

THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report



To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Zoe Porter, Planner I

Meeting Date: April 20, 2023

Agenda Item: **Variance – 1117 Fleming Street (RE #00004650-000000)** – A request for a variance to the minimum required front setback adjacent to Fleming Street, and the maximum allotted building coverage in order to relocate and renovate an existing multi-family home into a single-family home, construct a pool and outdoor deck, and construct two dwelling units on a double frontage lot located within the Historic Medium Density Residential (HMDR) zoning district pursuant to Section 90-395, 122-600(4)a. and 122-600(6)a., of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: The applicant is requesting a variance in order to relocate, elevate, and renovate an existing multi-family home, construct a pool and raised deck, and construct a new two-family residential dwelling unit.

Applicant: Richard McChesney; Spottswood, Spottswood, Spottswood, & Sterling, PLLC

Property Owner: Jeffrey Alexander Smead and James Thomas Braun JR

Location: 1117 Fleming Street (RE# 00004650-000000)

Zoning District: Historic Medium Density Residential (HMDR) zoning district



**Background:**

The subject property, 1117 Fleming Street, is a 6,909 square foot parcel located near the intersection of Fleming Street and White Street. The property is a double frontage lot, having frontage on both Stickney Lane and Fleming Street, and therefore is subject to the required front-yard setback on the north and south side of the parcel. The parcel is located within the Historic Medium Density Residential (HMDR) zoning district. According to the Monroe County Property Appraiser, the existing multi-family home was constructed in 1935; the structure currently consists of three (3) recognized non-transient dwelling units. The existing multi-family structure is both historic and contributing to the Key West Historic District. The current property owner purchased the property in 2021 per the variance application.

**Request:**

The applicant has requested a variance to the required front setback adjacent to Fleming Street, and a variance to the maximum building coverage requirement. The submitted plans propose relocation, elevation, and renovation of the existing three-unit multi-family home into a three bedroom, three-and-a-half-bathroom single-family home. Upon relocation, the existing structure would encroach 6'-4" into the required 10' required front setback, triggering a variance to the front-yard setback adjacent to Fleming Street. The proposed relocation into the front yard setback is intended to mimic the original location of the historic structure, which does not align with the dimensional requirements within the Land Development Regulations. However, the *U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for the Rehabilitation of Historic Buildings* encourages the historic character of a property to be retained and preserved, and as such the relocation is supported by HARC.

The remaining two units will be constructed within a new two-family residential dwelling unit facing Stickney Lane. The request to exceed the maximum allowed building coverage is not triggered by the construction of the three units, but rather reflects the addition of the proposed elevated wood deck, staircase, and above ground pool/spa. The requested variance to building coverage would not be necessary if the outdoor amenities were 29" or lower from grade. The variance application states these elevated outdoor amenities are elevated to improve accessibility on the property for family members with limited mobility.

**Proposed Development:**

The site data table below details the current and proposed site data for the property.

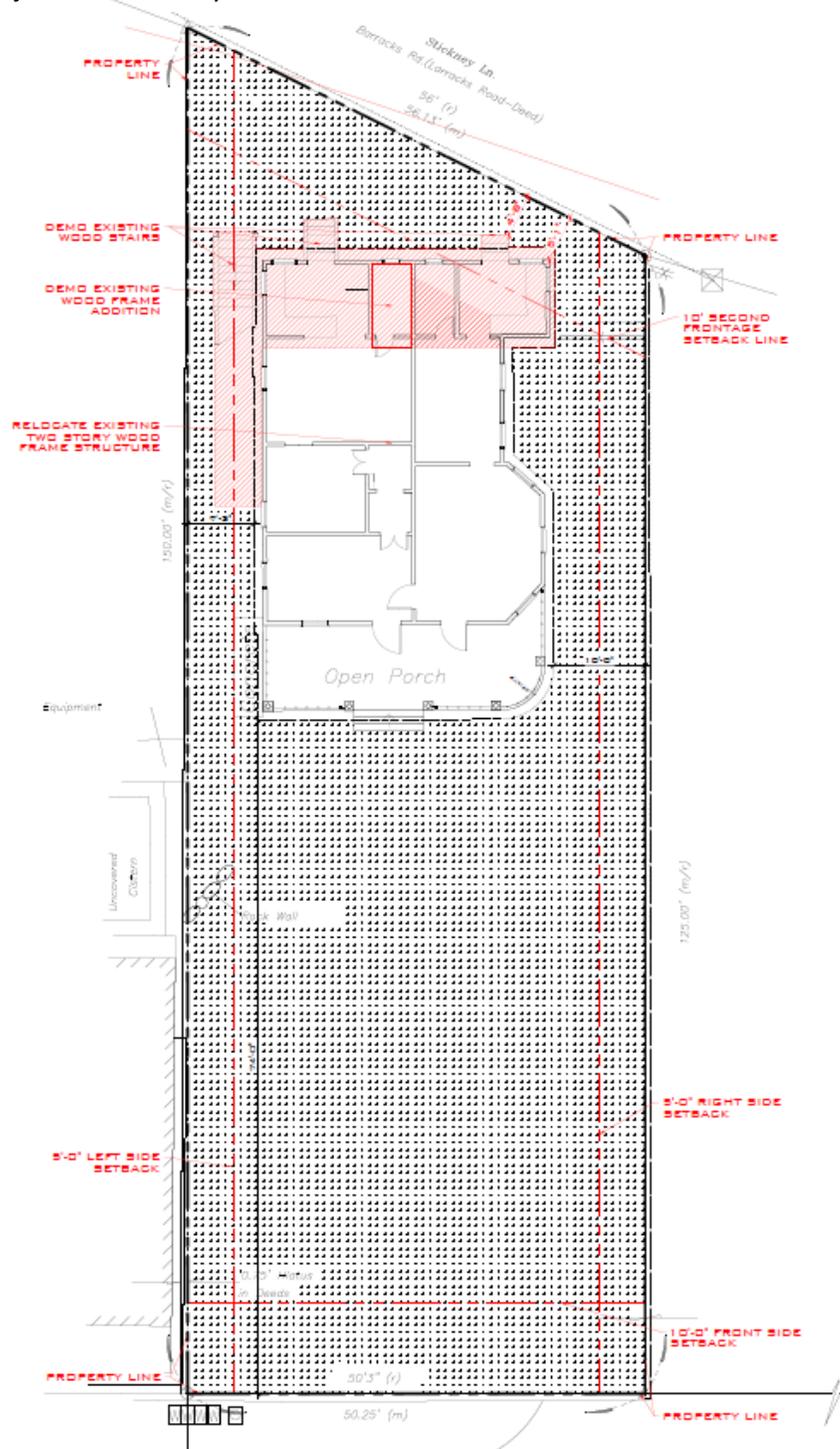
<b>Site Data Table</b>				
	<b>Code Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Variance Request</b>
Zoning District	HMDR			
Flood Zone	AE7			
Lot Size	4,000 sq. ft.	6,909.37 sq. ft.	6,909.37 sq. ft.	
Fleming Street Front Setback	10'	74'	3'-8"	<b>6'-4"</b>
Stickney Lane Front Setback	10'	4'-8"	10'-4" (varies)	
Right Side Setback	5'	4'-2"	6'-1"	
Left Side Setback	5'	7'-3"	5'	
Building Coverage	40% (2,763.74 sq. ft.)	25.9% (1,792.21 sq. ft.)	57.11% (3,949 sq. ft.)	<b>17.11% (1,185.26 sq. ft.)</b>
Impervious Surface	60% (4,154.62 sq. ft.)	9.41% (650 sq. ft.)	22.83% (1,578 sq. ft.)	
Open Space	35% (2,418.27 sq. ft.)	73.6% (5,089.27 sq. ft.)	35.2% (2,435 sq. ft.)	

The applicant is requesting variances pursuant to the following sections of the City of Key West Land Development Regulations:

- Section 122-600(4) a. – Maximum building coverage
- Section 122-600(6) a. – Minimum front setback

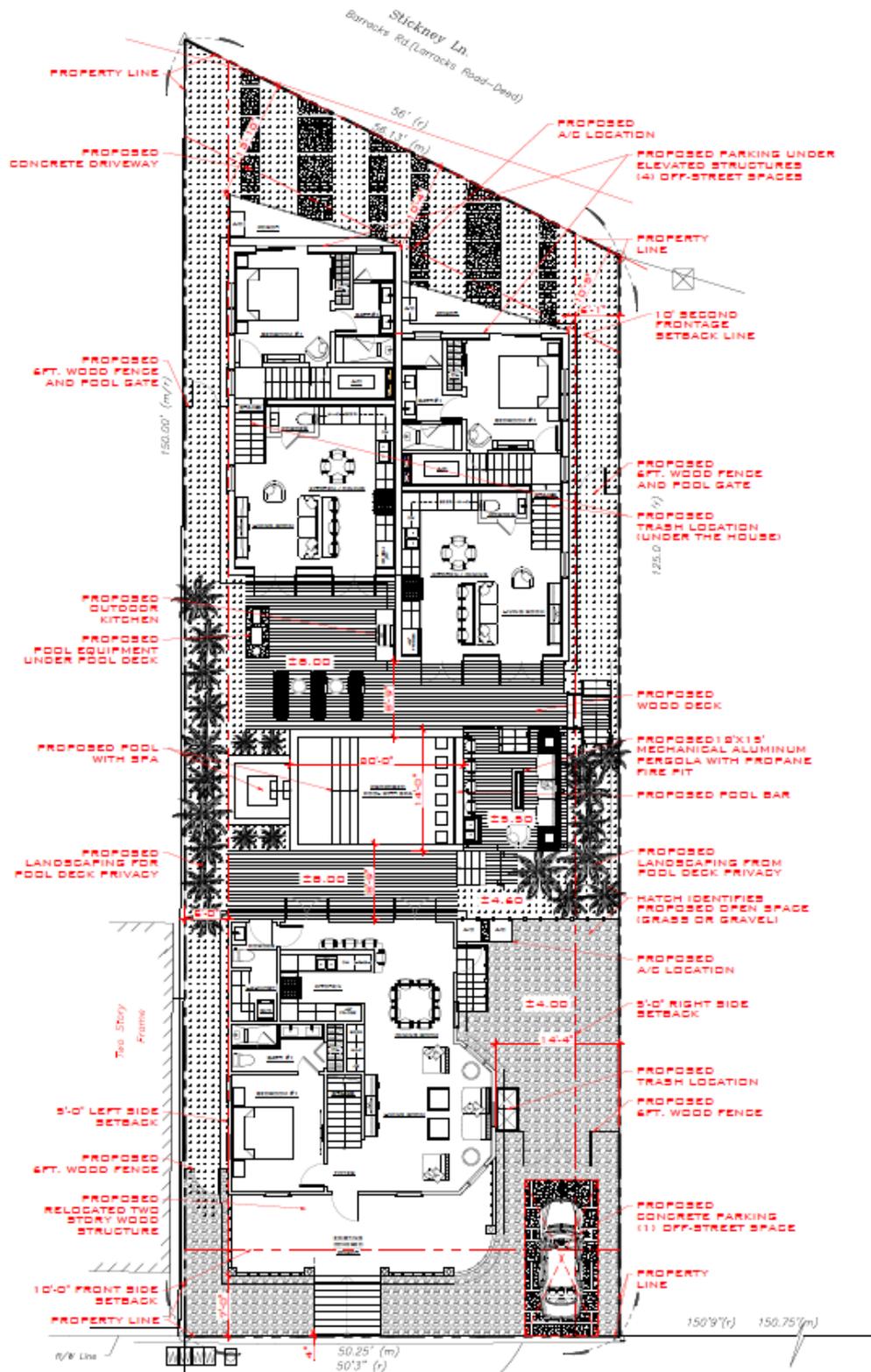
### Existing Site Plan:

The existing historic multi-family structure currently encroaches into the side setback and the front-yard setback adjacent to Stickney Lane.



## Proposed Site Plan:

The applicant has proposed to relocate the three-unit, multi-family structure within the front-yard setback adjacent to Fleming Street, elevate, and renovate the structure into a single-family home. The remaining two units will be constructed within a two-family dwelling unit with frontage to Stickney Lane. A 729 square foot elevated deck and 338 square foot above ground pool/spa is proposed between the two structures.



**Process:**

Planning Board Meeting:	Apr. 20 <sup>th</sup> , 2023
Local Appeal Period:	10 Days
Planning renders to DEO for review:	Up to 45 days

**Staff Analysis - Evaluation:**

The criteria for evaluating a variance are listed in Section 90-395 of the City of Key West Land Development Regulations. The Planning Board, before granting a variance, must find all 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.***

The subject property consists of 6,909 square feet, exceeding the minimum required 4,000 square foot lot size for properties located within the HMDR zoning district. The parcel is a double frontage lot; therefore, structures on the property are subject to the required front-yard setback on each side of the parcel with street frontage, as opposed to maintaining a designated required rear yard. However, the HHDR zoning district front-yard setback of 10' is less than the required rear yard setback of 15', providing the subject parcel with greater flexibility in situating structures.

**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 has proposed to relocate an existing noncomplying structure into the required front-yard setback, construction of additional structures on the property, which will cause on-site building coverage to exceed the maximum permitted within the HMDR zoning district. The proposed conditions are a result of the proposed site design.

**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.***

If the requested variances to the front yard setback and building coverage were to be voted for approval, the property would be subject to special privileges denied to other properties within the same zoning district. All properties, buildings, and structures located within the HMDR zoning district are subject to the dimensional requirements stated within the LDR's, unless the building or structure is considered legally noncomplying.

**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.***

Denial of the requested variance would not deprive the applicant of rights commonly enjoyed by other properties within the HMDR zoning district. The parcel is larger than the minimum lot size established for properties within the HMDR zoning district, therefore, the property contains the square footage necessary to reasonably utilize the land in accordance with the dimensional requirements within the LDR's.

#### 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 requested variance is not the minimum variance to make possible the reasonable use of the land, building, or structure. The variance to building coverage is triggered by the proposed elevated deck, staircase, and above ground pool/spa. Though the staircase may be a necessity, the elevated deck and the above ground pool/spa are not necessary to make possible the reasonable use of the land, but rather amenities for the residential units on the property. The need for both variances could potentially be reduced if the proposed deck, pool, and spa were decreased in size or removed entirely.

#### 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.***

The general intent of the Land Development Regulations (LDR's) is to promote public health, safety, and general welfare. Approval of the requested variances would not be in harmony with the general intent of the LDR's. However, the existing multi-family structure encroaches into a side setback and the front-yard setback adjacent to Stickney Lane, the proposed relocation will eliminate noncompliance to the side setback and allow the proposed two-family dwelling unit to be in compliance with the front-yard setback to Stickney Lane, potentially promoting improved line of sight for automobiles traveling on the narrow lane. The Section 122-32(c) of the LDR's states, in part, that noncomplying buildings or structures shall comply to the land regulations if moved from their existing location, however, the relocation of the historic structure to the front of the lot adjacent to Fleming Street does satisfy historic district guidelines and is not detrimental to the public interest.

#### 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 variance 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 capacity issues.

**The Planning Board shall make factual findings regarding the following:**

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

The standards established by Section 90-395(a) of the City Code have not been met in their entirety.

*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 received one objection from an adjacent property owner; the applicant has demonstrated a “good neighbor policy” by reaching out to and addressing concerns expressed by the objecting neighbor.

*The 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 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 or the ordinance in the zoning district would be permitted.

*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 such grounds were considered.

*No variance shall be granted that increase or has the effect of the increasing density or intensity of a use beyond that permitted by the comprehensive plan or these LDRs.*

No density or intensity of a use would be increased beyond that permitted by the comprehensive plan or these LDRs.

**Recommendation:**

The requested variance for exceeding the minimum required front setback and to the maximum permitted building coverage does not comply with all the criteria established within the Land Development Regulations. The Planning Department recommends **DENIAL** of the requested variance.

If the Planning Board chooses to approve the variance, the Planning Department recommends the following conditions:

1. The proposed construction shall be consistent with the plans signed, sealed, and dated March 8, 2023, by Artibus Design.
2. Per Utilities: a surface water management plan is required. Stormwater runoff retention volume shall be equivalent to one-inch times the parcel area, 576 cubic inches.

3. Per Utilities: best management practices (BMPs) for construction site sediment control, waste management, and stormwater pollution prevention are required and must be included on the construction plans.
4. Per Utilities: the applicant shall coordinate the sanitary sewer connection(s) with the Utilities Department.
5. Per Urban Forestry: The subject property has an existing tree removal permit that requires the planting of 8 native palms, each a minimum of 4' in height. Approved dicot trees can be replaced for some of the required palms (1-4' tall palm=1.3 caliper inches of dicot trees). Landscaping must include the required mitigation for the existing tree removal permit. Any additional vegetation shall consist of 70% native plant species pursuant to Section 108-412(b).