

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



To: Chair and Board of Adjustment Members

Through: Thaddeus Cohen, Planning Director

From: Patrick Wright, Planner II

Meeting Date: May 3, 2016

Agenda Item: **Height Variance - 533 Eaton Street (RE # 00004130-000000, AK # 1004294)** – A request for variance to maximum height in order to accommodate non-habitable hardware and utility structures on property located within the Historic Neighborhood Commercial District – Truman/Simonton (HNC-1) Zoning District pursuant to Sections 90-395, 122-810(3) and 122-1149 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida

Request: Variance to maximum height from the approved height of 55'-3" to 60'-4.5" for a new non-habitable elevator/stairway penthouse on the roof of the existing building.

Applicant: The Studios of Key West / Michael Miller, Architect

Property Owner: The Studios of Key West, Inc.

Location: 533 Eaton Street (RE # 00004130-000000, AK # 1004294)

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

Background:

The property at 533 Eaton Street currently houses the non-profit Studios of Key West. The building formerly housed the Scottish Rite/Masonic lodge until it was purchased by the Studios of Key West in 2013. TSKW received several development approvals in 2014 for the adaptive reuse of the building to meet their needs. Part of the proposed development would involve constructing a new roof garden with a 465-square-foot elevator/stairway penthouse, which necessitates the height variance. Currently, there is no access to the roof level. The elevator and stairway penthouse would be necessary to provide accessibility and emergency egress from the existing building to and from the proposed roof garden.

On April 3, 2014 the Board of Adjustment approved Resolution 14-110 approving a non-habitable height variance for an elevator/stairway penthouse at a total height of 55'-3". Since that time the building has gone through extensive interior renovations. As renovations continue it has

come to the attention of the builder and project architect that the design for elevator shaft and penthouse as currently approved do not meet the mechanical requirements for functional operation of the elevator. This has necessitated a request for an additional 5'-1.5" to the existing approved non-habitable height variance of 55'-3", for a total height of 60'-4.5".



Request:

The request is for a 5'-1.5" increase from the 55'-3" currently approved for the new elevator/stairway penthouse. This would be 25'-4.5" higher than the maximum height of 35 feet allowed within the HNC-1 Zoning District. Only the proposed elevator/stairway penthouse, awnings and a new railing would exceed the existing height of the building. All other rooftop structures would not exceed the existing building height. The rooftop elevator and stairway enclosure would be setback from the building façade and should not be visible from street level directly below. The existing rear exterior fire escape stairs would be extended to the roof level to provide a secondary egress.

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. 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 nonhabitable purposes, including, but not limited to, radio towers, antennae and spires, shall be final and not be subject to referendum** [Emphasis added.] 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.

The following table summarizes the relevant project data.

Project Data Summary				
Dimensional Requirement	Required/ Allowed	Existing	Proposed	Change
Zoning District	HNC-1			
Flood Zone	X			
Site size	5,185 SF; 0.12 acres			
Maximum height	35 feet	47'-5" Existing 55'-3" Currently Approved	60'-4.5"	+5'-1.5"; 25'-4.5" higher than maximum allowed; owner has applied for variance

Process:

Development Review Committee:	January 23, 2014
Planning Board Meeting:	March 13, 2014
HARC:	March 25, 2014
	February 23, 2016
Board of Adjustment:	April 1, 2014
	May 3, 2016

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.*

The existing conditions of the building pre-date the dimensional requirements of the current LDRs, and therefore is legally non-conforming to some dimensional requirements in the HNC-1 Zoning District. The Applicant is proposing to create new roof access that does not currently exist, and to use the space to add landscaping and a possible green roof, in a sense creating green space on developed property where it is otherwise not possible. It is proposed structure enclosing the new elevator and stairway that would provide roof access that triggers the need for a variance. The penthouse design is setback from the building façade so as not to be visible from street level directly below. Nonetheless, the nonconforming height of the historic building is not a special condition or circumstance that is unique to the land or building within the HNC-1 Zoning District.

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

The condition of the nonconforming building height was not created by the Applicant. However, the proposal to further increase the nonconforming building height is a condition created by the Applicant.

(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.

Granting of the variance request would confer the privilege of a larger and taller building, even though the space is non-habitable and would only be used to provide access to the roof.

(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.

If the height variance for the proposed elevator/stairway penthouse is denied, the Applicant would not be deprived of rights commonly enjoyed by other properties in the HNC-1 Zoning District. The possible new green roof does not necessitate a height variance. Therefore, hardship conditions do not exist.

(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 Applicant would have reasonable use of the land and building without the height variance. However, the height variance would be limited to only the proposed elevator/stairway penthouse, and not a whole new floor of the building.

(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 not being in compliance with all of the standards for considering variances, the granting of the requested variances would be considered injurious to the area involved and otherwise detrimental to the public interest. However, the Applicant's request would allow the creation of an amenity in the form of providing access to a landscaped terrace on a

property where no landscaping currently exists, and access to a possible green roof that would reduce stormwater run-off from the site.

- (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 nonconforming uses of other property in the HNC-1 Zoning District or permitted uses of property in other zoning districts has not been considered in the analysis of the requested variances.

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 at this time.

RECOMMENDATION:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends the request for variance 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 roof garden penthouse structure, awning and railing as shown on the approved plans dated March 7, 2016 by Michael Miller Architecture. Any future increase of height beyond this would require a new height variance application.
2. The roof shall not be used for any commercial activities that are unrelated to the principal uses, but may serve as an accessory use.