

**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: **After-the-Fact Variance – 1209 Laird Street – (RE# 00059250-000000)**
– A request for variances to the required rear yard setback, the maximum allowed building coverage, and maximum allowed impervious surface requirements in order to construct a raised deck in the rear yard on property located within the Single Family (SF) Zoning District pursuant to Sections 90-395, 122-238 (6) (a) (3), 122-238 (4) (a), and 122-238 (4) (b)(1) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: The applicant's rear yard deck is over 4 feet in height and is encroaching into the principle structure's rear yard setback, adding building coverage, and impervious surface to the extent that after-the-fact variances are required to continue the construction.

Applicant: Richard Milelli, Meridian Engineering, LLC.

Property Owner: Alex Model

Location: 1209 Laird Street – (RE# 00059250-000000)

Zoning: Single Family (SF) Zoning District



Background/Request:

The property at 1209 Laird Street is located within the Single-Family Zoning District and is one lot of record. A demolition in 2016 took place to remove the existing 1,094 square foot one story wood framed structure with wood decks per building permit #16-4146. In 2017, a new two-story structure with a rooftop deck was constructed per building permit #17-00001106. A concrete swimming pool was added soon after per building permit #17-1071. In 2018, the property owner applied for a wood deck per building permit #2018-2580. On July 17,2018, the Code department received a complaint regarding the wood deck being built while the application is under simultaneous plan review. During the code officer’s visit, he witnessed and photographed the deck almost done and then issued a stop work order per code case #18-1029. The applicant applied for an after-the-fact variance with the Planning department.

The plans submitted indicate the after-the-fact deck is encroaching into the rear required yard setback, adding building coverage, and impervious surface to the property requiring variances from all three-dimensional requirements.

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	6,000 Square Feet	5,280 Square Feet	5,280 Square Feet	In compliance
Maximum Height	25 Feet plus an additional five feet for non-habitable purposes if the structure has a pitched roof.	14.4 Feet	29 Feet 10 inches	In compliance
Maximum building coverage	35% (1,848 Square Feet)	39% (2,034 Square Feet)	42% (2,221 Square Feet)	Variance Required -373 Square Feet
Maximum impervious surface	50% (2,640 Square Feet)	41.5% (2,189 Square Feet)	54% (2,851 Square Feet)	Variance Required -211 Square Feet
Minimum open space	35% (1,848 Square Feet)	20% (1,077 Square Feet)	46% (2,429 Square Feet)	Improving In compliance
Minimum front setback	20 Feet	21 Feet 11 Inches	20 Feet	In compliance
Minimum side setback	5 Feet	3 Feet 6 Inches	5 Feet	In compliance
Minimum side setback	5 Feet	5 Feet	9 Feet 6 Inches	In compliance
Minimum rear setback	25 Feet	23 Feet 2 Inches	3 Feet 1 Inch	Variance Required -21 Feet 11 Inches

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 LDR's state the dimensional requirements for the SF zoning district. The property owner was notified through the Planning department that the wood deck would require variances to the Planning Board during the simultaneous plan review process. The code complaint and stop work order to the construction of the four (4) foot high deck connected to the principle structure created the variance request to become an after-the-fact variance request. There are no special conditions or circumstances.

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 construction of the after-the-fact four (4) foot wood deck began and is almost completed by the property owner, contractor without a building permit approval. The conditions were created by the applicant.

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.*

Within the Single-Family zoning district, the rear yard setback is 25 feet, the maximum building coverage is 35%, and the maximum impervious surface is 50%.

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 variances would not deprive the applicant of rights commonly enjoyed by other properties in the Single-Family Zoning District. A wood deck is not considered a hardship. 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 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 received 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**.

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, September 10, 2018 by Richard J. Milelli, P.E. No approval granted for any other work or improvements shown on the plans other than the proposed construction of the four (4) foot high wood deck connected to the principle structure.