

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



**To:** Madam Chair and City Commissioners

**Through:** Jim Scholl, City Manager

**From:** Vanessa Sellers, Planner II

**Meeting Date:** April 2, 2019

**Agenda Item:** **Height Variance – 5610 College Road (RE # 00072080-001300; AK # 1075990)** – A request for a variance to height for non-habitable space in order to construct a wireless telecommunications facility on property located within the Public and Semipublic Services District (PS) zoning district pursuant to Sections 90-395 and 122-1020 (3) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

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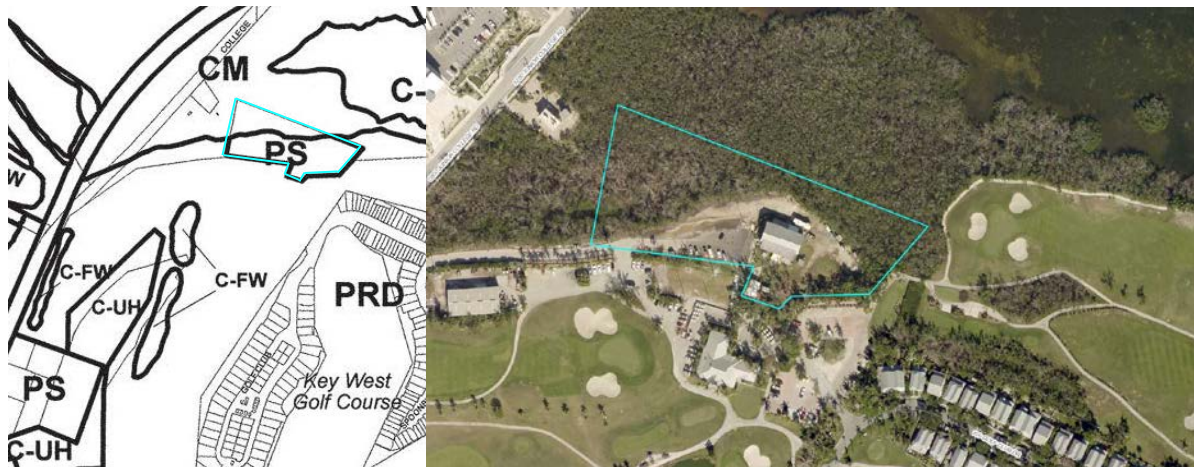
**Request:** To consider a height variance of 100-feet to allow for an overall height of 125-feet for non-habitable space in order to construct a wireless telecommunications facility consisting of a single 125-foot utility pole for antennae and a 40-foot by 40-foot elevated platform for equipment.

**Applicant:** Key West Telco, LLC

**Property Owners:** Arthur Sawyer Post 28 American Legion Dept of FL

**Location:** 5610 College Road  
(RE # 00072080-001300; AK # 1075990)

**Zoning:** Public and Semipublic Services District (PS)



**Background:**

The applicant is requesting a height variance in order to install a wireless telecommunications facility towards the rear of the parcel at 5610 College Road. The utility use will be in addition to the parcel's current use as the Arthur Sawyer American Legion Post 28.

The proposed wireless telecommunications facility will consist of a single 125-foot utility pole for antennae and a forty-foot by forty-foot elevated platform to store equipment. According to the applicant, the facility will decrease documented wireless communication service deficiencies in the area.

The request for a height variance is associated with an application for a conditional use permit because public and private utilities are a conditional use of the public service zoning district. The conditional use component was approved by the Planning Board at a duly noticed public meeting on Thursday, February 21, 2019.

**Request:**

A height variance for non-habitable space is requested to accommodate the proposed construction of a single utility pole for antennae. The total height would be 125-feet above existing grade. The pole is the only portion of the facility requesting to exceed height limit.

The City Charter Section 1.05 allows that variances to height regulations for non-habitable purposes 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. Board of adjustment height variances for a build back of involuntarily destroyed structures which are nonconforming in their height shall also be final and not be subject to referendum.
- (c) The maximum allowable height for habitable space on approximately 2.62 acres of City owned property on College Road in the HDR-1 zoning district shall be 40 feet for those projects that are devoted entirely to affordable workforce housing.

The following table summarizes the relevant project data:

Project Data				
	Required / Allowed		Proposed	Variance Request
<b>Zoning</b>	Public Service (PS)			
<b>Maximum Height</b>	25-feet		125-feet	100-feet

**City Actions:**

Board of Adjustment:

April 2, 2019

**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 Board of Adjustment 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.**

Although a wireless telecommunications antenna must be higher than surrounding buildings in order to provide adequate coverage, the applicant is proposing a height that exceeds the maximum allowable for the district. Special conditions or circumstances do not exist that are peculiar to the land involved and which are not applicable to other lands in the same district.

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's proposed placement of the facility in the PS zoning district triggers the need for a height variance, therefore the conditions are created 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.**

A height variance to construct a wireless telecommunications facility that exceeds the maximum allowable height of the zoning district by 100-feet 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.**

If the height variance for the proposed elevation is denied, the applicant would not be deprived of rights commonly enjoyed by other properties in the PS zoning district. However, there are no other zoning districts within the City of Key West that allow for the proposed height. Therefore, hardship conditions exist.

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 applicant would have reasonable use of the land without the variance. However, it is the minimum necessary to accommodate the request.

NOT IN COMPLIANCE.

6. **Not injurious to the public welfare. That the grant 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.

**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 meets some but not all 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.**

The Planning Department received twenty-two (22) public comments in support of the variance request and one (1) public comment in opposition of the variance request as of the date of this report. The applicant met with the objecting party on January 25<sup>th</sup> at the proposed site for the tower and the two exchanged multiple emails.

**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 nonhabitable pole antenna at a height of 125-linear feet. Any future increase of height beyond this will require a new height variance application.
2. The site improvements/renovations shall match approved plans dated October 4, 2018 by Russell C. Morrison, Engineer.
3. The proposed landscape plan dated August 15, 2018, by David Knoll, Architect, shall be reviewed by the City's Urban Forester and may be modified if necessary.
4. Pursuant to Section 122-63 (e), the necessary conditional use approval granted by the Planning Board on February 21, 2019 shall expire if construction has not commenced within twelve (12) months of approval.