

**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: January 18, 2017

Agenda Item: **Amendment to a Variance - 805 Olivia Street (RE # 00019930-000000)**
- A request for an amendment to a variance approved by Resolution 2015-27 and extended by Resolution 2017-29 for side, and rear yard setbacks in order to construct a 2 ½ story structure on property located within the Historic High Density Residential (HHDR) zoning district pursuant to Sections 90-395, 122-630(6)(b), and 122-630(6)(c) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: Amendment request to a previously approved variance granted for a side yard setback. The amendment is to modify the variance request to the minimum side and rear yard setback in order to construct a 2 ½ story single family residence.

Applicant: Gregory Oropeza, Oropeza, Stones, Cardenas Attorneys at Law

Property Owner: Bruce and Sharon Mineroff

Location: 805 Olivia Street (RE # 00019930-000000)

Zoning: Historic High Density Residential (HHDR) Zoning District



Background:

The property at 803-805 Olivia Street is located at the corner of Olivia Street and Windsor Lane and is one lot of record. There were three pre-existing structures on the property: one 2 ½ story dwelling unit, carport, and shed. In 2005, the owner received HARC approval for the demolition of a one story single family residence and the reconstruction of a new two story wood frame single family residence. The demolition took place; however, the reconstruction was put on hold. In 2009, the Planning Department acknowledged the existence of a second non-transient dwelling unit through the lawful unit determination process. The subject property was granted a variance to a side yard setback, Resolution No. 2015-27, in order to construct the second residential unit. The applicant received a 12 month variance extension, Resolution No. 2017-29. There is a scrivener's error in Resolution No. 2017-29 that includes an extension to a variance for a side and rear yard setbacks. The extension to Resolution No. 2015-27 is for a side yard setback.

During Hurricane Irma, an adjacent tree fell over and damaged the pre-existing non-conforming shed located to the rear, and north east side of the property. The shed has now been demolished. As a result of the destruction to the shed, the property owners have re-designed the 2 ½ story structure.

The applicant is proposing to construct a 2 ½ story single family residence that is connected by a hall way to the existing 2 1/2 story dwelling unit. A garage is proposed on the first floor of the 2 ½ story structure and the single family residence is on the second floor. There are two interior staircases. One is located at the east side of the structure, and the second staircase is located at the west side to the rear of the structure. Both will serve as access to the dwelling unit. The applicant received HARC approval for the 2 ½ story structure on July 28, 2015 and was granted an extension on July 28, 2017; however, the applicant will need to seek HARC approval for the revised design being submitted.

The property currently has three curb cuts to accommodate three off street parking spaces (garage facing Windsor Lane, 803 Olivia and 805 Olivia).

Relevant HHDR Zoning District Dimensional Requirements: Code Section 122-630					
Dimensional Requirement	Required/ Allowed	Existing	Approved by Resolution 2015-27	Proposed	Change / Variance Required?
Minimum lot size	4,000 SF	7,350 SF	7,350 SF	7,350 SF	In compliance
Maximum height	30 feet	0	30'	27'-3"	In compliance
Maximum density	22 dwelling units per acre	1 du / 0.22 ac=7.19	2 du / 0.22 ac=14.38	2 du / 0.22 ac=14.38	In compliance 2 du recognized
Maximum building coverage	50% (3679.5 sf)	28.5% (1,996 sf)	40% (2,940 sf)	37.6% (2,763 sf)	In compliance
Maximum impervious surface	60% (4415.4 sf)	43% (3,119 sf)	57.9% (4,262 sf)	56.3% (4,139 sf)	In compliance
Minimum Open Space	35% (2575.6 sf)	57.5% (4,231 sf)	60% (4,410 sf)	43.6% (3,211 sf)	In compliance
Minimum front setback	10 feet	10 feet	15'6"	21 feet 9 inches (New construction)	In compliance
Minimum North East side setback (New construction)	10.5 feet*	0 feet	5 feet*	5 feet*	Variance Required -5.5 feet
Minimum Street side setback	10.5 feet*	N/A	No change	No change	In Compliance
Minimum rear setback (New construction)	20 feet	0 feet	20 feet	10 feet 11 inches	Variance Required -9 feet 1 inch

*Side yard setback: 5 feet or 10 percent of lot width to a maximum of 15 feet.

Process:

Planning Board:

January 18, 2018

HARC extension:

July 28, 2017

Planning Board extension:

July 20, 2017

HARC:

July 28, 2015

Planning Board:

July 16, 2015

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 minimum side yard setback requirement of 10.5 feet makes the request to construct the second non-transient dwelling unit difficult without the need for variances. However, given that the previously existing one story residential dwelling unit was demolished and this would be an entirely new building, it is difficult for staff to find good and sufficient cause that the house cannot be designed in compliance with the minimum required setbacks. Therefore special conditions or circumstances do not exist.

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 request to construct a 2 ½ story structure within the required side and rear yard setbacks is generated from specific actions initiated 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.***

Section 122-27 of the Land Development Regulations discourages the expansion of site nonconformities. Therefore, allowing the expansion of the building envelope 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.***

The minimum side yard setback requirement makes the request to construct the second non-transient dwelling unit difficult without requesting variances. However, the new construction should be able to be designed to remain in compliance with the minimum required setbacks. Therefore, denial of the requested variance would not deprive the applicant of rights commonly enjoyed by other properties in the HHDR Zoning District. 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 requested 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):

Based on comments received at the DRC, 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 not been fully met by the applicant for the variances 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 variances request as of the date of this report..

RECOMMENDATION:

Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for variance be denied.

However, if the Planning Board approves this request, staff would like to require the following conditions:

General Conditions:

1. The proposed development shall be consistent with the plans dated October 30, 2017 by William Shepler, Registered Architect. No approval granted for any other work or improvements shown on the plans other than the construction of a 2 ½ story structure.

Conditions required to be completed prior to issuance of a building permit:

2. A Certificate of Appropriateness shall be obtained for the revised design.
3. Trees near and within the project area (including tree canopy in the adjacent property) will be protected during construction. Trees located within the work area that may need to be removed or trimmed may require permits from the Tree Commission. If a root or roots of a neighboring tree are located within the proposed work area, the property owner/contractor must consult with the Urban Forestry Manager before commencing any work that will result in severing the root/roots.

Condition to be completed prior to the issuance of certificate of occupancy:

4. Roof gutters shall be installed and downspouts shall be routed back onto the property, into landscaped areas, to prevent storm water runoff from impacting adjacent properties.