

**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, Planner II

Meeting Date: Sept. 16<sup>th</sup>, 2021

Application: Variance – 3528 Eagle Avenue (RE # 00052620-000000) – A request for a variance to rear setbacks and an increase in maximum allowed building coverage in the Single-Family (SF) zoning district in order to convert a rear shed into an affordable unit, pursuant to sections 90-395, 122-238 (6)b, and 122-238 (6)c of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

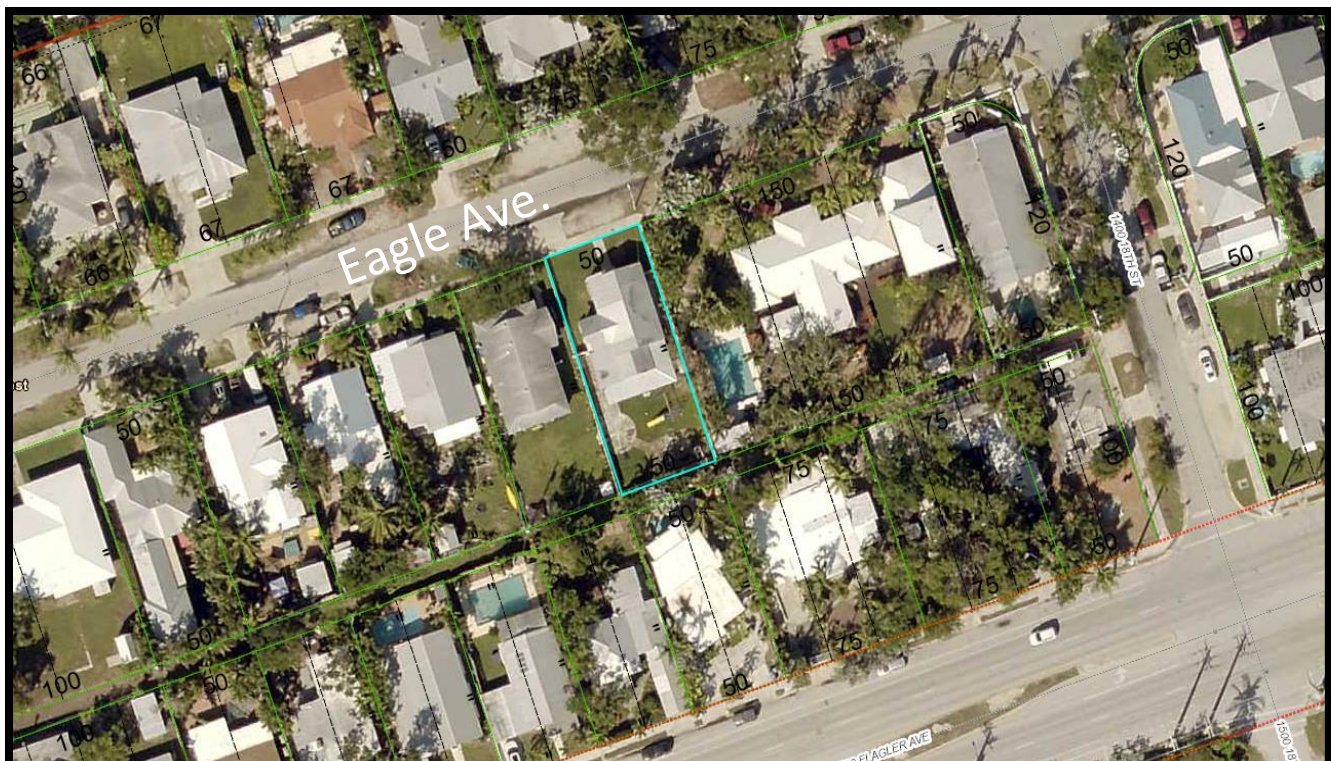
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Request: The applicant is requesting a variance to encroach into the rear setback and increase the allowed building coverage ratio above the SF zoning district maximum in order to create an affordable accessory unit.

Applicant: Meridian Engineering LLC

Property Owner: Antonio Estenoz

Location: 3528 Eagle Avenue (RE # 00052620-000000)



**Background:**

The subject parcel is located at 3528 Eagle Avenue and consists of two structures, a single-family home and a rear accessory structure. The single-family home is currently owner-occupied. The accessory structure was constructed in 2018 under BLD 2018-0505. Upon receiving the new survey included in the application, staff noted that the applicant did not build the 2018 rear accessory structure to the approved and permitted site plan. City code requires a setback of five (5) feet for all accessory structures. The rear accessory structure does not conform to the Land Development Regulations of the City of Key West. The building permit specified the structure would be six (6) feet from the property line however, the rear structure was constructed at 3.5-feet from the rear property line.

The applicant now proposes to convert the noncomplying structure into an accessory workforce housing unit. After discussing the setback issue with the Planning Department, the applicant has stated they will relocate the structure to five (5) feet away from the property line. The applicant was granted a BPAS unit for the proposed conversion of the accessory structure to an accessory unit in 2020. Accessory unit criteria are specified in Section 122-232 in the City Code which states that an accessory unit must meet criteria such as size and deed restrictions and must follow the same setbacks as the principal structure in the SF zoning district.

Site Data Table				
	Code Required	Existing	Proposed	Variance Request
Zoning	SF			
Flood Zone	AE-7			
Size of Site	6,000 sqft	6,000 sqft		
Height	n/a	n/a	n/a	n/a
Front Setback	30'	102'	102'	n/a
Left Side Setback	5'	11' 8.5"	6' 1"	n/a
Rear Setback	25'	3.5'	5'	20'
Building Coverage	35% -- 2,100 sqft	36.8% -- 2,211 sqft	40.6% -- 2,436 sqft	336 sqft
Impervious Surface	50% -- 3,000 sqft	51% -- 3,060 sqft	43.9% -- 2,634 sqft	n/a
Parking	n/a	n/a	n/a	n/a
Open Space	35% -- 2,100	49% -- 2,940 sqft	47.7% -- 2,863 sqft	n/a

**3528 Eagle Avenue, 2020**

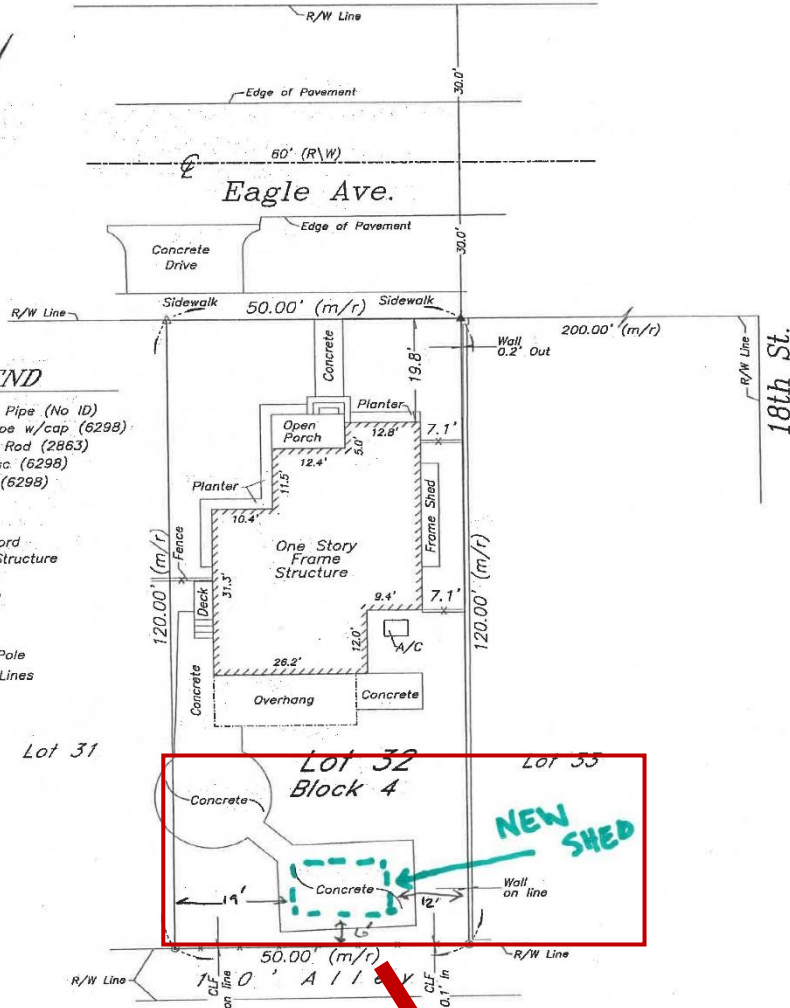
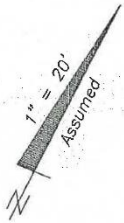


**3582 Eagle Avenue, Monroe County Property Appraiser, 2020**

The satellite pictures show the main structure in the front of the property and the subject rear structures near the rear property line. The accessory structure is not compliant with City Code. The applicant is proposing to increase their maximum building coverage allowed for the property. The applicant has chosen to remove an excess amount of concrete in the rear to lessen the variance request.

**Building Permit 2018-0505**

Boundary Survey Map of Lot 32, Block 4,  
Key West Foundation Co's Plat No. 1



**LEGEND**

- ⊙ Found 1/2" Iron Pipe (No ID)
- Set 3/4" Iron Pipe w/cap (6298)
- Found 1/2" Iron Rod (2863)
- ▲ Found Nail & Disc (6298)
- △ Set Nail & Disc (6298)
- (M) Measured
- (R) Record
- (M/R) Measured & Record
- C.B.S. Concrete Block Structure
- R/W Right of Way
- CLF Chain Link Fence
- ⊕ Centerline
- ⊗ Wood Utility Pole
- ⊠ Concrete Utility Pole
- P- Overhead Utility Lines

**NOTES:**

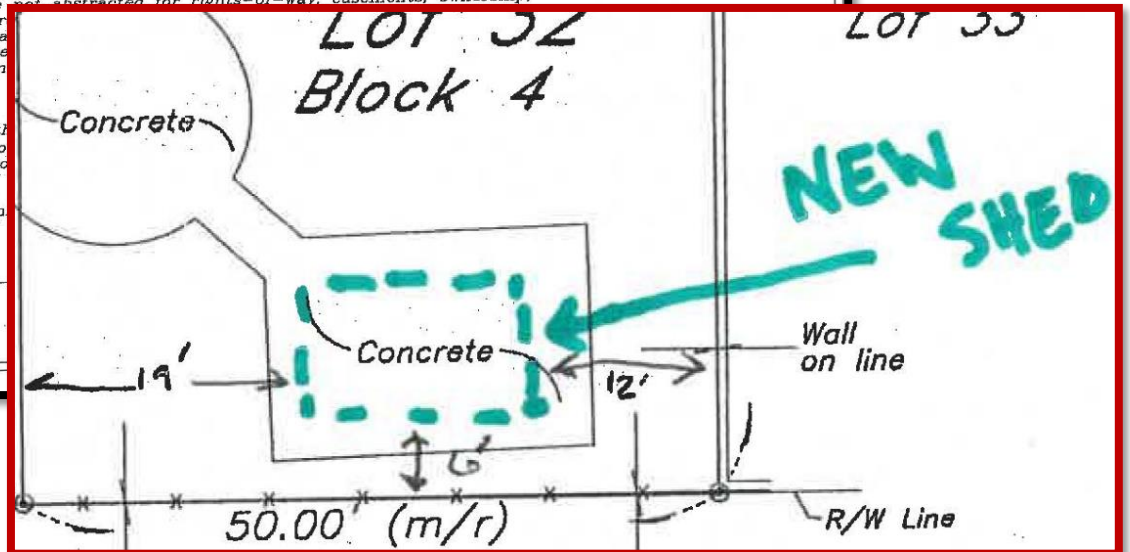
1. The legal description shown hereon was furnished by the client or their agent. This survey does not determine or imply ownership.
2. Underground foundations and utilities were not located.
3. All angles are 90° (Measured & Record) unless otherwise noted.
4. Street address: 3528 Eagle Ave., Key West, FL.
5. This survey is not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.
6. Lands shown hereon were not abstracted for rights-of-way, easements, ownership, or other instruments of record.
7. North Arrow is assumed as shown.
8. Date of field work: September 19, 2013.
9. Ownership of fences is unascertained.

BOUNDARY SURVEY OF: On the  
NUMBER 1, as Lot Thirty-Two  
Page 155, Monroe County, Florida

BOUNDARY SURVEY FOR: Ben

J. LYNN O'FLYNN, INC.

J. Lynn O'Flynn, PSM  
Florida Reg. #6298  
September 19, 2013



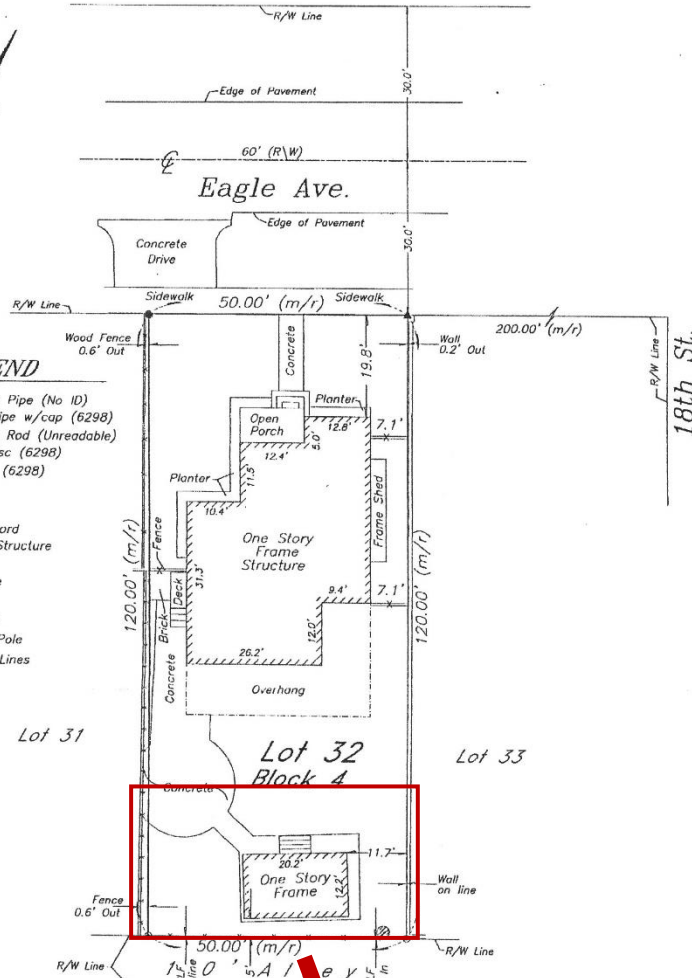
**Survey submitted with variance material**

**Boundary Survey Map of Lot 32, Block 4,  
Key West Foundation Co's Plat No. 1**



**LEGEND**

- ⊙ Found 1/2" Iron Pipe (No ID)
- Set 3/4" Iron Pipe w/cup (6298)
- Found 1/2" Iron Rod (Unreadable)
- ▲ Found Nail & Disc (6298)
- △ Set Nail & Disc (6298)
- (M) Measured
- (R) Record
- (M/R) Measured & Record
- C.B.S. Concrete Block Structure
- R/W Right of Way
- CLF Chain Link Fence
- ⊕ Centerline
- ⊗ Wood Utility Pole
- ⊗ Concrete Utility Pole
- P- Overhead Utility Lines



- NOTES:**
1. The legal description shown hereon was furnished by the client or their agent. This survey does not determine or imply ownership.
  2. Underground foundations and utilities were not located.
  3. All angles are 90° (Measured & Record) unless otherwise noted.
  4. Street address: 352B Eagle Ave., Key West, FL.
  5. This survey is not valid without the signature and seal of a Florida licensed surveyor and mapper.
  6. Lands shown hereon were not abstracted for rights or other instruments of record.
  7. North Arrow is assumed and based on the legal meridian.
  8. Date of field work: December 17, 2018
  9. Ownership of fences is undeterminable, unless otherwise noted.

**BOUNDARY SURVEY OF:** On the island of Key West and Block 4, as Lot Thirty-Two (32) of Block Four (4), Monroe County, Florida Public Records.

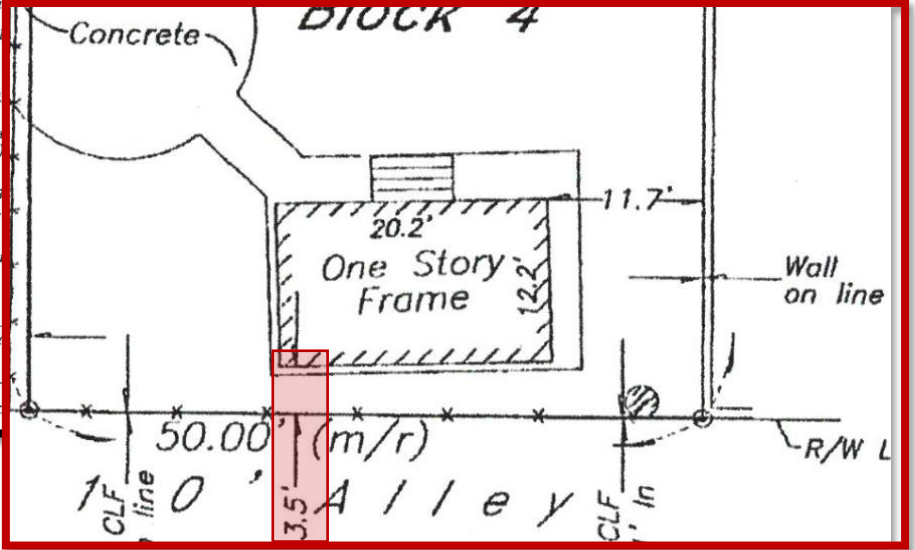
**BOUNDARY SURVEY FOR:** Antonio Estenez, III; Iberia Highsmith & Van Loon, P.A.

I HEREBY CERTIFY that this survey was made under the provisions as set forth by the Florida Board of Professional Surveyors, pursuant to Section 472.027, Florida Statutes.

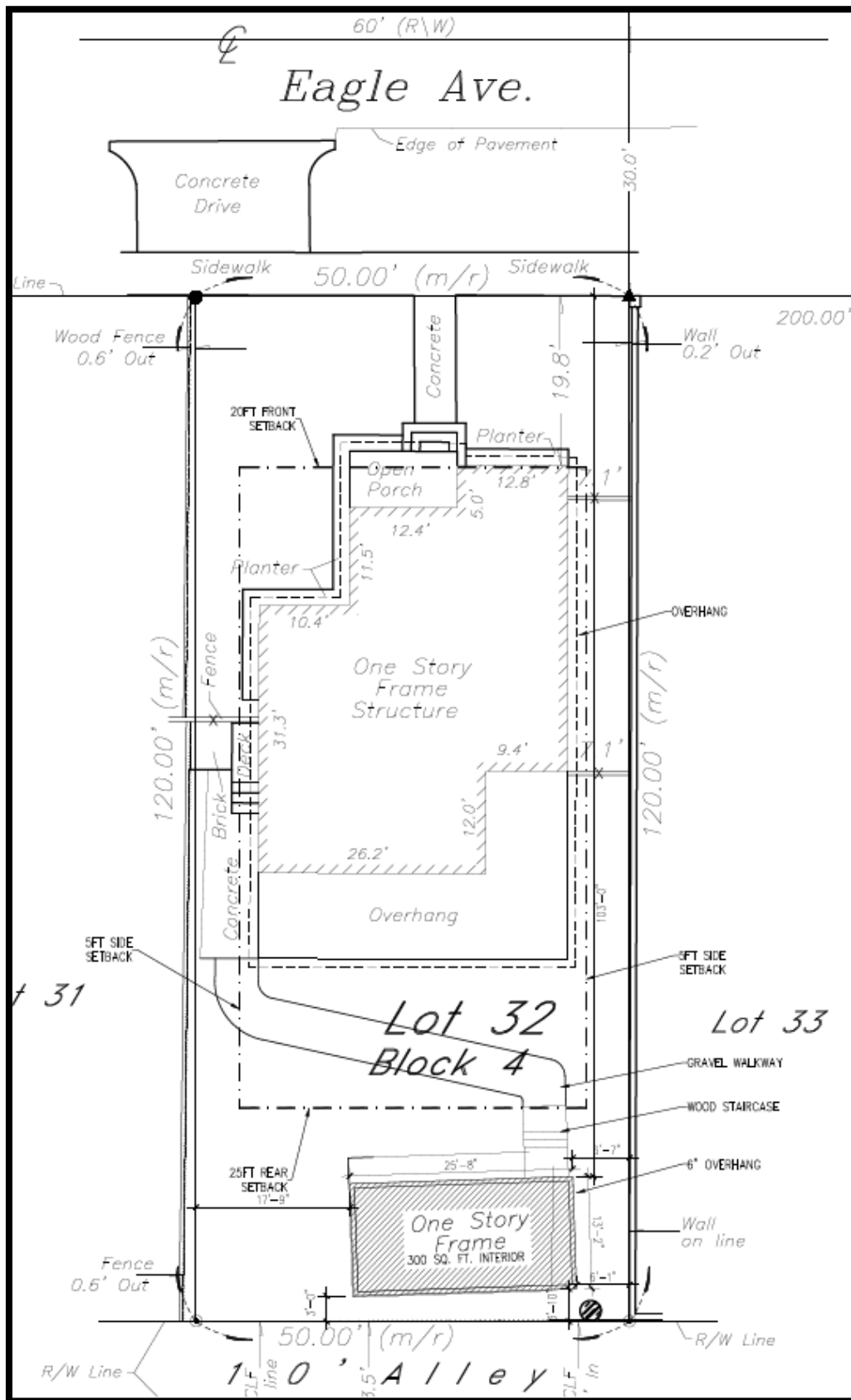
J. LYNN O'FLYNN, INC.

J. Lynn O'Flynn, PSM  
Florida Reg. #6298  
December 18, 2018

THIS SURVEY IS NOT ASSIGNABLE



**Proposed Site Plan, 2020**



**Process:**

Planning Board Meeting:	Postponed in order for the applicant to speak with neighbors regarding the proposed construction and address Code criteria.
Planning Board Meeting:	September 16 <sup>th</sup> , 2021
Local Appeal Period:	10 Days
Planning renders to DEO for review:	Up to 45 days

**Staff Analysis - Evaluation:**

The applicant has applied to convert a non-complying accessory structure into an accessory unit in the rear yard. Approval of the requested variance would allow the applicant to convert the structure into an affordable accessory unit and grant a variance to maximum building coverage and required setbacks. The property owner was granted a BPAS unit from the City in 2020 for the proposed accessory structure conversion. An accessory unit in the Single-Family zoning district has eleven stringent special criteria per Section 122-232 and 122-233, these conditions are in full below:

Sec. 122-232. - Accessory units.

The single-family residential district (SF) shall accommodate one accessory attached or detached unit per principal dwelling unit so long as the accessory unit is duly approved pursuant to the building permit allocation system, as provided in article IV of chapter 54, and meets the criteria cited in this subdivision. The building permit allocation methodology includes a permit formula in which one accessory unit equals 0.55 dwelling unit. Accessory units shall meet all size and dimension requirements of a principal structure and shall not be excluded from impact fee provisions.

Sec. 122-233. - Special criteria applicable to accessory units.

- (a) Accessory units proposed within the single-family residential district (SF) shall meet the following criteria:
- (1) Each unit shall have a rental rate, including utilities, not exceeding 15 percent of the median household income in the county. This affordability criteria shall be duly recorded as a deed restriction in perpetuity.
  - (2) Accessory units shall be restricted to occupancy by permanent residents.
  - (3) Accessory units shall not be sold separately as a condominium.
  - (4) When an accessory unit permit is originally initiated, the principal unit must be owned and occupied by a permanent resident.
  - (5) Accessory units shall not take up more than 40 percent of the principal structure.
  - (6) Accessory units shall comply with maximum impervious surface regulation within the SF district. Parking surfaces shall not be counted as open space.
  - (7) Accessory units shall comply with applicable landscaping requirements.
  - (8) Accessory units shall comply with the maximum threshold for lot coverage by impervious surfaces.
  - (9) Parking requirements shall be satisfied by both the principal and accessory unit.

- (10) Density shall be calculated based only upon the number of principal units on a site.
- (11) Accessory units shall not exceed 600 square feet and the minimum size shall be 300 square feet.

(b) Any application for accessory units shall include deed restrictions which shall be filed with the city and the clerk of the circuit court. The deed restrictions shall incorporate mandatory compliance with the criteria cited in subsection (a) of this section.

The proposed accessory unit does not meet all the criteria in Section 122-233, including, accessory units shall comply with the maximum threshold for lot coverage within the SF district and parking requirements shall be satisfied by both the principal and accessory unit. The applicant is required to have two off-street parking spaces, one for the main dwelling and one for the proposed accessory unit. Due to size constraints, the applicant has proposed zero (0) off-street parking spaces but abuts a wide City ROW where parking is common. Section 122-232 states that an accessory unit shall meet all size and dimension requirements of a principal structure, including principal structure setbacks, the proposed structure does not meet these requirements.

The criteria for evaluating variances 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 subject lot conforms to the dimensional requirements of the Land Development Regulations and the current principal structure conforms to all dimensional requirements for the single-family zoning district. To note, there is parking for at least two vehicles in front of the property in the City right-of-way, parking in the right-of-way does not satisfy Regulations regarding required off-street parking for dwelling units.

**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 current owner constructed the accessory structure in 2018/2019 and applied for a BPAS unit in 2020. There are no variances or notes for the property that show that the owner had applied for or was granted variances or other administrative approvals that would have granted the non-complying structure's current footprint.

**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 current non-complying accessory structure is proposed to be expanded and converted into an affordable accessory unit. The proposed accessory unit does not conform with the special



criteria applicable to accessory units. If approved, the expansion of a non-complying structure into an affordable unit may confer special privileges to the homeowner.

**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.*

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 and would not work unnecessary and undue hardship on the applicant.

**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 convert the non-complying accessory structure in such a way that the entirety of the building would be outside of the setback or relocated so it would be outside the setbacks. The applicant has proposed to remove excess concrete as well as a frame shed in order to stay under the maximum impervious surface threshold allowed in the SF zoning district.

**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 granting of an increase in maximum allowed building coverage may create an excess of stormwater runoff that surrounding parcels or the City's storm water system may have to bear.

**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 City of Key West has received several public comments against this application. The applicant has notified the City that he has met and or contacted each neighbor and surrounding property owner who has objected.

**Recommendation:**

The applicant has requested a variance to building coverage and rear setbacks in order to convert a non-complying accessory structure to an affordable accessory unit. The applicant has volunteered to move the current non-complying structure from 3-feet from the property line to 6-feet from the property line. The applicant has also reduced the impervious surface on the lot in order to not request an additional variance for impervious surface. Based on a review of the application according to the stringent evaluation criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for a variance be **DENIED**.

If the Planning Board chooses to approve this application, staff recommends the following conditions:

1. The rental unit be deed restricted affordable in perpetuity and comply with City of Key West Code Section 122-233(a)(1). Any deed restriction shall be presented to the City Planner, be subject to the approval of the City Attorney, and be recorded prior to a certificate of occupancy being issued.
2. The proposed plan shall be in accordance to building plans submitted to the Planning Department by Meridian Engineering LLC on 7/9/2020 (except for conditions provided in this Resolution).
3. The structure be moved at least six feet from all property lines.
4. Plant privacy landscaping the length of the structure and one foot wide between the structure and the property line, along the fence.
5. The accessory unit conform to the regulations for Accessory Units per Section 122-232 and Section 122-233 of the Land Development Regulations of the City of Key West below, notwithstanding the variances granted at this Planning Board meeting:

- (1) Each unit shall have a rental rate, including utilities, not exceeding 15 percent of the median household income in the county. This affordability criteria shall be duly recorded as a deed restriction in perpetuity.
- (2) Accessory units shall be restricted to occupancy by permanent residents.
- (3) Accessory units shall not be sold separately as a condominium.
- (4) When an accessory unit permit is originally initiated, the principal unit must be owned and occupied by a permanent resident.
- (5) Accessory units shall not take up more than 40 percent of the principal structure.
- (6) Accessory units shall comply with maximum impervious surface regulation within the SF district. Parking surfaces shall not be counted as open space.
- (7) Accessory units shall comply with applicable landscaping requirements.
- (8) Accessory units shall comply with the maximum threshold for lot coverage by impervious surfaces.
- (9) *The applicant has proposed no on-site parking in lieu of this requirement.*
- (10) Density shall be calculated based only upon the number of principal units on a site.
- (11) Accessory units shall not exceed 600 square feet and the minimum size shall be 300 square feet.