

**PLANNING BOARD
RESOLUTION NO. 2018-**

A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD GRANTING WITH CONDITIONS VARIANCES TO, ALLOWING AN AFTER-THE-FACT SIX FOOT SOLID FENCE ON THE FRONT YARD AS WELL AS AN EIGHT FOOT HIGH GATE ENTRY ON PROPERTY LOCATED AT 3302 HARRIET AVENUE (RE # 00031440-000100) IN THE MEDIUM DENSITY RESIDENTIAL (MDR) ZONING DISTRICT PURSUANT TO SECTIONS 90-395, 122-1183(D) (1) (C), AND 122-1181 OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA.

WHEREAS, the applicant has constructed a six foot solid fence in the front yard as well as an eight foot high entry gate on the side on property located at 3302 Harriet Avenue (RE#00031440-000100); and

WHEREAS, Section 122-1183(d)(1)(c) of the Land Development Regulations (the “LDRs”) of the Code of Ordinances (the “Code”) of the City of Key West, Florida (the “City”) states fences up to six feet in height may be constructed on the front, rear and side yard property lines of any parcel of land, provided that the upper two feet of such six-foot fence has openings of at least 50 percent or more in the construction of the fence. Solid fences up to six feet in height may be constructed on rear and side yard property lines of any parcel of land provided such solid six-foot fence is not constructed on property lines intersecting at street corners and that the adjoining property owners file their written consent with the building department consenting to the construction of such six-foot solid fence.; and

WHEREAS, the after-the-fact fence for the front yard is six feet solid wood fence in height;

and

WHEREAS, Section 122-1181 of the Land Development Regulations (the “LDRs”) of the Code of Ordinances (the “Code”) of the City of Key West, Florida (the “City”) states no accessory use or structure shall be erected in any required front or side yard, and the accessory uses or structure shall not cover more than 30 percent of any required rear yard.

WHEREAS, the after-the-fact eight foot high entry way gate is located in the required front yard of the subject property;

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on October 18, 2018; and

WHEREAS, the Planning Board finds 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 district; and

WHEREAS, the Planning Board finds that the special conditions do not result from the action or negligence of the applicant; and

WHEREAS, the Planning Board finds 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; and

WHEREAS, the Planning Board finds 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; and

WHEREAS, the Planning Board finds that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure; and

WHEREAS, the Planning Board finds 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; and

WHEREAS, the Planning Board finds that 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 are grounds for the issuance of the requested variance; and

WHEREAS, the Planning Board finds 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.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. An approval by Resolution of the Key West Planning Board for the after-the-fact variance in order to maintain a six foot solid wood fence in the front yard as well as an eight foot high entry way gate located in the required front yard on property located at 3302 Harriet Avenue (RE#00031440-000100) in the MDR zoning district pursuant to Sections 90-395, 122-1183(d) (1) (c), and 122-1181 of the City of Key West Land Development Regulations.

Section 3. It is a condition of this variance that full, complete and final application for all conditions of this approval for any use and occupancy for which this variance is wholly or partly necessary, shall be submitted in their entirety within two years after the date hereof; and further, that no application shall be made after expiration of the two-year period without the applicant obtaining an extension from the Planning Board and demonstrating that no change of circumstances to the property or its underlying zoning has occurred.

Section 4. The failure to fully and completely apply the conditions of approval for permits for use and occupancy pursuant to this variance in accordance with the terms of the approval as described in Section 3 hereof, shall immediately operate to terminate this variance, which variance shall be of no force or effect.

Section 5. This variance does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of applicant's assertion of legal authority respecting the property.

Section 6. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Section 7. This Resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit or development order will be rendered to the Florida Department of Economic Opportunity. Pursuant to Chapter 73C-44, F.A.C., this permit or development order is not effective for forty five (45) days after it has been properly rendered to the DEO with all exhibits and

applications attached to or incorporated by reference in this approval; that within the forty five (45) day review period, the DEO can appeal the permit or development order to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement or order.

Read and passed on first reading at a regularly scheduled meeting held this 18th day of October, 2018.

Authenticated by the Chairman of the Planning Board and the Planning Director;

Sam Holland, Planning Board Chairman

Date

Attest:

Patrick Wright, Planning Director

Date

Filed with the Clerk:

Cheryl Smith, City Clerk

Date

_____ Chairman

_____ Planning Director