

To whom it May Concern:

The input below is to provide feedback to the staff recommendation for the applied for variance regarding 418 United Street, Key West, Florida. It is not meant to reflect on the quality of the staffing effort, rather its purpose is to provide the most accurate data, information, knowledge and understanding. This enables the variance board to make the decisions which are based upon an understanding of the situation rather than simple unprocessed data.

Its format is aligned with the staff report verbiage, with applicant input being provided in a blue font.

V/r

Peter Janker

In this instance, the subject parcel is substandard in size and the existing residence currently maintains a substandard side yard setback adjacent to 417 United Street, owned by the property owner's son. However, the applicant has not documented why the AC units could not be situated elsewhere on the property. Thus, it is difficult to see how special circumstances exist to support the requested relief.

- “the subject parcel is substandard in size”

The size of the subject parcel is not relevant for this variance since neither lot in question is being reduced in size. It is currently less than 4000 square feet due to the previous owner deeding land to 419 United Street to allow that home to become a four-unit condominium. In accordance to City Code 122-1146 that property sale should not have been allowed, however, the transaction occurred prior to the current owners, who did not cause the issue. The variance in question does not reduce said square footage and use of the term substandard denotes that it has a bearing on the variance, which it does not have. Far from being “substandard” a 3633 square lot in Old Town is a larger than average lot.

- “417 United Street, owned by the.... Son”.

The adjacent 417 United is owned by the property owner's father not son.

- “the applicant has not documented why the AC units could not be situated elsewhere on the property”

The variance application itself notes that there are no other possible locations for the units in question. Subsequent site visits by city officials from the AC department and

Fire Department validate this fact. There are no other locations which permit installation due to line set maximum lengths, setbacks for AC units.

Secondly, the City requires that the applicant demonstrate that the conditions were not created by the property owner. In this instance, the existing side yard setback is substandard and is unable to accommodate the AC units. However, the applicant has not provided a reason why the AC units could not be located elsewhere on the property.

- “City requires that the applicant demonstrate that the conditions were not created by the property owner. In this instance, the existing side yard setback is substandard and is unable to accommodate the AC units”.

Of course the setback is less than 5 feet, that is the purpose of the variance that has been applied for and it’s the only location that will support the systems based upon HARC requirements; AC engineering specifications (98 foot maximum line sets); fire egress and access; flood requirements; ergonomics and consideration of neighbors and occupants/tenants. The area proposed for the ACs fully accommodates, or can be made to fully accommodate, all the needs of HARC; line set lengths; fire egress & access considerations as well as ergonomics and neighbor input. Applicant has fully identified why the proposed location is the only viable location thru site visits by the City’s AC lead and the Key West Fire Department. Per these two sites visits the City of Key West itself is aware that the proposed location of these systems, as first identified by permit application on 27 March 2023, are the only logical location for placement of the systems. The variance application submitted by the applicant, as well the City’s own subject matter experts, have themselves demonstrated why the ACs could not be located elsewhere on the property. As demonstrated by the movement of the rear apartment’s AC system to a more suitable location, as identified by the City, the applicant is open to alternate locations, however, in this case there are none. The City Forester has provided recommended plantings to shield said AC systems from street and sidewalk view and to replace the diseased tree that had to be removed.

The third criteria associated with a variance involves a determination that the approval of the variance would not confer special privileges to the applicant, denied to other land owners. In this instance, the approval of a side yard setback of one (1) inch would confer special privileges to the applicant, denied to other land owners.

- “the approval of a side yard setback of one (1) inch would confer special privileges to the applicant, denied to other land owners.

Old Town Key West is a unique historical community. Due to its historic nature, home lots are much smaller than elsewhere in the state of Florida. Far from conferring special privileges to the applicant, it is apparent that having less than a 5 foot setback from property lines in Old Town is a normal situation and the that the applicant is being denied consideration for this issue that are ignored in other cases of active new construction and renovation in Old Town. (see attached photos)

The fourth criteria to be considered is whether hardship conditions exist or that literal application of the code would deprive the property owner of rights commonly enjoyed by other property owners. A review of surrounding development patterns fails to reveal a common pattern of near zero foot side yard setbacks.

- “whether hardship conditions exist”

It is clear that there is a hardship condition in that the homes, in question, are about 7 feet apart and there are no other locations to place the AC systems without exceeding engineering parameters, HARC restrictions, or eliminating consideration of neighbors & tenants. Compliance to the 5-foot setback to the property line would severely impact one or the other of the houses since compliance would require the lot line to be against the side of one or the other houses, which is currently the case for 418 United. In any case, even creating the appropriate set back would only be measured in compliance by an inch or two, and would create safety issues in regards to safety.

The one foot offset of each AC system from the wall of the home, plus the one foot dimension of the unit itself and a required 5 foot offset to the property line would clearly require the entire width of the lane between 417 and 418 United. This constitutes the hardship condition since that would make the backyard of 417 United inaccessible other than transiting thru the residence.

- “A review of surrounding development patterns fails to reveal a common pattern of near zero-foot side yard setbacks”

It is unknown what a “common pattern” might consist of, however, a simple walk around the neighboring homes shows that there is current new development, renovations and legacy AC installations in which AC systems are clearly less than 5 feet from perceived property lines and in several cases just a few inches or in other words “near zero-foot” side yard setbacks. (see attached photos) If these examples can be found in the process of a 20-minute walk then an assessment should be considered regarding the effectiveness of the staff’s review process failing to reveal a “common pattern”.

In this case the lot line was moved 25 inches to place the AC systems within 418 United. However, the offset from 417 United Street is over 7 feet without affecting the lane between the properties which is critical for both access and safety. The planning board is considering the setback in only two dimensions. It is apparent that more and more homes are being constructed with the mini split systems at the front of the homes and immediately adjacent to property lines. The height of the system placement and the resulting dissipation of heat and noise makes such placement logical along with the need to protect said systems from flood. It is likely that this third dimension of elevation will need to be considered in the future given the unique space limited nature of Old Town properties.

The Planning Board is also required to determine that the relief requested is the minimum relief possible. In this instance, even with the proposed lot line realignment, the applicant is unable to provide more than a one (1) inch side yard setback. The sixth factor for the Planning Board to consider is whether the proposed variance is injurious to the public welfare. While the property to the west is currently owned by the applicant's son, this ownership pattern will not exist in perpetuity. The location of three (3) AC units one (1) inch from the adjacent property line is not consistent with the intent of the land development regulations and could pose a nuisance in the future.

- “the applicant is unable to provide more than a one (1) inch side yard setback”

The applicant could have provided more than one inch side setback and that was considered and rejected. It was rejected since doing so would have eliminated outside access to the backyard of 417 United Street by transferring the deficiency (not caused by either current property owner) that currently exists (property line only two inches from 418 United) to the property line being only two feet from the side of 417 United.

Since that deficiency would have been created by current ownership, the parties would not be able to apply for a future variance to repair.

- “the proposed variance is injurious to the public welfare. While the property to the west is currently owned by the applicant's son, this ownership pattern will not exist in perpetuity.”

As previously noted the property to the west is owned by the applicant's father not son.

If there were an ownership change for either property (not currently anticipated) said lot lines would remain the same and of course would be part of any future sale with the limitations and consideration of the purchased property. Should technology change or major renovation be done it would be controlled by the regulation and codes in effect at that time. Use of a variance is the least obtrusive method to resolve this issue in a sensible and logical manner. In this particular case the variance allows for enhanced fireman access and egress in that it: eliminates 15 window AC systems, allows for potential future fencing with a two foot wide walkway for 418 United vs 2 inches (as was there when the property was initially purchased) and a 5 foot wide pathway for 417 United. The rear half of 417 United would have a walkway of 5 feet instead of 3 feet. All in all, an approved variance greatly enhances both 417 United and 418 United from a utility and safety perspective and is a vast improvement over current lot lines.

The lot line changes that support the AC system installation stands on its own in that it represents a sound realignment of property which benefits both 417 and 418 United Street. Neither lot is reduced in size and the exchanged land enables both properties to be better utilized by their occupants.

- “The location of three (3) AC units one (1) inch from the adjacent property line is not consistent with the intent of the land development regulations and could pose a nuisance in the future.”

This statement misses the point that the offset from the ACs to 417 United is 5 feet. If the offset to the property line was increased to 4 feet, it would still not meet offset requirements of 5 feet to the property line. It would also create significant issues with property use and future owners since the encumbrance would hinder effective use of said properties. Since the ACs are suspended on the wall of 418 United they are effectively not hindering their neighbors at 417 United from a noise, heat exhaust or access/egress perspective. This third-dimension strategy/approach has been observed to being used on ongoing construction activity in Old Town. Far from being a “nuisance” is it appears to be a current ongoing building best practice given the space realities and limitations of Old Town, Key West.

It should be noted that these three AC systems being stacked in one space effectively reduces the AC footprint vs the five window AC units that it replaces. Placement of the three AC systems in a stack provides the ability to contain water effectively and ensures that said water remains on the property and is disperse into the aquifer via gravel sump.

As noted in the two photos of 419 United AC systems which are dispersed on three of the four walls of the house, it is evident that dispersal of the systems results in a eyesore. Consolidation of these AC systems allows for efficiency in emplacing screening plants to maintain the historical perspective of the building.

Finally, the Planning Board may not base its determination on the prevalence of other nonconformities in the area surrounding the subject premises. 4 Pursuant to Section 90-392 (b), “In granting such application the planning board must make specific affirmative findings respecting each of the matters specified in section 90-394 and may prescribe appropriate conditions and safeguards, including requirements in excess of those otherwise required by these land development regulations, which shall become a part of the terms under which a development order may be issued.”

Other “nonconformities” were identified solely in response to City staff statements which are deemed to be inaccurate and not as a justification for variance approval.

In addition, pursuant to Section 90-395, the Planning Board shall make factual findings regarding the following: (1) That the standards established in subsection (a) have been met by the applicant 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.

- “Good neighbor policy”

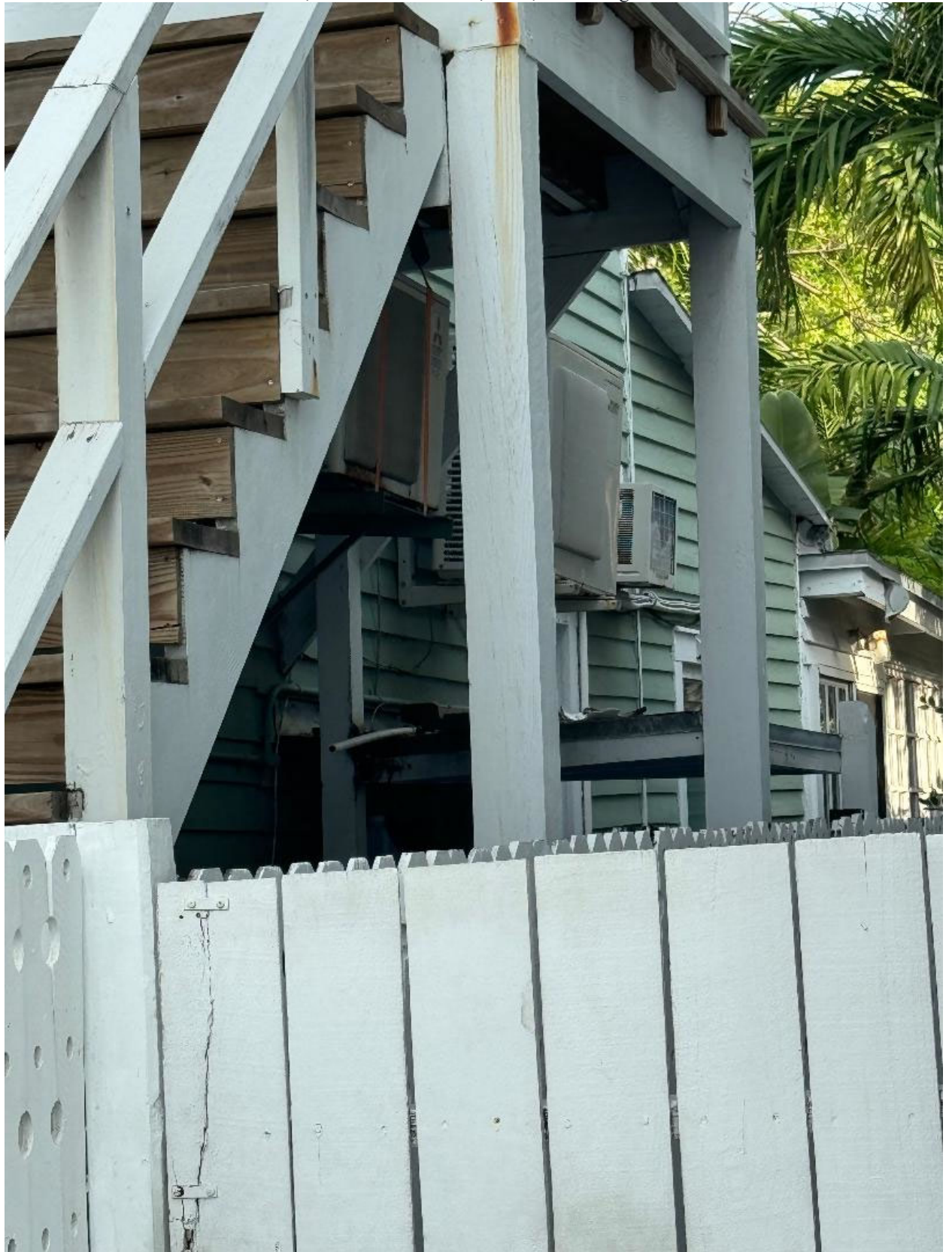
Applicant has talked to the neighbors, tenants and community members who have had only positive remarks regarding renovations in general as well as the location of the AC systems for the front three apartments. Applicant has reached out to the City for information as to any objections noted in their mailings with nothing received as of May 13, 2024.

Recommendation: Based upon the above analysis, the applicant has failed to meet each of the seven (7) factors associated with a variance pursuant to Section 90-395 of the City Code. It is recommended that the request be DENIED.

Respectfully object to the staff finding that the applicant has failed to meet all 7 objectives for the reasons stated above. From the provided data above it is an observation that the current staff report is superficial, does not adequately address issues, identify root causes and promote strategies that should be used from the perspective of making Old Town Key West a great place to live and vacation.

(Blue font narrative is data/information provided by representative of Applicant)

419 United – next door to 418 United, inside setback under, stairs, reduced egress



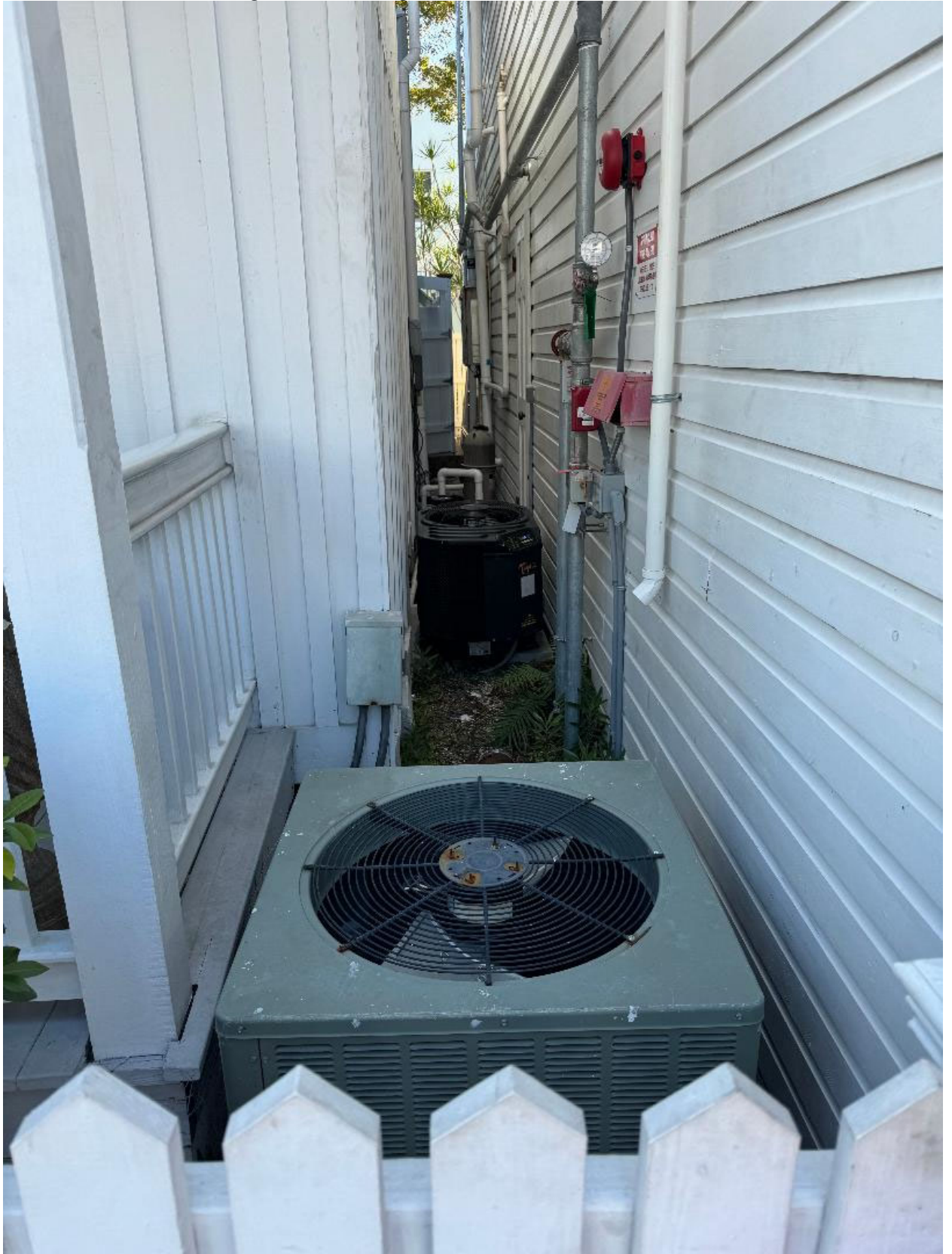
419 United – Inside setback (2 mini Splits and 3 window ACs)



419 Amelia – within setback, access & egress



1007 Whitehead - AC blocking lane as well as a pool AC heater



308 Catherine Street – Several Inches from Property line Fence



313 Amerlia Street – Inches from Property line fence, poor egress



324 Amelia – New Construction, inside setback



324 Amelia Compressors installed June 2024



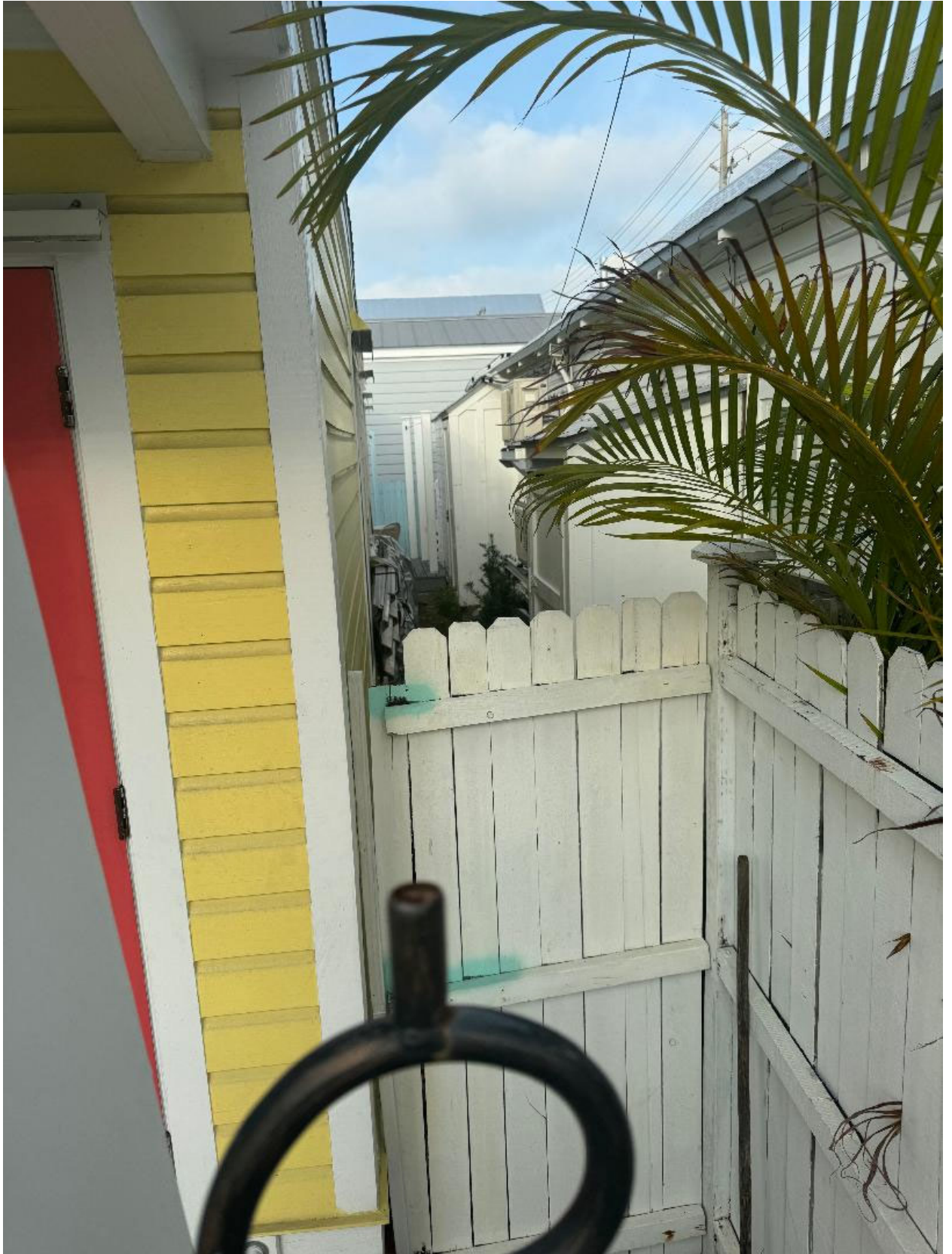
320 Amelia – New Construction inside setback



320 Amelia – Coompressor installed wiethin setback June 2024



1114 Whitehead – inside setback



517 Louisa – Inside Setback



727 William – Inside setback, reduced access and egress



318 Amelia - New Construction , two AC units



318 Amelia - New Construction , two new AC units installed June 2024



Neighbors and residents contacted and consulted with regarding renovations at 418 United Street Key West:

Richard Viveen	406 United Street	616-638-1180	Impressed
Tom Bellingham	417 United Street	305-407-7850	No Issues
Jamie & Cara	418 United Street	267-373-8196	No Issues
Jerome	418 United Street	305-680-7948	No Issues
Danny Horton	415 United Street	205-657-5985	No Issues
Meredith Burkardt	410 United Street	305-294-1452	No Issues
Tom Coffey	1303 Whitehead	847-212-9768	No Issues
Jonathan Mitter	417 United	305-282-1785	No Issues
Terry Dotson	408 United	606-226-1207	No Issues
Bert Whitt	1201 Whitehead	305-393-7181	Fantastic
Dennis Beaver	1207 Whitehead	305-294-3121	No Issues
Tony McKissick	401 United	954-648-9352	Great Improvement
Jeanie	429 United	305-619-9800	Beautiful
Donna Phillips	419 United		No Issues
Matt Neuenhaus	408 United	845-590-4132	No Issues

