

**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:** August 16, 2018

**Agenda Item:** **After-the-Fact Variance - 1535 5th Street – (RE# 00063630-000000) –**  
A request for variances to the minimum side yard setback requirement in order to maintain an addition on the single family residence as well as an addition on the storage shed on property located within the Single Family (SF) Zoning District pursuant to Sections 90-395, 122-238 (6) (a) (2), and 122-1181 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

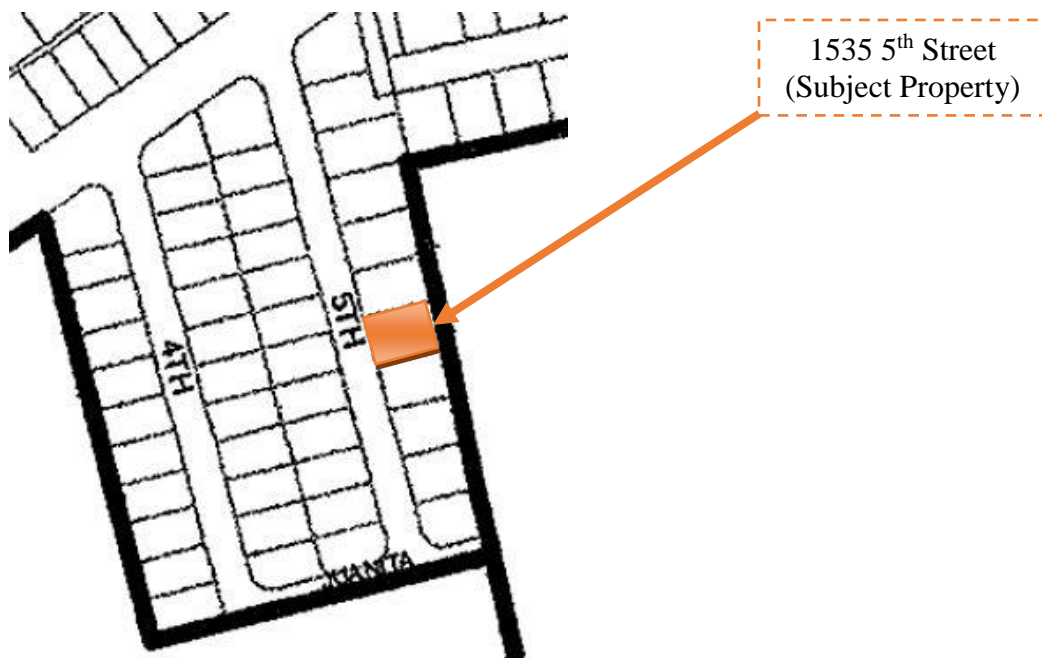
**Request:** The applicant is seeking a side yard setback for the after-the-fact addition to the single family residence as well as the addition on the shed that is encroaching into the side yard setback.

**Applicant:** Robert Reiley

**Property Owner:** Robert Reiley & Nicola Roques

**Location:** 1535 5th Street – (RE# 00063630-000000)

**Zoning:** Single Family (SF) Zoning District



**Background/Request:**

The property at 1535 5<sup>th</sup> Street is located within the Single Family Zoning District, and is one lot of record. The one story residential concrete block structure faces 5<sup>th</sup> Street and the rear yard faces the Salt Ponds.

The applicant received a code case – 16-00001570 for Violation of building the addition to the single family residence an addition to the rear shed, and a covered porch without applying for building permits. The property owner applied for the following after-the-fact building permits: for the single family residence addition of a bedroom/storage area and bathroom to the side of the property on permit # 18-0157, for the shed on the side and rear property on permit # 18-0159, and for the covered porch in the rear yard on permit # 18-0156. At that time, the property owner was informed by planning staff that they needed to apply for a variance to the Planning Board or remove the after-the-fact structures.

The Plans submitted indicate the after-the-fact shed is encroaching into the rear and side required yard setback requirements. The property owner has applied to demo the rear section of the shed so that there will be no rear setback encroachment. Currently, the shed is over the rear property line. The bedroom/storage area and bathroom addition are encroaching into the required side yard setback for the principle structure.

The following table summarizes the requested variances.

<b>Relevant SF Zoning District Dimensional Requirements: Code Section 122-238</b>				
<b>Dimensional Requirement</b>	<b>Required/ Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Change / Variance Required?</b>
Lot Size	6,000 Square Feet	7,115 Square Feet	7,115 Square Feet	In compliance
Maximum Height	25 Feet plus an additional five feet for nonhabitable purposes if the structure has a pitched roof.	12.2 Feet	12.2 Feet	In compliance
Maximum building coverage	35% (2,490 Square Feet)	51.8% (3,690 Square Feet)	50.9% (3,628 Square feet)	Improving In compliance
Maximum impervious surface	50% (3,557 Square Feet)	68 % (4,844 Square Feet)	60.2 % (4,282 Square Feet)	Improving In compliance
Minimum open space	35% (2,490 Square Feet)	14.26 % (1,015 Square Feet)	22.2 % (1,557 Square Feet)	Improving In compliance
Minimum front setback (Principle structure)	30 Feet	20 Feet 8 Inches	20 Feet 8 Inches	In compliance
Minimum South side setback (Principle structure)	5 Feet	7 Feet 6 Inches (Principle Structure)	7 Feet 6 Inches (Principle Structure)	In compliance
<b>Minimum North side</b>	<b>5 Feet</b>	<b>0 Feet</b>	<b>0 Feet</b>	<b>Variance Required</b>

setback setback (Principle Structure)				-5 Feet
Minimum North side setback (Shed)	5 Feet	0 Feet	0 Feet	Variance Required -5 feet
Minimum rear setback (Shed)	5 Feet	0 Feet	5 Feet	In compliance

**Process:**

**Planning Board Meeting:** August 16, 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 LDR's state the dimensional requirements for the SF district. The property owner would have been informed by planning staff that the bedroom/storage and bathroom side addition to the principle structure, and the storage shed would be going beyond the Single Family zoning dimensional requirements. The property owner constructed these structures without building permit approval. 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 after-the-fact bedroom/storage and bathroom side addition and shed were constructed by the property owner without any building permit approvals. The conditions were 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.*

Section 122-27 of the Land Development Regulations discourages the expansion of site nonconformities. The property owner may maintain their existing foot print to their principle structure. The after-the-fact bedroom/storage and bathroom addition expands the side setback non-conformity of the principle structure. The placement and existence of the after-the-fact shed encroaches into the side yard setbacks.

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 Single Family Zoning District. A bedroom/storage area with a bathroom addition and a shed is not considered a hardship. 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 13 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**.

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, May 18, 2018 by Craig Reynolds, P.E. No approval granted for any other work or improvements shown on the plans other than the proposed construction of the side bathroom addition and the front porch addition.