

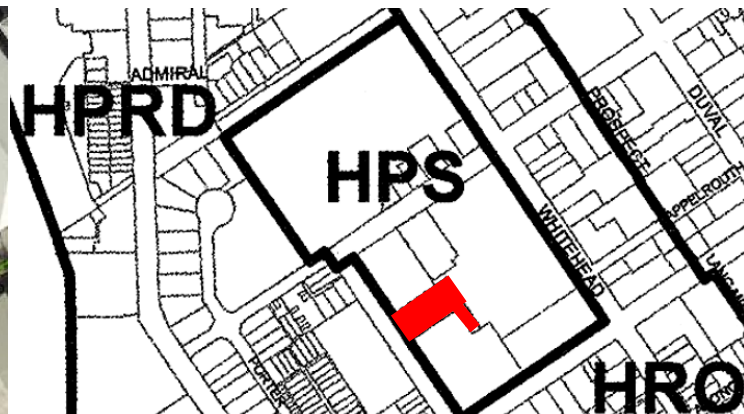
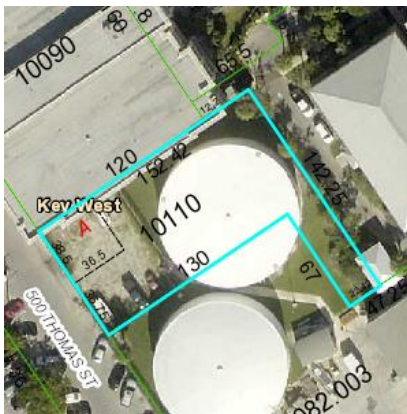
**THE CITY OF KEY WEST
BOARD OF ADJUSTMENT
Staff Report**



To: Madam Chair and City Commissioners
Through: Greg Veliz, City Manager
From: Melissa Paul-Leto, Planner I
Meeting Date: November 6, 2019
Agenda Item: **Height Variance – 521 Thomas Street (RE# 00010110-000000) – A** request for a variance to height for non-habitable space in order to construct a two-story chiller plant structure on property located within the Historic Public and Semipublic Services (HPS) zoning district pursuant to Section 90-395 and 122-960 (3) of the Land Development Regulations of the code of Ordinances of the City of Key West, Florida.

Request: To consider a height variance of 2-feet 7 inches to allow for an overall height of **27-feet 7 inches** for non-habitable space in order to construct a two-story structure that will house a chiller plant consisting of a portion of the brick masonry structure and the stone cornice which lies on top of the two-story structure.

Applicant: Trepanier & Associates, Inc.
Property Owner: Florida Keys Aqueduct Commission
Location: 521 Thomas Street (RE# 00010110-000000)
Zoning: Historic Public and Semipublic Services (HPS) zoning district



Background:

The applicant is requesting a height variance in order to construct a two-story structure that will house a chiller plant towards the front of the parcel at 510 Thomas Street. The chiller plant will serve the Jackson Square Courthouse Complex. The accessory use to the Courthouse Complex will be in addition to the parcel's current use which consists of a portion of a water storage tank as part of the Florida Keys Aqueduct Authority property.

The proposed chiller plant will consist of a two-story structure with a stone cornice across the top of all 4 walls which will house the chiller plant. The request for a height variance is associated with the following applications: A minor development and landscape waiver, variances for minimum required front yard setback, maximum allowed building coverage, an accessory use located within the required front yard, and an accessory use located within an adjacent parcel. The variances, minor development plan and landscape waiver components were approved by the Planning Board at a duly noticed public meeting on Thursday, August 15, 2019.

Request:

A height variance for non-habitable space is requested to accommodate the proposed construction of a portion of the brick masonry structure and the stone cornice which lies on top of the two-story structure. The proposed chiller plant structure does not have a roof. The height of the walls housing the chiller plant are designed to insulate the chiller plant. The total proposed height would be 27-feet 7 inches above the existing grade. A portion of the brick masonry structure and the stone cornice which lies on top of the walls of the structure are the only portion of the two-story structure requesting to exceed the height limit.

The City Charter Section 1.05 allows that variances to height regulations for non-habitable purposes 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. Board of adjustment height variances for a build back of involuntarily destroyed structures which are nonconforming in their height shall also be final and not be subject to referendum.

- (c) The maximum allowable height for habitable space in the HPS zoning district shall be 25 feet.

The following table summarizes the relevant project data:

Project Data			
	Required / Allowed	Proposed	Variance Request
Zoning	HPS		
Maximum Height	25-feet	27-feet 7 inches	2-feet 7 inches

City Actions:

Board of Adjustment:

November 6, 2019

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 Board of Adjustment 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.**

Although the applicant has designed a two-story structure to house the chiller plant and the walls surrounding the chiller plant must be higher in order to serve the necessary requirement for insulation for the chiller’s use, the applicant is proposing a height that exceeds the maximum allowable for the district. Special conditions or circumstances do not exist that are peculiar to the land involved and which are not applicable to other lands in the same district.

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’s proposed height for the two-story structure in the HPS zoning district triggers the need for a height variance, therefore the conditions are 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.**

A height variance to construct a two-story structure which houses a chiller plant exceeds the maximum allowable height of the zoning district by 2-feet 7 inches and this 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.**

If the height variance for the proposed elevation is denied, the applicant would be deprived of rights commonly enjoyed by other properties in the HPS zoning district. The height of the two-story structure is determined by the chiller plant's insulation requirements. Therefore, hardship conditions exist.

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 without the variance. However, it is the minimum necessary to accommodate the request.

NOT IN COMPLIANCE

- 6. Not injurious to the public welfare. That the grant 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 the non-compliance with all the standards for considering variances, the granting of the requested variance 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

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 meets some but not all 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 Planning Department has not received any public comments for the variance request as of the date of this report.

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 height variance shall only be for the nonhabitable portion of the brick masonry structure and the stone cornice which lies on top of the four walls that make up the two-story structure at a height of 27-linear feet and 7 inches. Any future increase of height beyond this will require a new height variance application.
2. The proposed development shall be consistent with the plans dated July 31, 2019 by Bender and Associates, Architects and T.Y. LIN International, Engineers.
3. The owner shall obtain a Certificate of Appropriateness for the proposed construction.