

**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:** October 15, 2020

**Agenda Item:** **After-the-Fact Variance - 3222 Riviera Drive - (RE# 00069440-000000)** - A request for after-the-fact variances for the maximum building coverage, maximum impervious surface, minimum open space, and minimum side yard setback requirements in order to allow an after-the-fact accessory structure on property located within the Single Family (SF) Zoning District pursuant to Sections 90-395, 122-238 (4) (a), 122-238 (4) (b) (1), 122-238 (6) (a) (2), and 108-346 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

**Request:** To allow for the property owner to maintain an after-the-fact accessory structure/ pool house.

**Applicant:** Wayne LaRue Smith

**Property Owner:** Lawney Management Company

**Location:** 3222 Riviera Drive - (RE# 00069440-000000)

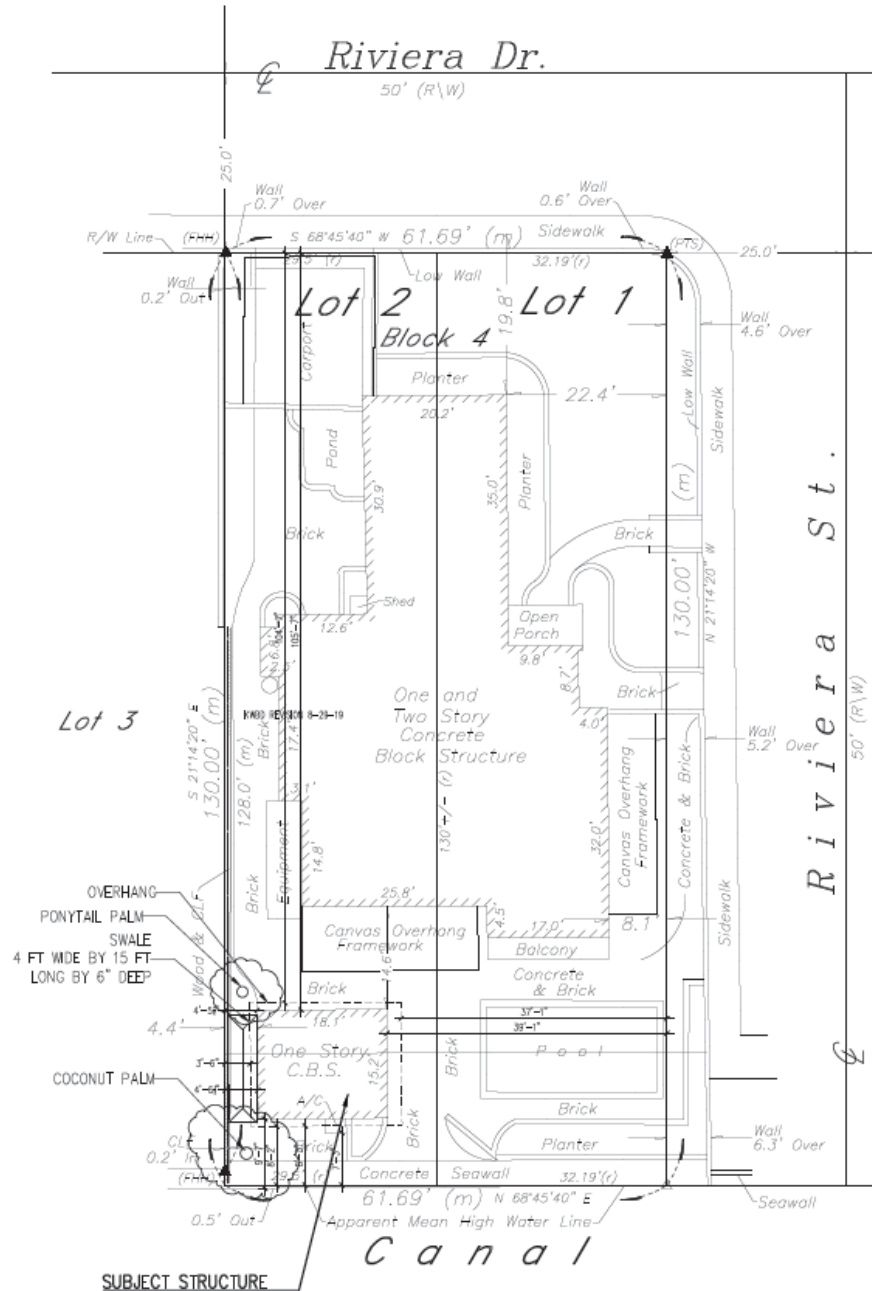
**Zoning:** Single Family (SF) zoning district



*Subject Property: 3222 Riviera Drive*

**Background/Request:**

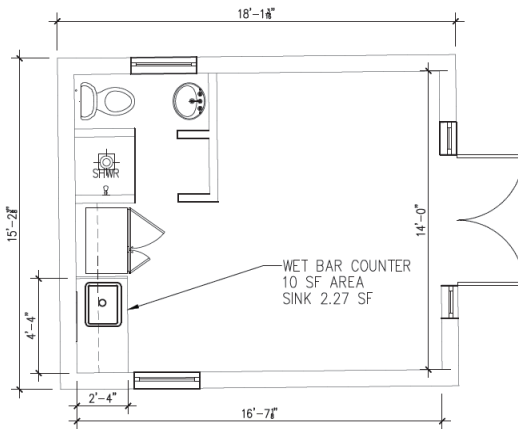
The property at 3222 Riviera Drive is located within the Single-Family zoning district and is two lots of record. The parcel is situated such that the principal structure faces Riviera Drive and Riviera Street serves as the parcel's side street. Riviera Canal is to the rear of the property and there is an adjacent neighbor to the southern side of the property. On February 23, 2018, the Code Compliance Department received a complaint from the adjacent neighbor Steve Russ at 3220 Riviera Drive. The details of the code complaint are the following: The complaint is specifically regarding an accessory structure built in the setback immediately against the neighbor's fence with no permits. The complaint also suggested the structure has been rented.



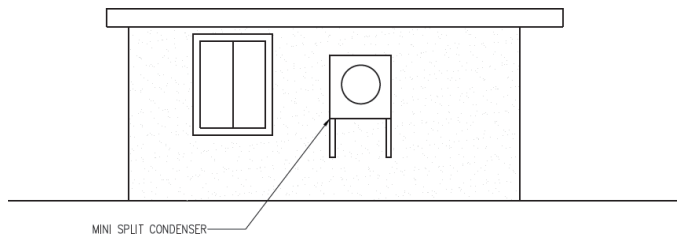
Subject Property: Existing Site Plan

The current property owner purchased the subject property with an after-the-fact accessory structure already on the property. It is a 362 square foot one-story accessory structure located in the rear side yard facing the pool and was constructed without building permits. The subject property is located within the AE-8 flood zone. The primary structure was constructed prior to the FEMA requirements to elevate new structures. However, the accessory structure is considered a new habitable structure and is required by FEMA to comply with the base flood elevation of the structure. Based on the plans submitted, the proposed design would require after-the-fact variances to the following dimensional requirements:

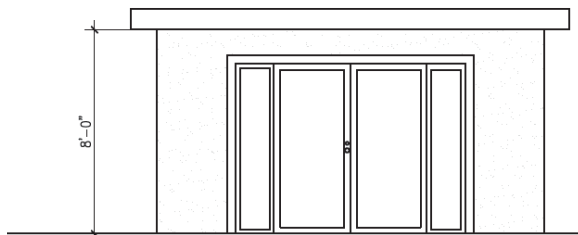
- The required maximum allowed building coverage is 35%, or 2,807 square feet, existing building coverage on site is 40.8%, or 3,274 square feet. The design proposes a total of 45.3% building coverage, or 3,636 square feet.
- The required maximum impervious surface is 50%, or 4,010 square feet, existing impervious surface is 68.9%, or 5,527 square feet. The design proposes 73.4%, or 5,889 square feet.
- The required minimum open space 35%, or 2,807 square feet, existing open space is 31.1%, or 2,493 square feet. The design proposes 26.6%, or 2,131 square feet.
- Finally, the required minimum side yard setback for accessory structures is 5 feet. The design proposes 3 feet 6 inches.



2 EXISTING FLOOR PLAN  
 CS-1 SCALE: 1/4" = 1'-0"



3 SIDE ELEVATION (CANAL SIDE)  
 CS-1 SCALE: 1/4" = 1'-0"



4 FRONT ELEVATION (EAST SIDE)  
 CS-1 SCALE: 1/4" = 1'-0"

The following table summarizes the requested variances.

<b>Relevant SF Zoning District Dimensional Requirements: Code Section 122-238</b>				
<b>Dimensional Requirement</b>	<b>Required/ Allowed</b>	<b>Existing without accessory structure</b>	<b>Existing with accessory structure</b>	<b>Change / Variance Required?</b>
Flood Zone	AE-8			
Lot Size	6,000 square feet	8,020 square feet	8,020 square feet	In compliance
Maximum Height (accessory structure)	25 Feet plus an additional five feet for non-habitable purposes if the structure has a pitched roof.	N/A	10 Feet (accessory structure)	In compliance
<b>Maximum building coverage</b>	<b>35% 2,807 square feet</b>	<b>40.8% 3,274 square feet</b>	<b>45.3% 3,636 square feet</b>	<b>Variance Required 829 square feet</b>
<b>Maximum impervious surface</b>	<b>50% 4,010 square feet</b>	<b>68.9 % 5,527 square feet</b>	<b>73.4% 5,889 square feet</b>	<b>Variance Required 1,879 square feet</b>
<b>Minimum open space</b>	<b>35% 2,807 square feet</b>	<b>31.1% 2,493 square feet</b>	<b>26.6% 2,131 square feet</b>	<b>Variance Required -676 square feet</b>
Minimum front yard setback (accessory structure)	20 Feet	N/A	104.7 feet (accessory structure)	In Compliance
<b>Minimum side yard setback (accessory structure)</b>	<b>5 Feet</b>	<b>N/A</b>	<b>3 Feet 6 inches (accessory structure)</b>	<b>Variance needed for 1 foot 6 inches</b>
Minimum street side yard setback (accessory structure)	5 feet	N/A	37 feet 1 inch	In compliance
Minimum rear yard setback (accessory structure)	5 Feet	N/A	7 Feet 3 inches (accessory structure)	In compliance

**Process:**

<b>Planning Board Meeting:</b>	June 18, 2020 (postponed by applicant)
<b>Planning Board Meeting:</b>	July 16, 2020 (postponed by applicant)
<b>Planning Board Meeting:</b>	August 20, 2020 (postponed by applicant)
<b>Planning Board Meeting:</b>	September 17, 2020 (postponed by applicant)
<b>Planning Board Meeting:</b>	October 16, 2020
<b>Local Appeal Period:</b>	30 days
<b>DEO Review Period:</b>	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 LDR's state the dimensional requirements for the Single-Family zoning district. If the former owner had gone through the proper approval process for building the guest house accessory structure, they would have been informed by planning staff that the accessory structure triggers variances to the maximum building coverage, maximum impervious surface, minimum open space, and minimum side yard setback requirements. The City's FEMA Coordinator would have been given the opportunity to inform the property owner that the accessory structure is non-conforming to the current flood zone, and the after-the-fact structure would not be approved at the building permit phase. The new property owner has adopted the code violation for the accessory structure, the after-the-fact variances, and the FEMA regulations to elevate the structure and is attempting to go through the proper process. However, there are no special conditions or circumstances that exist which are peculiar to the land, structure or building 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 habitable accessory structure was constructed by former owner without any building permits. The special conditions and circumstances result directly from the action or negligence of the former owner.

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.***

If the City had been given the proper opportunity to inform the former owner through the building permit process or through meeting with the owner in the preliminary design phase regarding the accessory structure the following actions could have been prevented:

- Planning staff would have notified the owner to move the structure in order to meet the minimum side setback requirement as well as notify the owner of the required variances to the maximum building coverage, maximum impervious surface, and to the minimum open space requirements.

- City's FEMA Coordinator would have been able to notify the owner that the subject property is located within the AE-8 flood zone which means the accessory structure would be required to be elevated to the minimum 8 feet in order to meet the base flood requirement.
- Per the City's Fire Department: The fire Department would have denied the request due to the encroachment into the side setback, would have made sure to maintain the side setback, and would have worked towards an alternative solution.

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.***

The applicant received a code violation was provided pertinent information regarding compliance of the flood elevation and dimensional requirements in the subject property's zoning district and flood zone. The former owner constructed the structure. Denial of the requested variance would not deprive the applicant of rights commonly enjoyed by other properties in the Single-Family zoning district.

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 to address the code violation citations.

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 structure increases several noncomplying dimensional standards of this property.

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:

General Conditions:

1. The after-the-fact habitable accessory structure shall be consistent with the site plan provided by Meridian Engineering LLC, February 26, 2020. No approval granted for any other work or improvements shown on the site plan other than the after-the-fact accessory structure, except for the stormwater improvements required in condition #2 below.

2. The after-the-fact structure shall have gutters with downspouts that drain into a swale, or other approved water mitigative technique, so as to avoid flooding and water pooling due to the proximity to the property line. Water should be directed away from the neighboring property.