

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



To: Madam Chair and City Commissioners

Through: Jim Scholl, City Manager

From: Melissa Paul-Leto, Planner I

Meeting Date: June 18, 2019

Agenda Item: **Height Variance – 1209 Laird Street (RE # 00059250-000000) – A request for a variance to height for non-habitable space in order to allow for the after the fact construction of a two-story single family structure on property located within the Single Family (SF) zoning district pursuant to Sections 90-395 and 122-238 (3) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.**

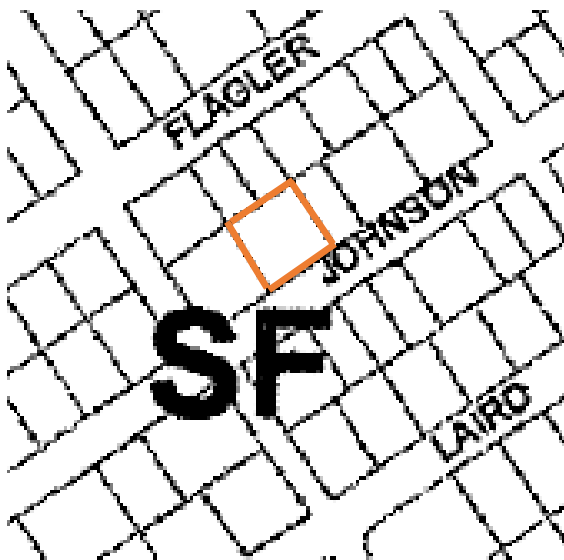
Request: To consider a height variance of 6 inches to allow for an overall height of 31-feet for non-habitable space to allow for the after the fact construction of a two-story single-family structure.

Applicant: Richard McChesney, Esq. – Spottswood, Spottswood, Spottswood & Sterling

Property Owners: Alex Model

Location: 1209 Laird Street (RE # 00059250-000000)

Zoning: Single Family (SF)



Background:

The applicant is requesting a height variance to allow for the after the fact construction of a two-story single-family structure at 1209 Laird Street. The structure was constructed with a height of 8.5 feet for the top first finished floor. Whereas the minimum required amount is 8.0 feet in the AE flood zone. The structure received a .5-foot Building Height Exception.

The property is in the Single-Family zoning district where the maximum height is 25 feet plus an additional five feet for non-habitable purposes if the structure has a pitched roof. The request for a height variance is triggered by the after the fact height measurement of 31.0 feet from the crown of road. Including the .5-foot Building Height Exception, there is a remainder of 6 inches within the pitched roof that is over the height limit.

Request:

A height variance for non-habitable space is requested to accommodate the after the fact construction of a two-story residential structure. The total height is 31.0-feet the crown of road.

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 most 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
Zoning	Single Family (SF)			
Maximum Height	25-feet plus an additional 5 feet for non-habitable purposes if the structure has a pitched roof.		31.0-feet	.5-feet

City Actions:

Board of Adjustment:

June 18, 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 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.**

Section 122-238 (3) states the maximum height within the Single-Family zoning district is 25 feet plus an additional five feet for non-habitable purposes if the structure has a pitched roof. The applicant constructed a two-story structure with 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 after the fact construction of a 31.0 feet structure from crown of road 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 allow a structure to exceed the maximum allowable height in the SF zoning district that other lands, buildings, and structures in the same zoning district must adhere to would confer special privileges on 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.**

Hardship conditions do not exist. The applicant constructed a brand-new structure with a pitched roof that exceeds the maximum allowable height in the SF zoning district. The applicant could have opted for a lower elevation, a flat roof, or a lower pitched roof. Literal interpretation of the provisions of the LDRs would not deprive the applicant of rights commonly enjoyed by other properties in this same 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 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 has not received any public comments for the variance request as of the date of this report.

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. The after the fact height variance request shall be consistent with the elevation drawing A-2.1 dated, May 29, 2019 by Richard J. Milelli, P.E.