

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



To: Chairman and Board of Adjustment Members

Through: Jim Scholl, Interim City Manager

From: Carlene Smith, LEED Green Associate, Planner II

Meeting Date: December 2, 2014

Agenda Item: A request for variance to height for non-habitable space in order to elevate an existing structure on property located within the Historic Medium Density Residential (HMDR) zoning district pursuant to Section 122-600(3) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida

Request: To consider a height variance of 1.48 feet for non-habitable space in order to elevate an existing structure 3.50 feet.

Applicant: Meridian Engineering LLC / Rick Milelli

Property Owner: David Wolkowsky Living Trust

Location: 920 Eisenhower Drive (RE # 00024260-000000; AK # 1025054)

Zoning: Historic Medium Density Residential (HMDR) zoning district



Background:

The request for a height variance is associated with an application for variance to setbacks which is scheduled to be heard by the Planning Board on December 18, 2014. The existing historic building is a two-story frame vernacular structure built circa 1906. The 7,768.50 square-foot property is in the AE6 Flood Zone and is located in a mapped repetitive loss area. The site was developed prior to the city’s current Land Development Regulations and the structure does not conform to current regulations, and is considered to be legally non-conforming.

This request is unrelated to the height referendum which still requires the City to amend the Comprehensive Plan and Land Development Regulations before it can become effective.

Request:

A height variance for non-habitable space is necessary to accommodate the proposed minimum variance required in order to elevate the structure above flood level. The proposed elevation will be consistent with the Florida Building Code requirement of a foot greater than BFE (base flood elevation) as well as the recommended height by the City’s Floodplain Administrator.

The height of the structure is at 27.98 feet (existing height includes difference between crown of the road and finished floor elevation). The applicant is proposing to elevate the structure 3.50 feet, which is 1.48 feet above the 30 foot height allowed in the HMDR zoning district. Only the peak of the structure would be above the existing height minimum. 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:

Project Data				
	Required/ Allowed	Existing	Proposed	Variance Request
Zoning	HMDR			
Flood Zone	AE-6			
Maximum Height	30 feet	27.98 feet*	31.48 feet	1.48 feet

* Existing height includes difference between crown of the road and finished floor elevation.

Process:

Board of Adjustment Meeting:	December 2, 2014
Planning Board Meeting:	December 18, 2014 (setback variances)
Development Review Committee:	October 23, 2014
HARC Meeting:	TBD

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 existing conditions of the structure pre-date the dimensional requirements of the current LDRs, and therefore is legally non-conforming to some dimensional requirements in the HMDR Zoning District. Although the structure is located in a mapped repetitive loss area, there are other parcels of land within the HMDR zoning district designation that are also located within the AE-6 FEMA flood zone. That being said, FEMA regulations are not considered a special condition or circumstance.

- 2. Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.**

The structure is located in the AE-6 flood zone, which is not a condition created by the applicant. However, the need for the height variance is triggered by the applicant's proposal to increase the building height above BFE.

- 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 granting of the variance request will confer special privileges upon the applicant since there are other parcels of land within the HMDR zoning district designation that are also located within the AE-6 FEMA flood zone and are below BFE.

- 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 HMDR zoning district. However, remaining below BFE in a repetitive loss area will continue to be a financial

detriment to the applicant as well as threaten the preservation of a contributing structure. Therefore, hardship conditions do exist.

- 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 height variance. However, remaining below BFE in a repetitive loss area will require continuous repair to a contributing structure.

- 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 request to elevate helps preserve the integrity of the contributing structure by considerably limiting the continuous damage caused by remaining below BFE. Therefore, the proposed development is in the public interest and is not detrimental to the welfare of the community.

- 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 nonconformities of other properties do not form the basis for this analysis.

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.**

As of the writing of this report, Staff is not aware of any objections at this time.

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 applications for variances to setbacks and Certificate of Appropriateness are approved and effective.
2. This height variance shall only be for the 1.48 foot increase from the 30' height allowed in the HMDR zoning district. Any future increase of height beyond this would require a new height variance application.