

THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report



To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Daniel Sobczak, AICP-C, Planner I

Meeting Date: January 21<sup>st</sup>, 2021

Application: **Variance** - 1409 Albury Street (RE# 00024150-000000) – A request for a variance to the maximum allowed building coverage and the maximum allowed impervious surface in order to construct a pool and spa at a parcel located in the Historic Medium Density Residential (HMDR) zoning district pursuant to Sections 90-395, 122-600 (4) a., and 122-600 (4) b.

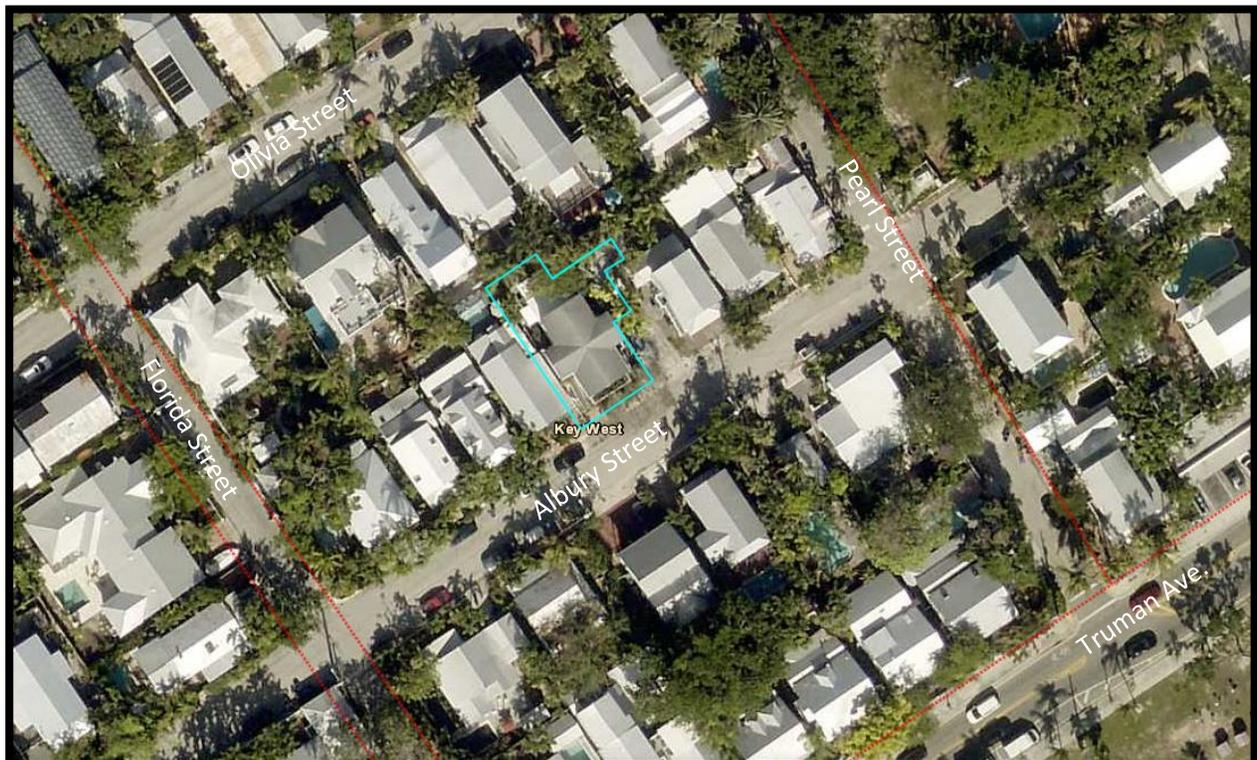
---

Request: The applicant is requesting a variance to the maximum allowed building coverage, maximum allowed rear yard coverage, minimum required open space, and the maximum allowed impervious surface in order to construct a pool, spa, and deck in the rear yard.

Applicant: Trepanier & Associates, Inc.

Property Owner: Siok Irrevocable Family Trust

Location: 1409 Albury Street (RE# 00024150-000000)



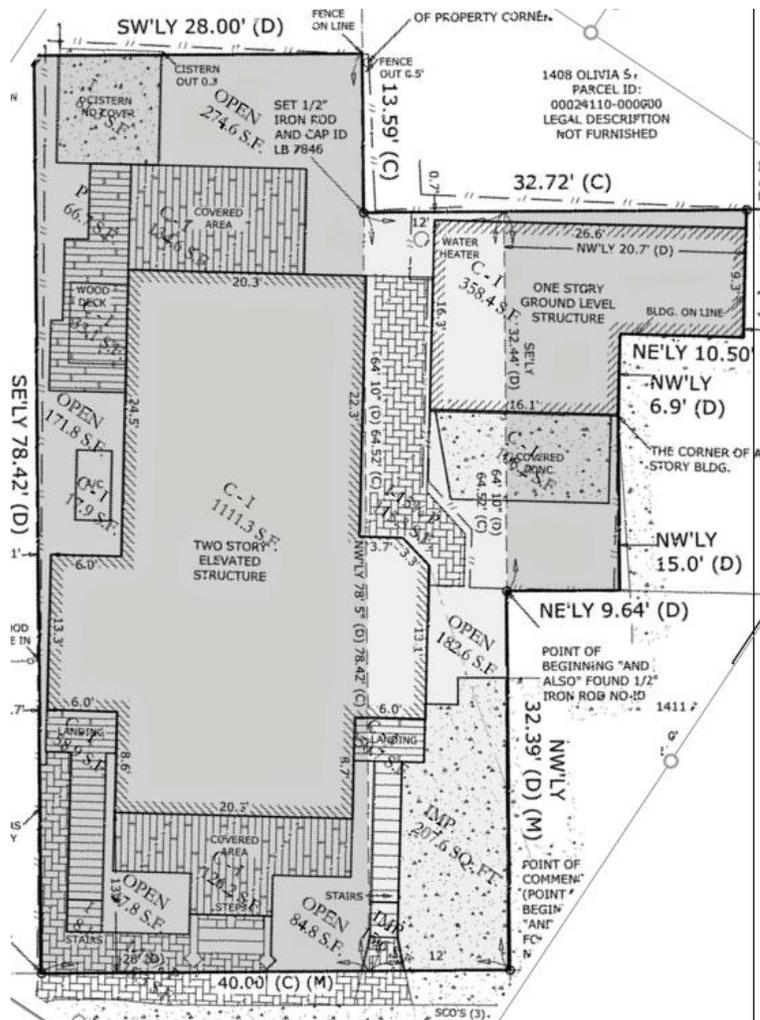
**Background:**

The subject parcel is located at 1409 Albany Street between Pearl Street and Florida Street. According to the Historic Architectural Review Commission, the current residential structure was constructed in 1920. The structure is of frame vernacular and is a historically significant contributing structure to the Key West Historic District. The parcel is surrounded by HMDR zoned properties on all sides.

The applicant applied for a building permit to construct a pool, spa, and wood deck on 10/14/2020. A correction comment was issued to the applicant on 10/19/2020 requesting information regarding the building coverage, impervious surface, and lack of boundary survey. The permit reviewer, Daniel Sobczak, and the architect, Brian Olson, communicated regarding the building permit, the need for a variance, and mitigation factors for the project. The architect submitted revised plans for the building permit on 11/16/2020. The revised plans showed a significant decrease in building coverage and impervious surface and a significant increase in open space. These revised plans indicated the architect's willingness to collaborate with staff to minimize noncompliance.

The owner contacted the Planning Department to ask if they would still need a variance after the revised plans were submitted. The Planning Department stated that while the revised plans were a substantial improvement, the department did not, at this point in time, have a mechanism to allow the project to go forward because it would still be noncomplying with building coverage, impervious surface, and open space. The applicant then applied for a variance on 12/18/2020 using the original plans that were not revised by the architect. The original plans submitted seek to remove a covered porch and construct a swimming pool, an above-ground spa, and a wood deck with noncomplying building coverage, open space, and impervious surface. The plans submitted also require a variance to rear yard coverage, the Code allows 30% of the required rear yard to be covered with accessory structures. The survey and the building permit plans below show the changes the applicant made to reduce their overall building coverage and impervious surface and create open space.

Right: Survey of the parcel located at 1409 Albany St.



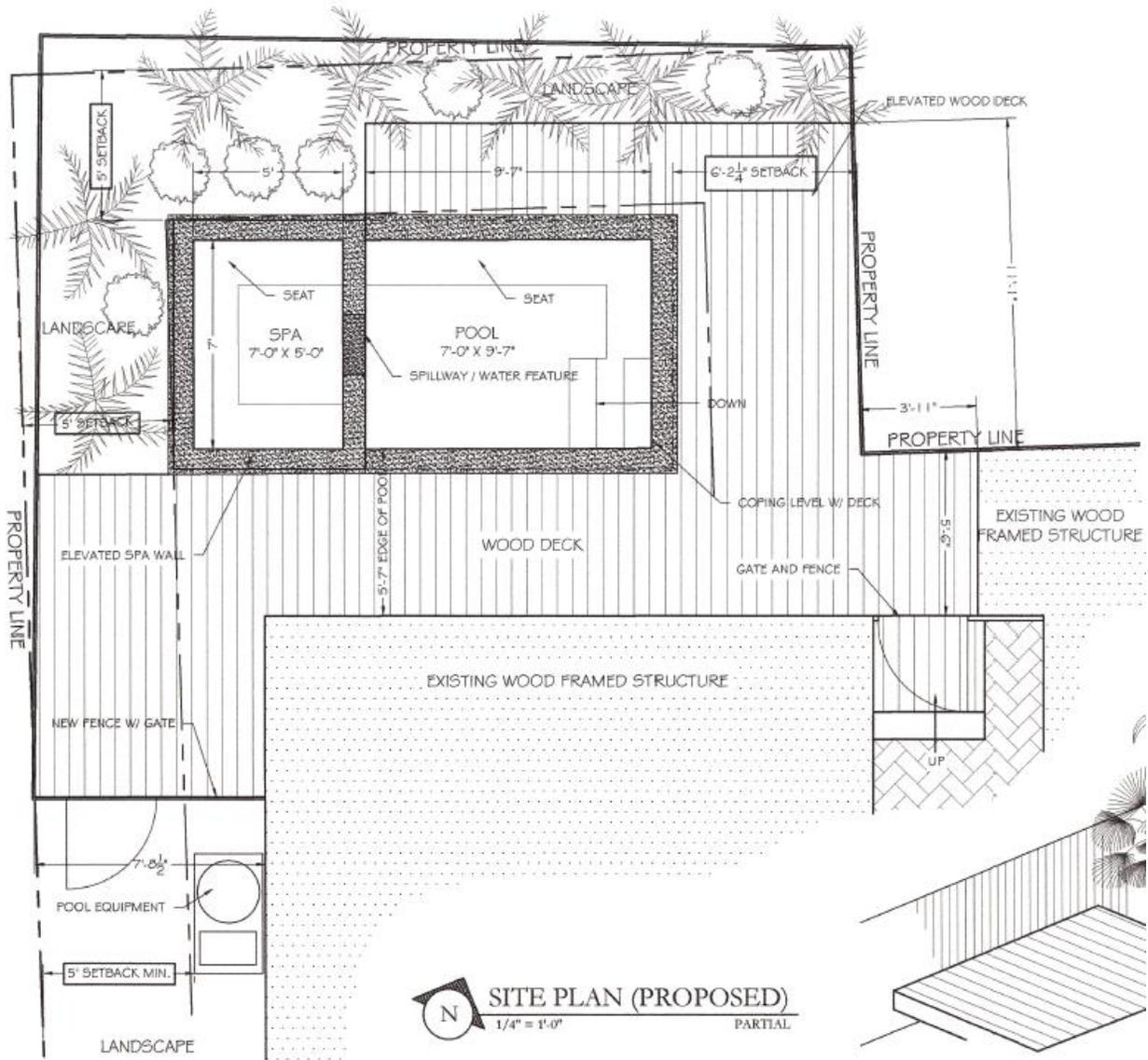
**Building Permit Plans:**

Site Plans submitted on 10/14/2020

**SITE DATA**

1409 ALBURY ST.		FLOOD: AE-7		ZONE: HMDR	
RE NO.	PROPOSED	EXISTING	ALLOWED	CHANGE / VAR. REQ.	
00024150-000000					
<b>SETBACKS:</b>					
FRONT	0.7'	0.7'	10'	NO CHANGE	NO
SIDE	0.7'	0.7'	5'	NO CHANGE	NO
SIDE	0.0'	0.0'	5'	NO CHANGE	NO
REAR	0.7'	0.7'	15'	NO CHANGE	NO
LOT SIZE	3,405 S.F.	3,405 S.F.	4,000 S.F. MIN.	NO CHANGE	NO
BUILDING COVERAGE	1,832 S.F. 54%	1,967 S.F. 58%	1,702.5 S.F. 50%	-135 S.F.	NO
BUILDING HEIGHT	20.3'	20.3'	30'	NO CHANGE	NO
IMPERVIOUS AREA	2,597 S.F. 76%	2,644 S.F. 78%	2,043 S.F. 60%	-47 S.F.	NO
OPEN SPACE	755 S.F. 22%	755 S.F. 22%	1,191.75 S.F. 35%	NO CHANGE	NO

NOTE: CISTERN, CONCRETE, BAMBOO, AND COVER OVER WOOD DECK AT REAR OF PROPERTY TO BE REMOVED.



Revised Site Plans submitted on 11/14/2020

TOTAL COVERAGE PROPOSED:	1,901.01 sq. ft.	55.8%
TOTAL IMPERVIOUS AREA PROPOSED:	2,204.65 sq. ft.	64.7%
TOTAL PERVIOUS AREA:	1,200.35 sq. ft.	35.3%
TOTAL OPEN SPACE:	946.33 sq. ft.	27.8%
TOTAL AREA:	3,405.00 sq. ft.	



**Proposed Development:**

The applicant has proposed the original plans submitted 10/14/2020 for this variance instead of the revised building permit plans that minimized noncompliance submitted 11/14/2020. The site table below details the current and proposed site data for the property. Four variances are proposed for this development.

Site Data Table				
	Code Required	Existing	Proposed	Variance Request
Zoning	HMDR			
Flood Zone	X			
Size of Site	4,000 sqft	3,405 sqft		
Height	30	20.3'	n/a	n/a
Front Setback	10'	.7'	n/a	Existing nonconforming
Side Setback	5'	.7'	n/a	Existing nonconforming
Rear Setback	15'	.7'	n/a	Existing nonconforming
Building Coverage	40%	58% -- 1,967 sqft	54% -- 1,832 sqft*	14% -- 470 sqft
Impervious Surface	60%	78% -- 2,644 sqft	76% -- 2,597 sqft*	16% -- 554 sqft
Open Space	35%	22% -- 755 sqft	22% -- 755 sqft	13% -- 437 sqft
Rear Yard Coverage	30%	30.2%	34%	4%

**Process:**

Planning Board Meeting: Jan. 21<sup>st</sup>, 2021  
Local Appeal Period: 10 Days  
Planning renders to DEO for review: Up to 45 days

**Staff Analysis - Evaluation:**

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 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 parcel located at 1409 Albury St. is slightly smaller than the code required minimum lot size, the parcel is 3,405 sq.ft. and the minimum size for lots in HMDR is 4,000 sq.ft. The applicant originally applied for a building permit and worked with the Planning Department to reduce their impervious surface, building coverage, and increase their open space. Due to the historic noncompliance of the lot and the structures, the applicant still needed to apply for a variance. The applicant applied for a variance with the original site plan submitted 10/14/2020. The parcel is currently being renovated and is currently over on impervious surface and building coverage, and under code required open space. Due to the extensive remodeling that is being performed at the structure, it is possible the applicant could further reduce their impervious surface building coverage.

**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 conditions have been partially created by the applicant. The property houses four units in two separate structures. The applicant has applied to remove a non-historic covered porch, in order to construct the proposed pool. There are several porch overhangs on the property and large amounts of impervious materials such as concrete and brick that could be repositioned or removed to create less impervious surface on the property. The applicant will be installing a pool, spa, and wood deck in the required rear yard equates to 34% coverage of that yard, City Code states that no required yard shall be covered with excess of 30%.

**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.*

The Land Development Regulations require maximum impervious surface and building coverage numbers in order to ensure drainage, general welfare, health standards, and aesthetics. A property with impervious surface or building coverage that exceed maximum allotted in the City Code could pose a risk to their property, their surrounding neighbor's property and the City's stormwater system by introducing excess stormwater runoff. The granting of these variances to construct a pool, spa, and deck may cause flooding of surrounding property owner's property and drain more stormwater runoff into the City's stormwater system.

**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 parcel located at 1409 Albury St. is larger than many of the surrounding parcels in the area but is smaller than the 4,000 sq.ft. minimum lot size. The Land Development Regulation's maximum building coverage and impervious space are designed to aid in stormwater runoff, drainage, and provide open space around and between structures for health, safety and aesthetic purpose. Strict compliance with the maximum building coverage and open space required in the HMDR zoning district would not pose a significant hardship on the applicant as the applicant could reduce their impervious and building coverage. The applicant could reduce the amount of concrete and brick walkways on the patio for a more pervious option like pervious pavers, stepping-stones, etc. The applicant could convert the driveway into a ribbon driveway, further reducing the amount of impervious on the lot. Literal interpretation of the provisions of the Land Development Regulations would not deprive the applicant of rights commonly enjoyed by other surrounding properties under the terms of this ordinance.

**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.*

This is not the minimum required variance that would make possible the reasonable use of the land, building and/or structure. The revised building plans show that it would be possible to reduce their overall variance request and still be able to construct the proposed pool, spa, and wood deck. The applicant also does not show any stormwater mitigation techniques such as swales, raingardens, etc. that could help mitigate the overages in impervious surface.

**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 variance will not be in harmony with the general intent of the land development regulations, as the applicant has not shown how they will mitigate the excess stormwater runoff of the impervious surface and building coverage. Requesting a variance for a pool and spa could also pose a precedent to the public that may increase the requests for these variances. The intent of the code and the intent of the code section in reference to building coverage, impervious surface, and open space are to promote the general welfare of the property owners and the city, allowing an increase in impervious surface without mitigating it on the parcel could cause flooding for the property owner and surrounding properties. Staff has recommended mitigating runoff in the Recommendations section below.

**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**

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

It does not appear that the requested variance will trigger any public facility or utility service 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 standards established by Section 90-395 of the City Code have not been fully met by the applicant for the variances 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.

**Recommendation:**

The proposed addition of a pool and above ground spa in the rear yard of a multi-family parcel would allow a continuation of the noncompliance of the parcel in impervious surface, building coverage, open space, and rear yard coverage. The Planning Department recognizes that many lots in the Historic District are smaller than code requires. Therefore, the department seeks to work with the applicant to find ways to mitigate the variance request or the impact of new structures on a nonconforming lot. Staff Recommend that the applicant incorporate the mitigation techniques outline in the conditions below and minimize their overall noncompliance. Without mitigation techniques, the proposed work will not minimize the properties noncompliance, and may lead to flooding for the property owner and the surrounding properties. The variance to the maximum allowed building coverage, maximum allowed impervious surface, maximum allowed required yard coverage, and minimum required open space, does not meet the criteria stated in Section 90-395. The Planning Department recommends **denial**.

If the Planning Board chooses to approve the variance, the Planning Department recommends the Planning Board approve the revised site plans submitted on 11/14/2020 for Building Permit # 2020-2896 following conditions:

1. The proposed construction shall be consistent (except for conditions of approval listed below) with the plans signed, sealed, and dated 10/5/2020 by Brian Olson.
2. The owner incorporates a swale proportionate to the property’s impervious surface ratio over the code required maximum
3. Landscaping be planted in the rear and side of the property to baffle noise, improve privacy, and generally mitigate the effects of the pool and above-ground spa.
4. The variance approval be for the Revised Site Plans submitted on 11/14/2020.