

**RESOLUTION NO. 22-240**

**A RESOLUTION OF THE CITY OF KEY WEST BOARD OF ADJUSTMENT APPROVING A VARIANCE ALLOWING FOR AN ELEVATOR SHAFT STRUCTURE TO EXCEED THE MAXIMUM BUILDING HEIGHT BY 13.8 FEET ON PROPERTY LOCATED AT 700-724 TRUMAN AVENUE (RE #00030020-000000) WITHIN THE HISTORIC PUBLIC AND SEMIPUBLIC SERVICES (HPS) ZONING DISTRICT, PURSUANT TO SECTION 90-395 AND SECTION 122-960 OF THE LAND DEVELOPMENT REGULATIONS, AND CHARTER SECTION 1.05 OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA.**

**WHEREAS**, the City of Key West Code of Ordinances Section 90-97 provides that the board of adjustment may authorize in specific cases a variance from the maximum height requirement of the land development regulations; and

**WHEREAS**, the City of Key West Charter Section 1.05(b) provides that height variance for uninhabitable purposes shall be final and not be subject to a referendum; and

**WHEREAS**, the owner/occupant of real property at 700-724 Truman Avenue is the Archdiocese of Miami, Inc., and proposing to renovate and convert an existing two-story building into a high school; and

**WHEREAS**, state and federal accessibility regulations require accessibility to educational facilities; and

**WHEREAS**, the Key West Board of Adjustment (the "Board") finds that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district; and

**WHEREAS**, the Board finds that granting the variance requested would not confer upon the applicant special privileges denied by the land development regulations to other lands,

buildings or structures in the same zoning district; and

**WHEREAS**, the Board finds 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 or undue hardship on the applicant; and

**WHEREAS**, the Board finds that the variance requested is the minimum variance that would make possible the reasonable use of the land, building or structure; and

**WHEREAS**, the Board finds that the grant of the variance would be in harmony with the general intent and purpose of the land development regulations and that such variance would not be injurious to the area involved and otherwise detrimental to the public interest or welfare; and

**WHEREAS**, the Board finds that the applicant cannot make reasonable use of the land, building or structure without the grant of the instant variance; and

**WHEREAS**, the Board finds that the applicant has satisfied the conditions of Section 90-395 of the Code of Ordinances (the "Code") of the City of Key West, Florida (the "City") and likewise met the requirements established by Code Section 90-274; and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the City of Key West, Florida:

**Section 1.** That a variance to the 25-foot maximum building height to the proposed 38.8 feet is hereby approved for a new exterior elevator shaft to be constructed to provide access to the existing 38.8 foot structure at 700-724 Truman Avenue pursuant to City Code Section 90-395 and City Charter Section 1.05(b).

**Section 2.** That this approval is subject to the following conditions:

1. The proposed construction shall be consistent with the plans signed, sealed, and dated, October 4, 2022, by William P. Horn Architect, P.A. for 700 Truman Avenue.

**Section 3.** This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

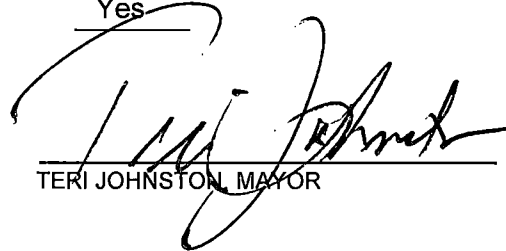
**Section 4.** This Resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit or development order will be rendered to the Florida Department of Economic Opportunity. Pursuant to Chapter 73C-44, F.A.C., this permit or development order is not effective for forty five (45) days after it has been properly rendered to the DEO with all exhibits and applications attached to or incorporated by reference in this approval; that within the forty five (45) day review period, the DEO can appeal the permit or development order to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement or order.

Passed and adopted by the Board of Adjustment at a meeting held this 19<sup>th</sup> day of October, 2022.

Authenticated by the Presiding Officer and Clerk of the Board on 20th day of October, 2022.

Filed with the Clerk on October 20, 2022.

Chairman Teri Johnston	<u>Yes</u>
Vice Chairman Samuel Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Absent</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>

  
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TERI JOHNSTON, MAYOR

ATTEST:



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CHERYL SMITH, CITY CLERK

THE CITY OF KEY WEST  
BOARD OF ADJUSTMENT  
Executive Summary



To: Board of Adjustment

Through: Katie P. Halloran, Planning Director

From: Mario Duron, AICP, The Corradino Group

Meeting Date: October 19, 2022

Application: **Variance** – 700-724 Truman Avenue (RE #00030020-000000) – A request for approval of a variance to exceed the maximum building height for an existing structure in the Historic Public and Semipublic Services (HPS) zoning district pursuant, to Sections 90-395, 122-960, and 122-1149 of the Land Development Regulations, and Charter Section 1.05 of the Code of Ordinances of the City of Key West, Florida.

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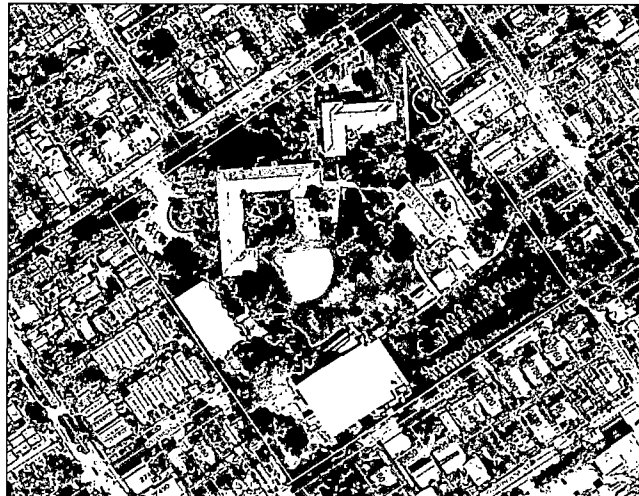
Request: The applicant is proposing to renovate and convert an existing two-story building into a high school. The existing building has a noncompliant height that exceeds the maximum twenty-five (25) feet permitted in the Historic Public and Semipublic Services zoning district.

Applicant: Oropeza Stones Cardenas, LLC

Property Owner: Archdiocese of Miami, Inc.

Location: 700-724 Truman Avenue (RE #00030020-000000)

Zoning: Historic Public and Semipublic Services (HPS) zoning district

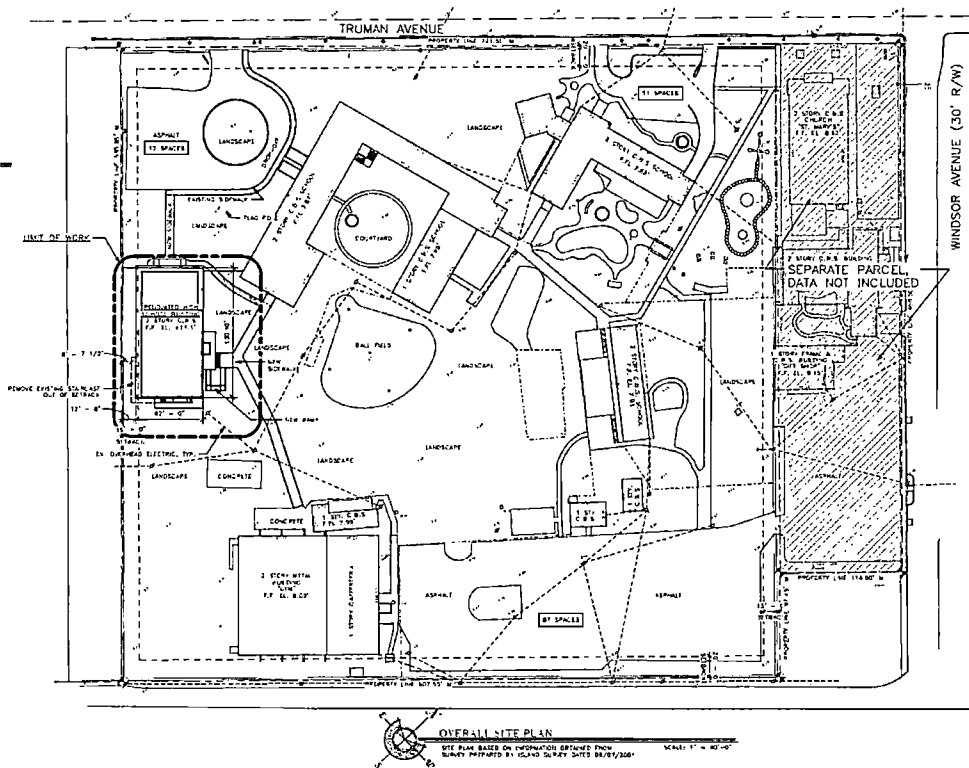


Background:

The property at 724 Truman Avenue is owned by the Archdiocese of Miami and is developed with the Basilica of St. Mary Star of the Sea school campus. The applicant intends to convert an existing two-story building on the campus, with the address 700 Truman Avenue, from an auditorium into a high school. Historically, the building was used as high school but the school program terminated 36 years ago. The property is located within the Historic Public and Semipublic Services (HPS) zoning district.

Due to the change of use and modification to the interior of the building via an accompanying major development plan request, a review of the dimensional requirements was completed. In reviewing, it was determined the existing building height does not comply with the maximum height of 25 feet permitted by code. The applicant is requesting the variance in order to construct an addition that will house an elevator shaft. The site plan below highlights the approximate location of the proposed work area in red.

The City of Key West Code Section 90-97 provides, "The board of adjustment may authorize in specific cases a variance from the maximum height requirements of the land development regulations and Article 1.05 of the Charter of the City of Key West where the requirements of section 90-394 are met. . ." the following sections provide the analysis for the request. The Board of Adjustment may finalize this height variance given that an elevator shaft is considered uninhabitable space per the City of Key West definitions in Section 86-9, copied below.



Overall site plan, submitted by the applicant

**City of Key West Code, Definition of terms, Section 86-9.**

*Habitable space is a room or space in a building designed for human occupancy that may be used for living, sleeping, eating or food preparation, or in which individuals congregate for amusement, educational or similar purposes or in which occupants are engaged at labor, and which is equipped with means of egress and light*

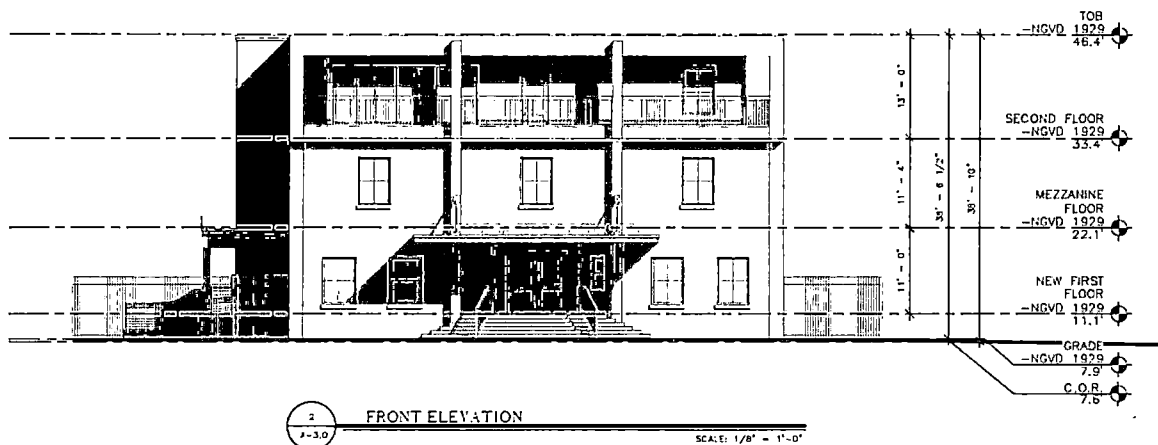
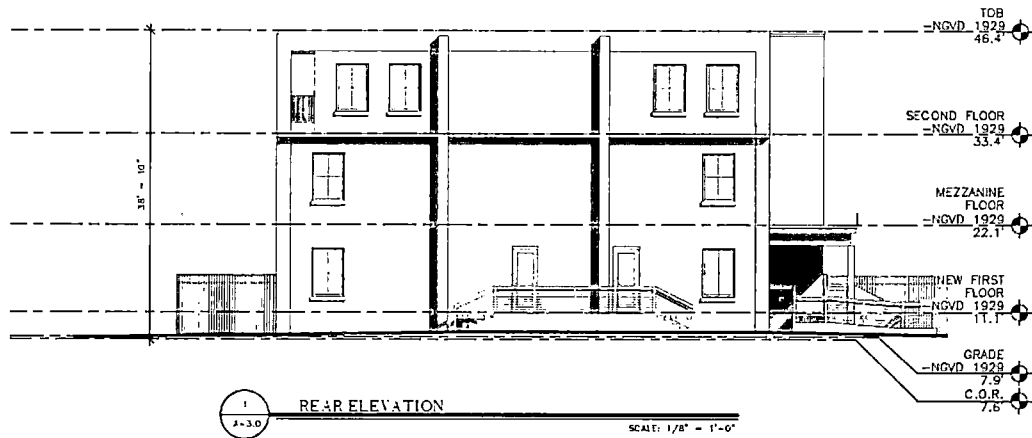
and ventilation facilities meeting the requirements of provisions. Storage or utility spaces and similar areas are not considered habitable space. All habitable space shall be accessible from the interior of exterior walls.

*Habitable space, - non,* means spaces and structures used for non-habitable purposes, including, but not limited to, radio towers, antennae, spires, storage or utility spaces and similar areas.

Request:

The applicant's request to renovate and reconstruct a two-story building into a high school requires a variance from the maximum height provided in Code Section 122-960(3). The existing structure exceeds the maximum height of twenty-five (25) feet allowed by the zoning district by approximately 13.8 FT. The existing building has total height of 38.8 FT.

In conjunction with the variance request, the applicant has submitted a major development plan (MDP) request for approval by the City Commission. The proposed site plan under the MDP includes the reconstruction of approximately 15,187 square feet of interior space within the two-story building currently designated as a gym/auditorium. The proposal also includes the addition of an external covered entryway and elevator shaft that will mirror the height of the existing building.



*Proposed elevations, submitted by applicant.*

Site Data:

The site data table below provides the existing and proposed site data for the development. All dimension requirements comply except those related to height. The HPS zoning district allows for a maximum height of twenty-five (25) feet. The applicant is requesting a variance to the noncomplying building height at approximately thirty-eight and a half feet (38.8 feet).

	CODE REQUIRED	EXISTING	PROPOSED	NOTES
Zoning	HPS			
Flood Zone	X			
Site Area	5,000 SF	8.7 AC		In Compliance
Height	25 FT	38.8* FT	38.8* FT	VARIANCE REQUIRED for elevator shaft addition: 13.8 FT.
FAR	1	.196	.198	In Compliance
Front Setback	20 FT	195.38 FT.		In Compliance
Rear Setback	20 FT	257.75 FT		In Compliance
Side Setback	Greater of 5 feet or 10 percent of lot width to a maximum of 15 feet.	≥ 12.63 FT		In Compliance
Building Coverage	40%	14.16%	14.32%	In Compliance
Impervious Surface	50%	45.14%	45.55%	In Compliance
Open/Landscape Area	50%	54.86%	54.45%	In Compliance

*\*Building height in HPS zoning district is measured from crown of road (46.4' - 7.6'=38.8').*

Based on the plans submitted, the proposed design would require a variance to the requirements of Section 122-960, below.

Sec. 122-960. - Dimensional requirements.

The dimensional requirements in the historic public and semipublic services district (HPS) are as follows; however, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission design guidelines:

(3) Maximum height: 25 feet.

Process:

DRC Meeting (discussion item):

August 25<sup>th</sup>, 2022

Local Appeal Period:

30 Days

City Clerk renders to DEO for review:

Up to 45 days

Staff Analysis - Evaluation:



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 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.*

This structure was constructed prior to adoption of the current Land Development Regulations. A change of use including three stories would require an elevator shaft to comply with ADA accessibility laws (Florida Accessibility Code for Building Construction).

#### PARTIAL 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 for the variance request are created by the applicant. The applicant is proposing to reconstruct/reconfigure the existing building to include three floors and construct an elevator shaft as an addition on the east side of the building. The construction of the exterior elevator shaft triggers a review of the dimensional requirements for the zoning district. The applicant has the option to solely utilize two stories and may be able to avoid a height variance but would not be able to maximize use of the structure. Accessibility code requires an elevator.

#### 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.*

Granting the variance requested will confer upon the applicant the special privilege to repurpose a non-complying structure with a height that exceeds the maximum allowed by code. However, the structure is proposed for use as an educational institution which provides a significant benefit to the community. Given the cost of land in Key West, it is most reasonable to maximize the use of this historic structure by constructing three floors, thus necessitating a height variance.

#### 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 HPS zoning district. However, the applicant cannot utilize the full structure without elevator access given accessibility requirements. City policy supports repurposing historic structures.

#### 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 the minimum variance that will make possible the reasonable use of the structure as a three floor building. It is not reasonable to limit the use of this structure to one story with a ramp. A two story

structure may not require an elevator that would surpass the height limit, but it would not allow for access to a third story for this proposed school. Florida accessibility code requires an elevator.

#### PARTIAL 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.*

The granting of the variance for the maximum height allowed for the existing building is not injurious nor detrimental to the public interest or welfare. The proposal for a high school provides for a need identified in the community.

#### 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 or utility service capacity issues.

#### 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 has not met all of 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.

#### Recommendation:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, and provided that the Applicant has not met all of the standards established by the City Code for a variance, recommends the request for a variance to maximum building height be DENIED.

However, if the Board of Adjustment chooses to approve the variance application, the Planning Department recommends the following condition:

1. The proposed construction shall be consistent with the plans signed, sealed, and dated, October 4, 2022, by William P. Horn Architect, P.A. for 700 Truman Avenue.