

MEMORANDUM

Date: March 4, 2025

To: Honorable Mayor and Commissioners

Via: Katie Halloran
Planning Director

From: Nicholas Perez-Alvarez, Stantec

Subject: **File 25-3388 - Variance – 1904-1906 Flagler Avenue (RE# 00063480-000000) and 1908 Flagler Avenue (RE# 00063450-000000)** - A request for a variance to allow an increase in the maximum height from 40-feet to 47.1-feet to permit the expansion of an existing school on property located within the Limited Commercial (CL) Zoning District pursuant to Sections 90-395 and 122-390 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida; and City of Key West Charter, Article I, Section 1.05.

Introduction

Request: This application requests a variance to maximum height from 40-ft. required to 47.1 ft. proposed to allow for the expansion of an educational institution.

Applicant: Trepanier & Associates Inc

Property Owner: 1908 Flagler Corp.

Location: 1904-1906 Flagler Avenue (RE# 00063480-000000) and 1908 Flagler Avenue (RE# 00063450-000000)

Zoning: Limited Commercial (CL)

Process:

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|-------------------------------------|---------------|
| Board of Adjustment Meeting: | March 4, 2025 |
| Local Appeal Period: | 10 Days |
| Planning renders to DOC for review: | Up to 45 days |

Background

The subject properties, with a combined lot size of 18,710 sq. ft., currently contain a one-story educational institution constructed in 2019 and a one-story commercial structure constructed in 1973. This application proposes major development plan approval for the demolition of the commercial structure to allow for the expansion to the school with a new three-story structure with accessible rooftop. A conditional use revision is also required, as educational facilities are a conditional use in the CL zoning district and the proposed expansion diverges from the existing conditional use parameters. The existing school currently accommodates 101 students and the application proposes an increase to a total of 376 students.

The conditional use approval for the existing school constructed in 2019 was approved by the Planning Board in 2014 under Resolution 2014-76 with one of the conditions of approval being a maximum 55-seat capacity.

A separate height variance application was submitted to increase the maximum allowable height from 40-ft. required to 47.1-ft. proposed to accommodate a rooftop covered terrace / walkway, restroom, and storage room. Height variances are subject to a separate approval by the Board of Adjustment. Section 1.05(b) of the City Charter states:

“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.”

Section 86-9 of the LDRs defines habitable space as:

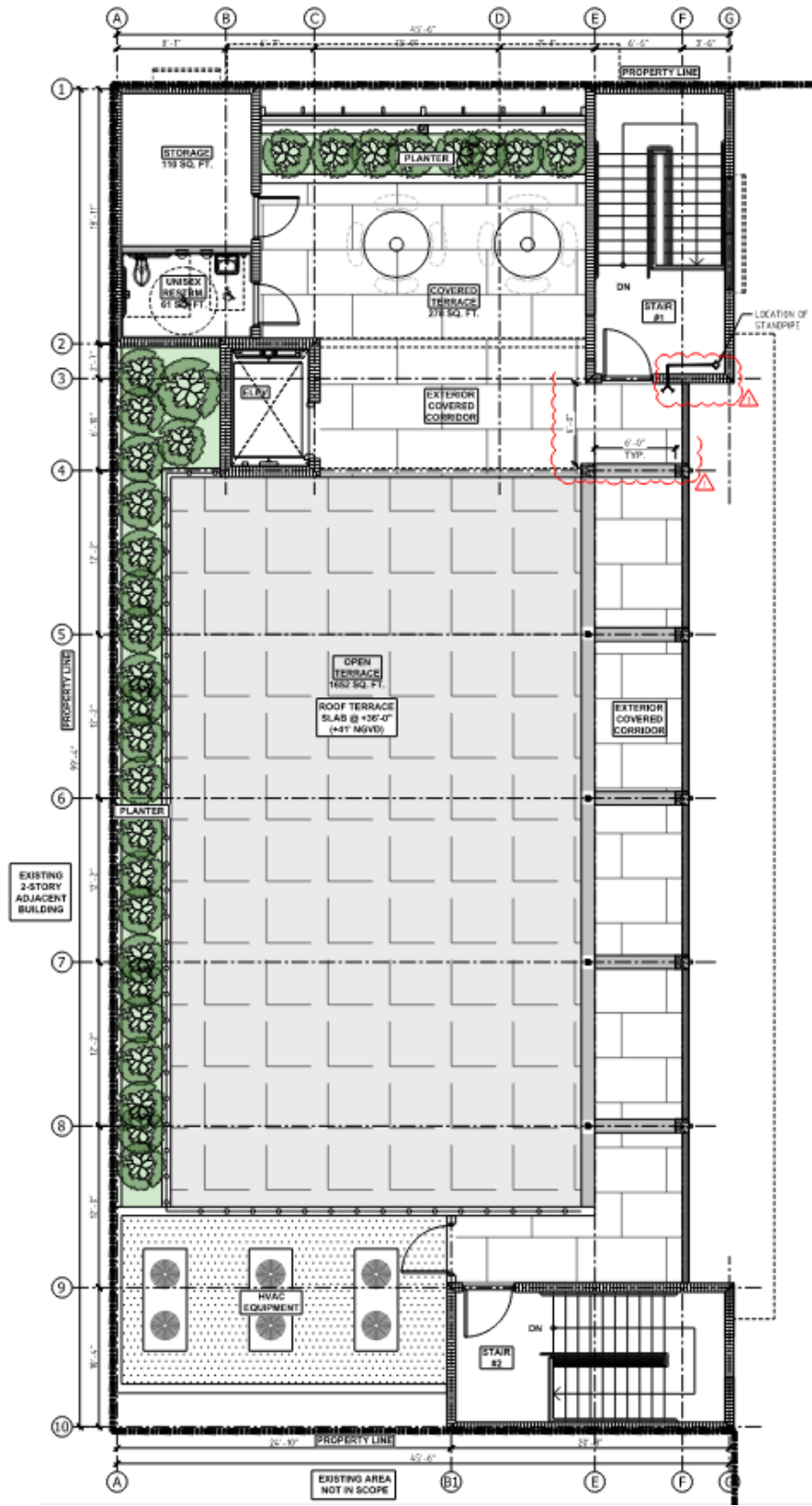
“a room or space in a building designed for human occupancy that may be used for living, sleeping, eating or food preparation, or in which individuals congregate for amusement, educational or similar purposes or in which occupants are engaged at labor, and which is equipped with means of egress and light and ventilation facilities meeting the requirements of provisions. Storage or utility spaces and similar areas are not considered habitable space. All habitable space shall be accessible from the interior of exterior walls.”

The rooftop terrace is to function as a congregation area for educational purposes. The City Attorney has provided a legal opinion that the rooftop terrace is not habitable space.

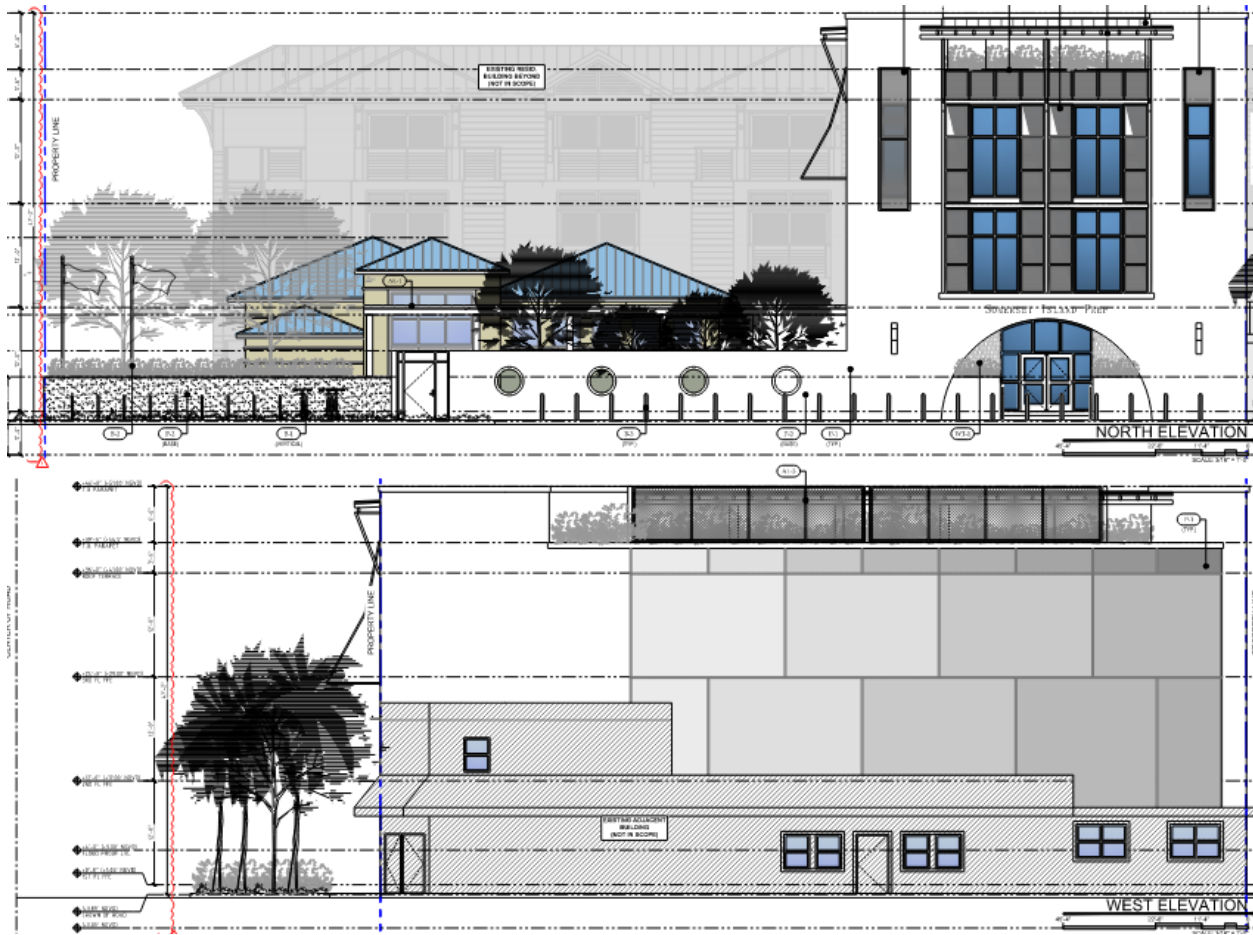
From the City Attorney: I have opined on this application, as well as the Tommy Roberts Memorial Stadium bleachers and press box replacement project that a proposal like this does not trigger a requirement for a referendum and is able to be considered and approved by the BOA as a height variance. Specifically, Sec. 86-9 defines what is “habitable space” which would require a referendum vote: Habitable space is a room or space in a building designed for human occupancy that may be used

*for living, sleeping, eating or food preparation, or in which individuals congregate for amusement, educational or similar purposes or in which occupants are engaged at labor; and which is equipped with means of egress and light and ventilation facilities meeting the requirements of provisions. Storage or utility spaces and similar areas are not considered habitable space. All habitable space shall be accessible from the interior of exterior walls. Upon reviewing the submitted plans, if the storage area, bathroom and stairwells/elevators will not be used for living, sleeping, eating or food preparation, or in which individuals congregate for amusement, educational or similar purposes or in which occupants are engaged at labor, then it does not trigger the referendum requirement. Regarding the open space being used for educational purposes, Sec. 86-9 requires that an area being considered as being habitable, must be a room or space in a building. These areas are not in a building; rather, on a building and that distinction relates to the term room or space. In my legal opinion, that provision was meant to apply to a defined room in a building such as a bedroom, kitchen or living room, or a larger “space”; still within a building such as a large open and enclosed meeting room inside of a building. Three words would make this proposal require a referendum. They are: “or on” and “open”. An example: *Habitable space is a room or open space in or on a building designed for human occupancy that may be used for living, sleeping, eating or food preparation, or in which individuals congregate for amusement, educational or similar purposes or in which occupants are engaged at labor.**

Proposed Rooftop



Proposed Front and Interior Side Elevations



Analysis:

The criteria for evaluating a variance are listed in Section 90-395 of the City Code. The Board of Adjustments, 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 applicant provides that the existing zoning district regulations do not contemplate the market realities that schools face, combined with the existing needs of the student population being unmet. However, the applicant proposes more than tripling of the student population and the school could be more modestly expanded within the constraints of the existing zoning district regulations.

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 again references the unmet need for an increased student population as a condition beyond the control of the applicant. The existing population of 101 students exceeds the maximum 55-seat capacity established under the school's original conditional use approval in 2014 under Resolution 2014-76. The school is being proposed for expansion, to include a rooftop educational and recreation area with a restroom.

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.*

Granting of the requested variances will confer special privileges to the applicant in the form of increased building height denied to other lands, buildings, or structures in the CL district.

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 the other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.*

The applicant indicates that a hardship exists in the form of school-aged children's lack of adequate educational facilities and opportunities. However, as the school can be more modestly expanded within the constraints of the existing zoning district regulations, denial of this variance request would not deny the applicant rights commonly enjoyed by other properties in the CL district.

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 provides that the requested variance is the minimum needed to meet the basic educational needs of the student body. The proposed increase is from the 55-seats permitted, to the 101-seats existing, to the 376-seats proposed. Lesser variances would accommodate a more modest increase in student population.

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 applicant states that the proposed school expansion furthers the community's goals and principles for guiding development. However, the traffic study provided has not provided sufficient information that the more than tripling of the student population would not negatively cause impacts to traffic and parking throughout the surrounding areas.

NOT IN COMPLIANCE

7. *Existing nonconforming uses of other property shall not be considered as 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.*

This application does not rely on other nonconforming lots and structures as justification.

IN COMPLIANCE

The Board of Adjustments shall make factual findings regarding the following:

The standards established by Section 90-395 of the City Code **have not been fully met** by the applicant for the height variance request.

Recommendation:

The Variance request to exceed the maximum height does not comply with all the evaluation criteria. Therefore, the Planning Department recommends DENIAL.