hereby amended as follows:

Sec. 90-97. Powers.

The board of adjustment may authorize in specific cases a variance from the ~~terms~~ maximum height requirements of the land development regulations and Article 1.05 of the Charter of the City of Key West where the requirements of section 90-394 are met. In addition, the ~~board of adjustment~~ city commission shall hear all appeals to the final orders and administrative and enforcement decisions of the chief building official.

Section ~~34~~: That section 90-182 of the Code of

Ordinances is hereby amended as follows:

Sec. 90-182. Powers and Duties.

The tree commission shall have the power and responsibility to carry out the duties conferred upon it by this Code of Ordinances and shall perform the duties in order to protect and enhance the health, growth, and planting of trees in the city. Findings of the tree commission regarding destruction or damage to trees are enforced through the special master. The only appealable decisions of the tree commission concern permits. These decisions may be appealed to the ~~board of adjustment~~ city commission.

Section 45: That section 90-391 of the Code of Ordinances is hereby amended as follows:

Sec. 90-3919. Variances.

An owner or his authorized agent may request a variance from the land development regulations as provided for in this division. The ~~board of adjustment~~ planning board shall have the quasi-judicial power necessary to grant such variances that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the land development regulations would result in unnecessary hardship. A variance from the terms of the land development regulations shall not be granted by the ~~board of adjustment~~ planning board unless and until the requirements of this division are met.

Section 56: That section 90-392 of the Code of Ordinances is hereby amended as follows:

Sec. 90-392. Application.

* * * *

(b) Upon receipt of an application for a variance, the ~~board of adjustment~~ planning board shall hold a public hearing upon the application in accordance with the procedures cited in section 90-393 and shall render an order granting or denying such application. In granting such application the ~~board of adjustment~~ planning board must make specific affirmative findings respecting each of the matters specified in section 90-394 and may prescribe appropriate conditions and safeguards, including requirements in excess of those otherwise required by these land development regulations, which shall become a part of the terms under which a development order may be issued.

Section 67: That section 90-393 of the Code of Ordinances is hereby amended as follows:

Sec. 90-393. Notice and hearing procedure.

In considering and acting upon applications for a variance from the land development regulations, the following procedures shall be observed:

(1) *Date of hearing.* The hearing shall be held by the ~~board of adjustment~~ planning board at a date and time fixed by the chairperson of the ~~board of adjustment~~ planning board.

(2) *Notice.* ~~The city clerk shall provide notice as provided in~~ Notice shall be provided as required by division 2 of article VIII of this chapter.

(3) *Appearance and presentation.* At any hearing upon any matter subject to this division, the applicant or his authorized representative seeking action by the ~~board of adjustment~~ planning board and any other party desiring to be heard upon the application may appear in person, by agent or by attorney. The applicant shall be entitled to make an initial presentation respecting the application and, at the conclusion of presentations or statements by all other parties, shall be entitled to offer a statement in rebuttal to such presentations if the applicant so desires. The chairperson of the ~~board of adjustment~~ planning board may, at the commencement of the hearing upon each application or at any time during such hearing, require that parties desiring to make a presentation identify themselves and may specify the time to be allowed each such party within which to make such presentation.

Section 78: That section 90-394 of the Code of Ordinances is hereby amended as follows:

Sec. 90-394. Action.

Action by the ~~board of adjustment~~ planning board upon any matter subject to the provisions of this division shall be announced by the chairperson of the board immediately following

the vote determining such action and shall thereafter be embodied in a written order prepared by the ~~city clerk~~ planning director and executed by the chairperson of the ~~board of adjustment~~ planning board and filed with the city clerk. Such written order shall be incorporated into the minutes of the meeting at which such action occurred. The board shall enter its order denying such application, specifying the reasons therefore, or granting such application, in whole or in part, under such terms and conditions as the board shall determine appropriate.

The ~~board of adjustment~~ planning board shall not grant a variance to permit a use not permitted by right or as a conditional use in the zoning district involved or any use expressly or by implication prohibited by the terms of the ordinance in the zoning district. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and no permitted use of lands, structures, or buildings in other zoning districts shall be considered grounds for the authorization of a variance. No variance shall be granted that increases or has the effect of increasing density or intensity of a use beyond that permitted by the comprehensive plan or these LDRs.

Section 89: That section 90-395 of the Code of Ordinances is hereby amended as follows:

Sec. 90-395. Standards, findings.

(a) Standards for considering variances. Before any variance may be granted, the ~~board of adjustment~~ planning board must find all of the following:

* * * *

(b) The ~~board of adjustment~~ planning board shall make factual findings regarding the following:

* * * *

Section 910: That section 90-397 of the Code of Ordinances is hereby amended as follows:

Sec. 90-397. Reapplication.

Reapplication for the same or similar piece of property requesting the same or similar variance from the land development regulations cannot be made within two years from the date the application was originally denied by the board of adjustment or planning board. An applicant may, however, submit a substantially different application or reapply based on changed conditions and/or the advent of new information which have a substantial impact on material issues.

Section 4011: That section 90-426 of the Code of Ordinances is hereby amended as follows:

Sec. 90-426. Scope.

With the exception of variances granted pursuant to this

division, tThe final decisions of the planning board may be appealed to the city commission. Variances granted pursuant to this division may be appealed in the manner provided by law to the county Circuit Court. Final decisions of the historic architectural review commission may be appealed to a special master, as provided by the Charter. Final orders and administrative and enforcement decisions by the city planner and chief building official may be appealed to the ~~board of adjustment~~ city commission. Appeals of permit decisions of the tree commission may only be addressed by ~~the board of adjustment~~ the city commission.

Section 1112: That section 90-427 of the Code of Ordinances is hereby amended as follows:

Sec. 90-427. Final decisions of planning board.

Decisions of the planning board shall be considered final in actions regarding minor development plan review as defined in sections ~~108-162 and 108-163~~ 108-91, and in review of conditional uses proposed as part of a minor development plan approval, and in review of variance requests. Decisions of the planning board regarding major development plan review, including proposed conditional uses that are a part of the major development plan, as well as subdivision of land, change in the land development regulations, change in the comprehensive plan, and/or other decisions of the planning

board, shall be advisory to the city commission.

Section ~~12~~13: That section 90-487 of the Code of Ordinances is hereby amended as follows:

Sec. 90-487. Powers and duties of city commission.

* * * *

(g) *Taking other actions necessary to implement the land development regulations.* The city commission may take such other action not delegated to the planning board, historic architectural review commission, board of adjustment, special master, hearing officer, or other entities as the city commission may deem desirable and necessary to implement the provisions of the comprehensive plan and the land development regulations.

Section ~~13~~14: That section 90-641 of the Code of Ordinances is hereby amended as follows:

Sec. 90-641. Scope.

Except as required by F.S. §§ 163.3181(3)(a), 163.3225(2), and 166.041(3)(a), (c), the city shall provide notice for public hearings on variances, board of adjustment actions, planning board actions, appeals, vacation of public easements or rights-of-way, conditional uses, development plans, subdivision plans, planned redevelopment and development plans, as provided in this division.

Section ~~14~~15: That section 102-3 of the Code of

Ordinances is hereby amended as follows:

Sec. 102-3. Appeals; Variances.

(a) *Appeals from historic architectural review commission.* Appeal from final rulings of the historic architectural review commission shall be made pursuant to division 4 of article V of chapter 90.

(b) *Variance.* A variance from the term "architecturally similar" as defined in section 102-1, which requires that an architecturally similar building shall have like characteristics in terms of location or setbacks on a lot, can be granted by the ~~board of adjustment~~ planning board after notice and hearing as for other zoning variances and after the board's consideration of the recommendation of the historic architectural review commission favoring or opposing the variance as provided in division 3 of article V of chapter 90.

Section 106-51: That section 106-51 of the Code of Ordinances is hereby amended as follows:

Sec. 106-51. Prohibited.

The outdoor display of merchandise in the historic zoning districts of the city is prohibited unless an exception is granted by the ~~board of adjustment~~ planning board, as provided in section 106-52. Merchandise shall mean any good or product or sample or likeness of any good or product offered for sale by a business. Outdoor display shall mean the placement of

merchandise on the exterior of a business structure, including a wall, roof, overhang, entranceway or window, or within a required setback area. For a cart, booth or arcade, outdoor display shall mean the placement of merchandise, either freestanding or by draping it, on the exterior or beyond the vertical plane of the cart, booth or arcade. In no event shall outdoor display be permitted in the public right-of-way. The prohibitions of this section shall not apply to automotive, bicycle and moped rentals and sales and to plant sales and shall not apply to art festivals or other special events duly permitted by the city commission.

Section 1617: That section 106-52 of the Code of Ordinances is hereby amended as follows:

Sec. 106.52. Exceptions.

Exceptions to section 106-51 may be granted by the ~~board of adjustment~~ planning board as follows:

(1) Factors favoring the exception are as follows:

* * * *

(2) Factors disfavoring the exception are as follows:

* * * *

(3) Exceptions to section 106-51 granted by the ~~board of adjustment~~ planning board shall be for a term of no more than 60 consecutive months and may be granted subject to terms and

conditions specified by the board in order to protect the architectural heritage and visual character of the district. Applications for exceptions shall be accompanied by a nonrefundable fee of \$100.00 to cover the costs to the city of processing the application and investigating the applicant.

(4) Exceptions to section 106-51 may be revoked by the ~~board of adjustment~~ planning board after notice and hearing on grounds that:

* * * *

(5) The city manager or the ~~board of adjustment~~ planning board, upon written petition by any city resident, may cause issuance of a notice of hearing on revocation of an exception, which notice shall be issued by the city clerk.

Section 4718: That section 108-574 of the Code of Ordinances is hereby amended as follows:

Sec. 108-574. Substitution of bicycle parking spaces.

An applicant for development plan approval pursuant to article II of this chapter may file a request for a variance to substitute additional bicycle parking (i.e., bicycle parking in excess of that required pursuant to section 108-572). The ~~board of adjustment~~ planning board may grant such variance upon a finding that such additional bicycle parking would be beneficial and would satisfy the specific conditions of sections 90-394 and 90-395. However, hardship conditions shall

not be a mandatory condition of obtaining the subject variance. If the ~~board of adjustment~~ planning board determines the requested bicycle parking is compliant with the referenced criteria, the ~~board of adjustment~~ planning board shall require that such additional parking be located on a site within 100 feet of the subject site. Furthermore, in determining the appropriate substitution, four bicycle parking spaces shall be equivalent to one motorized vehicle parking space. All such approved bicycle parking spaces shall satisfy pavement, maintenance, and construction specifications of subdivision II of this division as well as bicycle parking, design, lighting, and security criteria of section 108-643.

Section 1019: That section 108-987 "footnotes" of the Code of Ordinances is hereby amended as follows:

Sec. 108-97. Findings.

* * * *

TABLE INSET:

Footnotes:

(1) The equivalent single-family unit factors are based on the ratio of the average number of vehicles per unit based on the 1990 U.S. Census for the respective residential structure types divided by the vehicles per single-family units (i.e., 1.08 vehicles per unit). The computations are as follows:

(a) Single-family: $1.8/1/8=1.00$

(b) Accessory apartment or single room occupancy (SRO): $1.00/1.80=.55$. The Florida Department of Community Affairs approved the estimated average vehicles per accessory unit or single room occupancy (SRO) as one vehicle per accessory unit or SRO. Cross reference Comprehensive Plan Policy 1-2.1.3. Accessory units and single room occupancies (SROs) shall be affordable; restricted to occupancy by permanent residents; and cannot be sold separately as a condominium. When an accessory unit occupancy permit is originally initiated, the principal unit must be owned and occupied by a permanent resident. An accessory unit or SRO cannot take up more than 40 percent of the principal structure nor can it exceed 600 square feet and the minimum size shall be 300 square feet. The maximum threshold shall be an interim standard which may be increased, if prior to the remedial plan adoption date, an analysis of the city's apartments concludes that the typical one-bedroom apartment is more than 800 square feet and department of community affairs agrees that the 800 square feet threshold is not inconsistent with the Monroe County hurricane evacuation model. SROs by definition shall be restricted to one room efficiencies. No accessory unit shall have more than one

bedroom unless an additional bedroom is approved as a variance by the ~~board of adjustment~~ planning board. If such variance is approved, the total square footage shall not exceed 600 square feet. The permit allocation system shall be coordinated with the county's analysis of evacuation clearance times in order to maintain or decrease the standard time for such clearance. The city shall include the adjusted accessory unit and SRO impacts through 2010 in the annual allocation of units in order to reflect the impact of these units on public facilities.

* * * *

Section 1920: That section 108-1061 of the Code of Ordinances is hereby amended as follows:

Sec. 108-1061. Accessory units and single room occupancies.

Accessory units and single room occupancies (SROs) pursuant to the terms of the stipulated settlement agreement and comprehensive plan policy 1-2.1.3 shall be affordable, restricted to occupancy by permanent residents, and cannot be sold separately as a condominium. When an accessory unit occupancy permit is originally initiated, the principal unit must be owned and occupied by a permanent resident. An accessory unit or single room occupancy cannot take up more than 40 percent of the principal structure nor can it exceed

600 square feet, and the minimum size shall be 300 square feet. The maximum threshold shall be an interim standard which may be increased if, prior to the remedial plan adoption date, an analysis of the city's apartments concludes that the typical one-bedroom apartment unit is more than 800 square feet and the state department of community affairs agrees that the 800-square-foot threshold is not inconsistent with the county hurricane evacuation model. Single room occupancies by definition shall be restricted to one-room efficiencies. No accessory unit shall have more than one bedroom unless an additional bedroom is approved as a variance by the ~~board of adjustment~~ planning board. If such variance is approved, the total square footage shall not exceed 600 square feet. The permit allocation system shall be coordinated with the county's analysis of evacuation clearance times in order to maintain or decrease the standard time for such clearance. The city shall include the adjusted accessory unit and single room occupancy impacts through 2010 in the annual allocation of units in order to reflect the impact of these units on public facilities.

Section 2021: That section 110-260 of the Code of Ordinances is hereby amended as follows:

Sec. 110-260. Champion trees.

(b) The tree commission's designation of champion status

shall require a supermajority vote. In the event of an appeal to the ~~board of adjustment~~ city commission on the designation or lack of designation of a tree as a champion, the ~~board's~~ commission's decision shall be by supermajority vote.

Section 2122: That section 110-337 of the Code of Ordinances is hereby amended as follows:

Sec. 110-337 - Appeals.

Appeals of the tree commission's permit decisions may be taken to the ~~board of adjustment~~ city commission as provided in section 90-429.

Section 2223: That section 114-140 of the Code of Ordinances is hereby amended as follows:

Sec. 114-40. Variances.

(a) *Limitations.* Upon application and after notice as provided by sections 90-392 and 90-393, the ~~board of adjustment~~ planning board may grant variances from this division with terms and conditions for periods not to exceed 60 calendar months. Variances may be granted for historic, aesthetic, or other reasonable cause, including financial hardship, which cause shall be stated upon the record, and no variance shall be granted until after consideration of its impact on public safety.

Section 2324: That section 122-28 of the Code of Ordinances is hereby amended as follows:

Sec. 122-28. Replacement or reconstruction.

* * * *

(b) *Dwelling units (residential)*. Residential dwelling units may be replaced at their existing nonconforming density. Except as provided in subsection (f) of this section, dwelling units involuntarily destroyed do not require variances to be reconstructed or replaced. If a voluntary reconstruction or replacement occurs, if the dwelling units exist or existed in a noncomplying building or structure, the reconstruction or replacement that exceeds 66 percent of the assessed or appraised value of the building or structure shall require a variance granted by the ~~board of adjustment~~ planning board. In a voluntary reconstruction of a structure on a corner lot, the property owner must apply to the ~~board of adjustment~~ planning board for all necessary setback variances. All noncomplying accessory structures to the principal building or structure (e.g., a shed, pool, fence, etc., but not including a condominium clubhouse) shall also require a variance in order to be reconstructed or replaced, either voluntarily or involuntarily. If a proposed reconstruction or replacement would not otherwise require a variance but would add a new building or structure to the site to accommodate density, a variance shall be required for the additional building or structure. A residential building in which one or more units

hold a residential transient use business tax receipt shall be deemed residential for the purposes of this section.

* * * *

(d) *Properties without dwelling units.* For a proposed reconstruction or replacement of a property without dwelling units, where that property is either a nonconforming use or a noncomplying building or structure, (i) if the property is involuntarily destroyed, reconstruction or replacement does not require a variance; and (ii) if voluntarily destroyed to the extent that reconstruction or replacement would exceed 50 percent of the property's appraised or assessed value, the applicant must apply to the ~~board of adjustment~~ planning board for a variance.

* * * *

(g) *Miscellaneous.* With respect to subsections (a) through (f) of this section, the development review committee and the ~~board of adjustment~~ planning board, in evaluating petitions for variance, shall balance the need to protect life and property with the need to preserve the economic base of the community. Under no circumstances shall a voluntarily or involuntarily destroyed nonconforming use or noncomplying building or structure be replaced to a degree or level that increases or expands the prior existing nonconforming use or noncomplying building or structure.

Section 2425: That section 122-30 of the Code of Ordinances is hereby amended as follows:

Sec. 122-30. Abandonment of nonconforming use.

If a nonconforming use ceases, except when government action impedes access to the premises, any and every future use of the building or structure and/or premises shall be in conformity with the use sections of the land development regulations. All material and equipment associated with the abandoned nonconforming use shall be completely removed from the premises by its owner. No new structure or addition that does not conform to the requirements of this article shall be erected in connection with such nonconforming use. A nonconforming use shall be considered abandoned when such use has ceased for a period of 24 months. If a dispute occurs with the city about whether a use has been abandoned, the owner shall be entitled to a hearing before the ~~board of adjustment~~ planning board.

Section 2526: That section 122-32 of the Code of Ordinances is hereby amended as follows:

Sec. 122-32. Additional regulations.

* * * *

(e) A nonconforming use of a building or structure may be changed to another nonconforming use if the ~~board of adjustment~~ planning board finds that:

* * * *

Section ~~26~~27: That section 122-234 of the Code of Ordinances is hereby amended as follows:

**Sec. 122-234. Potential increase in accessory unit
threshold size**

No accessory unit in the single-family residential district (SF) shall have more than one bedroom unless an additional bedroom is approved as a variance by the ~~board of adjustment~~ planning board. If such variance is approved, the total square footage shall not exceed 600 square feet. The permit allocation system shall be coordinated with the county's analysis of evacuation clearance times in order to maintain or decrease the standard time for such clearance.

Section ~~27~~28: That section 122-1440 of the Code of Ordinances is hereby amended as follows:

Sec. 122-1440. Administration.

It shall be the duty of the zoning administrator to administer and enforce this division within the territorial limits over which the political subdivision the administrator represents has zoning authority. For any violation of this division, the person responsible for such violation shall be given notice in writing by the zoning administrator. Such notice shall indicate the nature of the violation and the necessary action to correct or abate the violation. A copy of

such notice shall be sent to the city ~~board of adjustment~~
planning board. An administrative official shall order
discontinuance of use of the land or building; removal of trees
to conform with height limitations set forth in this division;
removal of buildings, additions, alterations or structures;
discontinuance of any work being done; or shall take any or all
other actions necessary to correct violations and obtain
compliance with all the sections of this division.

Section 2829: That section 122-1469 of the Code of
Ordinances is hereby amended as follows:

Sec. 122-1469. Applicant eligibility requirements.

The following eligibility requirements shall be required
of households or persons to qualify for affordable work force
housing units to the extent lawful:

* * * *

(15) The ~~board of adjustment~~ planning board may review
a household's income and unique circumstances to determine
eligibility and conformance with the intent of this ordinance
to assure that people in need are not excluded and people
without need are not included.

Section 2930: That section 122-1470 of the Code of
Ordinances is hereby amended as follows:

Sec. 122-1470. Accessory unit infill.

(a) In all zoning districts of the city, except

conservation districts (C), airport district (A) and the HPRD, PRD, HHDR, HMDR, MDR, MDR-C, LDR-C and SF districts, the city commission desires to encourage the addition of affordable work force housing on the same site as commercial properties and institutions to promote employee housing. Such development shall be known as accessory unit infill. Tenants shall be eligible persons under section 122-1469. Applicants under this section may provide two bicycle or scooter parking spaces per unit as an alternative to applying to the ~~board of adjustment~~ planning board for parking variances. Provided that units of 600 square feet or less are treated as an 0.55 equivalent unit and all units provided are available under the city's building permit allocation ordinance, section 108-1056 et seq. of the Code of Ordinances, the city shall process applications under this section in the same manner as multifamily units or as a conditional use if multifamily is not allowed.

* * * *

Section 3031: 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 ~~31~~32. 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 ~~32~~33. The provisions of this Ordinance constitutes a "land development regulation" as State law defines that term. Accordingly, the City Clerk is directed to forward a copy of this Ordinance to State Department of Community Affairs pursuant to sections 380.05(6) and (11), Florida Statutes.

Section ~~33~~34. This Ordinance shall become effective immediately upon approval by the State Department of Community Affairs pursuant to section 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this 06th day of May, 2008.

Read and passed on final reading at a regular meeting held this 20th day of May, 2008.

Authenticated by the presiding officer and Clerk of the Commission on 21st day of May, 2008.

Filed with the Clerk May 21, 2008.


MORGAN McPHERSON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

EXECUTIVE SUMMARY



To: Jim Scholl, City Manager

From: Larry Erskine, Chief Assistant City Attorney
Amy Kimball-Murley, Interim Planning Director

Date: May 6, 2008

RE: **Code Revisions Pertaining to Board of Adjustment Role
Modifications to Allow Planning Board to Assume Most BOA
Responsibilities**

ACTION STATEMENT

Request: Approval of amendments to the City of Key West Code of Ordinances to permit: the Planning Board to be the decision-making authority for applications for variances and waivers to the Land Development Regulations (LDRs), with the exception of variances to height restrictions in the LDRs and the City Charter, which will be heard by the City Commission acting as the BOA; and, to permit the City Commission to hear appeals instead of the BOA.

Location: City-wide

BACKGROUND

The City Attorney's Office and Planning Department prepared amendments to the City's Code of Ordinances to permit the Planning Board to be the decision-making authority for applications for variances and waivers to the Land Development Regulations (LDRs) with the exception of variances to height restrictions in the LDRs and the City Charter, which will be heard by the City Commission acting as the BOA. Staff also prepared amendments to the Code of Ordinances to permit the City Commission instead of the BOA to hear appeals where the BOA is now identified. The Planning Staff and Legal Department prepared two ordinances; the first shows amendments to the LDRs per Section 90-522 and the second to other sections of the Code of Ordinances per Section 1-10.

Most communities in the State of Florida shifted Board of Adjustment responsibilities to the Local Planning Agency in the early 1990s when wide-scale revisions to local Land Development Regulations occurred as a result of Growth Management Act modifications. In Key West the Local Planning Agency is the Planning Board.

The Planning Board unanimously recommended approval of both ordinances on February 21, 2008. The Board also asked that the staff report for this item make note of several public comments which recommended that the constituency of the Planning Board be

increased to seven members with each Commissioner and the Mayor having one appointment each. This might allow better representation on the Board through elected officials and districts.

The proposed Ordinances will effectively eliminate the majority of activities now conducted by the Board of Adjustment except for those items with specific reference to the BOA in the charter (those items cannot be changed without a referendum). The Planning Board is aware that they may need to meet more frequently to address additional responsibilities described in this amendment. In addition, the Board is preparing for the potential approval of these ordinances through a series of special workshops intended to educate board members in key areas relevant their activities.

A second reading of the ordinances will be required by the Commission if approval is granted.

RECOMMENDATIONS

Options / Advantages / Disadvantages:

Option 1. Approve the ordinances.

1. **Consistency with the City's Strategic Plan, Vision and Mission:** This action would provide enhanced services and attractions geared toward tourism, consistent with the mission and vision of the city.
2. **Financial Impact:** There is no direct financial impact to the city itself.

Option 2. Amend the ordinances.

1. **Consistency with the City's Strategic Plan, Vision and Mission:** This action would provide enhanced services and attractions geared toward tourism, consistent with the mission and vision of the city.
2. **Financial Impact:** There is no direct financial impact to the city itself.

Option 3. Do not approve the ordinances.

1. **Consistency with the City's Strategic Plan, Vision and Mission:** This action would provide enhanced services and attractions geared toward tourism, consistent with the mission and vision of the city.
2. **Financial Impact:** There is no direct financial impact to the city itself.

STAFF RECOMMENDATION

Option 1, Approval of the ordinances.

PLANNING BOARD RESOLUTION
No. 2008-006

A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD PURSUANT TO SECTION 90-522 OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, APPROVING ORDINANCES MODIFYING THE CITY OF KEY WEST CODE OF ORDINANCES INCLUDING THE LAND DEVELOPMENT REGULATIONS TO PROVIDE FOR THE REVIEW AND DETERMINATION OF CERTAIN VARIANCE REQUESTS TO BE ADMINISTERED BY THE PLANNING BOARD AND FOR CERTAIN APPEALS TO BE HEARD BY THE CITY COMMISSION

WHEREAS, the Legal and Planning Departments prepared amendments to the Land Development Regulations to shift most Board of Adjustment responsibilities relating to variances and waivers to the Planning Board; and

WHEREAS, the Legal and Planning Departments also prepared amendments to other areas of the Code of Ordinances to shift the responsibilities to hear appeals from the Board of Adjustment to the City Commission; and

WHEREAS, the City's Legal and Planning Departments collaborated on revisions to the Code of Ordinances including the Land Development Regulations to accomplish the changes; and

WHEREAS, after public notice, the proposed amendments were considered at the Planning Board Meeting on January 17, 2008 and again on February 21, 2008; and

WHEREAS, at those meetings, Assistant City Attorney Larry Erskine presented the staff report for the proposed amendments; and

WHEREAS, the Board heard Mr. Erskine and recommend approval with correction of a typographical error; and

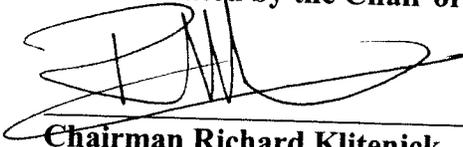
NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the Planning Board approves the two ordinances amending the Code of Ordinances including the Land Development Regulations.

Section 2. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the Chairman of the Planning Board and the Planning Director.

Passed at a meeting held February 21, 2008.

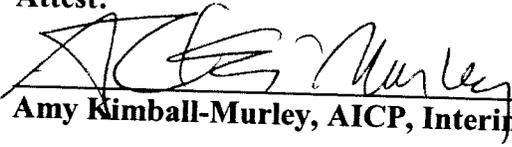
Authenticated by the Chair of the Planning Board and the Planning Director.



Chairman Richard Klitenick
Key West Planning Board

MAY 6, 2008
Date

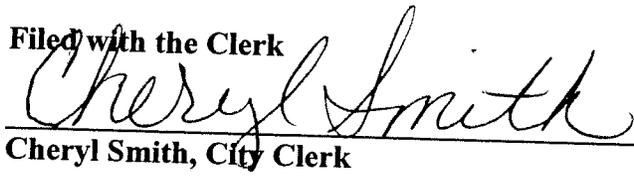
Attest:



Amy Kimball-Murley, AICP, Interim Planning Director

May 6, 2008
Date

Filed with the Clerk



Cheryl Smith, City Clerk

5-8-08
Date