

THE CITY OF KEY WEST PLANNING BOARD

Staff Report

To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Dan Gulizio, Senior Planner

Meeting Date: September 19, 2024

Agenda Item: **Variance - 418 United Street (RE# 00029000-000000)** - A request for a reduction in the minimum required side yard setback from five (5) feet to one (1) inch in order to install air conditioning units at a property located in the Historic High Density Residential (HHDR) zoning district, pursuant to Sections 90-395 and 122-630 (6) of the Land Development Regulations of the City of Key West, Florida.

Request: A request for a side yard setback variance to allow for the installation of AC units for property located in the HHDR District.

Property Owner: Paul Janker

Applicant: Peter Janker

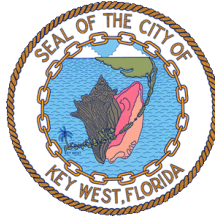
Location: 418 United Street

Zoning: Historic High Density Residential (HHDR) District

Background

The subject property is located along the north side of United Street, approximately 200 feet east of Whitehead Street within the Historic High Density Residential (HHDR) District. The property is adjacent to additional residential development to the north, west, and east. Across United Street to the south is both residential and commercial development.

The subject property maintains a lot area of approximately 3,633 square feet and the minimum required lot area within the HHDR District is 4,000 square feet. The subject property is currently improved with a



multi-family residence consisting of five rental units. The HHDR District requires a minimum side yard setback of five (5) feet or ten (10) percent of the lot width up to a maximum of fifteen (15) feet. In this instance, the subject property maintains a lot width of approximately 43 feet. As a result, a minimum setback of five (5) feet is required.

The applicant is seeking a reduction of the minimum required side yard setback from five (5) feet to approximately one (1) inch to accommodate three (3) stacked AC units. The adjacent property is owned by the applicant's father. The application also involved a lot line realignment or lot split as the AC units currently encroach on the adjacent property to the west. The applicant is proposing to realign the existing lot lines between 418 and 417 United Street to provide the proposed side yard setback of one (1) inch for the AC Units. The application will also require the review and approval of the Historic Architectural Review Committee (HARC).

The subject request has been considered by the Planning Board previously on April 18, 2024, May 16, 2024, and June 20, 2024. The application has been adjourned each time due to ongoing concerns from City staff including, Planning, Building, and the Fire Marshall. In order to address access concerns voiced by the Chief Building Official and the Fire Marshall, the applicant has proposed an easement agreement between 418 and 417 United Street. The Chief Building Official and Fire Marshall have indicated that the proposed easement agreement does not sufficiently address concerns associated with the requested variance. The Chief Building Official has suggested three (3) alternatives to the proposed variance:

1. Relocation of all units to the right side of the building on an elevated stand BFE+1, 5 feet from the property line behind the side staircase.
2. Relocation of all the units to the rear roof structure.
3. The merging of the complete two parcels into one parcel number, codified and recorded with the Monroe County Property Appraisers Office. This will eliminate the property line in between the two properties.

Process:

Planning Board Meeting: September 19, 2024
HARC Meeting: TBD
Local Appeal Period: 10 Days

Staff Analysis:

Variances are governed by City Code Chapter 90 (Administration), Article V, Division 3 (Variances). Pursuant to Section 90-395 (Standards, findings), before any variance may be granted, the Planning Board must find all of the following:

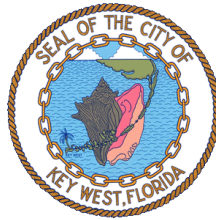


- (1) Existence of special conditions or circumstances. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other land, structures or buildings in the same zoning district.
- (2) Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.
- (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.
- (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.
- (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.
- (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.
- (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.

In this instance, the subject parcel is substandard in size and the existing residence currently maintains a substandard side yard setback adjacent to 417 United Street, owned by the property owner's father. However, the applicant has not documented why the AC units could not be situated elsewhere on the property. Thus, it is difficult to see how special circumstances exist to support the requested relief.

Secondly, the City requires that the applicant demonstrate that the conditions were not created by the property owner. In this instance, the existing side yard setback is substandard and is unable to accommodate the AC units. However, the applicant has not provided a reason why the AC units could not be located elsewhere on the property.

The third criteria associated with a variance involves a determination that the approval of the variance would not confer special privileges to the applicant, denied to other land owners. In this instance, the



approval of a side yard setback of one (1) inch would confer special privileges to the applicant, denied to other land owners.

The fourth criteria to be considered is whether hardship conditions exist, or that literal application of the code would deprive the property owner of rights commonly enjoyed by other property owners. A review of surrounding development patterns fails to reveal a common pattern of near zero foot side yard setbacks.

The Planning Board is also required to determine that the relief requested is the minimum relief possible. In this instance, even with the proposed lot line realignment, the applicant is unable to provide more than a one (1) inch side yard setback.

The sixth factor for the Planning Board to consider is whether the proposed variance is injurious to the public welfare. While the property to the west is currently owned by the applicant's father, this ownership pattern will not exist in perpetuity. The location of three (3) AC units one (1) inch from the adjacent property line is not consistent with the intent of the land development regulations and could pose a nuisance in the future. Finally, the Planning Board may not base its determination on the prevalence of other nonconformities in the area surrounding the subject premises.

Pursuant to Section 90-392 (b), "In granting such application the planning board must make specific affirmative findings respecting each of the matters specified in section 90-394 and may prescribe appropriate conditions and safeguards, including requirements in excess of those otherwise required by these land development regulations, which shall become a part of the terms under which a development order may be issued."

In addition, pursuant to Section 90-395, the Planning Board shall make factual findings regarding the following:

- (1) That the standards established in subsection (a) have been met by the applicant 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.

Recommendation:

The application was previously postponed from the April 18, 2024, May 16, 2024, and June 20, 2024 Planning Board meetings as the applicant had not resolved the concerns of City staff. These issues remain unresolved. In addition, the applicant has not resolved the concerns of the Historic Architectural Review Committee (HARC) Planner.

Based upon the above analysis, it is recommended that the request be DENIED.