



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

To: Chairman and Planning Board Members

Through: Roy Bishop, Planning Director

From: Vanessa Sellers, Planner II

Meeting Date: September 19, 2019

Agenda Item: **After-the-Fact Variance – 1701 Laird Street (RE # 00060660-000000) –**
A request for variances to the minimum front-yard setback requirements and accessory structure requirements in order to maintain a zero-foot front-yard setback for an accessory structure in a required front yard on property located within the Single-Family (SF) zoning district pursuant to Sections 90-395, 122-238 (6) a. 1., and 122-1181.

Request: The applicant is requesting a variance to the minimum front-yard setback requirement and a variance to the accessory structure location regulation in order to maintain an accessory structure in a required front yard.

Applicant: Lori Thompson & Owen Trepanier of Trepanier & Associates, Inc.

Property Owner: Solaris Photo / Design Inc.

Location: 1701 Laird Street, Key West

Zoning: Single-Family (SF)

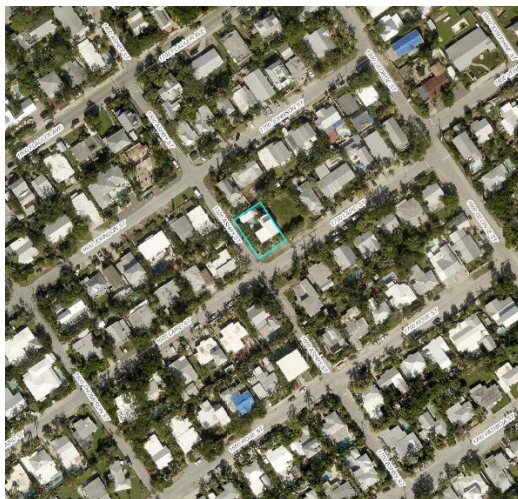


Image of an aerial view of the subject property and surrounding properties.

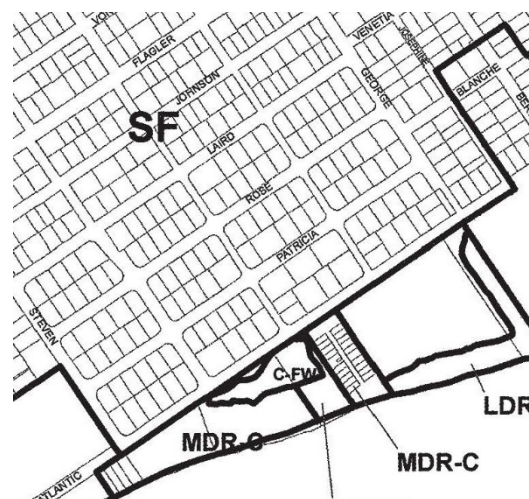
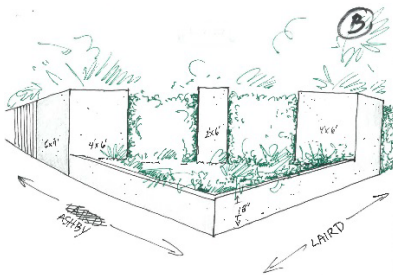


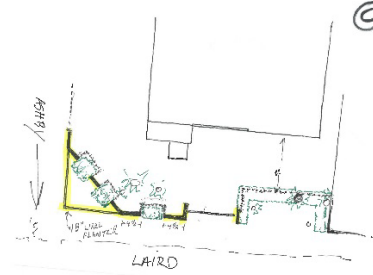
Image of a portion of the Official Zoning Map indicating the property is within the SF zoning district.

Background:

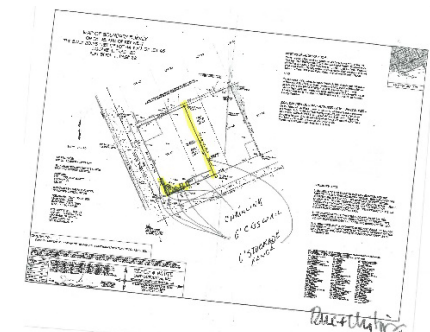
The property at 1701 Laird Street is located within the Single-Family (SF) zoning district. According to the property record card, a permit was issued on 5/6/2016 to construct a new single-family home. On September 27, 2017, the contractor for the property applied for a building permit with the following detailed project description: "Built [sic] 40' lin of concrete block wall as per plan. Install 32' lin of chain link fence. On front of property. Install 88' lin of 6' stockade fence on the northside of property." The application included two sketches and a boundary survey with the location of the proposed work indicated (see below). However, the application package did not indicate that the entry gate would include a cantilevered overhang, which elevates its status from an entry gate to a gatehouse, id est, an accessory structure. Building permit number 17-3557 was issued by the City of Key West Building Department and construction commenced.



Sketch of a proposed planter on the corner of Ashby St. and Laird St.



Sketch indicating the proposed wall's location.



Boundary Survey with markings indicating where the proposed work would take place.

On June 14, 2018, a City of Key West building inspector disapproved the final inspection of permit number 17-3557 when the unpermitted gatehouse was discovered. The location of the construction is in the required front setback and cannot be permitted without a variance. On July 15, 2019, the representative for the property owner applied for an after-the-fact variance.



Image of the subject gatehouse accessory structure.

Section 86-9 of the LDRs defines an *accessory structure* as a subordinate structure that is detached from the principal structure and located on the same parcel or property, the use of which is incidental to that of the principal structure.

The following table summarizes the requested variances:

Relevant SF Zoning District Dimensional Requirements: Code Section 122-238				
Dimensional Requirement	Required/ Allowed	Existing	Proposed	Change / Variance Required?
Maximum height	25'	<25'	No Change	No
Minimum lot size	6,000 SF	5,434 SF	No Change	No
Maximum density	8 dwelling units per acre	1	No Change	No
Maximum floor area ratio	N/A	N/A	N/A	No
Maximum building coverage	35%	30.4%	No Change	No
Maximum impervious surface	50%	47%	No Change	No
Minimum open space (residential)	35%	48%	No Change	No
Minimum front setback	30' or the avg. depth of front yards on developed lots within 100' each side, but not less than 20'	20'	0'0" for Accessory Structure	YES
Minimum side setback	5'	5'	No Change	No
Minimum street-side setback	10'	10'	No Change	No
Minimum rear setback	25'	25'	No Change	No
Relevant Accessory Uses and Structures Requirements: Code Section 122-1181				
No accessory use or structure shall be erected in any required front yard.			An accessory structure in the required front yard	YES
No separate accessory structure shall be erected less than five feet of any lot line.			An accessory structure less than 5' from the front lot line	YES

Process:

Planning Board Meeting: September 19, 2019

Local Appeal Period: 10 days

DEO Review Period: up to 45 days

Analysis – Evaluation for Compliance with the Land Development Regulations:

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 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.*

The subject parcel is a rectangular corner lot 61.75 feet wide and 88 feet deep, similar to other neighboring parcels. While many various nonconformities exist throughout the SF zoning district, new construction must comply with the LDRs. Although the applicant states that gateway structures are common in the area, 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.

There is no existence of special conditions or circumstances which are peculiar to the land, structure, or building involved and which are applicable to other land, structures, or buildings in the same zoning district.

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 subject application states that circa 2014, there was a change in policy, and since then, gateway structures are considered accessory structures. However, the subject gateway structure was constructed in 2018, approximately four (4) years after the policy change.

The subject accessory structure was constructed by the applicant within the required front yard without the benefit of a building permit. The conditions are a result of the actions of the applicant.

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.***

Pursuant to section 122-1181 of the Land Development Regulations, no accessory structure shall be erected in any required front or side yard, and no separate accessory structure shall be erected less than five feet of any lot line.

An after-the-fact variance approval to allow a zero-foot front setback for an accessory structure within a required front yard would confer special privileges upon the applicant that are otherwise denied by the LDRs to other lands, buildings, or structures in the SF zoning district.

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 LDRs would not deprive the applicant of rights commonly enjoyed by other properties in the SF zoning district. In addition, a gateway structure with a cantilevered roof does not provide any more security than a standard fence and gate that is permitted by right.

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 after-the-fact variances requested are not the minimum required that will make possible the reasonable use of the land, building, or structure. However, they are the minimum necessary to accommodate the request.

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 the requested variances would not be injurious to the area involved or otherwise detrimental to the public interest.

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 request 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:

Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for variances be **DENIED**.

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

General Condition:

1. The applicant shall contact the City of Key West’s Building Department to request a final inspection and closure of permit number 17-3557.