

**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 Analyst

Meeting Date: October 18, 2018

Agenda Item: **Variance – 3228 Flagler Avenue – (RE# 00069040-000000)** – A request for a variance to the minimum side setback requirement in order to construct five (5) deed restricted affordable units and three (3) market rate residential units on property located within the Commercial Limited (CL) zoning district pursuant to Sections 90-395, 122-390 (6) b., of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: The applicant is requesting a side setback variance in order to construct five (5) deed restricted affordable units and three (3) market rate residential units on the property.

Applicant: Trepanier & Associates

Property Owner: Land 10031, LLC c/o Uphoff Investments, LLC

Location: 3228 Flagler Avenue – (RE# 00069040-000000)

Zoning: Commercial Limited (CL) zoning district



Background/Request:

The property at 3228 Flagler Avenue is one lot of record and is located along the 3200 block of Flagler Avenue, between Riviera Street and Kennedy Drive. This site is at the edge of the Commercial Limited zoning district and immediately adjacent to the Single Family zoning district. The existing concrete block structure was built in 1969. The existing commercial site is used as a convenience store, and service station known as Dion’s. The establishment fronts Flagler Avenue with a concrete block warehouse attached at the rear. The street side is Riviera Street and the rear of the property faces Riviera Drive.

The applicant is proposing to demolish the attached concrete block warehouse in the rear of the property in order to construct a two story structure that will house five (5) deed restricted affordable units and three (3) market rate residential units. The plans include the following: 15 automobile parking spaces, 18 scooter/bicycle spaces, an underground water catchment system, bocce courts, and ten ventilated limited storage rooms. This project is utilizing Section 122-1470 – Accessory unit infill (parking relief for .78 ESFU 2 bicycle/scooter spaces for required automobile spaces. The plans submitted would require a variance to the minimum side yard setback requirement as the proposed two story structure is encroaching into the required 15 foot side setback.

The following table summarizes the requested variance.

Relevant CL Zoning District Dimensional Requirements: Code Section 122-390				
Dimensional Requirement	Required/ Allowed	Existing	Proposed	Change / Variance Required?
Maximum Height	40 Feet	20 Feet	39 Feet	In compliance
Minimum lot size	10,000 Square Feet	21,982 Square Feet	21,982 Square Feet	In compliance
Maximum building coverage	40% (10,991 Square Feet)	26% (5,741 Square Feet)	38% (8,355 Square Feet)	In compliance
Maximum impervious surface	60% (13,189.2 Square Feet)	100 % (21,982 Square Feet)	84 % (18,477 Square Feet)	Improving In compliance
Minimum open space	30% (6,725 Square Feet)	5 % (1099.1 Square Feet)	16 % (3,463 Square Feet)	Improving In compliance
Minimum front setback	Minimum 25 Feet or as an alternative ten % of lot depth for buildings up to 25 Feet in height or 20% of lot depth for buildings over 25 Feet in height; provided, however, the	73.05 Feet	73.05 Feet	In compliance

	maximum setback shall be 50 feet			
Minimum side setback	15 Feet (15 feet or ten percent of lot width up to a maximum of 20 feet, whichever is greater)	.8 Feet	5 Feet	Variance Required -10 Feet
Minimum street side setback	20 Feet	51.9 Feet	20 Feet	In compliance
Minimum rear setback	Minimum 25 Feet or as an alternative ten % of lot depth for buildings up to 25 Feet in height or 20% of lot depth for buildings over 25 Feet in height; provided, however, the maximum setback shall be 50 feet	25 Feet	25 Feet	In compliance

Process:

Planning Board Meeting: October 18, 2018
Planning Board Meeting: September 18, 2018 (postponed by staff)
Planning Board Meeting: August 16, 2018 (postponed by staff)
Local Appeal Period: 10 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 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 land, structure, and building involved do not have special conditions or circumstances involved that any other property located within the CL zoning district possesses. The lot size exceeds conformity at 21,982 square feet whereas the minimum lot size for the district is 10,000 square feet.

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 proposed two story multifamily residential structure is encroaching into the side setback. The lot width is 100 feet on the property. In the CL zoning district, the side yard setback requirement is 15 feet. The property owner positioned the proposed the residential structure so that it is encroaching 5 feet into the required side yard. The choice to locate the residential structure that extends into the required side setback is 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.***

The property's side yard is adjacent to a commercial use property located within the CL zoning district. Granting the minimum side required yard setback requirement in order to construct the two story multi family structure closer to the neighboring property than is allowed 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 CL Zoning District. The applicant can choose to shorten the width of the multifamily residential structure 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, 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 being in compliance with 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 not received any public comment 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 28, 2018 by Robert Allen Steele, P.A. No approval granted for any other work or improvements shown on the plans other than the proposed construction of the two story multifamily structure that includes five (5) deed restricted affordable units, three (3) market rate residential units, ground floor storage units, bocce courts, an underground catchment system, parking, electric charging systems, and scooter/bicycle spaces.