

THE CITY OF KEY WEST
PLANNING BOARD
Staff Report



To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Daniel Sobczak, AICP-C, Planner I

Meeting Date: October 15th, 2020

Application: **Variance** - 3749 Duck Avenue (RE# 00054160-000000) - A request for a variance to the minimum rear yard setback for the construction of a second single-family structure in the rear of a property located in the Single-Family (SF) zoning district pursuant to Section 90-395 and Section 122-238 (6) a. 3.

Request: The applicant is requesting a variance to both the minimum rear yard setback for the construction of a second principle structure in the SF zoning district. This variance will allow the applicant to construct a second single-family home on the property within the code required rear setbacks.

Applicant: Richard J. McChesney

Property Owner: Christine Baratto

Location: 3749 Duck Avenue (RE# 00054160-000000)



Background:

The subject parcel is located at 3749 Duck Avenue on the corner of 20th Street and Duck Ave. The structure was built in 1963 and is neither in the Key West Historic District nor a contributing structure. The parcel is 13,500 sq.ft. in total area and is more than twice the area of the minimum single-family zoned parcel. The parcel is surrounded by SF zoned properties to the north, south, east, and west.

The applicant applied for a Building Permit Allocation System (BPAS) unit in 2019 and for an additional market-rate unit with the same design presented in this application. The unit was awarded in May 2020 and a letter to the applicant was sent in June 2020 alerting them of the approval. The approval letter states that Planning Board approval will still be needed before any work may begin. Section 108-997 states that all new and renovated structures that will receive a BPAS allocation award must receive a Florida Green Building Certificate (FGBC) before a Certificate of Occupancy can be awarded. The applicant has stated that they will construct a structure that will obtain at least a *Silver* certification level. The applicant was awarded a market-rate BPAS unit and will construct a market-rate single-family home inclusive of a porch, water-heater, kitchen, bathroom, etc. Section 122-1081 allows more than one principal structure to be constructed on any one lot, provided that zoning requirements be met for each structure. All additional principal structures or accessory units in the single-family zoning district must conform to the zoning requirements. The city code limits the ability of homeowners to construct additional living units on Single-Family zoned properties by required all additional living units to meet principal structure setbacks, including a 25-foot rear setback.

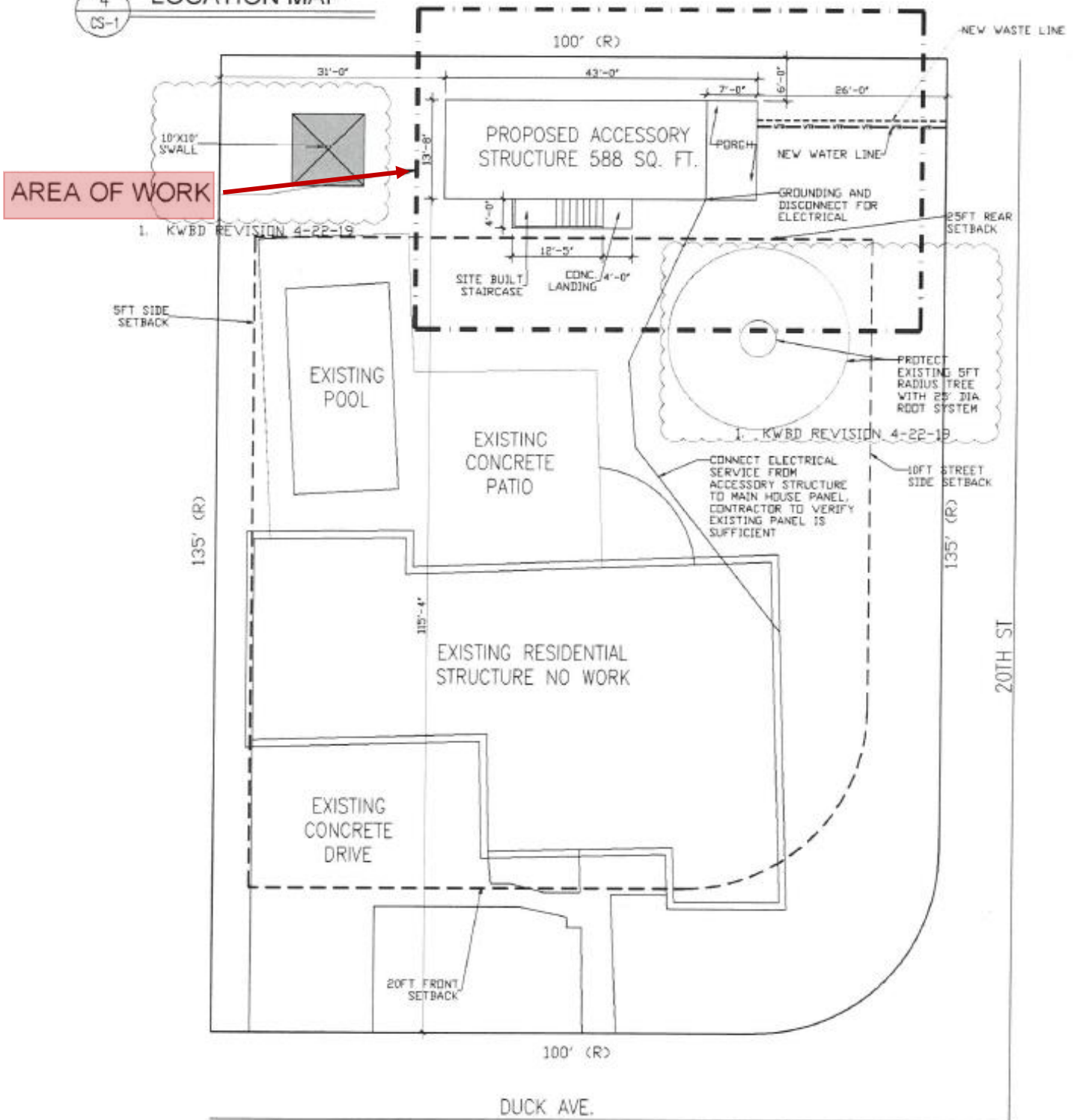
Proposed Development:

The site table below details the current and proposed site data for the property. The applicant was approved for a BPAS unit and will require Planning Board approval to construct the proposed single-family home.

Site Data Table				
	Code Required	Existing	Proposed	Variance Request
Zoning	SF			
Flood Zone	X			
Height	25' Max	n/a	15'-8"	n/a
Size of Site	6,000 sq.ft.	13,366 sq.ft.	n/a	n/a
Front Setback	30' *	17'-6"	n/a	n/a
Side Setback	5'	4'-4"	5'-6"	n/a
Street Side Setback	10'	19'-8"	25'	n/a
Rear Setback	25'	65'-8"	6'	19'
Building Coverage	35% -- 4,678 sqft	26% -- 3,567 sqft	31% -- 4,193 sqft	n/a
Impervious Surface	50% -- 6,683 sqft	42% -- 5,619 sqft	47% -- 6,272	n/a
Open Space	35% -- 4,678 sqft	58% -- 7,747 sqft	53% -- 7,094 sqft	n/a

4
CS-1
LOCATION MAP

ALLOWED 30% REAR YARD SETBACK



1
CS-1
PROPOSED SITE PLAN

Rear Portion of 3749 Duck Ave, Google Maps, 2019



Process:

Planning Board Meeting:	Oct 15 th , 2020
Local Appeal Period:	10 Days
Planning 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 Planning Board, 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.*

The property located at 3749 Duck Ave is more than twice the size of the minimum required 6,000 sq.ft. for a SF parcel. The property currently consists of one single-family structure, and various accessory structures. Due to the expansive size of the lot, there is an excess of land where the proposed second principle structure could be placed to meet all of the Land Development Regulations (LDRS). There are an ample amount of trees and other landscaping buffers between the rear of 3749 Duck Ave and the property abutting the proposed single-family structure. There are multiple lots in SF with a similar size and similar layout that could potentially accommodate a second principle structure without obtaining a variance. The applicant has stated that due to the rear accessory structures and a large canopy tree, the location to the rear of the property six feet from the property line is the only space available to construct this second market rate unit.

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 applicant applied for and was allocated a BPAS unit for an additional single-family unit. The applicant proposed plans that would place the proposed single-family unit in the rear setbacks. In addition to the applicant's accessory structures, there are multiple trees on the lot, including a large protected tree that limits where new structures may be erected. The City Code dictates that all additional dwelling units in the SF zoning district meet the zoning requirements for the district, including setbacks.

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.*

The Land Development Regulations require setbacks in order to ensure life safety, general welfare, health standards, and aesthetics. The variance to the rear setback for a new single-family home will confer special privileges to the applicant that are denied by the land development regulations to other property owners. The rear property line of 3749 Duck Ave consists of a four-foot brick privacy wall and a three feet wide landscaped strip. The proximity of the proposed single-family dwelling may pose a hazard to the general welfare of the property owner and surrounding property owners by introducing a new market-rate single-family home in close proximity to other single-family homes that could result in excess noise, or other nuisance factors.

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.*

The parcel located at 3749 Duck Ave is comparable to many parcels in the SF zoning district, although it is one of the largest parcels on the block. The Land Development Regulation's required setbacks are designed to provide open space around and between structures for health, safety and aesthetic purpose. Strict compliance with the minimum setbacks required for the SF zoning district would not pose a significant hardship on the applicant as the proposed structure could be repositioned to be closer to the main structure.

Literal interpretation of the provisions of the Land Development Regulations would not deprive the applicant of rights commonly enjoyed by other surrounding properties under the terms of this ordinance.

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 requested is not the minimum required that will make possible the reasonable use of the land, building and/or structure. It is reasonable that the applicant could amend their plans to either reposition the structure to be further than six feet from the property line or possibly

move the structure closer to the existing single-family home and the proposal would not require a 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.*

The proposed variance would not be injurious to the public welfare; however, it is not in harmony with the general intent of the land development regulations. The proposed unit is close to the rear of the property line and the roof does not include a gutter which would help mitigate potential stormwater runoff from impacting the neighboring property.

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 or utility service 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 not been fully met by the applicant for the variances 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.

Recommendation:

The proposed site plan for the property located at 3749 Duck Ave will allow for a second principal structure to be in the code required rear setback. The City Code presently requires all additional dwelling

units, either accessory units or additional single-family units, to meet all zoning requirements for the SF zoning district, including setbacks. These requirements limit property owners in the construction of additional units, both accessory and single-family units. The proposed structure is 600 sq.ft., more or less. The addition of the kitchen has resulted in classification of this unit going from an accessory structure to a single-family home. The variance to the minimum rear setback does not meet the criteria stated in Section 90-395. The Planning Department recommends **denial**.

If the Planning Board chooses to approve the variance, the Planning Department recommends the following conditions:

1. The construction shall be consistent with the plans signed, sealed, and dated 3/25/2020 Meridian Engineering LLC., excepting for the addition of gutters and downspouts; see condition #2
2. The new structure shall have gutters with downspouts that drain into a swale, or other approved water mitigative technique, so as to avoid flooding and water pooling due to the proximity to the property line. Water should be directed away from the neighboring property to the north.