

THE CITY OF KEY WEST
PLANNING BOARD
Staff Report



To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Melissa Paul-Leto, Planner I

Meeting Date: May 20, 2021

Agenda Item: **Variance –1 Havana Avenue & 4 Havana Avenue – (RE# 00021310-000000)** - A request for variances to the minimum rear yard setback, and the minimum side yard setback in order to reconstruct an addition, raise the interior ceilings and demolish the rear encroachment over the property line on property located within the Historic High Density Residential (HHDR) zoning district pursuant to Sections 90-395, 122-630 (6) b., and 122-630 (6) c., of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: The applicant is proposing to demolish portions of an existing rear addition that are encroaching over the property line, raise the interior ceilings of the existing addition, and construct a pitched roof over the existing addition.

Applicant: Richard McChesney

Property Owner: 1 Havana Lane LLC

Location: 1 Havana Avenue & 4 Havana Avenue – (RE# 00021310-000000)

Zoning: Historic High Density Residential (HHDR) zoning district



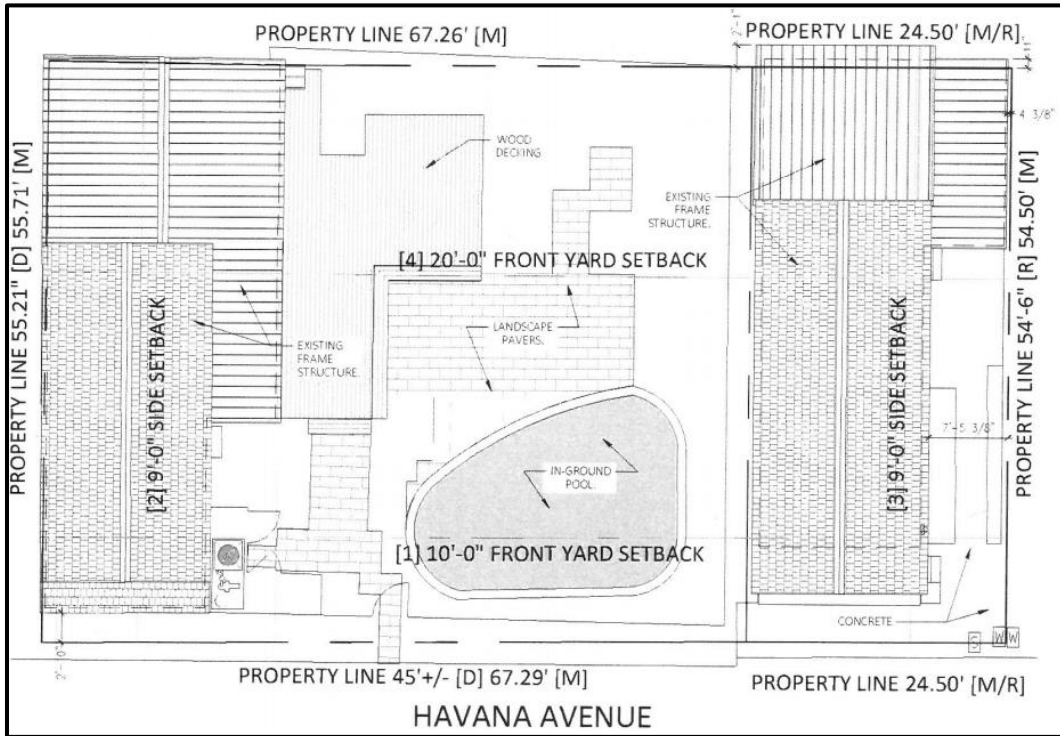
Background/Request:

The subject property is located near the corner of Nichols Avenue, facing Havana Avenue. The parcel size is 5,011.85 square feet and is three lots of record with three addresses. The parcel consists of 1 Havana Avenue, a one story structure recognized as a residential dwelling unit, 3 Havana Avenue which has no structures on it except for a pool, and 4 Havana Avenue, The 4 Havana Avenue includes a one-story framed residential structure that is historic, and contributing, built circa 1928.

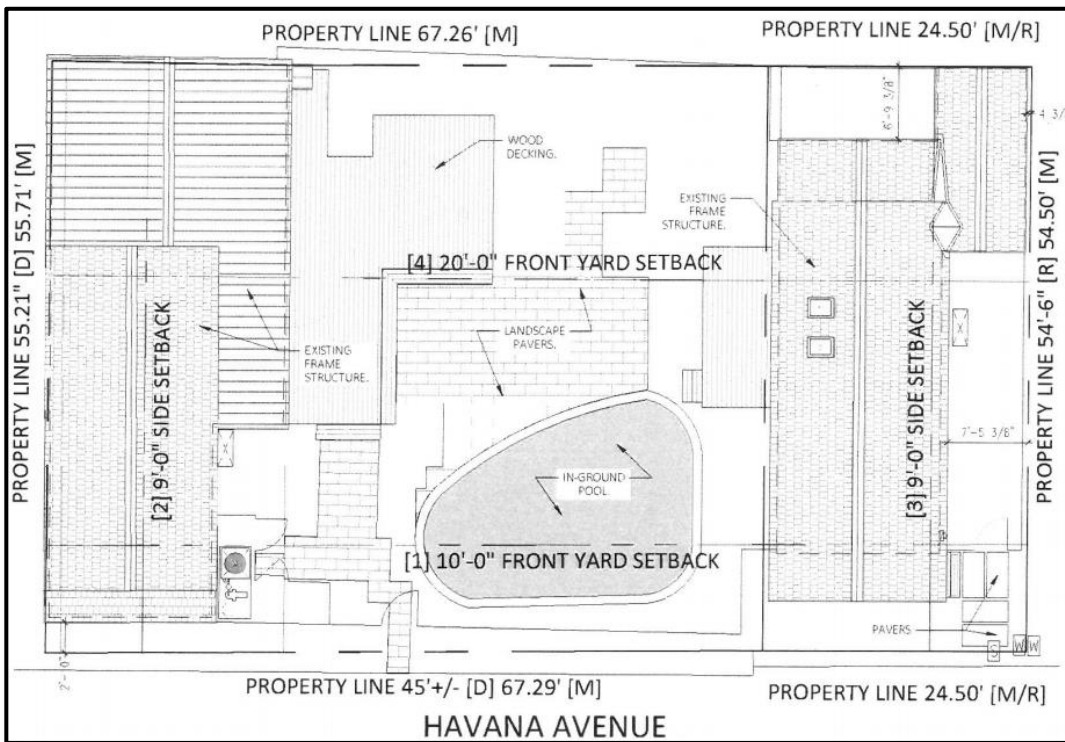
The properties at 1 Havana Avenue, 3 Havana Avenue and 4 Havana Avenue are under the same ownership and received a unity of title on April 14th, 2021. The parcel is recognized for two residential units, 1 Havana Avenue, and 4 Havana Avenue. The subject of this variance is 4 Havana Avenue. The property owner would like to reconstruct the existing rear addition at 4 Havana Avenue. Currently, a portion of the addition is encroaching over the property line, since the ceiling is very low in the interior space of the addition which is proposed to remain. A new pitched roof is planned. Based on the proposed plans, the residence will be remodeled throughout.



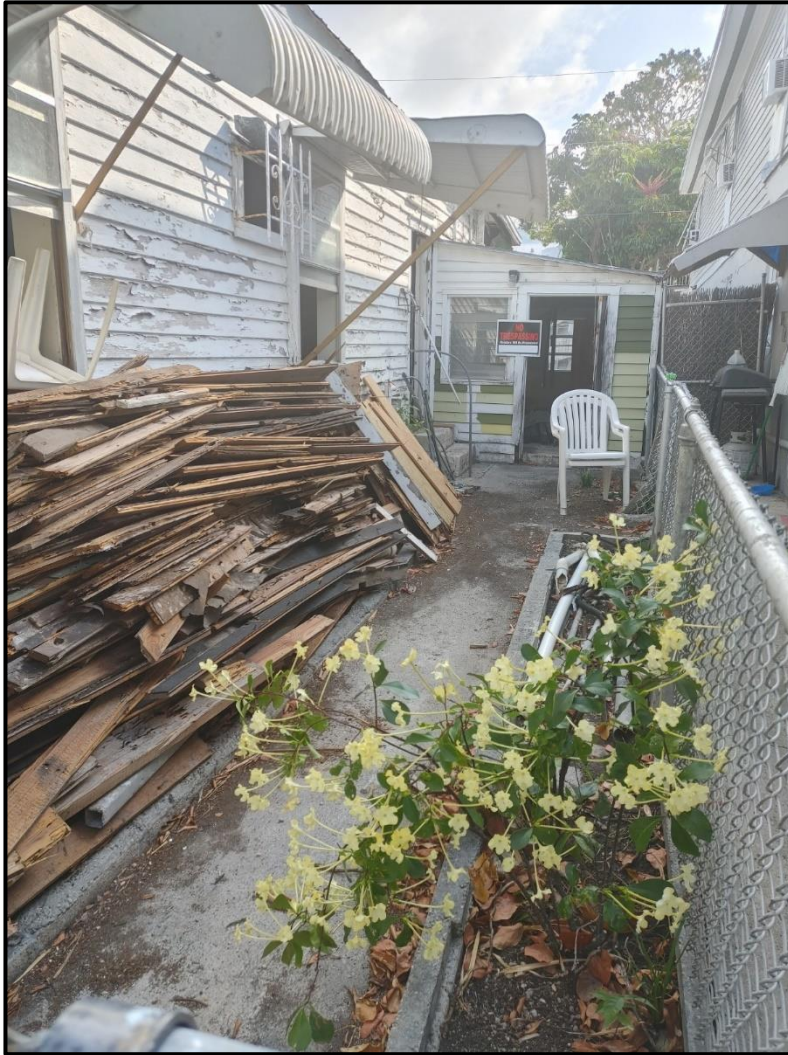
4 Havana Avenue – Site visit May 3, 2021



Existing Site Plan



Proposed Site Plan



4 Havana Avenue – Side Addition – Site Visit May 3, 2021

The applicant is proposing the following: To demolish the rear portion of the existing addition that is encroaching over the property line, reconstruct the interior of the one-story framed structure, extend the interior ceiling of the rear addition, and construct a pitched roof over the existing addition. Based on the plans submitted, the proposed design would require variances to the following dimensional requirements:

- The required minimum side setback in the (HHDR) zoning district is 5 feet or 10 percent of lot width to a maximum of 15 feet, whichever is greater. The minimum side setback would be 9 feet for this parcel. The existing side setback is 4 3/8 inches. The applicant is proposing 4 3/8 inches with a pitched roof.
- The required minimum rear yard setback is 20 feet. The existing rear yard setback is 2 feet 1 inch over the property line. The applicant is proposing 0 feet.

Relevant HHDR Zoning District Dimensional Requirements: Code Section 122-630

Dimensional Requirement	Required/Allowed	Existing	Proposed	Change / Variance Required?
Flood Zone	X			
Maximum Height	30 feet	16 feet 10 ¾"	16 feet 10 ¾"	In compliance
Minimum Lot Size	4,000 SF	5,011.85 SF	5,011.85 SF	Existing non-conformity
Maximum Building Coverage	50 % 2,505.93 SF	40.99 % 2,054.12 SF	38.63 % 1,936.19 SF	In compliance
Maximum Impervious Surface Ratio	60 % 3,007.11 SF	64.7 % 3,243.84 SF	59.9 % 3,002.25 SF	In compliance
Minimum Open Space	35 % 1,754.15 SF	26.73 % 1,399.65 SF	31.55 % 1,581.24 SF	In compliance
Minimum Front Yard Setback	10 feet	2 feet 10 inches	2 feet 10 inches	Existing non-conformity
Minimum North Side Yard Setback	9 feet	0 feet	0 feet	Existing non-conformity
Minimum South Side Yard Setback	9 feet	4 3/8 inches	4 3/8 inches	Variance Required 4 5/8 inches
Minimum Rear Yard Setback	20 feet	2 feet 1 inch over	0 feet	Variance Required 20 feet

Process:

Planning Board Meeting:

May 20, 2021

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 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 existing dimensions and size of the parcel's pre-date the dimensional requirements of the current Land Development Regulations, and therefore were legally non-conforming in the HHDR zoning district. However, the owner recently received a unity of title for the following parcels: 1 Havana Avenue, 3 Havana Avenue, and 4 Havana Avenue which together makes the total parcel size over the minimum lot size required in the HHDR zoning district, which is 4,000 square feet . Therefore, 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 variance request is a result of the actions of the applicant proposing to elevate the ceilings, construct a pitched roof, and demolish portions of the existing encroachment.

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. Elevating the interior ceiling, constructing a pitched roof on an addition which is currently encroaching into the side and rear setbacks, would confer special privileges upon the applicant. However, the applicant is improving the noncompliance of structures on the property by demolishing the portion of the addition that is encroaching over the property line to the rear of the property.

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 HHDR zoning district. Now that the property owner has received a unity of title, they have an opportunity to demolish the existing one-story structure at 4 Havana Avenue and construct a residence that conforms within the HHDR dimensional requirements. 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.

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 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 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 received no public comments for the variance requests 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:

1. The proposed design shall be consistent with the plans dated, April 15, 2021 by Aileen Osborn, R.A., A2O Architecture.
2. The property owner shall install an NFPA 13 (Residential) fire suppression system for the entire residential structure at 4 Havana Avenue.