

**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 I

Meeting Date: February 21, 2019

Agenda Item: Variance – 3841 North Roosevelt Boulevard – (RE# 00064881-000200, 00064881-000600, 00064881-000900, 00064881-001000, 00064881-001100, 00064881-001200, 00064881-001400, 00064881-001500, 00064881-001800, 00064881-002100, 00064881-002200, 00064881-002300, 00064881-002700, 00064881-002800, 00064881-002900, 00064881-003000, 00064881-003100, 00064881-003300, 00064881-003400, 00064881-003500, 00064881-003700, 00064881-003900, 00064881-0042000, 00064881-004300, 00064881-004400, 00064881-004500, 00064881-004700, 00064881-004800, 00064881-005100, 00064881-005200, 00064881-005300, 00064881-005600, 00064881-006000, 00064881-006400, 00064881-006600, 00064881-006700, 00064881-006800, 00064881-007000, 00064881-007200, 00064881-007500, 00064881-007600, 00064881-007900, 00064881-008000, 00064881-008300, 00064881-008400, 00064881-008500, 00064881-008600, 00064881-008700, 00064881-008800, 00064881-008900, 00064881-009000, 00064881-009100, 00064881-009200, 00064881-009300, 00064881-009400, 00064881-009500, 00064881-009700, 00064881-010000, 00064881-010100, 00064881-010300, 00064881-010400, 00064881-010500, 00064881-010600, 00064881-010700, 00064881-010800, 00064881-011000, 00064881-011100, 00064881-011200, 00064881-011400, 00064881-011500, 00064881-011600, 00064881-011700, 00064881-011800, 00064881-011900, 00064881-012000, 00064881-012100, 00064881-012200, 00064881-012300, 00064881-012400, 00064881-012500, 00064881-012700, 00064881-012800, 00064881-013000, 00064881-013100) – A request for a variance to the maximum allowed impervious surface requirement to install brick pavers near the pool area and back of shoreline on property located within the Commercial General (CG) zoning district pursuant to Sections 90-395, and 122-420 (4) (b) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: The applicant is seeking a variance to the maximum impervious surface requirement to install brick pavers.

Applicant: The Spottswood Law Firm – Donald Craig and/or Erica Sterling and/or Richard McChesney

Property Owner: SH5 Ltd.

Location: 3841 North Roosevelt Boulevard – (RE# 00064881-000200, 00064881-000600, 0064881-000900, 00064881-001000, 00064881-001100, 00064881-001200, 00064881-001400, 00064881-001500, 00064881-001800, 00064881-002100, 00064881-002200, 00064881-002300, 00064881-002700, 00064881-002800, 00064881-002900, 00064881-003000, 00064881-003100, 00064881-003300, 00064881-003400, 00064881-003500, 00064881-003700, 00064881-003900, 00064881-004200, 00064881-004300, 00064881-004400, 00064881-004500, 00064881-004700, 00064881-004800, 00064881-005100, 00064881-005200, 00064881-005300, 00064881-005600, 00064881-006000, 00064881-006400, 00064881-006600, 00064881-006700, 00064881-006800, 00064881-007000, 00064881-007200, 00064881-007500, 00064881-007600, 00064881-007900, 00064881-008000, 00064881-008300, 00064881-008400, 00064881-008500, 00064881-008600, 00064881-008700, 00064881-008800, 00064881-008900, 00064881-009000, 00064881-009100, 00064881-009200, 00064881-009300, 00064881-009400, 00064881-009500, 00064881-009700, 00064881-010000, 00064881-010100, 00064881-010300, 00064881-010400, 00064881-010500, 00064881-010600, 00064881-010700, 00064881-010800, 00064881-011000, 00064881-011100, 00064881-011200, 00064881-011400, 00064881-011500, 00064881-011600, 00064881-011700, 00064881-011800, 00064881-011900, 00064881-012000, 00064881-012100, 00064881-012200, 00064881-012300, 00064881-012400, 00064881-012500, 00064881-012700, 00064881-012800, 00064881-013000, 00064881-013100)

Zoning: General Commercial (CG) zoning district



Background/Request:

The property at 3841 North Roosevelt Boulevard, known as the Key West Marriot Beachside Hotel is located in the CG zoning district and is one lot of record.

The plans submitted are for an addition of 2800 square feet of brick pavers near the pool area and back of the shoreline setback. The brick pavers are intended to be used for special events. The scope of work area is currently sand near the shoreline. The proposed design requires a variance to the maximum allowed impervious surface coverage. The maximum allowed impervious surface in the General Commercial zoning district is 60%. Currently, the impervious surface on the property is non-conforming at 72%, 232,610 square feet. With the additional 2800 square feet of impervious brick surface, the total impervious surface proposed on the lot is 72.9 %, 235,410 square feet. Resulting in an overall 12.9%, 41,742.2 square foot increase from the maximum allowed impervious surface requirement.

The following table summarizes the requested variance.

Relevant CG Zoning District Dimensional Requirements: Code Section 122-420				
Dimensional Requirement	Required/ Allowed	Existing	Proposed	Change / Variance Required?
Lot Size	15,000 square feet	322,780 square feet	322,780 square feet	In compliance
Maximum impervious surface	60% (193,667.8 square feet)	72 % (232,610 square feet)	72.9 % (235,410 square feet)	Variance required -12.9% (41,742.2 square feet)
Minimum open space	20% (64,555.9 square feet)	27.9 % (90,170 square feet)	27 % (87,369 square feet)	In compliance

Process:

Planning Board Meeting:	February 21, 2019
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 land, structures and buildings involved are located on the property within the CG zoning district. The required minimum lot size in the CG zoning district is 15,000 square feet. The 3841 North Roosevelt Boulevard property has a lot size of 322,780 square feet, much larger than the minimum size required.

The land should have more than enough square feet to accommodate the 60% maximum allowed impervious surface. Therefore, there are no special conditions or circumstances that exist that are peculiar to the land, structures or buildings involved.

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 plans submitted by the applicant are for installing 2800 square feet of brick pavers. The property is currently non-conforming with the maximum impervious surface requirement. The proposed brick pavers will further increase this non-conformity. The applicant could remove some portion of impervious surface from somewhere else on the property so as not to need the 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.***

Section 122-27 of the Land Development Regulations discourages the expansion of site nonconformities. The property is currently non-conforming with the maximum impervious surface requirement in the General Commercial zoning district. The plans submitted require special privileges to go beyond the property owner's current non-conformity and increase it further.

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 CG Zoning District. The property owner may continue to have special events in the scope of work area without the brick pavers as they have in the past by using portable stages or stands. 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, it is 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 following all 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.*

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 not received any 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**.

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 plans dated, December 20, 2018 by Thomas E. Pope, P.A. No approval granted for any other work or improvements shown on the plans other than the proposed installation of the brick pavers near the pool area and back of the shoreline setback.