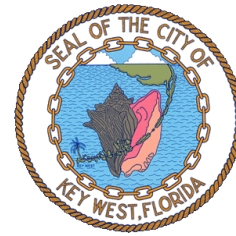


**THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report**



**To:** Chairman and Planning Board Members

**Through:** Roy Bishop, Planning Director

**From:** Angela Budde, Planner I

**Meeting Date:** December 19, 2019

**Agenda Item:** **Variance -626 Samaritan Lane (RE# 00016170-000000)** – A request for a variance to the minimum rear yard setback requirement in order to construct an addition onto the principal structure expanding upwards into the nonconformity on a property located within the Historic Residential/Office (HRO) Zoning District pursuant to the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida

**Request:** The applicant is proposing site modifications to the property by constructing an addition to accommodate a bedroom and bathroom

**Applicant:** Carlos Rojas, Registered Architect

**Property Owner:** Lynn H. Kephart Revocable Trust

**Location:** 626 Samaritan Lane (Re# 00016170-000000)

**Zoning:** Historic Residential/Office (HRO) Zoning District

**Background/Request:**

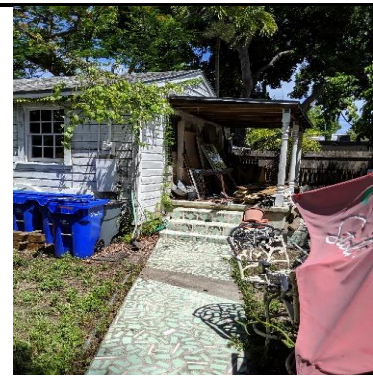
The property at 626 Samaritan Lane is located between Petronia and Angela Streets, Duval and Whitehead Streets and is one lot of record. The existing nonconforming single-family residential structure is located within the rear setback. The property is located within the Key West Historic District and has been recognized as a contributing structure to the district, built circa 1938.

The applicant is proposing to construct an addition onto the principal structure. The plans submitted would require a variance to the rear-yard setback as the nonconformity is expanding upwards and changing the three (3) dimensional envelope of the primary structure.



The following table summarizes the requested variance:

Relevant HRO Zoning District Dimensional Requirements: Code Section 122-930				
Dimensional Requirement	Required/ Allowed	Existing	Proposed	Change / Variance Required?
Flood Zone	X			
Maximum height	30 Feet	14 Feet	17 Feet 9 Inches	No
Minimum lot size	5,000 Square Feet	2,435 Square Feet	No change	No
Maximum floor area ratio	1.0	N/A	N/A	No
Maximum building coverage	50% (1,217.5 Square Feet)	28.2% (687 Square Feet)	34.3% (835 Square Feet)	No
Maximum impervious surface	60% (1,461 Square Feet)	29.4% (717 Square Feet)	52.2% (1,273 Square Feet)	No
Minimum open space (residential)	35% (852 Square Feet)	81% (1,978 Square Feet)	41% (1,003 Square Feet)	No
Minimum front setback	5 Feet	7 Feet 10 Inches	No change	No
Minimum right-side yard setback (North)	5 Feet	0 Feet	No change	No
Minimum left-side yard setback (South)	5 Feet	22 Feet 7 Inches	5 Feet	No
<b>Minimum rear-yard setback</b>	<b>10 Feet</b>	<b>3 Feet 8 Inches</b>	<b>Expands upon vertically</b>	<b>Yes</b>



**Process:**

Planning Board Meeting:	December 19, 2019
HARC:	TBD
Local Appeal Period:	10 days
DEO Review Period:	up to 45 days

**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 Planning Board, 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.***

The land involved presents special conditions and circumstances as the parcel is a flag lot. The City's code defines a flag lot as a lot not fronting on or abutting a public road and where access to the public road is by a narrow, private right-of-way. However, the structure, and building involved *do not* have any special conditions or circumstances that any other property located in the HRO zoning district possess. The principal structure is nonconforming to the minimum rear yard setback. Though legally, nonconforming site characteristics are not uncommon in the City, and therefore do not generate the existence of special conditions or circumstances that any other property located within the HRO Zoning District possesses.

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 is proposing site modifications that increase the nonconformity in the rear-yard setback. The construction of a new structure onto the principal structure within the rear-yard setback will expand upon vertically the noncomplying setback. Thus, the condition is generated from specific actions initiated 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.***

Section 122-32 (d) of the Land Development Regulations states that nonconforming structures shall not be extended, expanded, enlarged, or increased in intensity. Therefore, expanding upon vertically the rear-yard setback with a proposed addition to the principal structure 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.***

The applicant states the literal interpretation would deprive the basic habitation space. However, the applicant currently has existing use of the site without the variance approval. Therefore, hardship conditions do not exist. Denial of the requested variance would not deprive the applicant of rights commonly enjoyed by other properties in the HRO Zoning District.

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 current conditions of the land and building makes possible a reasonable use. Although the request expands only portions of the nonconforming structure, there may be other design strategies that can make the variance minimal.

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 granting of the requested variance would not be injurious to the area involved or otherwise 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 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 of the City Code have been met by the applicant for a variance.***

The standard established by Section 90-395 of the City Code have been fully met by the applicant for the variance requested.

***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 comment for the variance request as of the date of this report.

Pursuant to Code Section 90-392, in granting such application the Planning Board must make specific affirmative findings respecting each of the matters specified in Code Section 90-394.

***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 of 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 increases or has the effect of 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:**

Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for a variance be **denied**.

However, if the Planning Board approved this request, staff would like to require the following conditions:

### **General Conditions:**

1. The proposed development shall be consistent with the plans dated October 30, 2019 by Carlos Rojas, Jr., Registered Architect. No approval granted for any other work or improvements shown on the plans other than the proposed addition onto the principal structure located in the rear-yard setback of the property.
2. Trees near and within the project area will be protected during construction. Trees located within the work area that may need to be removed would require approval from the Tree Commission or the City of Key West Urban Forester.

**Conditions required to be completed prior to issuance of a building permit.**

3. The owner shall obtain a Certificate of Appropriateness for the proposed construction.