

**THE CITY OF KEY WEST
PLANNING BOARD Staff
Report**



To: Chair and Planning Board Members

From: Melissa Paul-Leto, Planner Analyst

Through: Patrick Wright, Planning Director

Meeting Date: October 18, 2018

Agenda Item: **An After-the-Fact Variance – 3302 Harriet Avenue (RE# 00031440-000100)** – An After-the-Fact Variance request to maintain a solid six foot fence located in the front yard as well as an eight foot high gate entry on the side of the property located within the Medium Density Residential (MDR) zoning district pursuant to Sections 90-395, 122-1183(d) (1) (c), and 122-1181 of the City Land Development Regulations.

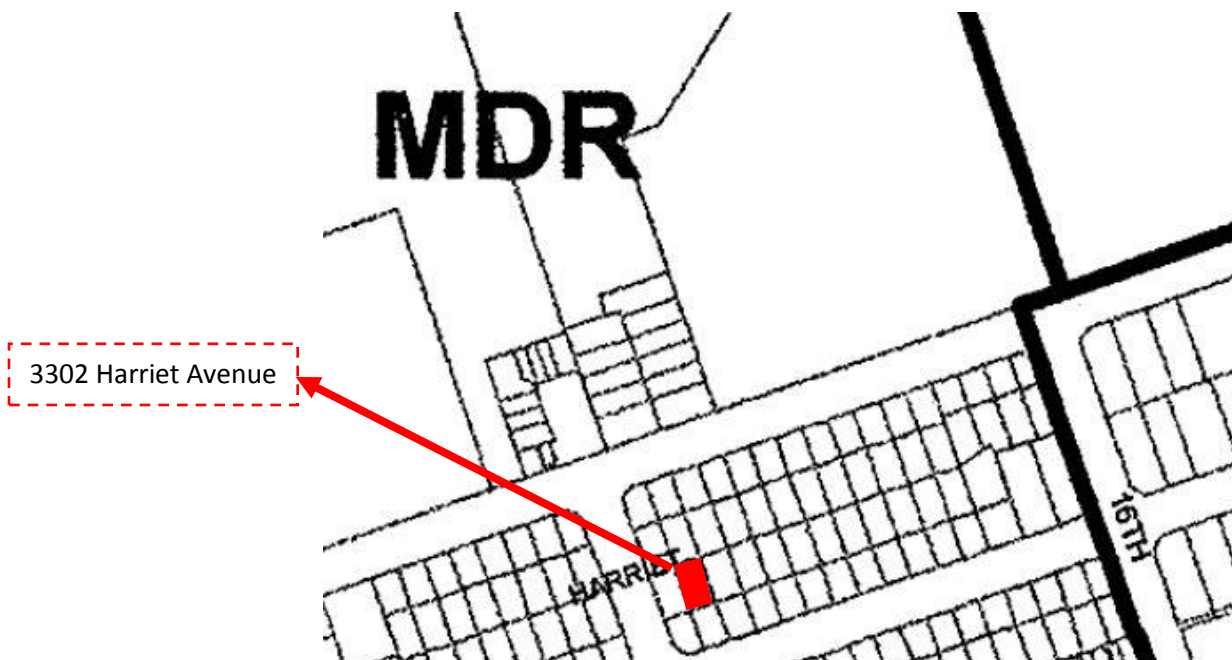
Request: To maintain a six foot solid wood fence approximately 139 linear feet around the front property line of Harriet Street and on the side yard as the property facing the driveway includes an eight foot high gate entry.

Applicant: Timothy Schwarz

Property Owners: Timothy Schwarz

Location: 3302 Harriet Avenue (RE#00031440-000100)

Zoning: Medium Density Residential (MDR) zoning district



Background:

The After-the-Fact Variance request arose from a Code Violation given to the property owner on July 5, 2018 for constructing a six foot solid wood fence on the front yard facing Harriet Avenue, as well as an eight foot high gate entry structure without building permits. An after-the fact building permit went through the City’s Simultaneous plan review process. The Planning department notified the property owner per code, front and street side fences that are six feet in height must provide at least 50% open space within the top two feet of the fence design or they may opt to select a picket style fence or a shadow box fence. The current fence on the property has half inch gaps between the wood boards. In order for this fence to be considered a picket style fence the property owner will need to create at least one and three fourths of an inch gap between boards to come into compliance per the Building Official.

Process:

Planning Board:	October 18, 2018
Planning Board:	September 18, 2018 (Tabled by Planning Board)
Local Appeal Period:	30 days
DEO Review Period:	Up to 45 days

Analysis – Evaluation for Compliance With The Land Development Regulations:

The standards for considering variances are set forth in Section 90-395(a) of the City of Key West (the “City”) Land Development Regulations (“LDRs”). 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.**

Based on the applicant’s before and after pictures, the lot previously had a non-conforming six foot solid wood fence around the property. After Hurricane Irma destroyed the fence, the applicant replaced it like for like. Unfortunately, emergency permits for like as like had already expired and the applicant decided to construct a new sold wood fence with a eight foot gate entry way without building permits and without the simultaneous review process. If the applicant had gone through the simultaneous review process he would have been informed by planning staff to revise the design of the fence and eliminate the entry gate otherwise a variance would be required. The applicant could have had an opportunity to decide whether to apply for a variance or revise the proposed design. Instead, the applicant has had to apply for an after-the-fact variance due to a code violation. Therefore, there are no special conditions or circumstances peculiar to the land that necessitates the gate and fence design constructed by the applicant.

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 necessity of the variance request is due to the nature of the chosen design for the after-

the-fact fence and gate. It is not apparent that the applicant explored design options which complied with the code. The conditions were created by the applicant and have triggered this after-the-fact variance request.

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 eight foot high entry gate and front yard solid wood fence could have been designed and constructed to meet applicable regulations; therefore a special privilege will be conferred to the applicant by granting the variances for the fence and the entry gate.

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 applicant states that he has a hardship regarding his height and suffers from two herniated disks. He writes that he is unable to pass through any entryway lower than eight feet without risking severe injury. However, the request for a variance to the accessory structure entry way gate is necessitated by the chosen design. It is not necessary for there to be an entry gate that is eight feet in height. The entry gate could be 6 feet in height without a top frame allowing for a universal design that everyone can enter the property using.

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 request is more than the minimum necessary. The applicant is able to construct a front yard fence that complies with the 50% open space regulation as well as construct an entry gate that does not have a top frame that does not exceed 6 feet in height.

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.**

Due to not being in compliance with all of the standards for considering variances, the granting of the requested variance would be injurious to the area involved and otherwise detrimental to the public interest.

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.

The applicant is not using neighboring properties as a basis for this variance request.

IN COMPLIANCE

Concurrency Facilities and Other Utilities or Service (Code Section 108-233):

It does not appear that the requested variances would trigger any public facility capacity issues.

Pursuant to Code Section 90-395(b), the Planning Board shall make factual findings regarding the following:

(1) That the standards established by Code Section 90-395 have been met by the applicant for a variance.

The applicant has not met the standards established by the City Code for the height variance request for the fence and gate structures.

(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.

There has be no public comments submitted since this report was written.

Recommendation:

Based on the above analysis of the standards for considering variances established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the requested variances be **DENIED**.

However, if the Planning Board approves this request, staff would like to require the following conditions:

General Conditions:

1. The proposed development shall be consistent with the elevation drawing submitted by the applicant. No approval granted for any other work or improvements shown on the plans other than the after-the-fact front yard fence and side yard entry gate accessory structure.