

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



**To:** Chairman and Board of Adjustment Members

**Through:** Jim Scholl, City Manager

**From:** Carlene Smith, LEED Green Associate, Planner II

**Meeting Date:** March 3, 2015

**Agenda Item:** **Height Variance – 1212, 1220 & 1222 Simonton Street (RE # 00028730-000000, 00028750-000000; AK # 1029513, 1029530) – A request for variance to height for non-habitable space in order to construct an elevator shaft on the second floor roof deck on a proposed hotel project on property located within the Historic Neighborhood Commercial - Truman / Simonton (HNC-1) Zoning District pursuant to Sections 90-395 and 122-810 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.**

**Request:** To consider a height variance of 5 feet 2 inches to an overall height of 40 feet 2 inches for non-habitable space in order to construct an elevator shaft on the second floor roof deck.

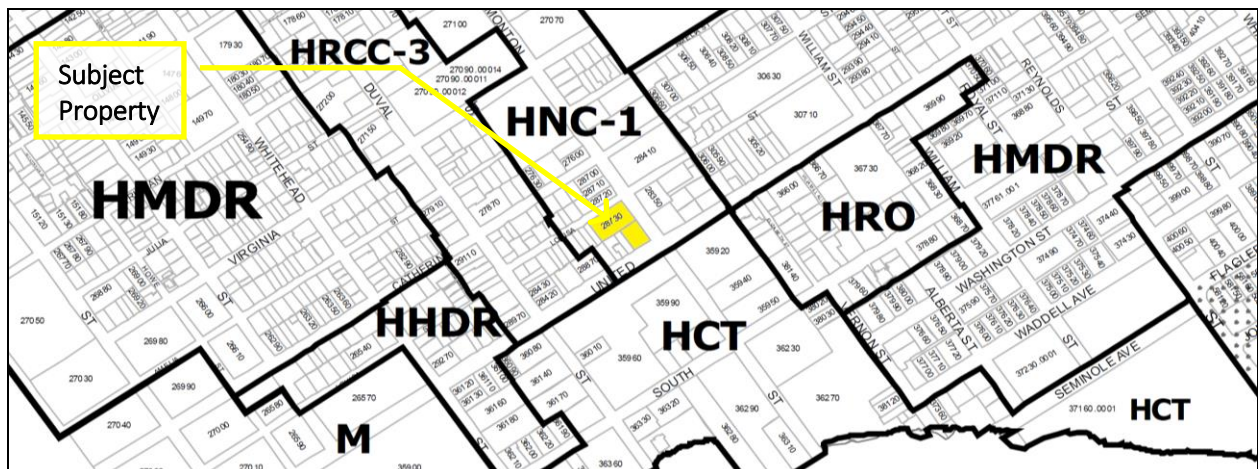
**Applicant:** Trepanier & Associates, Inc.

**Property Owners:** Casa Marina – 1220 Simonton Street, LLC

**Location:** 1212, 1220 & 1222 Simonton Street

(RE # 00028730-000000, 00028750-000000; AK # 1029513, 1029530)

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



**Background:**

The request for a height variance is associated with an application for major development plan and landscape modifications / waivers for the demolition of the existing Spindrift Motel and an existing mixed-use commercial / residential building and the construction of a new 22-room hotel with one non-transient apartment.

The proposed development would demolish all existing buildings and the commercial uses at 1220-1222 Simonton Street would cease, to be replaced by a new 22-room hotel and one non-transient apartment. The new hotel features several pool areas, including a rooftop pool, deck and bar area. Several existing building encroachments and setback nonconformities would be eliminated and the overall property would be brought further into compliance with the City’s Land Development Regulations.

**Request:**

A height variance for non-habitable space is requested to accommodate the proposed construction of an elevator shaft on the second floor roof deck. The elevator would allow ADA access to the second floor amenities. Total height would be 40 feet 2 inches from crown of road. The elevator shaft is the only portion of the building requesting to exceed height limit.

The City Charter Section 1.05 allows that variances to height regulations for non-habitable purposes 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 non-habitable 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:

<b>Project Data</b>				
	<b>Required/ Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Variance Request</b>
<b>Zoning</b>	HNC-1			
<b>Maximum Height</b>	35 feet	28 feet	40 feet 2 inches	5 feet 2 inches

**City Actions:**

Development Review Committee (DRC):	January 22, 2015
Board of Adjustment:	March 3, 2015

**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 Board of Adjustment before granting a variance 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 proposed development would demolish all existing buildings. Therefore, there would be no existing special conditions and/or circumstances peculiar to this property.

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's proposed placement of the amenities on the rooftop triggers the need for ADA accessibility and therefore the height variance request for the elevator shaft.

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.**

Although the proposed placement of the rooftop pool and bar is strategically placed furthest away from residential use on Louisa Street, the height variance to construct an elevator shaft on the second floor roof deck 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.**

If the height variance for the proposed elevation is denied, the applicant would not be deprived of rights commonly enjoyed by other properties in the HNC-1 zoning district. Although the proposed placement of the rooftop pool and bar is strategically placed furthest away from residential use on Louisa Street, the pool and bar can be centrally placed between the two structures eliminating the need for the elevator. 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 applicant would have reasonable use of the land and building without the variance. 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.**

The applicant's proposed placement of the rooftop pool and bar is strategically placed furthest away from residential use on Louisa Street therefore preserving the integrity of the neighborhood by considerably limiting the noise. Therefore, it does not appear that granting of the variance will be injurious to the area involved or otherwise detrimental to the public interest or welfare.

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.

**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 meets some, but does not meet all 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.**

The Planning Department has not received any public comment for the variance request as of the date of this report.

**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 application for major development plan and landscape modifications / waivers are approved and effective.
2. This height variance shall only be for the nonhabitable elevator shaft at a height of 40 feet 2 inches. Any future increase of height beyond this 3D building envelope would require a new height variance application.