

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



To: Chairman and Planning Board Members

Through: Patrick Wright, Planning Director

From: Melissa Paul-Leto, Planner Analyst

Meeting Date: June 21, 2018

Agenda Item: **After-the-Fact Variance - 3713 Donald Avenue – (RE# 00056750-000000)** – A request for variances to the minimum side, rear yard setback requirements, the maximum allowed building coverage, and the maximum allowed impervious surface in order to maintain and finish construction of an the shed, and a covered roof over a wood deck for property located within the Single Family (SF) Zoning District pursuant to Sections 90-395, 122-238 (6) (a) (2), 122-238 (6) (a) (3), 122-238 (4) (a), and 122-238 (4) (b) (1) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: The applicant is seeking the following variances: minimum side, rear yard setback requirements, the maximum allowed building coverage, and the maximum allowed impervious surface in order to maintain and finish construction of an after-the-fact shed, and a covered roof over a wood deck.

Applicant: Michael Ngov

Property Owner: Michael Ngov

Location: 3713 Donald Avenue – (RE# 00056750-000000)

Zoning: Single Family (SF) Zoning District



3713 Donald Avenue
Subject property

Background/Request:

The property at 3713 Donald Avenue is located within the Single Family Zoning District, and is one lot of record. The one story residential framed structure faces Donald Avenue near the corner of 18th Street.

The applicant received a code case – 17-00001277 for Violation Section 14-37 Building Permits; professional plans; display of permits; address; exceptions for building a shed, and a roof over an existing wood deck in the rear yard of the property. The property owner applied for after-the-fact building permits for the shed, and the roof. At that time, the property owner was informed by planning staff that they needed to apply for variances to the Planning Board or remove the after-the-fact structures.

The Plans submitted indicate the after-the-fact shed is encroaching into the rear and side required yard setback requirements. The roof over the rear deck is encroaching into the required rear yard setback for the principle structure. The Combination of the after-the-fact shed, and the after-the-fact roof over the wood deck requires the following variances: The minimum side, rear yard setback requirements, the maximum allowed building coverage, and the maximum allowed impervious surface.

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?
Lot Size	6,000 Square Feet	5,987 Square Feet	5,987 Square Feet	In compliance
Maximum Height	25 Feet plus an additional five feet for nonhabitable purposes if the structure has a pitched roof.	15.5 Feet	15.5 Feet	In compliance
Maximum building coverage	35% (2,095 Square Feet)	43% (2,622 Square Feet)	46% (2,781 Square feet)	Variance Required 686 Square Feet
Maximum impervious surface	50% (2,993 Square Feet)	52 % (3,100 Square Feet)	55 % (3,269 Square Feet)	Variance Required 276 Square Feet
Minimum open space	35% (2,095 Square Feet)	48 % (2,887 Square feet)	45 % (2,718 Square Feet)	In compliance
Minimum front setback (Principle structure)	30 Feet	14.25 Feet	14.25 Feet	Existing Non-conformity In compliance
Minimum side setback (Shed)	5 Feet	9 Feet 8 Inches (Principle structure)	2 Feet 1 1/2 Inches (Shed)	Variance Required -2 feet 8 1/2 Inches
Minimum side setback (Principle structure)	5 Feet	3.25 Feet (Principle	3.25 Feet (Principle	Existing Non-conformity

		Structure)	Structure)	In compliance
Minimum rear setback (Shed)	5 Feet	5 Feet 2 3/4 Inches (Principle structure, existing non-conformity)	1 Foot 2 ½ Inches (Shed)	Variance Required -3 feet 7 1/2 Inches
Minimum rear setback (Principle Structure After-the-Fact Roof over deck)	25 Feet	5 Feet 2 3/4 Inches (Principle structure, existing non-conformity)	10 Feet 6 Inches (After-the-Fact roof over deck)	Variance Required -14 feet 6 Inches

Process:

Planning Board Meeting: June 21, 2018
Planning Board Meeting: May 17, 2018 (postponed by staff)
HARC: TBD
Local Appeal Period: 30 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 LDR's state the dimensional requirements for the SF district. The property owner would have been informed by planning staff that the shed, and the roof over the deck would be going beyond the Single Family zoning dimensional requirements. The property owner constructed these structures without building permit approval. There are no special conditions or circumstances.

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 after-the-fact shed and roof over the existing wood deck were constructed by the property owner without any building permit approvals. The conditions were created by 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.***

Section 122-27 of the Land Development Regulations discourages the expansion of site nonconformities. The property owner may maintain their existing wood deck connecting to the principle structure. The after-the-fact roof over the wood deck expands the rear setback non-conformity of the principle structure and increases the properties impervious surface and building coverage requiring variances to all three dimensional requirements. The placement and existence of the after-the-fact shed requires encroaches into the rear, side yard setbacks, building coverage ,and impervious surface requiring variances to all four dimensional requirements.

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.***

Denial of the requested variance would not deprive the applicant of rights commonly enjoyed by other properties in the Single Family Zoning District. A shed and roof over a deck is not considered a hardship. Therefore, hardship conditions do not exist.

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 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.***

Due to not being in compliance with all of the standards for considering variances, the granting of the requested variances 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.*

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 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 been fully met by the applicant for the variance 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 received no public comments for the variance request as of the date of this report.

Pursuant to Code Section 90-392, in granting such application the Planning Board must make specific affirmative findings respecting each of the matters specified in Code Section 90-394.

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 of 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 increases or has the effect of 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:

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

If Planning Board chooses to approve the request for variances then staff suggests the following condition in order to retain a shed constructed without a permit:

1. A gutter shall be installed on the roof edge along the property line. Downspout shall be directed onto the property, preferably into a landscaped area.