

ORDINANCE 393 - 2007

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF KEY COLONY BEACH, FLORIDA, AMENDING THE CITY LAND DEVELOPMENT REGULATIONS, ARTICLE XII. OTHER DEVELOPMENT REVIEW PROCEDURES, SECTION 101-171 VARIANCES; AMENDING THE REGULATIONS FOR THE VARIANCE PROCEDURE AND CRITERIA; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF THE CITY OF KEY COLONY BEACH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning & Zoning Committee found the variance criteria needed to be clarified and the process to notify the public and surrounding property owners could be improved; and

WHEREAS, the City Commission held two joint public workshops with the Planning & Zoning Committee and a public hearing to discuss the variance criteria and review process; and

WHEREAS, the City Commission finds that additional notification to surrounding property owners and the general public prior to the Planning & Zoning Committee hearing would improve the process by encouraging citizen participation; and

WHEREAS, the City Commission finds that revising and simplifying the variance criteria and review process for the Planning & Zoning Committee would make it more understandable for the Committee and citizens; and

WHEREAS, the City Commission desires to make improvements to the land development code by amending the variance regulations.

NOW THEREFORE BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF KEY COLONY BEACH, FLORIDA sitting in Regular Session this 14th day of June, 2007 that Article XII. Other Development Review Procedures of the Land Development Regulations be amended as follows: (Additions are underlined; deletions are ~~crossed-out~~.)

ARTICLE XII OTHER DEVELOPMENT REVIEW PROCEDURES

Sec. 101-171. Variances.

(1) Initiation. Any owner, agent, lessee or occupant of land or a structure may apply in writing to the city clerk for a variance, on that land, from the requirements of this chapter, except that no request for a use variance will be considered. Details must be included with the request and be filed with the city clerk together with the established fee for a variance. If the applicant is other than the owner of the property, the written consent of the owner for the variance requested must be submitted with the application. When the petitioner is a public agency, the city commission may authorize the waiver or reduction of the fee.

(2) Planning and zoning committee procedure.

- (a) Upon receipt of a written request, the city clerk will deliver the request to the planning and zoning committee.
- (b) The planning and zoning committee shall make an investigation of the conditions pertaining to the requested variance in advance of the public hearing by the city commission. This investigation shall be at a duly noticed meeting. Mailing of notice of the meeting shall be made by the city to all property owners within three hundred (300) feet of the boundaries of the property which is the subject of the variance request.
- (c) The planning and zoning committee, shall make their recommendation to the city commission in writing, based upon the standards in (5) below. They may recommend approval or disapproval of the variance or may recommend approval of the same subject to such specified conditions as it may deem to be necessary or advisable in furtherance of the provisions of this chapter. Reasons for the recommendation shall be stated.

(3) City commission procedure.

- (a) After receipt of the planning and zoning committee report, the city commission shall give notice in a newspaper stating the date, time and place of a city commission public hearing as provided for in section 101-173.
- (b) After their public hearing the city commission may approve or disapprove the requested variance or may approve the same subject to specified conditions as it may deem to be necessary or advisable in furtherance of the provisions of the zoning ordinance. If the applicant desires to present evidence not presented to the planning and zoning committee, the matter shall be returned to the planning and zoning committee for further deliberation and recommendation unless the city commission finds by majority vote that the new evidence is insignificant or unsubstantial.
- (c) The commission shall state reasons for their decision, based on the standards detailed in (5) below.
- (d) The decision of the city commission shall be final. No new request for similar action concerning the same property may be made to the city commission or planning and zoning committee for a period of not less than six (6) months after the date of said decision by the city commission.

(4) Effective period.

A building permit application must be submitted within twelve (12) months of variance approval otherwise the approval expires. Any extension of up to twelve (12) months may be granted by the city commission for good cause.

(5) Standards for granting variances.

(a) Specific criteria:

- (1) The applicant shall demonstrate a showing of good and sufficient cause;
- (2) Failure to grant the variance would result in unnecessary hardship to the applicant;
- (3) Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;
- (4) Property has unique or peculiar circumstances, which apply to this property, but which do not apply to other properties in the same zoning district;
- (5) Granting the variance will not give the applicant any special privilege denied other properties in the immediate neighborhood in terms of established development patterns.

(b) Recommendations to the city commission.

- (1) If all 5 specific criteria are met, then the planning & zoning committee shall recommend approval to the city commission. Approval by the city commission would be by majority vote of the city commission.

If the planning & zoning committee finds the five (5) specific criteria are not met, they shall recommend disapproval of the variance unless they specifically find that the granting of the variance will have minimal adverse effect on other citizens of the city or on the city. Approval of a variance where all five (5) specific criteria are not met shall require a favorable vote of four-fifths (4/5) of the city commission.

- (2) Conditions The planning and zoning committee may recommend, and the city commission may prescribe, appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.
- (3) Use Variance: Under no circumstances shall the city commission grant a variance to permit a use not generally permitted in the zoning district. No nonconforming use of neighboring lands, structures or buildings in the 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.

~~(5) (a) General standards: Variances from the terms of this chapter shall be approved only if they will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary and undue hardship. In order to recommend or authorize any variance from the terms of this chapter, all of the specific standards listed in (b) below must be met. However, when all of the six (6) conditions do not exist, the planning and zoning committee may recommend and the city commission may make an exception and grant a variance when they believe that special and unnecessary conditions do exist in the request and that literal enforcement of the provisions of this chapter will result in unnecessary and undue hardship on the applicant and that the granting of the variance will have minimum adverse effect on other citizens of Key Colony Beach or on the city. Approval of a variance under these conditions would require a favorable vote of four-fifths (4/5) of the city commission.~~

~~(b) Specific standards:~~

- ~~1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.~~
- ~~2. That the special conditions and circumstances do not result from the actions of the applicant.~~
- ~~3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district.~~
- ~~4. That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.~~
- ~~5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.~~
- ~~6. That the granting of the variance will be in harmony with the general intent and purpose of this chapter and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.~~

~~(c) Other considerations:~~

- ~~1. Conditions: In granting any variance; the planning and zoning committee may recommend, and the city commission may prescribe, appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.~~
- ~~2. Use variance: Under no circumstances shall the city commission grant a variance to permit a use not generally permitted in the zoning district. No nonconforming use of neighboring lands, structures or buildings in the 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.~~

This Ordinance, upon final passage, shall be included in the Code of Ordinances for the City of Key Colony Beach, Florida, and numbered as set forth herein above.

All Ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of any such conflict.

If any singular provision of this ordinance is held to be unconstitutional, preempted by federal or state law, or otherwise held invalid by any court of competent jurisdiction, the remaining provisions of the Ordinance shall not be invalidated.

This Ordinance shall become effective following compliance review and approval by the State Planning Agency.

Clyde Burnett, Mayor

Attest: Vickie L. Bollinger, City Clerk

Approved as to Form and Legal Sufficiency:

Thomas D. Wright, City Attorney

05/02/07 Public Notice for Hearing, Florida Keys Keynoter
05/10/07 City Commission Public Hearing
05/24/07 1st Reading
05/26/07 Date of Notice, Florida Keys Keynoter
06/14/07 Second Reading
 Effective Date