

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



**To:** Chairman and Planning Board Members

**Through:** Katie Halloran, Planning Director

**From:** Nicholas Perez-Alvarez, AICP, Stantec

**Meeting Date:** August 17, 2023

**Agenda Item:** **Variance** – 5 Catholic Lane (RE# 00010630-000000) – A request for a variance on side setbacks for addition of a second floor to a noncomplying structure for property located within the Historic High Density Residential (HHDR) Zoning District pursuant to Sections 90-395 and 122-630 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

**Request:** A request for a variance to the side setbacks for an existing nonconforming residential structure(s) located within a historic district to include an addition on the second story and remove an existing porch area. The HHDR Zoning District requires a minimum front setback of 10’ and side setbacks of 5’. The variance proposes maintaining the existing front and side setbacks at 2’ for the front, and sides at 2’-3” and 4’.

**Applicant:** Bert Bender

**Property Owner:** Emily Bender Caudell

**Location:** 5 Catholic Lane, Key West, Florida  
(RE # 00010630-000000)

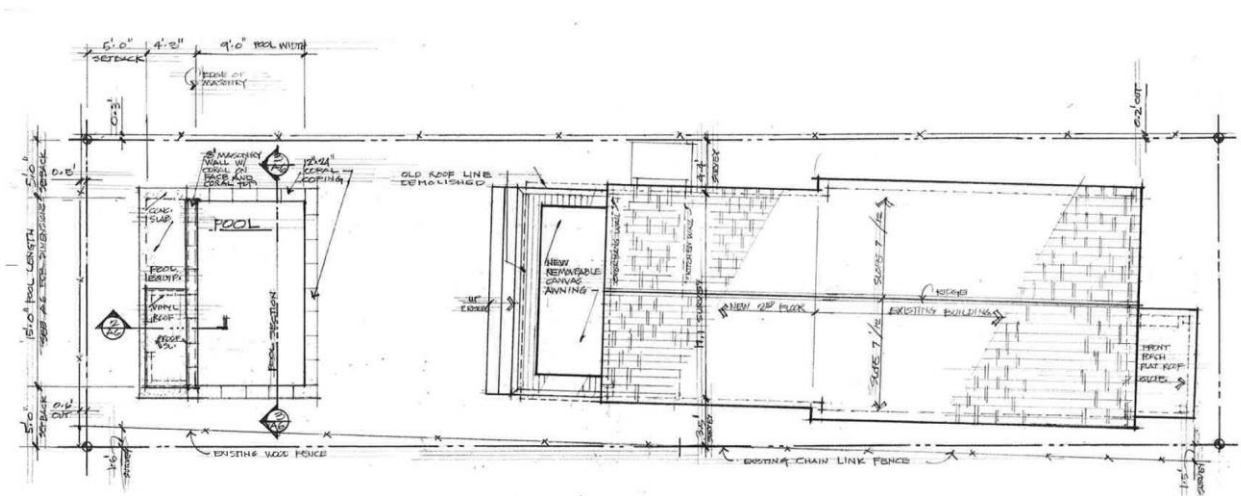


*Aerial Map of the Subject Property*

**Background:**

The subject property, with a total lot area of 2,356 sq. ft., is in the Historic High-Density Residential (HHDR) Zoning District. The parcel includes one principal structure with nonconforming front and side setbacks. According to the property card, this property last transferred ownership in June 2021.

The applicant is proposing a second-floor addition to the structure that would encroach into the required front and side setbacks, however, the addition would not encroach further than the existing first floor structure. The HHDR zoning district currently requires a front setback of 10' and side setbacks of 5' for this property. The proposed setbacks for the new addition are 2' for the front, and sides at 2'3" and 4'.



*Figure 1: Proposed Site Plan*

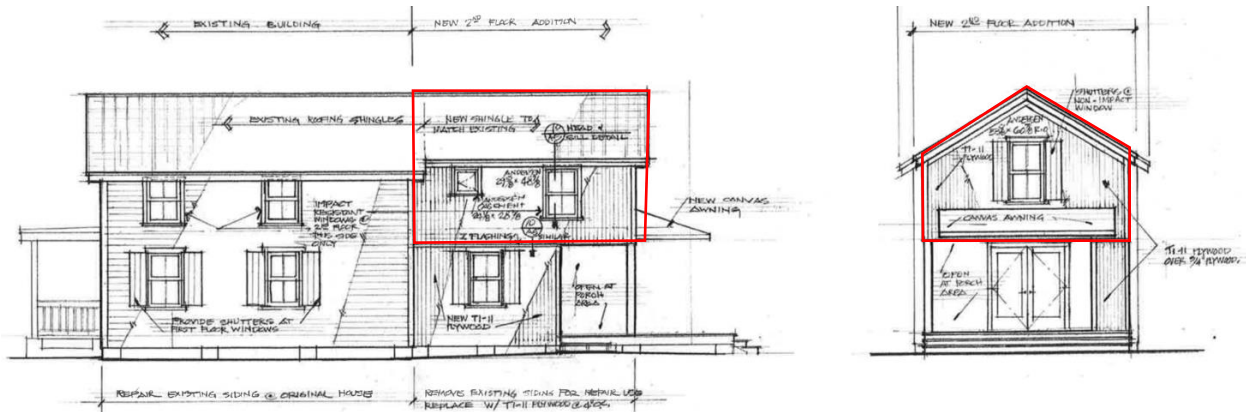


Figure 2: Side and Rear Elevations Showing Proposed Addition

The site data table below provides the current and proposed site data for the property.

Site Data Table:				
	Code Required	Existing	Proposed	Variance Request
<b>Front Setback</b>	10-feet	2'	No Change*	Yes
<b>Side Setback (north)</b>	5-feet	2'-3"	No Change*	Yes
<b>Side Setback (south)</b>	5-feet	4'	No Change*	Yes
<b>Rear Setback</b>	20-feet	38'	43'	No
<b>Building Coverage</b>	50%	37.2%	43.7%	No
<b>Impervious Surface</b>	60%	41.4%	45.4%	No
<b>Open Space</b>	35%	50.9%	50.9%	No
<b>Parking<sup>1</sup></b>	N/A	0	0	No
<b>Maximum Height</b>	30-feet	21'-6"	No Change	No

Based on the plans submitted, the proposed design would require a variance to the following requirement:

- \*In accordance with Section 122-28 of the Land Development Regulations, a variance for site setbacks (front, side/side) is required as a result of the proposed single-family residence renovation which enlarges a noncomplying structure;
  - Front:** 2' existing, 2' proposed
  - Side (north):** 2'-3" existing, 2'-3" proposed
  - Side (south):** 4' existing, 4' proposed

The application was sent to the Development Review Committee (DRC) members for comment on July 10, 2023. Two DRC members responded with comments:

<sup>1</sup> Site is legally nonconforming with no existing off-street parking. A parking variance is not required due to no new units being proposed.

1. Urban Forestry: “No impacts are authorized to occur to the existing starfruit tree. The location of the tree must be included on the plans as well as a tree protection plan for the tree.”
2. Fire Marshal: “5 Catholic Lane owner/contractor shall provide a fully automatic fire sprinkler system for the entire residence. Due to the side set back variances.”

**Staff Analysis - Evaluation:**

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 lot dimensions are legally nonconforming, with a 25-ft. lot width that is significantly narrower than the minimum 40-ft. lot width required under the current Land Development Regulations. Although this legal nonconforming lot presents challenges for redevelopment, small lots are very common in the historic district and there are not existing special conditions which are peculiar to the land and structure involved, which are not 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.*

This structure was constructed in 1924. The setbacks of the existing historic house were established by a previous owner under previous zoning regulations. The applicant provided that the existing addition and covered rear deck were also constructed by a previous owner. The owner seeks to expand square footage vertically by adding a second story to maintain first floor yard area and other improvements.

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.*

Granting the variance requested will confer upon the applicant special privileges denied by the Land Development Regulations to other lands, buildings, or structures in the same zoning district. However, granting the variance requested will allow for improvements to the property while not further extending the existing structure into the required setbacks; the second-floor addition will be located directly above the existing first floor encroachments. Staff appreciates that the second-floor addition allows for the property to remain compliant with building coverage and impervious surface regulations.

PARTIAL 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.*

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 requested is not the minimum variance needed to make possible the reasonable use of the land, building or structure. The proposed second story addition allows for improvements to the structure while maintaining the structure's historic side and rear setbacks.

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 will not be injurious to the area involved or otherwise detrimental to the public interest of welfare unless there is concern from immediate neighbors regarding privacy. At this time, staff has not been advised of any neighbor opposition to the requested variance. The request is for a vertical addition to the residence within the same front and side setbacks.

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.*

Planning staff did not consider other nonconforming uses of the other properties in the development of this analysis.

IN COMPLIANCE

**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.

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. At this time, staff has not been advised as to the applicant's efforts to coordinate with neighbors.

The standards established by Section 90-395 of the City Code **have not been fully met** by the applicant for the requested variances on front and side setbacks.

**RECOMMENDATION:**

The Planning Department recommends that the request for variances for front and side setbacks be **denied**. If the Planning Board elects to approve the variance, staff recommends inclusion of the following conditions:

1. The proposed construction shall be consistent with the plans prepared by Bender & Associates Architects, dated May 9, 2023.
2. No impacts are authorized to occur to the existing starfruit tree. The location of the tree must be included on the plans as well as a tree protection plan for the tree.
3. Provide a fully automatic fire sprinkler system for the entire residence.