



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

To: Chairman and Planning Board Members

Through: Patrick Wright, Planning Director

From: Vanessa Sellers, Planner II

Meeting Date: October 18, 2018

Agenda Item: **Variance – 1124 Truman Avenue (RE # 00032360-000000)** - A request for a variance to the minimum rear yard setback requirement in order to construct a 133-square-foot addition at property located within the Historic Neighborhood Commercial – Truman / Simonton (HNC-1) zoning district pursuant to the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

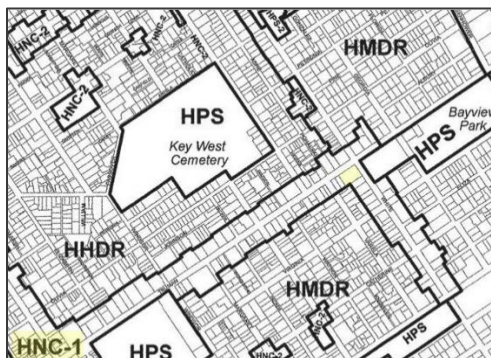
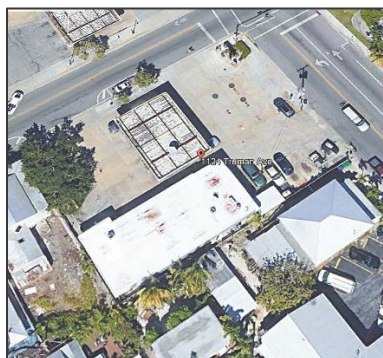
Request: The applicant is seeking a variance in order to construct a 133-square-foot addition partially within the required rear yard setback. The proposed new construction will create an interior connection between an existing accessory structure that is entirely within the rear yard setback and the primary structure which is partially in the rear and side yard setbacks.

Applicant: Trepanier & Associates, Inc.

Property Owners: Land 10031 LLC, Land 8601 LLC, Land 113 LLC, Land 2708 LLC, Land 7009 LLC, Land 8351 LLC, Land 1701 LLC, Land 4027 LLC, Land 2421 LLC

Location: 1124 Truman Avenue, Key West

Zoning: Historic Neighborhood Commercial – Truman / Simonton (HNC-1)



Background:

The property at 1124 Truman Avenue is located on the southwest corner of Truman Avenue and White Street and is one lot of record. It is located within the HNC-1 zoning district, and it is within the Key West Historic District boundaries.

There are three (3) active business licenses attached to the property:

Number	Classification
31770	Food Service: Catering / Take-Out Only
31771	Gas Station
31772	Retail / Mail Order / Wholesale 2001-5000 SF

The property currently contains one 2,599-square-foot one-story structure used for retail (convenience store) and a take-out only restaurant (Dion’s Quick Chick), a 103-square-foot accessory structure used for restrooms, and a 1,616-square-foot overhead metal canopy above four (4) gasoline pumps.

The applicant is proposing to construct a 133-square-foot addition that will enable interior access between the 2,599-square-foot structure and the 103-square-foot structure. Approximately one-half of the new floor area will fall within the required rear yard setback. The plans submitted will require a variance to the minimum rear yard setback requirements of the HNC-1 zoning district.

The following table summarizes the requested variance:

Relevant HNC-1 Zoning District Dimensional Requirements: Code Section 122 - 810				
Dimensional Requirement	Required/ Allowed	Existing	Proposed	Change / Variance Required?
Maximum height	35 feet	<35 feet	35 feet	No
Minimum lot size	4,000 SF	15,201 SF	No change	No
Maximum density	16 dwelling units per acre	N/A (commercial)	N/A (commercial)	No
Maximum floor area ratio	1.0	17% (2,702 SF)	18% (2,877 SF)	No
Maximum building coverage	50%	31% (4,727 SF)	32.9% (5,006 SF)	No
Maximum impervious surface	60%	≈97%	≈97%	No
Minimum open space (commercial)	20%	≈3%	≈3%	No
Minimum front setback	5 feet	5 feet	>5 feet	No
Minimum side setback	5 feet	2.05 feet	No change	No
Minimum street side setback	7.5 feet	7.5 feet	>7.5 feet	No
Minimum rear setback	15 feet	1.3 feet	1.3 feet	Variance Required (Expanding upon)

Process:

Planning Board Meeting: October 18, 2018
Local Appeal Period: 10 days
DEO Review Period: up to 45 days

Analysis – Evaluation for Compliance with the Land Development Regulations:

The criteria for evaluating a variance are listed in Section 90-395 of the City Code. The Planning Board, before granting a variance, must find all of the following:

1. ***Existence of special conditions or circumstances. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other land, structures, or buildings in the same zoning district.***

When the existing 2,599-square-foot primary structure was constructed in 1969, the minimum rear setback for the zoning district (C-1) was five feet. The structure is 5'-2" from the rear property line. Since then the zoning district and requirements have changed, making the building a legal, noncomplying structure.

A search of City records did not reveal when the 103-square-foot restroom was constructed within the required rear setback, 1'-7" from the rear property line.

Section 122-32 of the LDRs allows a noncomplying building to be continued. However, enlargements or extensions of noncomplying buildings may only be permitted if the existing nonconformity is not further increased. In addition, the lot size of 15,201-square-foot allows for the expansion to occur elsewhere on the parcel and stay in compliance with the minimum requirements of the zoning district. Therefore, staff is unable to find the existence of special conditions or circumstances.

NOT IN COMPLIANCE.

2. ***Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.***

The applicant is proposing to construct a 133-square-foot addition, of which approximately half will be within the required rear setback. Therefore, the conditions are generated from specific actions initiated by the applicant.

NOT IN COMPLIANCE.

3. ***Special privileges not conferred. That granting the variance requested will not confer upon the applicant any special privileges denied by the land development regulations to other lands, buildings, or structures in the same zoning district.***

Section 122-27 of the LDRs discourages the expansion of site nonconformities. Therefore, permitting the construction of an addition within the required rear yard setback would confer special privileges upon the applicant.

NOT IN COMPLIANCE.

4. ***Hardship conditions exist. That literal interpretation of the provisions of the land development regulations would deprive the applicant of rights commonly enjoyed by other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.***

The minimum lot size in the HNC-1 zoning district is 4,000-square-feet. The applicant is proposing a 133-square-foot addition to a 2,599-square-foot structure on a 15,201-square foot parcel.

Due to the size of the parcel, it is difficult for staff to find hardship conditions. Literal interpretation of the provisions of the land development regulations would not deprive the applicant of rights commonly enjoyed by other properties in the HNC-1 zoning district under the terms of this ordinance and would not work unnecessary and undue hardship on the applicant.

NOT IN COMPLIANCE.

5. ***Only minimum variance granted. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.***

The variance requested is not the minimum required that will make possible the reasonable use of the land, building, or structure. However, it is the minimum necessary to accommodate the request.

NOT IN COMPLIANCE.

6. ***Not injurious to the public welfare. That the granting of the variance will be in harmony with the general intent and purpose of the land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public interest or welfare.***

Due to the non-compliance with all the standards for considering variances, the granting of the requested variance would be injurious to the area involved and otherwise detrimental to the public interest.

NOT IN COMPLIANCE.

7. ***Existing nonconforming uses of other property not the basis for approval. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.***

Existing non-conforming uses of other properties, use of neighboring lands, structures, or buildings in the same district, or other zoning districts, are not the basis for this request.

IN COMPLIANCE.

Concurrency Facilities and Other Utilities or Service (Section 108-233):

It does not appear that the requested variance will trigger any public facility or utility service capacity issues.

The Planning Board shall make factual findings regarding the following:

That the standards established by Section 90-395 of the City Code have been met by the applicant for a variance.

The standards established by Section 90-395 of the City Code have not been fully met by the applicant for the variances requested.

That the applicant has demonstrated a “good neighbor policy” by contacting or attempting to contact all noticed property owners who have objected to the variance application, and by addressing the objections expressed by these neighbors.

The Planning Department has not received any public comment for the variance request as of the date of this report.

RECOMMENDATION:

Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for a variance to the minimum rear yard setback requirements be denied.

However, if the Planning Board approves this request, staff would like to require the following conditions:

General Conditions:

The proposed development shall be consistent with the plans dated September 5, 2018 by Robert Allen Steele, Registered Architect. No approval granted for any other work or improvements shown on the plans other than the proposed construction of a 133-square-foot addition to link the existing 2,599-square-foot primary structure to the existing 103-square-foot accessory structure.

Condition required to be completed prior to the issuance of a building permit:

A Certificate of Appropriateness shall be obtained for the proposed development.

