

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



To: Chair and Board of Adjustment Members

Through: Donald Leland Craig, AICP, Planning Director

From: Kevin Bond, AICP, LEED Green Associate, Planner II

Meeting Date: April 1, 2014

Agenda Item: **Height Variance - 533 Eaton Street (RE # 00004130-000000, AK # 1004294)** – A request for variance to maximum height in order to accommodate non-habitable hardware and utility structures as part of the adaptive reuse of a former Scottish Rite Masonic club/lodge into new art studio classrooms, offices and exhibition spaces on property located within the Historic Neighborhood Commercial District – Truman/Simonton (HNC-1) Zoning District pursuant to Sections 90-395, 122-810(3) and 122-1149 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida

Request: Variance to maximum height from 47'-5" to 55'-3" for a new non-habitable elevator/stairway penthouse on the roof of the existing building.

Applicant: Trepanier & Associates, Inc.

Property Owner: The Studios of Key West, Inc.

Location: 533 Eaton Street (RE # 00004130-000000, AK # 1004294)

Zoning: Historic Neighborhood Commercial – Truman/Simonton (HNC-1)

Background:

The Studios of Key West, Inc. bought the former Scottish Rite/Masonic Lodge property at 533 Eaton Street in October 2013 with the intention of renovating the historic, three-story building to become its new location, including artist workspaces, offices, classrooms, exhibition spaces and an auditorium. The Studios of Key West would move from its current location in the Old Armory building located at 600 White Street, which is owned by the State of Florida. In order to allow the proposed development, several development approvals would be necessary.

Part of the proposed development would involve constructing a new roof garden with a 465-square-foot elevator/stairway penthouse, which necessitates the height variance. Currently, there is no access to the roof level. The elevator and stairway penthouse would be necessary to provide accessibility and emergency egress from the existing building to and from the proposed roof

garden. The other two-thirds of the roof would be for mechanical equipment, a new skylight and the remaining area may become a green roof.



Concurrent with the height variance, the Studios of Key West also applied for a Major Development Plan/Conditional Use for reconstruction over 2,500 square feet on property in the historic district and the proposed cultural and civic activities, requested landscape waivers to all landscaping requirements, an easement to maintain existing roof overhangs and an alcohol sales special exception to sell beer, wine and liquor for on-site consumption. Those applications are being reviewed separately.

The existing historic building is a three-story, 15,836-square-foot, Art Deco-style structure built circa 1950 as a Scottish Rite Temple. The building has three floors with a partial, unfinished mezzanine level between the second and third floors. The 5,184-square-foot property is located at the western corner of Eaton and Simonton Streets, and has nearly 100% building coverage. The site was developed prior to the city's current Land Development Regulations and the current building does not conform to current regulations, and is considered to be legally non-conforming.

On March 13, 2014, the Planning Board recommended to the City Commission to approval with conditions of the Major Development Plan/Conditional Use and landscape waivers. The Planning Board also approved the alcohol sales special exception.

Request:

The request is for a 7'-10" increase from the 47'-5" existing building height to the 55'-3" proposed height of the new elevator/stairway penthouse. This would be 20'-3" higher than the maximum height of 35 feet allowed within the HNC-1 Zoning District. Only the proposed elevator/stairway penthouse and a new railing would exceed the existing height of the building. All other rooftop structures would not exceed the existing building height. The rooftop elevator and stairway enclosure would be setback from the building façade and should not be visible from

street level directly below. The existing rear exterior fire escape stairs would be extended to the roof level to provide a secondary egress.

Pursuant to City Code Section 122-1149, “building height” as used in the LDRs means the vertical distance from the crown of the nearest adjacent street to the highest point of the proposed building. These height regulations may be waived in order to accommodate nonhabitable hardware and utility structures typically associated with the principal structure, including spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy or use.

Furthermore, the City Charter allows that variances to height regulations may be granted by the Board of Adjustment. The full provision is provided as follows:

City Charter Section 1.05, Height Restriction:

- (a) Building height restrictions in the City's Land Development Regulations and building code in effect as of the adoption of this charter section are subject to change only upon approval of a majority of the qualified electors casting ballots at a general municipal election.
- (b) If the Board of Adjustment approves a height variance for habitable building space, this approval shall be submitted to the voters for ratification in the next regularly scheduled election. Board of Adjustment approval shall not become effective until voter ratification. **Board of Adjustment height variances for nonhabitable purposes, including, but not limited to, radio towers, antennae and spires, shall be final and not be subject to referendum** [Emphasis added.] Board of Adjustment height variances for build back of involuntarily destroyed structures which are nonconforming in their height shall also be final and not subject to referendum.

The following table summarizes the relevant project data.

Project Data Summary				
Dimensional Requirement	Required/ Allowed	Existing	Proposed	Change
Zoning District	HNC-1			
Flood Zone	X			
Site size	5,185 SF; 0.12 acres			
Maximum density	16 dwelling units per acre	0 units	0 units	None
Maximum floor area ratio	1.0	3.05	3.04; nonconforming	-0.01
Maximum height	35 feet	47'-5"	55'-3"	+7'-10"; 20'-3" higher than maximum allowed; owner has applied for variance
Maximum building coverage	50%	96.3%	96.3%; nonconforming	None

Project Data Summary				
Dimensional Requirement	Required/ Allowed	Existing	Proposed	Change
Maximum impervious surface	60%	99%	99%; nonconforming	None
Minimum lot size	4,000 SF	5,185 SF	5,185 SF	None
Minimum lot width	40 feet	49.86 feet; 58.00 feet	49.86 feet; 58.00 feet	None
Minimum lot depth	90 feet	96.00 feet; 50.00 feet	96.00 feet; 50.00 feet	None
Minimum front setback (Eaton St)	5 feet	0 feet; -3 feet roof overhang	0 feet; -3 feet roof overhang; nonconforming	None; owner has applied for easement
Minimum side setback (SW side)	5 feet	0 feet	0 feet; nonconforming	None
Minimum rear setback (NW side)	15 feet	0 feet	0 feet; nonconforming	None
Minimum street side setback (Simonton St)	7.5 feet	0 feet; -3 feet roof overhang	0 feet; -3 feet roof overhang; nonconforming	None; owner has applied for easement
Minimum vehicular parking	None per Sec. 108-573	0 spaces	0 spaces; nonconforming	None
Minimum handicap parking	None per Sec. 108-573	0 spaces	0 spaces; nonconforming	None
Minimum bicycle parking	None per Sec. 108-573	0 spaces	0 spaces; nonconforming	None
Minimum open space	20%	0%	0%	None
Landscaping	Code Ch 108, Arts V & VI	None	None	Waivers requested
Consumption area or number of seats		None	None	None

Process:

Development Review Committee:	January 23, 2014
Planning Board Meeting:	March 13, 2014
HARC:	March 25, 2014
Board of Adjustment:	April 1, 2014

Analysis – Evaluation for Compliance With The Land Development Regulations:

Pursuant to City Code Section 90-97, the Board of Adjustment may authorize in specific cases a variance from the maximum height requirements of the LDRs and Article 1.05 of the City Charter where the requirements of City Code Section 90-394 are met. The criteria for evaluating variances are listed in City Code Section 90-395(a). Before any variance may be granted, the Board of Adjustment 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 existing conditions of the building pre-date the dimensional requirements of the current LDRs, and therefore is legally non-conforming to some dimensional requirements in the HNC-1 Zoning District. The Applicant is proposing to create new roof access that does not currently exist, and to use the space to add landscaping and a possible green roof, in a sense creating green space on developed property where it is otherwise not possible. It is proposed structure enclosing the new elevator and stairway that would provide roof access that triggers the need for a variance. The penthouse design is setback from the building façade so as not to be visible from street level directly below. Nonetheless, the nonconforming height of the historic building is not a special condition or circumstance that is unique to the land or building within the HNC-1 Zoning District.

- (2) ***Conditions not created by applicant.*** That the special conditions and circumstances do not result from the action or negligence of the applicant.

The condition of the nonconforming building height was not created by the Applicant. However, the proposal to further increase the nonconforming building height is a condition created by the Applicant.

- (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.

Granting of the variance request would confer the privilege of a larger and taller building, even though the space is non-habitable and would only be used to provide access to the roof.

- (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.

If the height variance for the proposed elevator/stairway penthouse is denied, the Applicant would not be deprived of rights commonly enjoyed by other properties in the HNC-1 Zoning District. The possible new green roof does not necessitate a height variance. Therefore, hardship conditions do not exist.

- (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 Applicant would have reasonable use of the land and building without the height variance. However, the height variance would be limited to only the proposed elevator/stairway penthouse, and not a whole new floor of the building.

- (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 being in compliance with all of the standards for considering variances, the granting of the requested variances would be considered injurious to the area involved and otherwise detrimental to the public interest. However, the Applicant's request would allow the creation of an amenity in the form of providing access to a landscaped terrace on a property where no landscaping currently exists, and access to a possible green roof that would reduce stormwater run-off from the site.

- (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 nonconforming uses of other property in the HNC-1 Zoning District or permitted uses of property in other zoning districts has not been considered in the analysis of the requested variances.

Pursuant to Code Section 90-395(b), the Board of Adjustment shall make factual findings regarding the following:

- (1) That the standards established by Section 90-395 of the City Code have been met by the applicant for a variance.**

The Applicant has not met all of the standards established by the City Code 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.**

As of the writing of this report, Staff is not aware of any objections at this time.

RECOMMENDATION:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends the request for variance be **DENIED**.

However, if the Board of Adjustment chooses to approve the variance application, the Planning Department recommends the following conditions:

1. This approval shall not become effective until the concurrent applications for Major Development Plan/Conditional Use and easement are approved and effective.
2. This height variance shall only be for the roof garden penthouse structure and railing as shown on the approved plans dated March 11, 2014 by Michael Miller Architecture. Any future increase of height beyond this would require a new height variance application.
3. The roof shall not be used for any commercial activities that are unrelated to the principal uses, but may serve as an accessory use.