

ORDINANCE NO. 09-06

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF KEY WEST, APPROVING AN AMENDMENT TO PART B, LAND DEVELOPMENT REGULATIONS, SECTIONS 86-9, 122-238 AND 122-1151, OF THE CODE OF ORDINANCES TO DEFINE PITCHED ROOF AND TO ALLOW AN EXTRA FIVE FEET IN BUILDING HEIGHT IN THE SINGLE FAMILY (SF) DISTRICT FOR NON-HABITABLE PURPOSES WHEN THE STRUCTURE HAS A PITCHED ROOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 90-517 of the Code of Ordinances allows the City Commission to amend the text of the land development regulations in accordance with certain procedures and criteria; and

WHEREAS, the Planning Department initiated the proposed amendment to address conflicts between Flood Emergency Management Agency (FEMA) base flood elevation requirements and height restrictions in the Single Family (SF) zoning district which were resulting in the construction of architecturally incompatible structures with reduced wind resistance;

WHEREAS, the allowance of an additional five feet of height for non-habitable purposes if a structure has a pitched roof would resolve most of the identified conflicts between base flood elevations and height restrictions in the SF District and will provide for more architecturally compatible and wind resistant roof design;

WHEREAS, the Planning Board held a noticed public hearing on _____, where based on February 19, 2009 the consideration of recommendations by the City planner, city attorney, building official and other information recommended approval of the proposed amendments;

WHEREAS, the City Commission held a noticed public hearing on 4-7-09 and in its

deliberations considered the criteria identified in section 90-521 of the Code of Ordinances;

WHEREAS, the City determined that the proposed amendments: are consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional demand on public facilities; will have no impact on the natural environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use patterns; and are in the public interest.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1. Chapter 86, General Provisions, Section 86-9 Definition of Terms, is modified to include: Pitched roof means a roof with a pitch of no less than 4/12 (a 4-inch rise in a 12-inch horizontal run).

Section 2. Chapter 122, Article IV. Districts, Division 3. Residential Districts, Subdivision III. Single-Family Residential District (SF), Section 122-238. Dimensional requirements, (3) is modified to read: Maximum height: 25 feet plus an additional 5 feet for non-habitable purposes if the structure has a pitched roof.

Section 3. Chapter 122, Article V. Supplementary Regulations, Division 3. Area Requirements, Section 122.1151, Table of Size and Dimension Regulation, “Maximum height (feet)” in the SF single family residential district is modified to include a footnote as follows: 25²⁰.

Section 4. Chapter 122, Article V. Supplementary Regulations, Division 3. Area Requirements, Section 122.1151, footnotes, is modified as follows: 19. Maximum height may be increased five feet if the structure has a pitched roof, the design of which is approved by the

historic architectural review commission.

Section 5. Chapter 122, Article V. Supplementary Regulations, Division 3. Area Requirements, Section 122.1151, is modified to include a new footnote as follows: 20. Maximum height may be increased five feet for non-habitable purposes if the structure has a pitched roof.

Section 6. **Effective Date.** This Ordinance shall become effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this 17th day of March, 2009.

Read and passed on final reading at a regular meeting held this 7th day of April, 2009.

Authenticated by the presiding officer and Clerk of the Commission on 8th day of April, 2009.

Filed with the Clerk April 8, 2009


MORGAN MCPHERSON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

K:\LDR Amendments\021909 - Ordinance SF Height and Pitched Roof.doc

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF KEY WEST ORDINANCE
NO. 09-06

2009 MAY - 1 AM 11:39
CITY OF KEY WEST
FLORIDA

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), *Fla. Stat.*, (2008), approving a land development regulation adopted by a local government within the City of Key West Area of Critical State Concern as set forth below.

FINDINGS OF FACT

1. The City of Key West is a designated area of critical state concern.
2. On April 14, 2009 the Department received for review City of Key West Ordinance No. 09-06, which was adopted by the City of Key West City Commission on April 8, 2009, ("Ord. 09-06"). The purpose of Ord. 09-06 is to amend Part B, Land Development Regulations, Section 86-9, 122-238 and 122-1151, to define pitched roof and to allow an extra five feet in building height in the single family (SF) district for non-habitable purposes when the structure has a pitched roof.
3. Ord. 09-06 is consistent with the City's Comprehensive Plan.

CONCLUSIONS OF LAW

4. 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 based upon consistency with the Principles for Guiding Development applicable to that area of critical state concern. §§ 380.05(6) and 380.05(11), *Fla. Stat.*, (2008).
5. The City of Key West is an Area of Critical State Concern. § 380.05, *Fla. Stat.* (2008) and Rule 28-36.001, *Fla. Admin. Code*.

6. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2008). The regulations adopted by Ord. 09-06 are land development regulations.

7. 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 the particular area (the “Principles”). § 380.05(6), *Fla. Stat.*; see *Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff’d.*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles for the City of Key West Area of Critical State Concern are set forth in Rule 28-36.003(1), *Fla. Admin. Code*.

8. Ord. 09-06 promotes and furthers the following Principles in Rule 28-36.003(1):

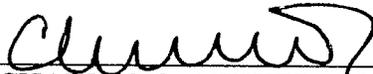
- (a) To strengthen local government capabilities for managing land use and development.
- (e) Protection of historical heritage of Key West and the Key West Historical Preservation District.
- (h) To protect the public health, safety, welfare and economy of the City of Key West, and the maintenance of Key West as a unique Florida resource.

9. Ord. 09-06 is not inconsistent with the remaining Principles. Ord. 09-06 is consistent with the Principles for Guiding Development as a whole. Ord. 09-06 furthers the Key West Comprehensive Plan Policy 1-2.1.3: Single Family Residential Development; Policy 3-1.7.3: Minimize Potential Blighting Influences; Policy 1A-1.3.11: City Actions to Assist Historic Preservation; and Policy 1A-5.1.4: Maintain Unique Architectural Heritage of Historically Significant Housing Resources.

WHEREFORE, IT IS ORDERED that Ord. 09-06 is found to be consistent with the Principles for Guiding Development of the City of Key West Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.


CHARLES GAUTHIER, AICP
Director, Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL

ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

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 persons listed below by the method indicated this ^{29th} day of April, 2009.


for Paula Ford, Agency Clerk

By U.S. Mail:

The Honorable Morgan McPherson
Mayor, City of Key West
P.O. Box 1409
Key West, Florida 33041

Cheryl Smith
Clerk to the City Commission
P.O. Box 1409
Key West, Florida 33041

Amy Kimball-Murley, AICP
Planning Director
City of Key West
P.O. Box 1409
Key West, Florida 33041

Larry Erskine
City Attorney
P.O. Box 1409
Key West, FL 33041

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator, DCA Tallahassee
Richard E. Shine, Assistant General Counsel, DCA Tallahassee

EXECUTIVE SUMMARY



To: Jim Scholl, City Manager
From: Amy Kimball-Murley, Planning Director
Date: March 17, 2009
RE: Single Family (SF) District Modifications

ACTION STATEMENT

Request: An ordinance approving an amendment to Land Development Regulations Sections 86-9, 122-238 and 122-1151, of the Code of Ordinances to define pitched roof and to allow an extra five feet in building height in the Single Family (SF) District for non-habitable purposes when the structure has a pitched roof

Location: Single Family (SF) Zoning District

BACKGROUND

Last year the City Commission directed the City Manager to prepare amendments to the Land Development Regulations to address areas in the code which result in numerous variance applications, but which do not appear to accomplish a public purpose. This ordinance is the first in an expected series of amendments to fulfill the City Commission's direction.

Height in the Single Family (SF) District is limited to 25', as measured from the crown of the road. The SF District includes some of the lowest lying areas of the City, and much of the housing stock there was developed in the 1960's, prior to strict application of standardized flood elevation criteria. Hurricane Wilma-related storm surges caused widespread flooding and damage in low lying areas of the City, particularly in the SF district, and the City has been faced with numerous applications for renovation and reconstruction of homes in this area which are required, either through structural value thresholds or new construction code requirements, to meet Federal Emergency Management Agency (FEMA) elevation requirements. Often new two story structures are not able to comply with FEMA elevation requirements and the SF district height restrictions without proposing a flat roof, or a roof with a low pitch. Such roofs are typically inconsistent with the architectural style in Key West and provide reduced wind resistance compared to roofs with greater pitch. Alternatively, homeowners have applied to the City's Board of Adjustment for a building height variance. Variance criteria in the City Code are strict, and are not intended as a means to address widespread conditions within the community. In fact, a clear sign that the Land Development Regulations are not reflecting community character and conditions is frequency of variance applications for similar requests. In such cases, the City can consider modifications to the code (if such modifications are consistent with the Comprehensive Plan and community

character). Height variance requests in the SF district have been numerous, and when denied the resulting (and code compliant) structures are often less attractive and storm resistant than those where modest height variances for non-habitable space are allowed. In the experience of the Building Department and the Planning Department, most applicants request variances of less than five feet to construct a pitched roof.

This amendment addresses height restrictions in the Single Family (SF) district. The amendment will allow an extra five feet of building height within the SF district for non-habitable purposes, so long as the structure has a pitched roof. Two other zoning districts allow an extra five feet of building height with a pitched roof: the Historic Residential Commercial Core – 1 (HRCC-1) and Historic Residential Commercial Core –3 (HRCC-3). Neither of those districts restrict the use of the additional height for habitable or non-habitable purposes. However, the Planning Department believes that such a restriction in the SF district is appropriate and consistent with existing provisions in the City Charter which allow variances to be granted for building height for non-habitable purposes without a public referendum.

Building height within the City is measured from the crown of the road to the highest point of the roof (see City of Key West Comprehensive Plan Goal 1-2 and City of Key West Code of Ordinances Chapter 86.9, Definition of terms, building height). Modifications to the way in which height is measured, or the point from which height is measured, will require an amendment to the Comprehensive Plan and the Land Development Regulations. In addition, any such change may trigger an amendment to the City Charter, which requires certain types of changes to building height to be subject to public referendum. While the City may wish to consider modifications to the Charter, Comprehensive Plan and LDRs to change the point from which height is measured, such efforts are more appropriate for consideration as part of the long range plan updates proposed over the next year.

The LDRs reference pitched roofs in several sections of the code, but do not define the term. The Historic Architectural Review Commission (HARC) has been reviewing definitions of pitched roofs for the last ten months, and has devised a definition of pitched roof which is consistent with the Florida Building Code as well as the community character of Key West. The proposed ordinance includes the addition of the pitched roof definition as recommended by HARC in Chapter 86.

Review Criteria: Section 90-522 of the Code outlines key review criteria for any changes to the Land Development Regulations. A review of the proposed ordinance relative to the criteria is provided below.

Sec. 90-522. Planning board review of proposed changes in land development regulations.

(a) The planning board, regardless of the source of the proposed change in the land development regulations, 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 of zoning to the city commission for official action. In its deliberations the planning board shall consider the criteria stated in section 90-521.

The Planning Board held a public hearing on February 19, 2009, with due public notice. The board considered the recommendation of the City Planner, City Attorney, Building Official, and other information submitted at the hearing. A written report prepared by the Planning Department for the Planning Board and a recommendation from the Planning Board are attached.

Sec. 90-521. Criteria for approving amendments to official zoning map. In evaluating proposed changes to the official zoning map, the city shall consider the following criteria:

Please note that the proposed change does not impact the official zoning map or underlying future land use map designations. However, each criterion is addressed.

(1) *Consistency with plan.* Whether the proposal is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

The proposed ordinance is consistent with the Comprehensive Plan. In particular it respects the Comprehensive Plan Goal 1.2, which adopts the Future Land Use Map (FLUM) series and its attendant footnotes (including the footnote that establishes the definition of building height), as well as Policy 3-1.7.3, which requires the minimization of neighborhood blighting influences through the promotion of land use planning practices and urban design.

(2) *Conformance with requirements.* Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.

The proposed modifications appear consistent with all applicable requirements of the code and will strengthen the code by defining an important term.

(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed rezoning.

The flooding impacts resulting from Hurricane Wilma revealed the extent to which the existing height restrictions impact redevelopment within the SF District. Although the underlying conditions (base flood elevation and height restrictions) did not change, the natural disaster resulted in a wave of construction that had the same effect as a changed land use condition. This proposed land development regulation modification will help address the identified problems in the SF district.

(4) *Land use compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.

This proposal will allow redevelopment to be more compatible with the Key West style of construction.

(5) *Adequate public facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to chapter 94.

The proposed modification will have no impact on public facilities or the requirement to provide facilities through existing concurrency regulation.

(6) *Natural environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

The proposed ordinance modifications do not impact existing natural resource protection regulations.

(7) *Economic effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.

The proposal is not expected to adversely impact property values. It is possible the construction of more compatible structures, with better wind resistance, could support and improve property values within the SF District.

(8) *Orderly development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

This modification is expected to support the dominate character of construction in Key West.

(9) *Public interest; enabling act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.

The proposal appears to support the public interest by enabling more aesthetically compatible construction with better wind resistance.

(10) Other matters. Other matters which the planning board and the city commission may deem appropriate.

This modification will eliminate the majority of height variance applications made to the City, which should be in the public interest and improve the quality of the code.

RECOMMENDATIONS

Options / Advantages / Disadvantages:

Option 1. Approve the ordinance

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:** The City will receive less variance application related fees, but will also spend less staff time processing variance applications.

Option 2. Do not approve the ordinance

1. **Consistency with the City's Strategic Plan, Vision and Mission:** This action would not provide enhanced services and attractions geared toward tourism, consistent with the mission and vision of the city.
2. **Financial Impact:** Failure to approve the ordinance could have negative consequences on the public seeking to redevelop two story homes in the SF district by requiring variance applications, which add time, cost and risk to each project.

STAFF RECOMMENDATION

Option 1, Approval of the ordinance

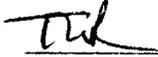
RESOLUTION NUMBER 2009-009

A RESOLUTION OF THE KEY WEST PLANNING BOARD RECOMENDING APPROVAL OF AN AMENDMENT TO PART B, LAND DEVELOPMENT REGULATIONS, SECTIONS 86-9, 122-238 AND 122-1151, OF THE CODE OF ORDINANCES TO DEFINE PITCHED ROOF AND TO ALLOW AN EXTRA FIVE FEET IN BUILDING HEIGHT IN THE SINGLE FAMILY (SF) DISTRICT FOR NON-HABITABLE PURPOSES WHEN THE STRUCTURE HAS A PITCHED ROOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning Department initiated the proposed amendment to address conflicts between Flood Emergency Management Agency (FEMA) base flood elevation requirements and height restrictions in the Single Family (SF) zoning district which were resulting in the construction of architecturally incompatible structures with reduced wind resistance; and,

WHEREAS, the Planning Board held a noticed public hearing on February 19, 2009, where based on the consideration of recommendations by the city planner, city attorney, building official and other information, the Board recommended approval of the proposed amendments; and

WHEREAS, the Planning Board determined that the proposed amendments: are consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional demand on public facilities; will have no impact on the natural environment; will not negatively impact property values or the general

 Vice Chairman
 Planning Director

welfare; will result in more orderly and compatible land use patterns; and are in the public interest.

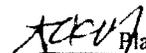
BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

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

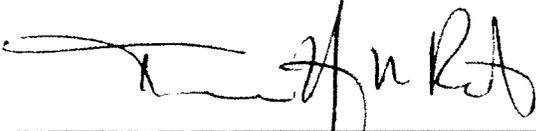
Section 2. That a AN AMENDMENT TO PART B, LAND DEVELOPMENT REGULATIONS, SECTIONS 86-9, 122-238 AND 122-1151, OF THE CODE OF ORDINANCES TO DEFINE PITCHED ROOF AND TO ALLOW AN EXTRA FIVE FEET IN BUILDING HEIGHT IN THE SINGLE FAMILY (SF) DISTRICT FOR NON-HABITABLE PURPOSES WHEN THE STRUCTURE HAS A PITCHED ROOF is hereby recommended for approval; a copy of 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.

Read and passed on first reading at a regular meeting held this 19 day of February, 2009.

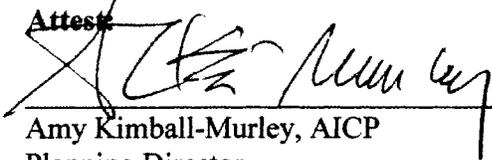

Vice Chairman

Planning Director

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



Tim Root, Vice Chairman
Key West Planning Board

Date

~~Attest~~


Amy Kimball-Murley, AICP
Planning Director

Feb. 25, 2009

Date

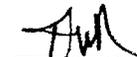
Filed with the Clerk:

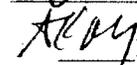


Cheryl Smith, City Clerk

2-26-09

Date



Vice Chairman


Planning Director

ORDINANCE NO. _____

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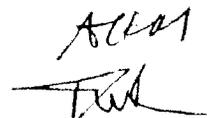
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WHEREAS, the Planning Board held a noticed public hearing on _____, where based on the consideration of recommendations by the City planner, city attorney, building official and other information recommended approval of the proposed amendments;

WHEREAS, the City Commission held a noticed public hearing on _____ and in its

Handwritten signatures in black ink, including the word 'ACCEPT' and a signature that appears to be 'T. H. ...'.

deliberations considered the criteria identified in section 90-521 of the Code of Ordinances;

WHEREAS, the City determined that the proposed amendments: are consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional demand on public facilities; will have no impact on the natural environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use patterns; and are in the public interest.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1. Chapter 86, General Provisions, Section 86-9 Definition of Terms, is modified to include: Pitched roof means a roof with a pitch of no less than 4/12 (a 4-inch rise in a 12-inch horizontal run).

Section 2. Chapter 122, Article IV. Districts, Division 3. Residential Districts, Subdivision III. Single-Family Residential District (SF), Section 122-238. Dimensional requirements, (3) is modified to read: Maximum height: 25 feet plus an additional 5 feet for non-habitable purposes if the structure has a pitched roof.

Section 3. Chapter 122, Article V. Supplementary Regulations, Division 3. Area Requirements, Section 122.1151, Table of Size and Dimension Regulation, "Maximum height (feet)" in the SF single family residential district is modified to include a footnote as follows: 25²⁰.

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historic architectural review commission.

Section 5. Chapter 122, Article V. Supplementary Regulations, Division 3. Area Requirements, Section 122.1151, is modified to include a new footnote as follows: 20. Maximum height may be increased five feet for non-habitable purposes if the structure has a pitched roof.

Section 6. **Effective Date.** This Ordinance shall become effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2009.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2009.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2009.

MORGAN MCPHERSON, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

K:\LDR Amendments\021909 - Ordinance SF Height and Pitched Roof.doc

Handwritten signature

Key West Planning Board Meeting Agenda
February 19, 2009 – 6:00 p.m.
City Commission Chamber
Old City Hall, 510 Greene Street



Item 4.b.5.

Single Family (SF)
District LDR Modification –

An ordinance approving an amendment to Land Development Regulations Sections 86-9, 122-238 and 122-1151, of the Code of Ordinances to define pitched roof and to allow an extra five feet in building height in the Single Family (SF) District for non-habitable purposes when the structure has a pitched roof



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

To: Chairman and Planning Board Members

From: Amy Kimball-Murley, AICP

Meeting Date: February 19, 2009

Agenda Item: An ordinance approving an amendment to Land Development Regulations Sections 86-9, 122-238 and 122-1151, of the Code of Ordinances to define pitched roof and to allow an extra five feet in building height in the Single Family (SF) District for non-habitable purposes when the structure has a pitched roof

Background

Last year the City Commission directed the City Manager to prepare amendments to the Land Development Regulations to address areas in the code which result in numerous variance applications, but which do not appear to accomplish a public purpose. This ordinance is the first in an expected series of amendments to fulfill the City Commission's direction.

Height in the Single Family (SF) District is limited to 25', as measured from the crown of the road. The SF District includes some of the lowest lying areas of the City, and much of the housing stock there was developed in the 1960's, prior to strict application of standardized flood elevation criteria. Hurricane Wilma-related storm surges caused widespread flooding and damage in low lying areas of the City, particularly in the SF district, and the City has been faced with numerous applications for renovation and reconstruction of homes in this area which are required, either through structural value thresholds or new construction code requirements, to meet Federal Emergency Management Agency (FEMA) elevation requirements. Often new two story structures are not able to comply with FEMA elevation requirements and the SF district height restrictions without proposing a flat roof, or a roof with a low pitch. Such roofs are typically inconsistent with the architectural style in Key West and provide reduced wind resistance compared to roofs with greater pitch. Alternatively, homeowners have applied to the City's Board of Adjustment for a building height variance. Variance criteria in the City Code are quite strict, and is not intended as a means to address widespread conditions within the community. In fact, a clear sign that the Land Development Regulations are not reflecting community character and conditions is frequency of variance applications for similar requests. In such cases, the City can consider modifications to the code (if such modifications are consistent with the Comprehensive Plan and community character). Height variance requests in the SF district have been numerous, and when denied the resulting (and code compliant)

structures are often less attractive and storm resistant than those where modest height variances for non-habitable space are allowed. In the experience of the Building Department and the Planning Department, most applicants request variances of less than five feet to construct a pitched roof.

This amendment addresses height restrictions in the Single Family (SF) district. The amendment will allow an extra five feet of building height within the SF district for non-habitable purposes, so long as the structure has a pitched roof. Two other zoning districts allow an extra five feet of building height with a pitched roof: the Historic Residential Commercial Core - 1 (HRCC-1) and Historic Residential Commercial Core - 3 (HRCC-3). Neither of those districts restrict the use of the additional height for habitable or non-habitable purposes. However, the Planning Department believes that such a restriction in the SF district is appropriate and consistent with existing provisions in the City Charter which allow variances to be granted for building height for non-habitable purposes with a public referendum.

Building height within the City is measured from the crown of the road to the highest point of the roof (see City of Key West Comprehensive Goal 1-2 and City of Key West Code of Ordinances Chapter 86.9, Definition of terms, building height). Modifications to the way in which height is measured, or the point from which height is measured, will require an amendment to the Comprehensive Plan and the Land Development Regulations. In addition, any such change may require an amendment to the City Charter, which requires certain types of changes to height to be subject to public referendum. While the City may wish to consider modifications to the Charter, Comprehensive Plan and LDRs to change the point from which height is measured, such efforts are more appropriate for consideration as part of the long range plan updates proposed over the next year.

The LDRs reference pitched roofs in several sections of the code, but do not define the term. The Historic Architectural Review Commission (HARC) has been reviewing definitions of pitched roofs for the last ten months, and has devised a definition of pitched roof which is consistent with the Florida Building Code as well as the community character of Key West. The proposed ordinance includes the addition of the pitched roof definition as recommended by HARC in Chapter 86.

Review Criteria: Section 90-522 of the Code outlines key review criteria for any changes to the Land Development Regulations. A review of the proposed ordinance relative to the criteria is provided below.

Sec. 90-522. Planning board review of proposed changes in land development regulations.

(a) The planning board, regardless of the source of the proposed change in the land development regulations, 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 of zoning to the city commission for official action. In its deliberations the planning board shall consider the criteria stated in section 90-521.

This report is prepared in anticipation of the first Planning Board meeting regarding the proposed ordinance change. These modifications have been coordinated with the City Attorney and Building Official, and are originating with the City Planner.

Sec. 90-521. Criteria for approving amendments to official zoning map.
In evaluating proposed changes to the official zoning map, the city shall consider the following criteria:

Please note that the proposed change does not impact the official zoning map or underlying future land use map designations. However, each criteria is addressed.

(1) *Consistency with plan.* Whether the proposal is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

The proposed ordinance is consistent with the Comprehensive Plan. In particular it respects the Comprehensive Plan Goal 1.2, which adopts the Future Land Use Map (FLUM) series and its attendant footnotes (including the footnote that establishes the definition of building height), as well as Policy 3-1.7.3, which requires the minimization of neighborhood blighting influences through the promotion of land use planning practices and urban design.

(2) *Conformance with requirements.* Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.

The proposed modifications appear consistent with all applicable requirements of the Code and will strengthen the code by defining an important term.

(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed rezoning.

The flooding impacts resulting from Hurricane Wilma revealed the extent to which the existing height restrictions impact redevelopment within the SF District. Although the underlying conditions (base flood elevation and height restrictions) did not change, the natural disaster resulted in a wave of construction that had the same effect as a changed land use condition. This proposed land development regulation modification will help address the identified problems in the SF district.

(4) *Land use compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.

This proposal will allow redevelopment to be more compatible with the Key West style of construction.

(5) Adequate public facilities. Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to chapter 94.

The proposed modification will have no impact on public facilities or the requirement to provide facilities through existing concurrency regulation.

(6) Natural environment. Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

The proposed ordinance modifications do not impact existing natural resource protection regulations.

(7) Economic effects. Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.

The proposal is not expected to adversely impact property values. It is possible the construction of more compatible structures, with better wind resistant, could support and improve property values within the SF District.

(8) Orderly development. Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

This modification is expected to support the dominate character of construction in Key West.

(9) Public interest; enabling act. Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.

The proposal appears to support the public interest by enabling more aesthetically compatible construction with better wind resistance.

(10) Other matters. Other matters which the planning board and the city commission may deem appropriate.

This modification will eliminate the majority of height variance applications made to the City, which should be in the public interest and improve the quality of the code.

PROCESS

After the Planning Board recommends changes to the City Commission, the ordinance will require two City Commission readings for adoption. Absent any appeals, the ordinance will be rendered to the DCA , who will have 60 days to issue an order of consistency.

RECOMMENDATION

The Planning Department recommends consideration and approval of the draft ordinance.

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