

**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: November 15, 2018

Agenda Item: **Variance – 1021 Fleming Street- (RE# 00005060-000000)** – A request for variance to the required side setback requirement in order to construct an accessory structure in the rear yard for property located within the Historic Medium Density Residential (HMDR) Zoning District pursuant to Sections 90-395, 122-600 (6) b., of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: The applicant is seeking to relocate the existing accessory structure used as a shed off the property line and convert the structure into habitable space.

Applicant: Richard McChesney

Property Owner: Deborah Lippi

Location: 1021 Fleming Street- (RE# 00005060-000000)

Zoning: Historic Medium Density Residential (HMDR) Zoning District



Background/Request:

The property at 1021 Fleming Street is located between Frances and Grinnell Street within the Historic Medium Density Residential (HMDR) zoning district. The parcel is one lot of record consisting of a two-story wood framed residence facing Fleming Street, and an accessory structure to the side /rear of the property. The accessory structure is currently encroaching outside of the parcel’s lot line to the side.

The applicant is proposing to relocate the accessory structure reducing the non-conforming encroachment. Then converting the accessory structure from a storage shed into a pool house. The proposed accessory structure is a total of 108 square feet. The plans submitted would require a variance to the minimum required side yard setback.

The following table summarizes the requested variance.

Relevant HMDR Zoning District Dimensional Requirements: Code Section 122-600				
Dimensional Requirement	Required/ Allowed	Existing	Proposed	Change / Variance Required?
Lot Size	4,000 Square Feet	4,656 Square Feet	4,656 Square Feet	In compliance
Maximum Height (accessory structure)	30 Feet	10 Feet	12.5 Feet	In compliance
Maximum building coverage	40% (1,862 Square Feet)	29.8% (1,388 Square Feet)	29.4% (1,368 Square Feet)	In compliance
Maximum impervious surface	60% (2,328 Square Feet)	47.5% (2,213 Square Feet)	47.1% (2,193 Square Feet)	In compliance
Minimum open space	35% (1,630 Square Feet)	43.8% (2,037 Square Feet)	41.5% (1,934 Square Feet)	In compliance
Minimum front setback (accessory structure)	5 Feet	72.1 Feet	72.7 Feet	In compliance
Minimum right-side setback (accessory structure)	5 Feet	35.9 Feet	35.11 Feet	In compliance
Minimum left side setback (accessory structure)	5 Feet	.24 Feet encroachment	2.72 Feet	Variance Required -2.28 feet
Minimum rear setback (accessory structure)	5 Feet	5 Feet 5 Inches	5 Feet	In compliance

Process:

Planning Board Meeting:

November 15, 2018

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 HMDR zoning district. The required minimum lot size in the HMDR zoning district is 4,000 square feet. The 1021 Fleming Street property has a lot size of 4,656 square feet, more than the required amount. The lot was developed prior to the adoption of the current Land Development Regulations (LDRs).

Other land, structures and buildings within the HMDR 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 applicant has chosen to relocate the accessory structure to further reduce the current non-conforming encroachment onto the adjacent neighbor's property. However, the proposed relocation encroaches into the side setback 2.28 feet requiring a side setback variance approval. The choice to place the proposed accessory structure in the required minimum five-foot setback was created by the property owner.

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.***

Granting the minimum setbacks for an accessory structure will confer special privileges to the applicant that is denied by the Land Development Regulations to other lands, buildings or structures in the same zoning district.

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 Historic Medium Density Residential zoning district. The property owner may relocate the proposed accessory structure so that there is no encroachment into the required setbacks. 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, they are 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 of 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 received no 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**.

If Planning Board chooses to approve the request for variances, then staff suggests the following condition:

1. The proposed development shall be consistent with the plans dated, October 8, 2018 by Robert L. Delaune, P.A. No approval granted for any other work or improvements shown on the plans other than the proposed accessory structure.