

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



To: Chairman and Planning Board Members

Through: Patrick Wright, Planning Director

From: Melissa Paul-Leto, Planner I

Meeting Date: March 21, 2019

Agenda Item: **Variance – 3742 Eagle Avenue – (RE# 00052260-000000)** – A request for a variance to a street side setback requirement to replace the roof on property located within the Single Family (SF) Zoning District pursuant to Sections 90-395, 122-238 (6)(a)(4) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: The applicant is seeking to replace the current roof with a higher pitched roof. The request triggers a street side setback variance.

Applicant: Serge Mashtakov, P.E.

Property Owner: David Swiderski

Location: 3742 Eagle Avenue – (RE# 00052260-000000)

Zoning: Single Family (SF) Zoning District



Background/Request:

The property at 3742 Eagle Avenue is located on the corner of Eagle Avenue and 20th Street and is one lot of record. There is a one-story ground level residential structure with a garage facing 20th Street.

The existing one-story structure currently has a low-pitched roof that has an overall height of sixteen feet. The applicant is proposing to replace the existing roof with a higher pitched roof that has an overall height of twenty-two feet and one inch. The one-story residential structure has an existing non-conformity to the street side setback requirement. The replacement of the roof for a higher pitched roof triggers an expansion of the existing non-conformity by raising the three-dimensional envelope. The plans submitted require a variance to the minimum street side yard setback requirement.

The following table summarizes the requested variances.

Relevant SF Zoning District Dimensional Requirements: Code Section 122-238				
Dimensional Requirement	Required/ Allowed	Existing	Proposed	Change / Variance Required?
Lot Size	8,000 Square feet	11,865.9 square feet	11,865.9 square feet	In compliance
Maximum Height	25 feet plus an additional five feet for non- habitable purposes if the structure has a pitched roof	16 feet	22 feet 1 inch	In compliance
Maximum building coverage	35% (4,153.06 square feet)	44.49% (5,279.5 square feet)	44.04% (5,226.0 square feet)	Improving non-conformity In compliance
Maximum impervious surface	50% (5,932.95 square feet)	74.22 % (8,806.8 square feet)	73.32 % (8,700.4 square feet)	Improving non-conformity In compliance
Minimum open space	35% (4,153.06 square feet)	25.78 % (3,059.1 square feet)	26.68 % (3,165.5 square feet)	Improving non-conformity In compliance
Minimum front setback	20 feet	21 feet 9 inches	22 feet 7 inches	In compliance
Minimum side setback	5 feet	10 feet	10 feet 2 inches	In compliance
Minimum street side setback	10 feet	7 feet 8 inches	7 feet 8 inches	Variance Required -4 feet 4 inches
Minimum rear setback	25 feet	39 feet 9 inches	33 feet	In compliance

Process:

Planning Board Meeting:

March 21, 2019

HARC:

TBD

Local Appeal Period:

30 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 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, structures and buildings involved are located on the property within the SF zoning district. The required minimum lot size in the SF zoning district is 6,000 square feet. The 3742 Eagle Avenue property has a lot size of 11,865.9 square feet. There should be more than enough space for the property to be in compliance with all the dimensional requirements.

The lot was developed prior to the adoption of the current Land Development Regulations (LDRs). However, many other land, structures and buildings within the SF Zoning District were also developed prior to the adoption of the current LDRs. Therefore, there are no special conditions or circumstances that exist that are peculiar to the land, structures or buildings involved.

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 are a result from the property owner wanting a higher-pitched roof. This variance request is a result of the action of the applicant proposing to raise the three-dimensional envelope in an area that is encroaching within the street side setback by choosing a higher pitched roof design instead of replacing with the same pitched roof design it currently has.

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 122-27 of the Land Development Regulations discourages the expansion of site nonconformities. The roof could be replaced without expanding the three-dimensional envelope on the property. Therefore, allowing a higher pitched roof design to be constructed in an area that is already encroaching into the street side setback, 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.*

Denial of the requested variance would not deprive the applicant of rights commonly enjoyed by other properties in the Single-Family zoning district. The property owner may choose the same design the house currently has as a roof replacement without the need for a variance. Therefore, hardship conditions do not exist.

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 request is not the minimum required that will make possible the reasonable use of the land, building, or structure. However, it is the minimum necessary to accommodate the request.

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.*

Due to not following all the standards for considering variances, the granting of the requested variances 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

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 standards 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 any public comments 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 variances be **denied**.

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

General Conditions:

1. The proposed development shall be consistent with the plans dated, February 06, 2019 by Serge Mashtakov, P.E. No approval granted for any other work or improvements shown on the plans other than the proposed pitched roof replacement.