

**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: June 21, 2018

Agenda Item: **1222 & 1224 3rd Street – (RE# 00051550-000000)** – A request for a variance to the minimum rear yard setback requirement in order to reconstruct a one story duplex structure with a raised v-crimp roof on property located within the Medium Density Residential (MDR) Zoning District pursuant to Sections 90-395, 122-270 (6) (a) (3) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: The applicant is requesting a variance to the minimum rear setback in order to change the roof from a flat roof to a v-crimp pitched roof.

Applicant: Lee Mattingly, Mattingly Construction

Property Owner: Shlomi & Joy Emanuel-Kohen

Location: 1222 & 1224 3rd Street – (RE# 00051550-000000)

Zoning: Medium Density Residential (MDR) Zoning District



Background/Request:

The property at 1222 & 1224 3rd Street is a one story duplex located within the Medium Density Residential Zoning District, and is one lot of record. The one story duplex is on the corner of Patterson Avenue and Third Street. The existing flat roof was destroyed by Hurricane Irma.

The applicant is proposing to construct a v-crimp pitched roof. The duplex is currently non-conforming with the rear setback requirements. The proposed change in roof height will raise the three dimensional envelope and requires a rear setback variance.

The following table summarizes the requested variance.

Relevant MDR Zoning District Dimensional Requirements: Code Section 122-270				
Dimensional Requirement	Required/ Allowed	Existing	Proposed	Change / Variance Required?
Lot Size	One-half acre	7,000 Square Feet	7,000 Square Feet	Existing Non-conformity In Compliance
Maximum Height	35 Feet	15 Feet 10 Inches	23 Feet 10 Inches	In compliance
Maximum building coverage	35% (2,450 Square Feet)	25% (1,750 Square Feet)	26% (1,824 Square feet)	In compliance
Maximum impervious surface	50% (3,500 Square Feet)			In compliance
Minimum open space	35% (2,450 Square Feet)	75 % (5,250 Square feet)	73 % (5,110 Square Feet)	In compliance
Minimum front setback	20 Feet	20 Feet	20 Feet	In compliance
Minimum side setback	7 Feet	24 Feet	24 Feet	In compliance
Minimum street side setback	10 Feet	24 Feet 10 Inches	24 Feet 10 Inches	In compliance
Minimum rear setback	20 Feet	18 Feet 11 Inches	18 Feet 11 Inches	Variance Required -1 Foot 1 Inch

Process:

Planning Board Meeting:

June 21, 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 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 existing conditions of the one story duplex structure pre-dates the dimensional requirements of the current LDR's, and therefore is legally non-conforming to some dimensional requirements in the MDR zoning district. However, the applicant could replace the roof with a similar flat roof design without the need of a variance request. Therefore, 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 conditions are a result of Hurricane Irma destroying the existing roof. This variance request is a result of the actions of the applicant proposing to raise the three dimensional envelope in an area that is encroaching within the rear setback by choosing a v-crimp pitched roof design instead of a flat roof design.

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. The roof could be replaced without expanding the three dimensional envelope on the property. Therefore, allowing a v-crimp pitched roof design to be constructed in an area that is already encroaching into the rear setback, 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.***

Denial of the requested variance would not deprive the applicant of rights commonly enjoyed by other properties in the Medium Density Residential zoning district. The property owner may choose a flat roof design 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 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**.