

**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 15, 2017

**Agenda Item:** **Variance – 1119 Whitehead Street (RE # 00028260-000000)** – A request for a variances to the minimum side and rear setback requirements in order to reconstruct the roof into a pitched roof design. The property is located within the Historic Medium Density Residential (HMDR) Zoning District pursuant to Sections 90-395, 122-600(6) B & C., of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

**Request:** The applicant is seeking a side and rear setback variance in order to reconstruct an existing flat roof into a pitched roof design.

**Applicant:** Seth Neal of Pike Architects

**Property Owner:** John & Denise Obbagy

**Location:** 1119 Whitehead Street (RE # 00028260-000000)

**Zoning:** Historic Medium Density Residential (HMDR) zoning district



**Background/Request:**

The existing one story residential wood framed structure is located within the HMDR zoning district and is considered historic but a non- contributing structure.

The applicant is proposing to reconstruct the roof design from a flat roof to a 5v crimp metal roof design onto the rear side of the one story residential structure. This has triggered a variance to the existing side and rear setback requirement as the roof design will expand the three dimensional footprint of the existing non-conformity.

<b>Relevant HMDR Zoning District Dimensional Requirements: Code Section 122-600</b>				
<b>Dimensional Requirement</b>	<b>Required/ Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Change / Variance Required?</b>
Minimum Height	30 feet	16 feet 4 inches	16 feet 4 inches	In compliance
Minimum lot size	4,000 sq. Ft.	3,670.65 sq. ft.	No change	No change Nonconforming In compliance
Maximum building coverage	40% (1,468.3 sq. Ft.)	54.2% (1,989 sq. ft.)	54.2% (1,989 sq. ft.)	No change Nonconforming In compliance
Maximum impervious surface	60% (2,202.4 sq. ft.)	70.44% (2,585 sq. ft.)	70.16% (2,575 sq. ft.)	Improving impervious surface In compliance
Minimum open space	35% (1,284.7 sq. ft.)	29.59% (1,086 sq. ft.)	29.32% 1,076 sq. ft.	Improving minimum open space In compliance
Minimum front setback	10 feet	0 inches	0 inches	No change Nonconforming In compliance
Minimum side setback	5 feet	5 feet	5 feet	In compliance
Minimum side setback	5 feet	7 inches	7 inches	<b>Variance Required -4 feet – 5 inches</b>
Minimum rear setback	15 feet	8 feet – 1 ½ inches	8 feet – 1 ½ inches	<b>Variance Required -6 feet – 10 1/2 inches</b>

**Process:**

<b>Planning Board Meeting:</b>	June 15, 2017
<b>HARC:</b>	TBD
<b>Local Appeal Period:</b>	30 days
<b>DEO Review Period:</b>	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 primary 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. 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 existing conditions are created by the applicant. This variance request is a result of the actions of the applicant proposing to raise the three dimensional footprint in an area that is encroaching within the side and rear setbacks by choosing a pitched 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 nonconforming structures. The roof could be replaced without expanding the three dimensional footprint on the property. Therefore, allowing the pitched roof design to be constructed in an area that is already encroaching into the side setback 4 feet 5 inches leaving 7 inches of space from the property line adjacent to a neighbor, 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 HMDR Zoning District. The applicant can 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 not received any public comment 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**.