

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



To: Chair and Board of Adjustment Members

From: Kevin Bond, AICP, LEED Green Associate, Acting Planning Director

Meeting Date: December 2, 2014

Agenda Item: **Height Variance – 716-718 South Street (RE # 00036870-000000, AK # 1037681)** – A request for variance to maximum height in order to accommodate non-habitable hardware and utility structures as part of the reconstruction of 17 transient residential dwelling units on property located within the Historic Residential / Office (HRO) Zoning District pursuant to Sections 90-395, 122-930(3) and 122-1149 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida

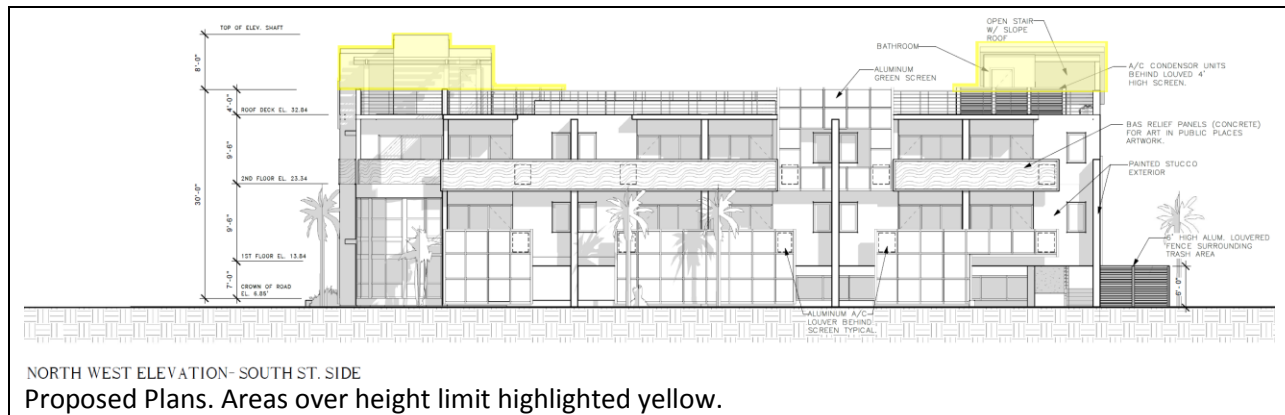
Request: Variance to maximum height from 30 feet to 38 feet for non-habitable structures on the roof of the proposed 17-unit hotel called Two Ocean Inn.

Applicant: Trepanier & Associates, Inc.

Property Owner: South Street Hospitality LLC

Location: 716-718 South Street (RE # 00036870-000000, AK # 1037681)

Zoning: Historic Residential / Office (HRO)



Background:

The subject property, located at the southern corner of South and William Streets within the HRO Zoning District, is currently used as the 17-unit Seashell Motel and Key West Youth

Hostel. The existing development on the property is in compliance with the maximum height within the HRO Zoning District.



In June 2006, approval for a full redevelopment of the 17-unit hotel was granted to the prior property owner, Denise Ganton, through City Commission Resolution No. 06-212. The approved plans called for a new hotel building with three floors of rooms above grade and a fourth floor for below-grade parking. The overall building height was 33 feet, with habitable space up to 30 feet and the top three feet including rooftop air conditioning equipment and an elevator tower. All required off-street parking would have been provided in the below-grade garage, except for the one required ADA van-accessible parking space. Rather than increase the building height further to accommodate the vertical clearance requirement for van-accessible spaces, the City approved an easement to allow the van-accessible space to be located on William Street. Construction never commenced on that approval, although multiple time extensions were granted by both the City and state law.

In October 2013, Ganton sold the property to South Street Hospitality, LLC. In April 2014, the new owners submitted the subject application with an all-new plan for the hotel redevelopment. The proposed development would demolish the existing 17-unit Seashell Motel and construct a new 17-unit hotel called Two Ocean Inn. The new plans call for a two-story building, plus covered parking on the ground level under the building and a rooftop pool, sun deck and breakfast area. The parking level would not be as far below grade as the prior approved plans. Thus, floors for hotel rooms was reduced from three to two levels. The prior approved plans located the pool and deck on the ground level, which would not have provided as much landscaped open space. The van-accessible space was moved on-site as an uncovered stand-alone space with its own driveway access to William Street, and would not be under the building. Additionally, two (2) on-street vehicular spaces, including one (1) ADA-accessible space, would be provided.

The overall height of the building would be 38 feet from crown of road, with no habitable space located above 30 feet. Portions of the proposed building that would exceed the 30-foot height limit include an elevator shaft, two stairways (one covered; one fully enclosed), a wood trellis, a pool bathroom and minor portions of railings and screens. The elevator shaft and stairways would be necessary to provide accessibility and emergency egress from the proposed rooftop pool area. The Florida Building Code (FBC) requires an ADA-accessible bathroom to be located

in close proximity to a commercial pool. Bathrooms are not considered habitable space under FBC.

Concurrent with the height variance, the property owner also applied for a Major Development Plan for the reconstruction of five or more transient residential units within the historic district and the modification or waiver to some landscaping requirements. Those applications are being reviewed separately. On September 18, 2014, the Planning Board recommended to the City Commission to approval with conditions of the Major Development Plan and landscape modifications / waivers.

Request:

The variance request is for an eight (8)-foot increase to the 30-foot maximum height within the HRO Zoning District to the 38-foot proposed height of the new building. The height increase would accommodate non-habitable portions of the proposed building, consisting of an elevator shaft, two stairways (one covered; one fully enclosed), a wood trellis, a pool bathroom and minor portions of railings and screens. All other rooftop structures would not exceed the existing building height.

Pursuant to City Code Section 122-1149, “building height” as used in the LDRs means the vertical distance from the crown of the nearest adjacent street to the highest point of the proposed building. These height regulations may be waived in order to accommodate nonhabitable hardware and utility structures typically associated with the principal structure, including spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy or use.

Furthermore, the City Charter allows that variances to height regulations may 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 nonhabitable 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 Summary				
Dimensional Requirement	Required/ Allowed	Existing	Proposed	Change / Variance Required?
Zoning District	HRO			
Flood Zone	AE-6 & X			
Site size	13,744 SF; 0.32 acres			
Maximum density	16 du/acre	17 units (53.9 du/acre)	17 units (53.9 du/acre)	No change / Nonconforming
Maximum floor area ratio	1.0	0.71 [estimate, not indicated]	0.98	+0.27 / In compliance
Maximum height	30 feet	Not indicated, but in compliance	38 feet (elevator); 26 feet (habitable space)	Variance required
Maximum building coverage	50%	58% [estimate, not indicated]	50%	-8 / In compliance
Maximum impervious surface	60%	89%	60%	-29 / In compliance
Minimum lot size	5,000 SF	13,744 SF	13,744 SF	None
Minimum lot width	50 feet	132.15 feet	132.15 feet	None
Minimum lot depth	100 feet	104 feet	104 feet	None
Minimum front setback (South St)	5 feet	Less than 1 foot	5 feet	+4 feet / In compliance
Minimum side setback (west)	5 feet	-1.2 feet (encroachment)	6 feet to trash enclosure; 16 feet to building	+7.2 feet / In compliance
Minimum rear setback (alley)	10 feet	-3.6 feet (encroachment)	22 feet	+25.6 feet / In compliance
Minimum street side setback (William St)	5 feet	~7.5 feet; (gravel parking within street)	5 feet	-2.5 feet / In compliance
Minimum vehicular parking	1 space per lodging unit + 1 manager space = 18 spaces required	2 off-street spaces (+ 8 or 9 nonconforming on-street spaces)	18 off-street spaces, incl 1 ADA van- accessible space; (+ 2 on-street parallel spaces incl 1 ADA in cross easement)	+16 off-street spaces / In compliance
Minimum handicap parking	1 space	0 spaces	1 off-street van- accessible space (+ 1 on-street parallel in cross easement)	+1 off-street space / In compliance
Minimum bicycle parking	35% of vehicular spaces = 7 spaces	Not indicated	8 spaces	In compliance
Minimum open space	20%	11%	28%	+17 / In compliance

Project Data Summary				
Dimensional Requirement	Required/ Allowed	Existing	Proposed	Change / Variance Required?
Landscaping	Code Ch 108, Arts V & VI	See analysis	See analysis	Nonconforming, but would improve; modification / waiver requested
Consumption area or number of seats		None	None	None

Process:

Development Review Committee: April 24, 2014
 Planning Board (major development plan): September 18, 2014 (approved with conditions)
 HARC: October 28, 2014 (approved)
 Board of Adjustment: pending
 DEO Review: Up to 45 days, following local appeal period

Analysis – Evaluation for Compliance With The Land Development Regulations:

Pursuant to City Code Section 90-97, the Board of Adjustment may authorize in specific cases a variance from the maximum height requirements of the LDRs and Article 1.05 of the City Charter where the requirements of City Code Section 90-394 are met. The criteria for evaluating variances are listed in City Code Section 90-395(a). Before any variance may be granted, the Board of Adjustment 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 property pre-date the adoption of the current LDRs. The property is nonconforming to many aspects of the LDRs including allowed uses, maximum density, minimum setbacks, minimum off-street parking, minimum open space and landscaping standards. The Applicant is proposing to redevelop the property and in the process bring the property much further into compliance with the LDRs. Many existing nonconformities would be eliminated or reduced. The nonconforming use (hotel) would be continued and nonconforming density would be maintained as allowed. Overall landscaping would be increased but still nonconforming, thus the modification/waiver request. Nonetheless, given that most land, structures and buildings within the historic district predate the modern LDRs and many properties are nonconforming, these are not 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.*

Although the existing development on the property is nonconforming to many aspects of the LDRs, it does not exceed the maximum height and there is not a pool. The proposed redevelopment of the hotel presents an opportunity to bring the property into full compliance with the LDRs. The applicant proposes to bring the property further into compliance with the LDRs by eliminating or reducing some nonconformities, but the proposed height would

create a new nonconformity that does not currently exist. Locating a pool on the roof is largely what is necessitating the requested height variance, due to the necessary access, egress and bathroom requirements. However, pools are not an unusual accessory use for hotels and locating the pool on the roof increases landscaped open space on the ground and potentially reduces noise impacts for adjacent residential properties. Nonetheless, the proposed height of the new building is a condition or circumstance created entirely 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.***

Hotels, motels and transient lodging uses are prohibited within the HRO Zoning District. However, the LDRs allow nonconforming uses and density to continue. Pools are not an unusual accessory use for hotels, and the portions of the proposed building above the height limit are considered non-habitable and would be used to provide access or utility functions to the rooftop pool area. Nonetheless, the granting of the variance request would confer the privilege of a new larger and taller hotel building in a zoning district that prohibits new hotels. 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.***

Although pools are not an unusual accessory use for hotels, the lack of a pool or a roof deck for a new hotel would not create a hardship condition on the applicant. The existing property is in compliance with the maximum height and does not have a pool or roof decks. The applicant would still be entitled to redevelop the property in compliance with the LDRs. If the height variance for the proposed hotel building is denied, the Applicant would not be deprived of rights commonly enjoyed by other properties in the HRO 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 Applicant would have reasonable use of the land and proposed building without the height variance. 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.***

If approved, the Applicant's request would allow the addition of a pool, roof deck and breakfast patio amenities for hotel guests. The proposed location of these amenities on the roof allows additional landscaping and open space to be provided, which help bring the property further into compliance with the LDRs. However, due to not being in compliance with all of the standards for considering variances, the granting of the requested height

variance would be considered 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 nonconforming uses of other property in the HRO Zoning District or permitted uses of property in other zoning districts has not been considered in the analysis of the requested variances. IN COMPLIANCE.

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.**

The City received objections by noticed property owners, both before and after the Planning Board hearing on September 18, 2014. Documentation of the applicant's "good neighbor" efforts, including a neighborhood meeting and one-on-one contact with concerned neighbors, is attached with the Major Development Plan materials.

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 application for Major Development Plan is approved and effective.
2. This height variance shall only be for the nonhabitable rooftop structures as shown on the attached approved plans by William P. Horn, P.A. Any future increase of height beyond the three-dimension building envelope shall require a new height variance application.
3. The rooftop pool shall be closed between sunset and sunrise each day.