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 II
Meeting Date:	April 22nd, 2021
Application:	**After-the-Fact Variance –** 3226 Eagle Avenue (RE# 00052890-001400) **-** A request for an after-the-fact variance to maximum allowed building coverage, maximum allowed impervious space, minimum required open space, and minimum allowed side setback in order to maintain a nonconforming accessory structure for a property located in the Medium Density Residential (MDR) zoning district pursuant to Sections 90-395,

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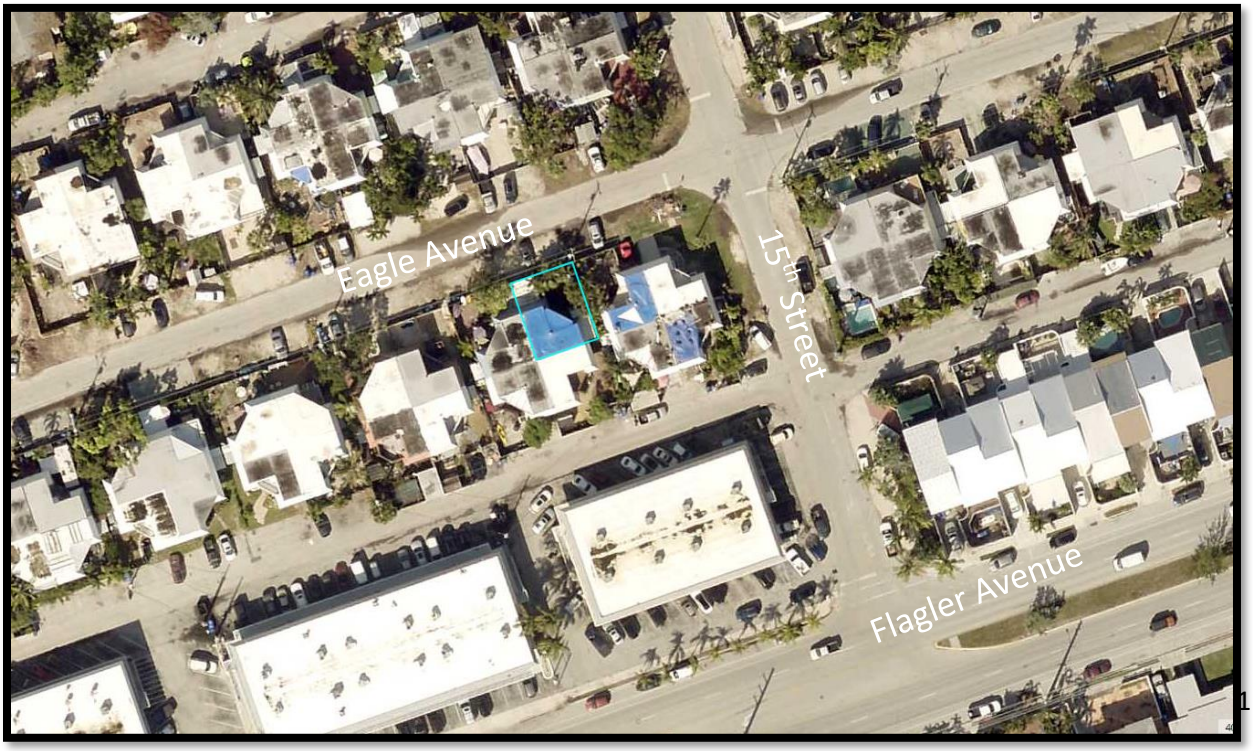
Request:	The applicant is requesting an after the fact variance to building coverage, impervious surface, open space, and minimum side setbacks in order to maintain an existing nonconforming accessory structure.
Applicant:	Alena Lembach
Property Owner:	Alena Lembach
Location:	3226 Eagle Avenue (RE# 00052890-001400)



Background:

The subject parcel is located at 3226 Eagle Ave near the corner of Eagle Ave and 15th Street. According to the Monroe County Appraiser's Officer, the current residential structure was constructed in 1988. The parcel is surrounded by MDR zoned properties to the north, east, and west, and Limited Commercial (CL) zoned properties to the south.

The applicant had received a variance for a similar project in 2015, a variance to setbacks and building coverage in order to construct a 58 square foot shed. Due to unforeseen circumstances, the applicant was unable to start the project until after the variance had expired. A code case resulted from the applicant's construction of the structure after the variance expired, which has led the applicant to reapply for a variance to construct a similar structure of 80.5 sqft.

Proposed Development:

The site table below details the current and proposed site data for the property. Three variances are proposed for this development.

Site Data Table				
	Code Required	Existing	Proposed	Variance Request
Zoning	SF			
Flood Zone	AE			
Size of Site	6,000 sqft	1,719 sqft		
Height	30	n/a	n/a	n/a
Front Setback	n/a	n/a	n/a	n/a
Side Setback	5'	1.5'	1.5'	3.5'
Rear Setback	5'	1.5'	1.5'	3.3'
Building Coverage	35% -- 601 sqft	56% -- 970 sqft	61% -- 1,050 sqft	26% -- 449 sqft
Impervious Surface	50% -- 860 sqft	87% -- 1,503 sqft	87% -- 1,503 sqft	37% -- 643 sqft
Open Space	35% -- 601 sqft	12.5% -- 215 sqft	12.5% -- 215 sqft	22.5% -- 386 sqft

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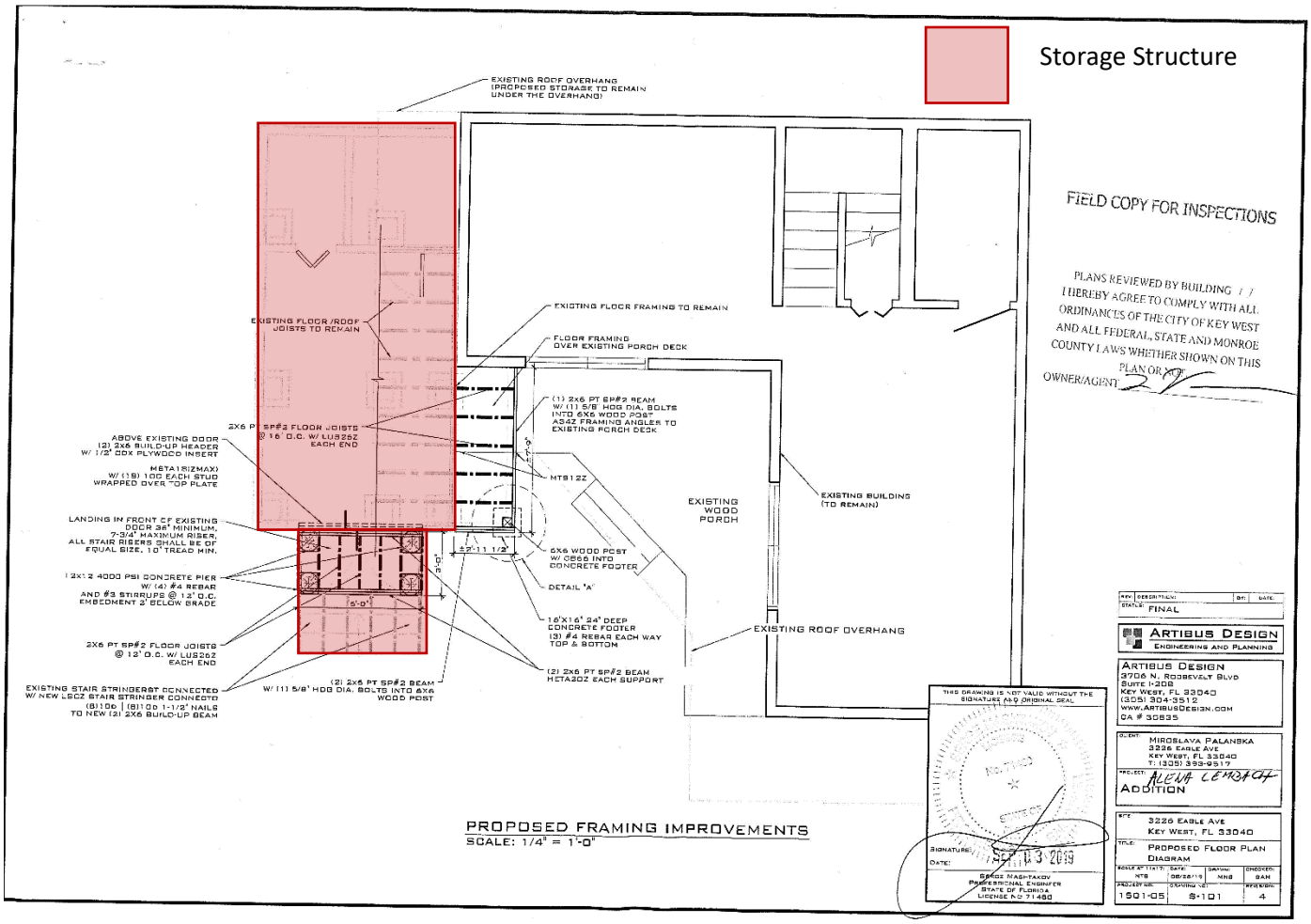
Building Plans, 3226 Eagle Ave, submitted by applicant



The variance is request for an existing storage structure as shown in the plans above. The storage structure is 80.5 sqft in area.

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Process:

Planning Board Meeting:	April 22nd, 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 3226 Eagle Ave. is smaller than the code required minimum lot size, the parcel is 1,719 sq.ft. and the minimum size for lots in MDR is half an acre, or 21,780 sq.ft. The applicant applied for and was approved a variance for a similar storage structure in 2015. The applicant's current project is an expansion of the previously approved storage structure that has slightly increased its overall size. The project is not to be a living structure but a storage structure only without plumbing. The applicant was originally approved in 2015 for a storage structure with five-foot setbacks and a size of 58 sq.ft. The applicant is applying for a variance for a storage structure with 1.5 - foot setbacks and 80.5 sq.ft. in size.

   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 were partially created by the applicant, while the original storage structure variance was permitted, the applicant was not able to start construction within the two-year period after the variance was approved which resulted in its expiration. The applicant then started construction on the structure even though the variance had lapsed. The current storage structure is slightly larger in size and does not meet the five-foot accessory structure setbacks. The storage structure also increases the building coverage and impervious surface over the max allowed for parcels located in the MDR zoning district. The lot is however under sized for the zoning district, as are all lots in the 'Smurf Village' development, and is smaller than required lot size. The Fire Marshal's office is content with the application and would not require the applicant to remove the structure.

   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 setbacks in order to ensure life safety, general welfare, health standards, and aesthetics. The storage structure is currently placed in the side

and rear setbacks and raises building coverage and impervious surface past what the City Code currently allows. The Fire Marshal's office has stated that the structure would be able to remain.

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 3226 Eagle Ave is similar size to many lots in the CL zoning district, as all the lots in 'Smurf Village' zoned CL are identical in size, and is significantly smaller than the half acre minimum lot size. The Land Development Regulation's required setbacks are designed to provide open space around and between structures for health, safety and aesthetic purpose. Strict compliance with the minimum setbacks required for the MDR zoning district would not pose a significant hardship on the applicant as the applicant could move the structure and possibly meet the five-foot setback. To minimize the visibility and prominence of the structure to the surrounding property owners, the Planning Department has recommended to plant landscape between the structure and the property line. The applicant has chosen to minimize this issues by coordinating with the Planning Department and agreeing to plant landscaping on the side of the structure. 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.*

   The variance requested is not the minimum required that will make possible the reasonable use of the land, building and/or structure. It is reasonable that the applicant could amend their plans to fit all or most of the proposed structures within the buildable space of the parcel and outside the required setbacks, as well as reducing the overall size of the structure to what was permitted in 2015.

   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, but if granted would allow a storage structure area on a small legal nonconforming platted lot. Encroaching into the side setbacks could be injurious to public welfare and the surrounding property owners. The applicant is working with the Fire Department to find a solution to any life/safety issues.

   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 after-the-fact variance for a storage structure for the property located at 3226 Eagle Ave will allow the owner of a small legal nonconforming lot to exceed building coverage and impervious surface cover and maintain a storage structure built within required setbacks. The property owner received a variance in 2015 for a similar storage structure in 2015, the applicant has built a similar structure that has enhanced the size of the 2015 structure by 30 sqft and is in the side and rear setback. The applicant has offered to plant landscaping around the structure to screen the encroachment in the setbacks from the neighboring property. The variance to the building coverage, impervious surface, open space, and minimum side setbacks 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 following conditions:

1. The proposed construction shall be consistent (except for conditions of approval listed below) with the plans signed, sealed, and dated 8/26/2019 by Serge Mashtakov
2. Landscaping be planted around the structure, between the storage structure and 3228 Eagle Ave.
3. Gutters be placed on the structure and downspouts be added to drain all rain-water runoff into proposed swales.