



THE CITY OF KEY WEST PLANNING
BOARD
Staff Report

To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Nicholas Perez-Alvarez, AICP, Stantec

Meeting Date: October 19, 2023

Agenda Item: **Variance – 1905 Staples Avenue (RE# 00046930-000000):** A request for variance approval for non-complying front, side and rear setbacks and building coverage, to allow a single-family residence, located in the Limited Commercial (CL) Zoning District, pursuant to Sections 90-395, 122-390 and 108-346 of the City of Key West Land Development Regulations.

Request: To allow for a new three-story home to be built on a vacant lot.

**Property Owners/
Applicant:** KW Empire, LLC/Trepanier and Associates, Inc.

Location: 1905 Staples Avenue (RE# 00046930-000000):

Zoning: Limited Commercial (CL)



Pictures of the existing vacant lot with surrounding land-uses identified

Background:

This item was postponed by the Board, at the request of the applicant several times. It was postponed at the May 18, 2023 Planning Board hearing due to testimony given and to allow the applicant the opportunity for revisions. The applicant submitted minor changes meant to address the department’s comments, conclusions and recommendations. These changes are reflected below. This item was again postponed at the September 21, 2023 Planning Board hearing due to individuals unable to provide public comment.

- *Impervious surface reduction from 49% to 47.6%*
- *Building coverage reduction from 49% to 45.3%*
- *Open space increase from 49% to 52%*
- *Front setback increase from 5’ to 6’-5”*
- *Side setback (west) increase from 6’ to 7’-3”*
- *Modifications to architectural design*

The subject property is located at 1905 Staples Avenue near the corner of First Street. The lot has been in

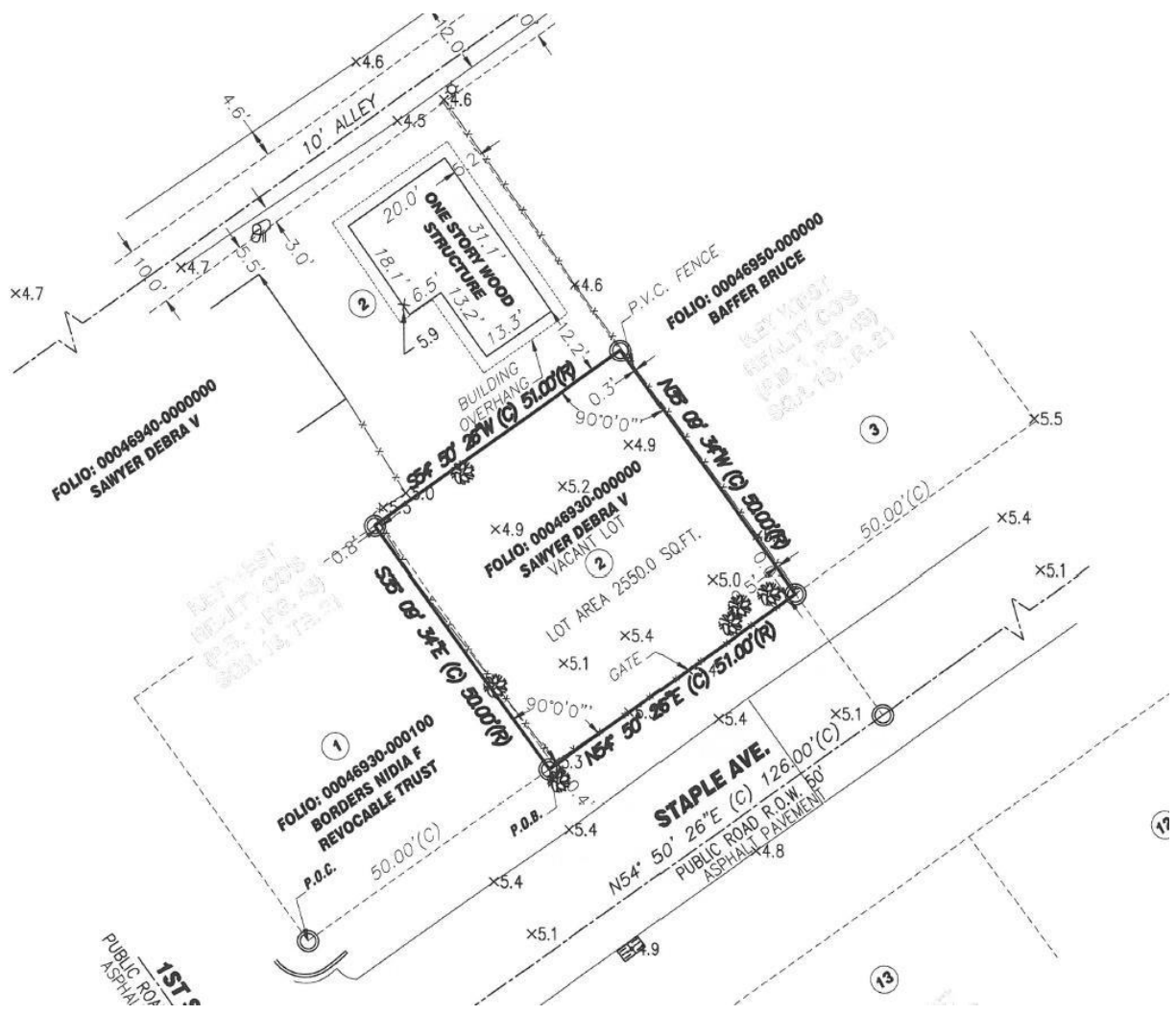
this current condition at least since 1982, per the deed. The lot is approximately 50' X 51' or 2,550 square feet, and is the result of multiple subdivisions along this block of Staples Avenue.

In 1969 the entire property known as 1905 Staples Avenue was owned together with its adjacent properties known as 1411 First Street and 1415 First Street. At that time the minimum lot size was the same as it is today and the code did not allow for lot splits which created nonconforming lots. In 1972, the northern portion of the lot was separated as 1411 First Street, and in 1982, 1415 First Street was separated, leaving the remainder lot of 1905 Staples Avenue as it exists today, unlawfully split into a non-conforming lot. Ordinance 69-29, adopted by the City of Key West in 1969 and in effect at the time this lot was unlawfully split, included the following subdivision regulations:

- No yard or lot existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this ordinance shall meet at least minimum requirements established by this ordinance.
- If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements for lot width and area as established by this ordinance, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance, and no portion of said parcel shall be used or sold which does not meet lot width and area requirements established by this ordinance, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements of this ordinance.

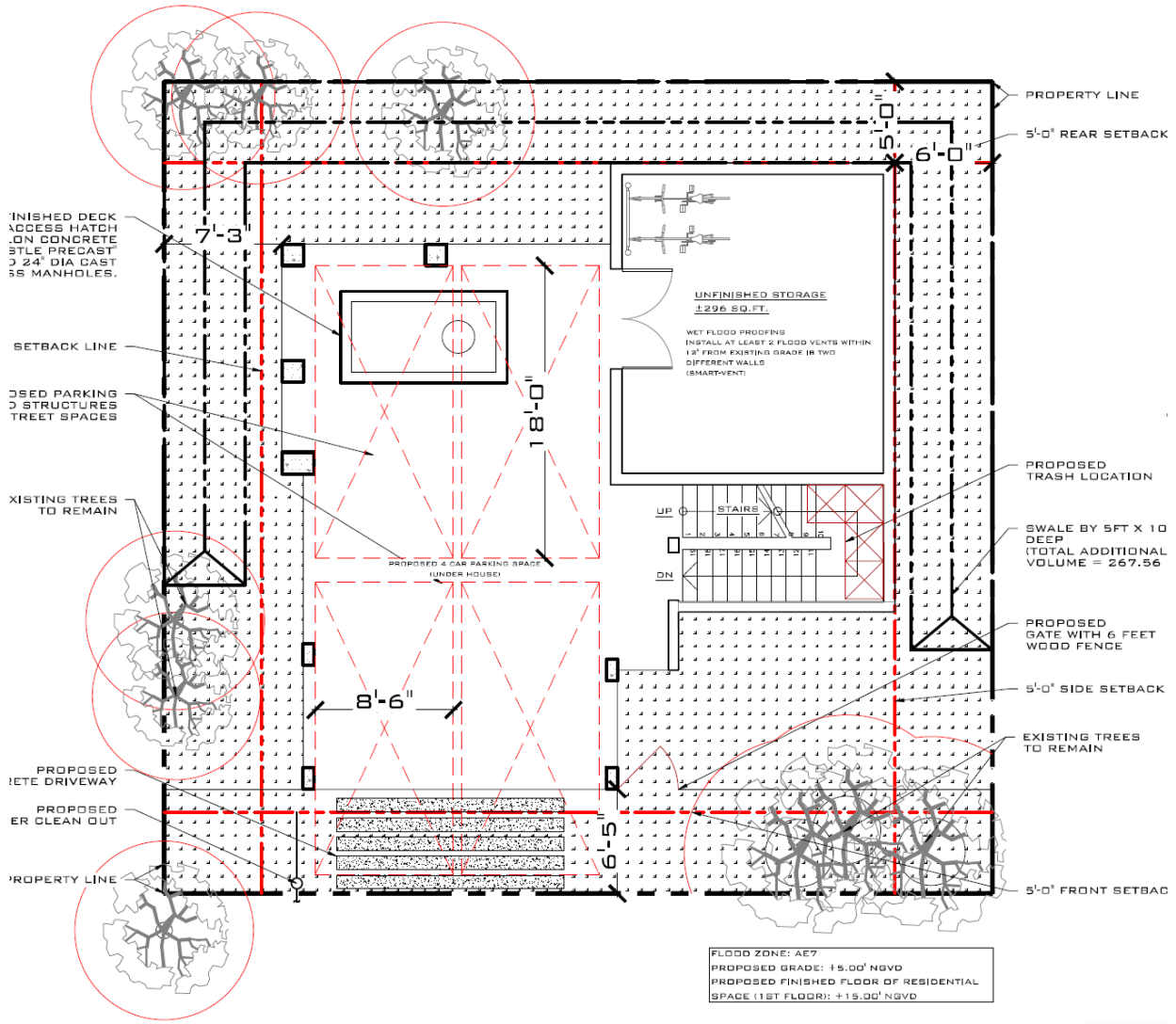
The property has remained vacant with no structures since that time; there are six mature mahogany trees and a strangler fig on the property today. The current property owner purchased the site in late 2021, according to the Monroe County Property Appraiser. The property was awarded one BPAS unit in 2021.





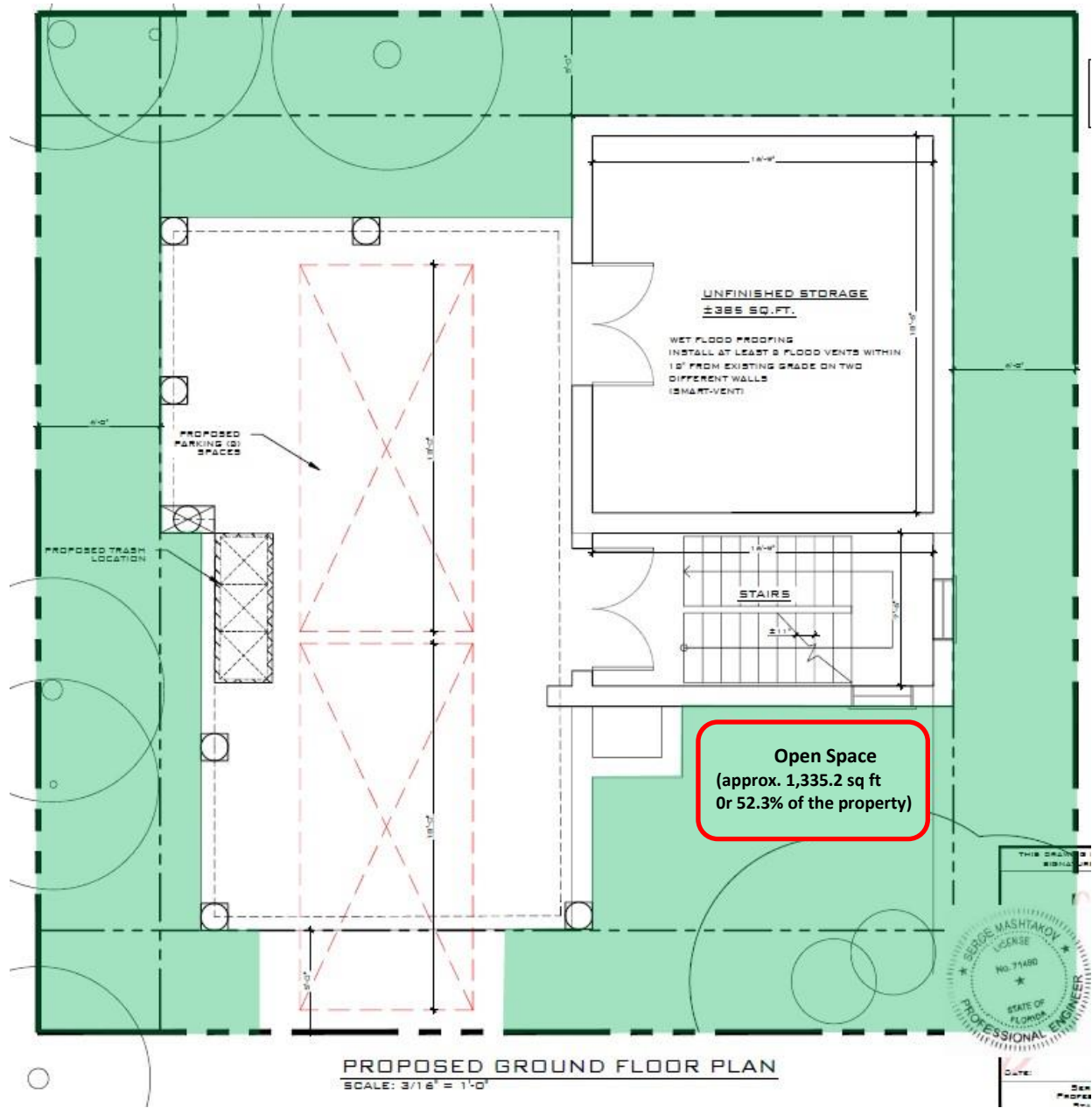
Request:

The request is to build a new three-story four bedroom home on a vacant lot. There are four proposed setback encroachments, on all four sides of the home. The applicant is requesting a variance from the front, rear and the two side setbacks. The applicant is also requesting a variance for exceeding building coverage maximums. The standards for all setbacks and coverage are described in Sec. 122-390 of the Land Development Regulations. At 2,550 square feet, the lot is about ¼ of the minimum lot size for properties zoned Limited Commercial (10,000 square foot minimum). City staff’s position is that the lot was illegally split to a non-conforming size and the City does not allow variances to the minimum lot size requirements.



PROPOSED SITE PLAN
 SCALE: 3/16" = 1'-0"





Site Data Table

	Required/Allowed	Existing	Proposed	Variance Requested
Lot Size	10,000 sq ft	2,550 sq ft	No Change	No change
Impervious Surface	60% 1,530 sq ft	12% 320 sq ft	47.6% 1,215 sq ft	No
Building Coverage	40% 1,020 sq ft	0% 0 sq ft	45.3% 1,157 sq ft	Variance Needed 5.3% requested
Open Space Requirement	35% 893 sq ft	88% 2,230 sq ft	52% 1,335 sq ft	No
FAR	NA	0.0	No Change	No
Front Setback	10' ft	N/A	6'-5"	Variance Needed 3'7" requested
Rear Setback	10'	N/A	5'	Variance Needed 5' requested
Side Setback (East)	15' ft	N/A	6'	Variance Needed 9' requested
Side Setback (West)	15' ft	N/A	7'-3"	Variance Needed 7'9" requested
Height	40'	N/A	39'-2.5"	No
Parking	1 space per unit	0	2 ¹	No

The applicant is requesting a variance pursuant to Sections 90-395, Section 122-390(4), Section 122-390(5) and Section 122-390(6) of the City of Key West Land Development Regulations:

For the proposed front setback: Sec. 122-390 (6)a
10' is required by code; 6'-5" is proposed by the applicant

For the proposed side (east) setback: Sec. 122-390 (6)b
15' is required by code; 6' is proposed by the applicant

For the proposed side (west) setback: Sec. 122-390 (6)b
15' is required by code; 7'-3" is proposed by the applicant

For the proposed rear setback: Sec. 122-390 (6)a
10' is required by code; 5' is proposed by the applicant

For the proposed building coverage: Sec. 122-390 (4)a
40% is required by code; 45.3% is proposed by the applicant

¹ Two double-stacked spaces proposed

Process:

Planning Board Meeting: October 19, 2023
HARC: TBD
Local Appeal Period: 10 days
DEO Review Period: up to 45 days

Staff Analysis- Evaluation:

The criteria for evaluating a variance are listed in Sections 122-395 of the City of Key West Land Development Regulations. 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.*

Special conditions do not exist which are peculiar to the land. While the block was subdivided multiple times, creating multiple conforming lots, it also created a 'left-over' parcel that is a quarter of the legal lot size within this zoning district, which does not conform with the lot size requirements. This was not a legal action and a lot of this size would not have been approved based on the code requirements for minimum lot size.

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 block was subdivided several times through the 70's and 80's, creating the existing non-conforming lot. The lot was not created by the applicant who purchased the property in 2021. The setbacks and building coverage proposed by the applicant, however are related to the action of the applicant. The applicant could propose a smaller structure that could comply with at least some, if not all, of the dimensional criteria.

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.*

Granting of the requested variances may confer special privileges to the applicant. Similar lot size conditions are found in neighboring properties. While the majority of the lots on the block are 100' in depth, this property is half of that length. The variance process is

available to all property owners in the same district. As noted above, the owner could propose a more modestly sized structure for this small lot.

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 the other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.*

The current property does not comply with existing applicable zoning code requirements for lot size given it was subdivided multiple times, creating a non-conforming left-over lot.

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 applicant is requesting variances from all setbacks and building coverage, which are a design consideration. The applicant has the opportunity to design a smaller home, which could meet at least some of the setbacks and building coverage requirements. The lot size however is existing, and there is no opportunity to increase the size of the lot.

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.*

There is potential to affect public welfare given the lack of convenient parking for four bedrooms which are designed to accommodate roommate style housing for multiple tenants. While there is room to accommodate four vehicles, the configuration is tandem, which could force vehicles to park on the street to avoid getting blocked in.

NOT IN COMPLIANCE

7. *Existing nonconforming uses of other property shall not be considered as 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.*

This application does not rely on other nonconforming lots and structures as justification.

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 the City Code have been met by the applicant for a variance.

The standards established by the City Code have not been fully met by the applicant for the variance requested.

That the applicant has demonstrated "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 received two public comments for the variance request which were shared with the applicant.

The Planning Board shall not grant a variance to permit a use not permitted by right or as a conditional use in the zoning district involved or any use expressly or by implication prohibited by the terms of the ordinance in the zoning district.

No use not permitted by right or as a conditional use in the zoning district involved or any use expressly or by implication prohibited by the terms or the ordinance in the zoning district would be permitted.

No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and no permitted use of lands, structures, or buildings in other zoning districts shall be considered grounds for the authorization of a variance.

No such grounds were considered.

No variance shall be granted that increase or has the effect of the increasing density or intensity of a use beyond that permitted by the comprehensive plan or these LDRs.

No density or intensity of a use would be increased beyond that permitted by the comprehensive plan or these LDRs.

RECOMMENDATION:

The Variance request to exceed the allowed front, rear and side setbacks and building coverage does not comply with all the evaluation criteria. The Planning Department recommends **DENIAL**.

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

1. The proposed construction shall be consistent with the plans, signed, sealed and dated 7/22/2023 by Artibus Design for 1905 Staples Avenue.
2. There shall be no parking in the open space in the front yard outside of the covered carport.