

**THE CITY OF KEY WEST
BOARD OF ADJUSTMENT**
Executive Summary



To: Board of Adjustment

From: Kevin Bond, AICP, LEED Green Associate, Senior Planner

Through: Donald Leland Craig, AICP, Planning Director

Meeting Date: November 18, 2014

Agenda Item: **Height Variance – 1500 Reynolds Street (RE # 00037160-000100; AK # 8735677)** – A request for variance approval to maximum building height to allow new wireless antennas and a new nonhabitable equipment shelter on the roof of an existing hotel building on property located within the Historic Commercial Tourist (HCT) Zoning District pursuant to Sections 90-395, 122-900(3) and 122-1149 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida

Request: To allow the installation of three new Verizon wireless communication antenna arrays and a new 12'x20' nonhabitable equipment shelter on the roof of the Casa Marina Resort building at a total height not to exceed 53.5 feet from crown of road.

Applicant: Charles F. Fink, SBA Communications Corporation

Property Owner: Casa Marina Owner LLC

Location: 1500 Reynolds Street (RE # 00037160-000100; AK # 8735677)

Zoning: Historic Commercial Tourist (HCT)



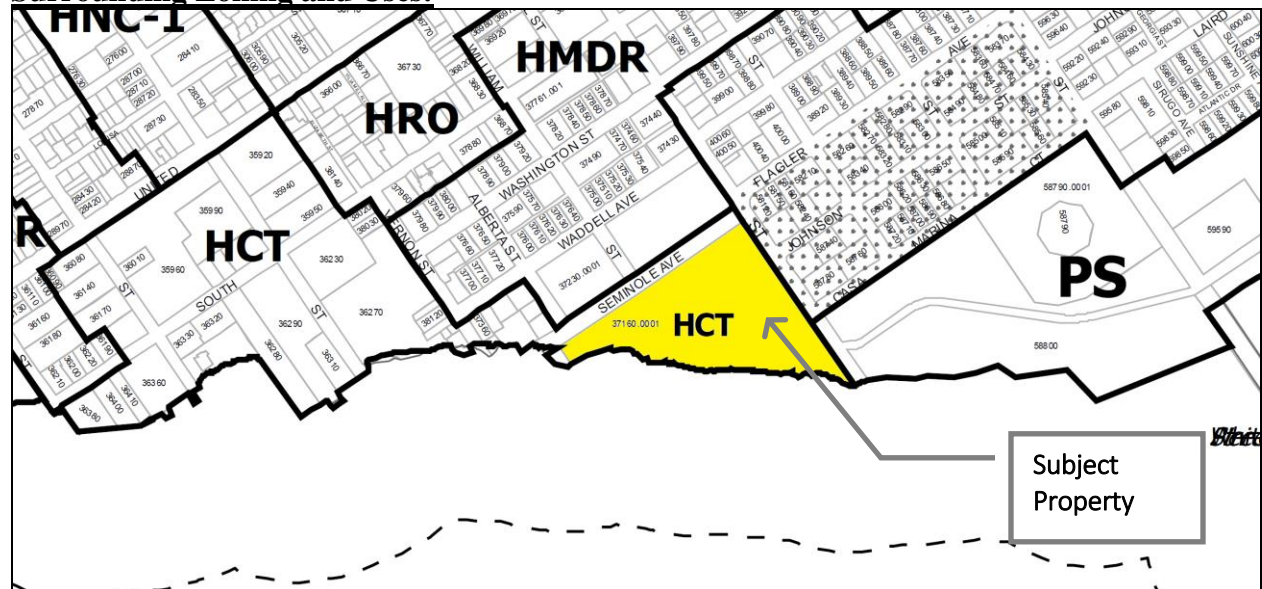
Background:

The property, which contains the Casa Marina Resort, is located at the southern corner of Reynolds Street and Seminole Avenue. The proposed location of the new antennas and nonhabitable equipment shelter is the roof a non-historic hotel building built as an addition to the original Casa Marina building, which is a contributing structure within the Key West Historic District. This same roof area contains existing wireless antennas, equipment and nonhabitable shelters previously approved as conditional uses and height variances by the City in 2002 and 2010.

Due to the proposed expansion of the three-dimensional building envelope by the new antennas and equipment shelter, a height variance is required to be obtained. Additionally, wireless communication facilities are considered a public and private utility under the City's Land Development Regulations. Conditional use approval is required for new or expanding public and private utilities within the HCT Zoning District, pursuant to City Code Section 122-898(8). On September 18, 2014, the Planning Board granted the conditional use request with conditions through Resolution No. 2014-60.

Request:

The applicant proposes to install three new antenna "tripods," a 12'x20' nonhabitable equipment shelter and related wireless communication equipment on the roof of a non-historic building at the Casa Marina Resort. The new antennas and shelter would extend up to eight (8) feet higher than the existing rooftop parapet wall, for a total height of 53.5 feet above crown of road. The new structures would not exceed the height of the existing rooftop wireless facilities, although the new equipment shelter would be four (4) inches taller than the other existing shelter. The maximum building height within the HCT Zoning District is 35 feet.

Surrounding Zoning and Uses:

North: HMDR and SF, Residential
South: C-OW, Atlantic Ocean
East: PS, Higgs Beach
West: HCT, Hotels, Residential

Pursuant to City Code Section 122-1149, “building height” as used in the LDRs means the vertical distance from the crown of the nearest adjacent street to the highest point of the proposed building. These height regulations may be waived in order to accommodate nonhabitable hardware and utility structures typically associated with the principal structure, including spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy or use.

Furthermore, the City Charter allows that variances to height regulations may be granted by the Board of Adjustment without being subject to referendum so long as the exceeded height is for non-habitable space. The full provision is provided as follows:

City Charter Section 1.05, Height Restriction:

- (a) Building height restrictions in the City's Land Development Regulations and building code in effect as of the adoption of this charter section are subject to change only upon approval of a majority of the qualified electors casting ballots at a general municipal election.
- (b) If the Board of Adjustment approves a height variance for habitable building space, this approval shall be submitted to the voters for ratification in the next regularly scheduled election. Board of Adjustment approval shall not become effective until voter ratification. Board of Adjustment height variances for non-habitable purposes, including, but not limited to, radio towers, antennae and spires, shall be final and not be subject to referendum. Board of Adjustment height variances for build back of involuntarily destroyed structures which are nonconforming in their height shall also be final and not subject to referendum. (Ord. No. 98-21, § 2 (Exh. A), 8-4-1998)

Process:

Development Review Committee:	July 24, 2014
Planning Board (conditional use review):	September 18, 2014 (approved with conditions)
HARC:	October 28, 2014
Board of Adjustment:	November 18, 2014
DEO Review:	Up to 45 days

Analysis – Evaluation for Compliance With The Land Development Regulations:

Pursuant to City Code Section 90-97, the Board of Adjustment may authorize in specific cases a variance from the maximum height requirements of the LDRs and Article 1.05 of the City Charter where the requirements of City Code Section 90-394 are met. The criteria for evaluating variances are listed in City Code Section 90-395(a). Before any variance may be granted, the Board of Adjustment 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.***

There are no special conditions or circumstances that are peculiar to the land that are not applicable to other land in the same zoning district. The Planning Department is aware that special conditions or circumstances are peculiar to wireless communication facilities

regarding height. However, the property owner has reasonable use of the property without the addition of new wireless telecommunications facilities.

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

Conditions associated with this application are created by the applicant. The property owner has reasonable use of the property without the addition of new wireless communication facilities.

- (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 (LDRs) to other lands, buildings or structures in the same zoning district.***

Granting this variance would confer a special privilege upon the applicant. However, two prior applications for similar wireless communication facilities in the same location were granted in 2002 and 2010.

- (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.***

To achieve the desired level of service, the applicant states that they must build a facility that exceeds the building height limit within the HCT Zoning District. The applicant states there are a lack of acceptable alternative locations in the area on which to collocate these new antennas. Regardless, the property owner has reasonable use of the property without the addition of new wireless communication facilities.

- (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 for 18.5 feet over the maximum building height of 35 feet within the HCT Zoning District may be the minimum variance that would make possible the desired level of service. However, the applicant has not demonstrated that the requested height variance is the minimum necessary. Further, the property owner has reasonable use of the property without the addition of new wireless communication facilities.

- (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 HCT Zoning District provides for public and private utilities through a conditional use review. The conditional use application that was submitted concurrently with this variance application for height was approved with conditions by the Planning Board on September 18, 2014. The conditional use approval establishes whether the use anticipated by this variance request would be in harmony with the general intent and purpose of the Land Development Regulations. It does not appear that the granting of the variance would be injurious to the public interest or welfare.

- (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.*

Other non-conforming properties are not considered as the basis for this request.

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

Concurrency management was considered as part of this review and the conditional use review. The site is fully developed. No aspect of this application is anticipated to adversely impact any public facilities monitored as part of the City's concurrency management system.

Pursuant to Code Section 90-395(b), the Board of Adjustment shall make factual findings regarding the following:

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

The Applicant has not met all of the standards established by the City Code for a variance.

- (2) **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.**

As of the writing of this report, Staff is not aware of any objections.

RECOMMENDATION:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends the request for a variance to maximum building height be **DENIED**.

However, if the Board of Adjustment chooses to approve the variance application, the Planning Department recommends the following conditions:

1. This height variance shall only be for the proposed wireless communication facilities as shown on the attached plans by Russell C. Morrison, P.E. Any future increase of height beyond the three-dimensional building envelope would require a new height variance application.
2. The applicant shall adhere to the recommendations by the Florida State Historic Preservation Office, according to the attached letter dated August 25, 2014. Additionally, in order to further reduce the adverse visual impacts on the historic district, the applicant shall locate the new antennas and equipment shelter as far away from Seminole Avenue as possible, provided the height of the structures is not further increased.
3. The applicant shall comply with all applicable laws and regulations, including federal requirements pertaining to air traffic safety, wireless communication facilities and Section 106 consultation as required in the National Environmental Protection Act.