

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-C, Planner I

Meeting Date: December 17<sup>th</sup>, 2020

Application: **After-the-Fact Variance** - 727 Emma Street (RE# 00013730-000000) - A request for an after-the-fact variance to maximum allowed building coverage, maximum allowed coverage of a rear yard, minimum allowed rear setback, and the minimum allowed side setback in order to alter a nonconforming rear accessory structure for a property located in the Historic Neighborhood Commercial (HNC-3) zoning district pursuant to Sections 90-395, 122-870, and 122-1181.

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Request: The applicant is requesting an after the fact variance to the side and rear setbacks, maximum building coverage, and rear yard coverage in order to alter and finalize a noncomplying structure in the rear yard to be used as accessory living space.

Applicant: William Shepler Architect, PA

Property Owner: Lisa Rivard

Location: 727 Emma Street (RE# 00013730-000000)

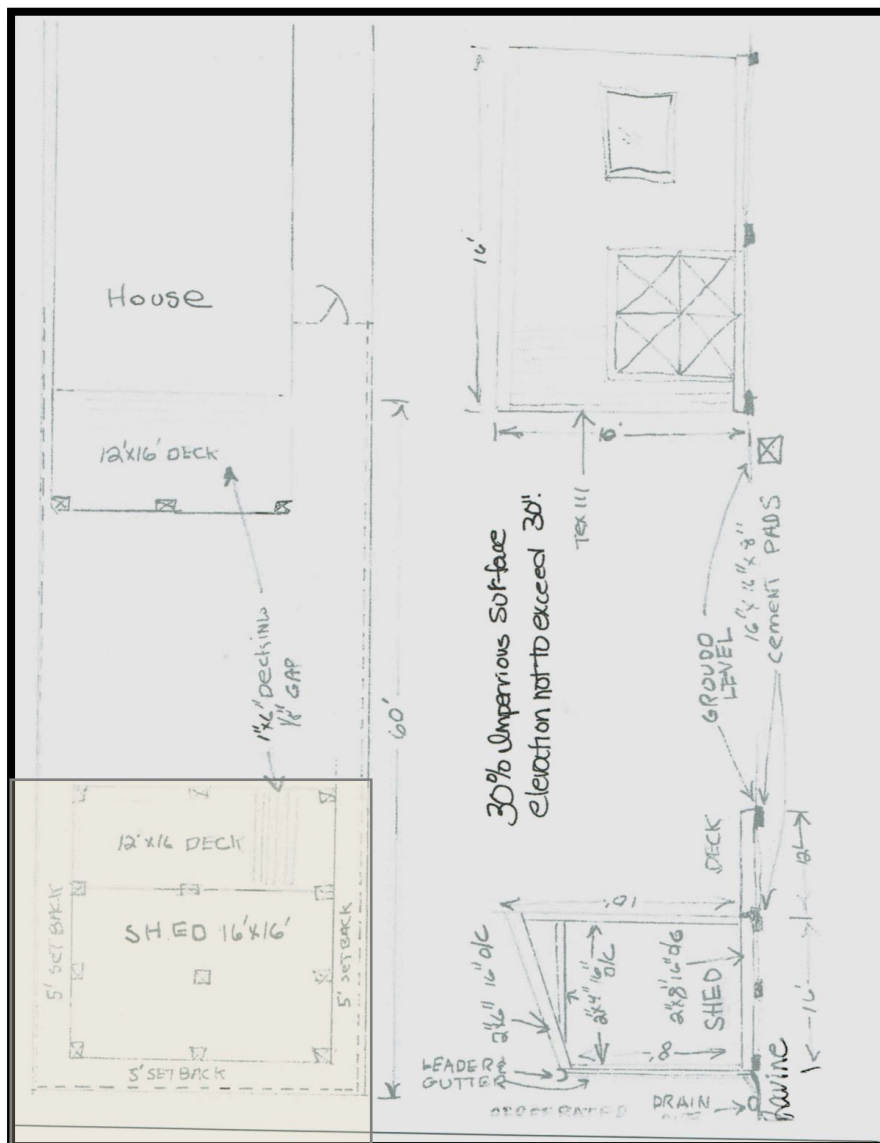


**Background:**

The subject parcel is located at 727 Emma Street near the corner of Emma Street and Petronia Street. According to the Historical Architectural Review Commission, the current residential structure was constructed in 1920. The structure is of frame vernacular and is a historically significant contributing structure to the Key West Historic District. The parcel is surrounded by HNC-3 zoned properties to the south, east, and west, and Historic Medium Density Residential (HMDR) zoned properties to the northeast.

The applicant had received a prior building permit for a smaller rear structure than what is currently proposed. The property had an existing 20'x12' shed and a 12'x20' deck in the rear. The applicant received an approved building permit to alter those structures into a 16'x16' shed and a 12'x16' deck with five-foot setbacks. Due to unforeseen circumstances the property owner ceased construction of the rear structure and the building permit has since expired. The applicant would like to continue the construction work in the rear while also expanding the overall footprint of the structure and construct a structure in the rear setbacks.

Building Permit Site Plans, 2016, submitted by applicant



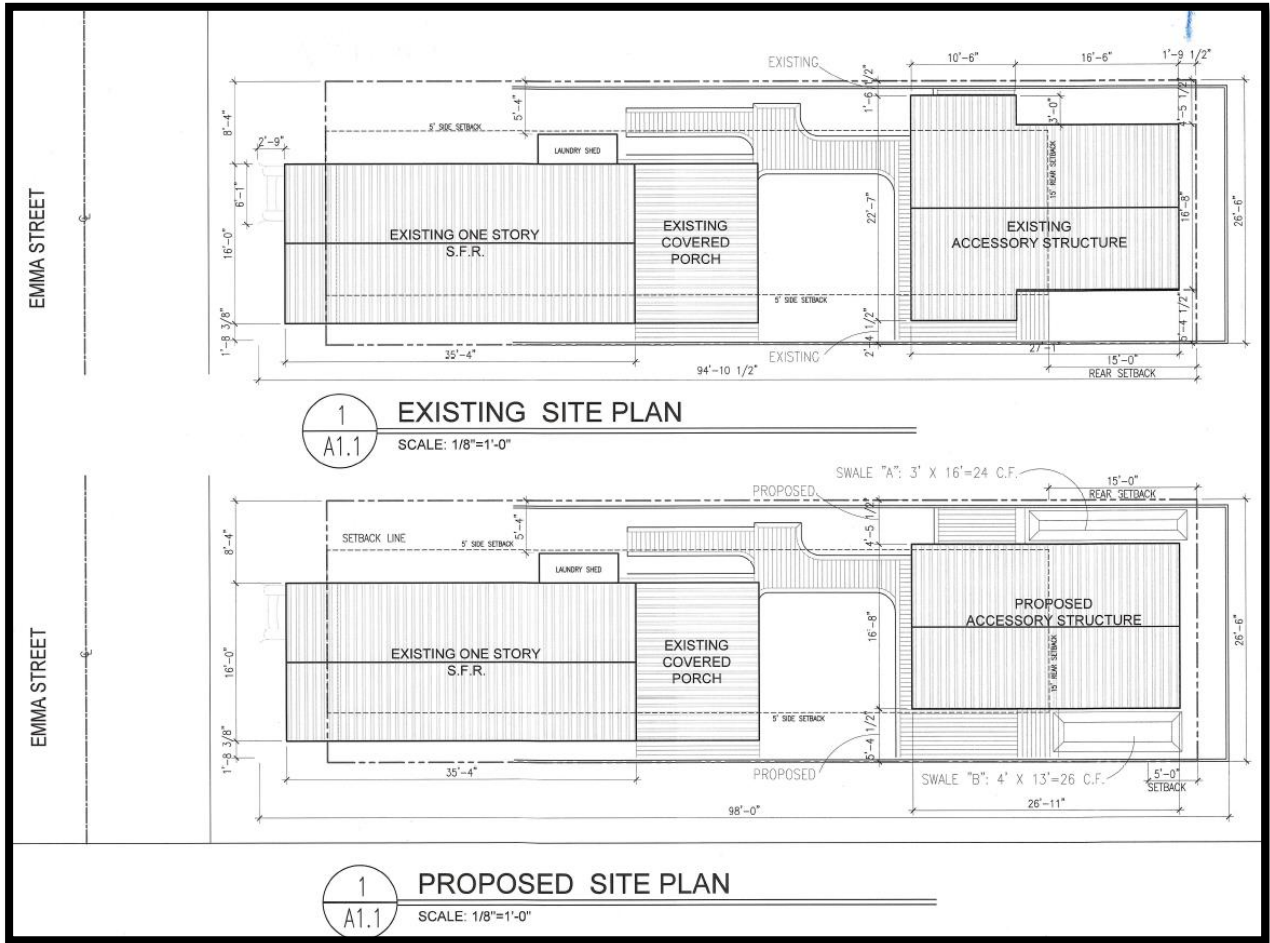
**Proposed Development:**

The site table below details the current and proposed site data for the property. Three variances are proposed for this development.

Site Data Table				
	Code Required	Existing	Proposed	Variance Request
Zoning	HNC-3			
Flood Zone	X			
Size of Site	2,332 sqft			
Height	30	12'10"	12'10"	n/a
Front Setback	0'	n/a	n/a	n/a
Side Setback	5'	1.5'	1.5'	3.5'
Rear Setback	5'	1.7'	1.7'	3.3'
Building Coverage	40% -- 932 sqft	52% -- 1,212 sqft	49.6% -- 1,156 sqft	9.6% -- 223 sqft
Impervious Surface	60% -- 1,399 sqft	52% -- 1,212 sqft	49.6% -- 1,156 sqft	n/a
Open Space	35% -- 816	47% -- 1,096 sqft	48% -- 1,119 sqft	n/a
Rear Yard Coverage	30%	55%	55%	25%

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Building Plans 727 Emma St, submitted by applicant



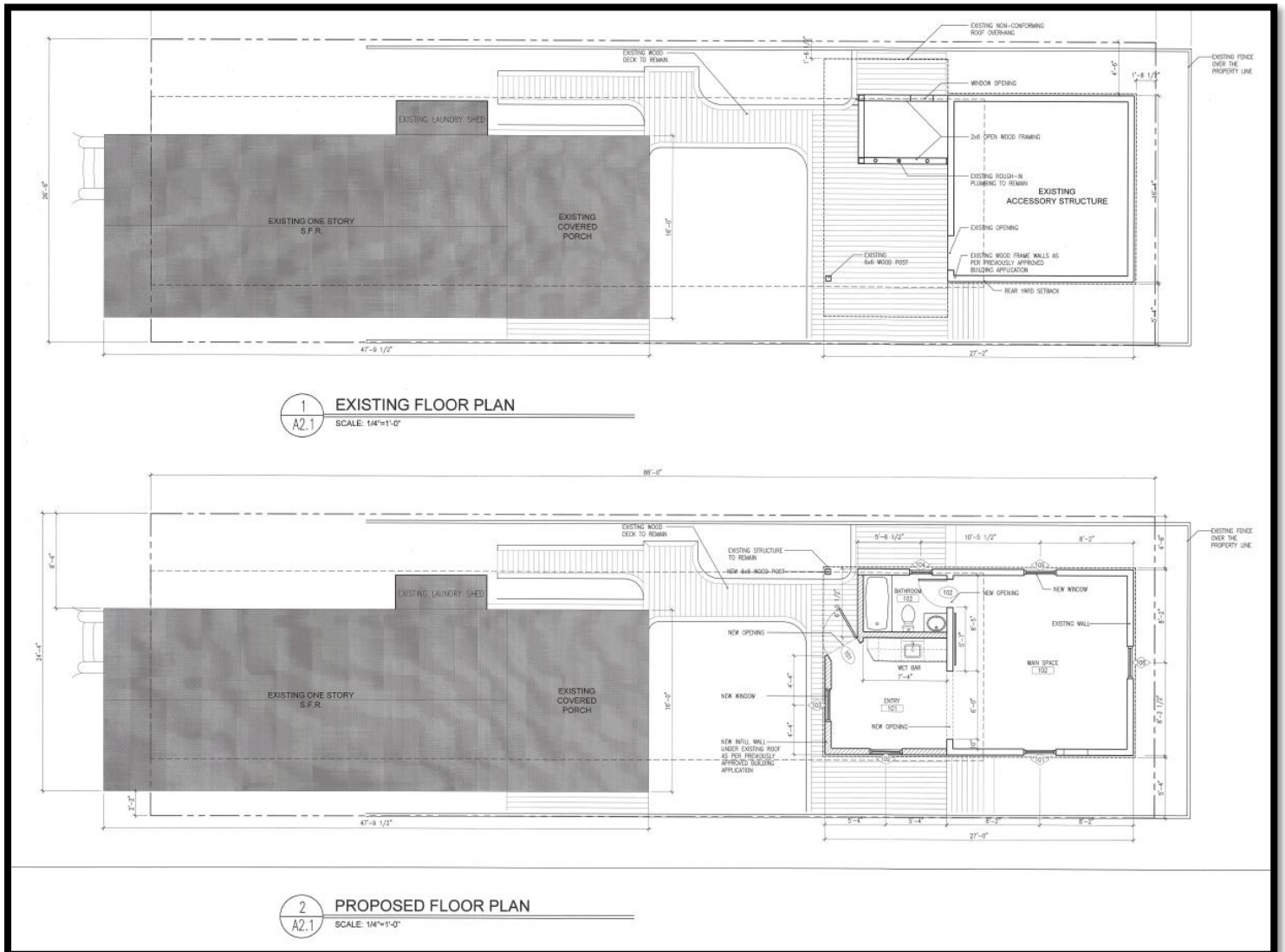
The existing accessory structure is a half-built structure with a roof, some walls, decking, and some electrical work. The applicant proposes to reduce the eaves on the north side of the structure and introduce swales on either side of the structure. The below pictures illustrate the unfinished structure:

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Building Plans, 727 Emma St, submitted by applicant



**Process:**

Planning Board Meeting:	Dec. 17 <sup>th</sup> , 2020
Local Appeal Period:	10 Days
Planning renders to DEO for review:	Up to 45 days

**Staff Analysis - Evaluation:**

The criteria for evaluating a variance 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 parcel located at 727 Emma St. is smaller than the code required minimum lot size, the parcel is 2,332 sq.ft. and the minimum size for lots in HNC-3 is 4,000 sq.ft. The applicant applied for and was permitted to construct a smaller rear accessory storage structure in 2016. The applicant's current proposed project is an expansion of that shed structure that would increase its overall size and convert it to an accessory living structure. The rear structure was originally approved for five-foot setbacks and a 256 sq.ft. size, the applicant has proposed to have a 1.7-foot rear setback and increase that size to 400 sq.ft.

**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 conditions were partially created by the applicant, while the original shed was permitted with five-foot setbacks and a smaller size and scope, the proposed accessory living space is larger and will be in the rear and side setback. The increase in the size also increases the building coverage over the max allowed building coverage for parcels located in the HNC-3 zoning district. The lot is however under sized for the zoning district and was originally platted with a smaller than required lot size.

**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 Land Development Regulations require setbacks in order to ensure life safety, general welfare, health standards, and aesthetics. The completion of the rear structure will place it in the rear and side setbacks and cover more of the rear yard than the City Code currently allows. City Code states that structures in the rear yard may not total a coverage greater than 30% of the yard. The rear yard of the house equates to 398 sq.ft. the proposed structure takes up most of the rear yard, about 215 sq.ft or 54% of the rear yard.

**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.*

The parcel located at 727 Emma Street is smaller than most lots in the zoning district and is smaller than the 4,000 sq.ft. minimum lot size. The Land Development Regulation's required setbacks are designed to provide open space around and between structures for health, safety and aesthetic purpose. Strict compliance with the minimum setbacks required for the HNC-3 zoning district would not pose a significant hardship on the applicant as the applicant could move the structure and losing some yard in between the accessory structure and the rear structure. The applicant is minimizing some of these issues by coordinating with the Planning Department to plant landscaping, alter the plans to reflect clearstory or ribbon windows to enhance privacy, and keeping the surrounding deck closer to grade to add ingress/egress. 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.

**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 amend their plans to fit all or most of the proposed structures within the buildable space of the parcel and outside the required setbacks, as well as reducing the overall size of the structure to what was permitted in 2016.

**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 variance will not be in harmony with the general intent of the land development regulations, but if granted would allow an accessory living area on smaller than required platted lot in the Historic District. Encroaching into the rear setbacks could be injurious to public welfare and the surrounding property owners. The applicant is working with the Fire Department to find a solution to any life/safety issues. The applicant has also worked with the Planning Department to alter their building design and plant landscape to mitigate noise, and enhance privacy for abutting property owners.

**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.*

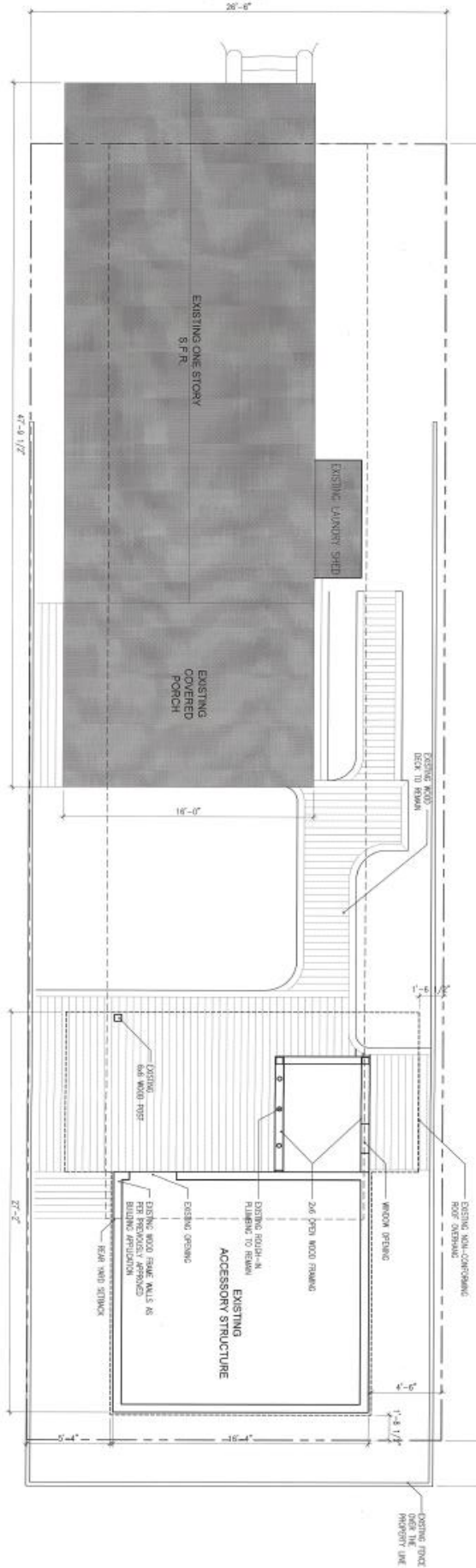
The Planning Department has not received any public comment for the variance request as of the date of this report.

**Recommendation:**

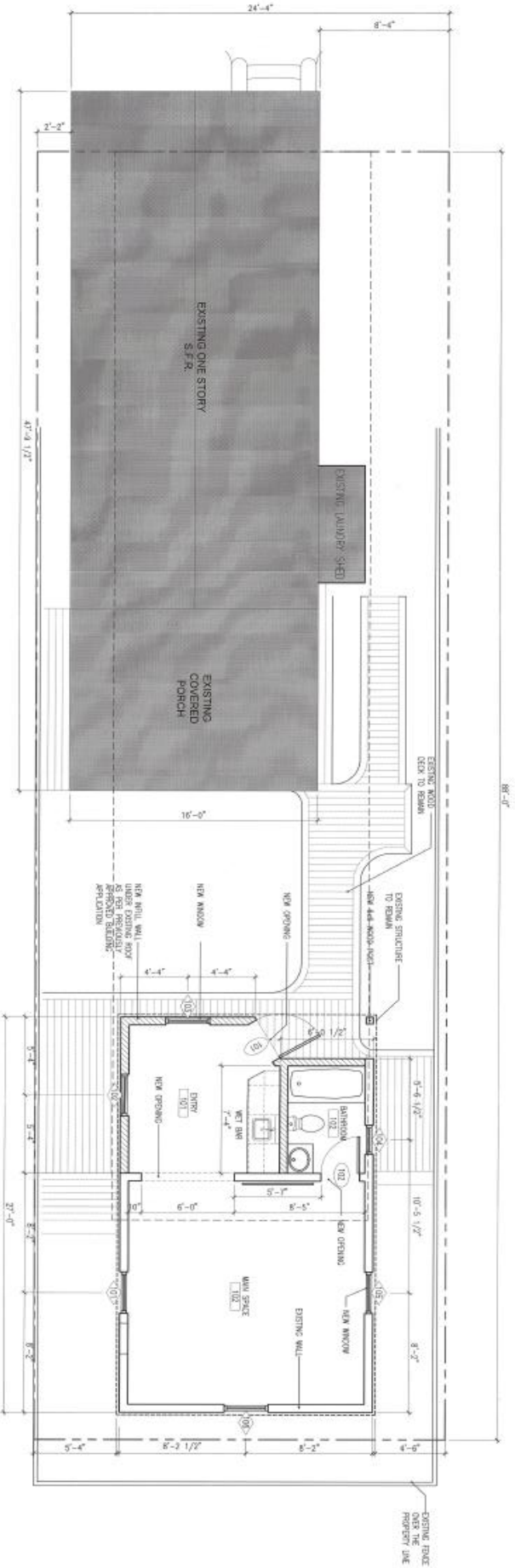
The proposed rear accessory structure for the property located at 727 Emma Street will allow a parcel sub-standard in required size to develop an accessory living area. The property owner received a building permit for an accessory storage structure in the rear yard in 2016, the applicant has proposed a similar structure using much of the same materials but enhancing the size. For privacy concerns, the applicant has offered to plant enhanced landscaping around the structure and to install clearstory or ribbon windows to enhance the privacy for the abutting rear property owner. The variance to the minimum required rear setback, maximum rear yard coverage, and maximum allowed building coverage does not meet the criteria stated in Section 90-395. The Planning Department recommends **denial**.

If the Planning Board chooses to approve the variance, the Planning Department recommends the following conditions:

1. The proposed construction shall be consistent (except for conditions of approval listed below) with the plans signed, sealed, and dated 8/3/2020 by William Shepler, PA.
2. The owner sign a non-conversion agreement stating that the accessory living structure may not be converted to a rentable dwelling.
3. Landscaping be planted in the rear of the property to baffle noise and mitigate the effects of the encroaching accessory living space into the rear setback.
4. Gutters be placed on the structure and downspouts be added to drain all rain-water runoff into proposed swales.



1  
 A2.1  
 SCALE: 1/4"=1'-0"  
 EXISTING FLOOR PLAN



2  
 A2.1  
 SCALE: 1/4"=1'-0"  
 PROPOSED FLOOR PLAN