

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



To: Chairman and Board of Adjustment Members

From: Thaddeus Cohen, Planning Director

Meeting Date: February 17, 2016

Agenda Item: A Resolution of the Key West Board of Adjustment allowing a variance to building height regulations for non-habitable space for an entry feature for the proposed new Dock Master building at 1801 North Roosevelt Boulevard (RE# 00072070-000000; Alt. Key 1075868 and RE# 00072070-000200; Alt. Key 8842635) in the Public and Semi-public Services Zoning District (PS) under the Code of Ordinances of the City of Key West and Part 1 of Article 1, Section 1.05 of the City Charter of the City of Key West.

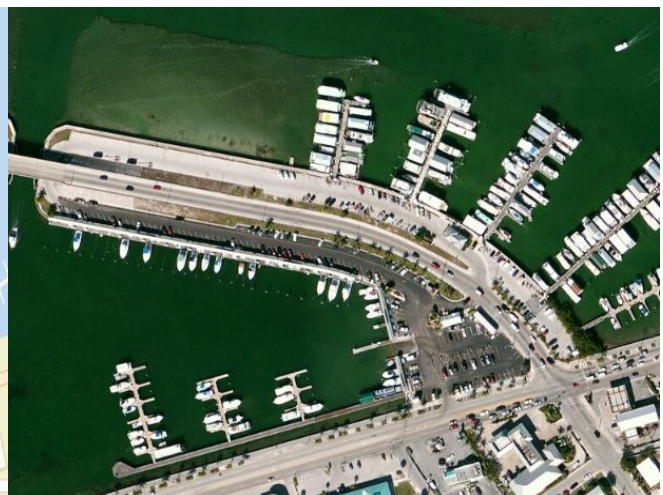
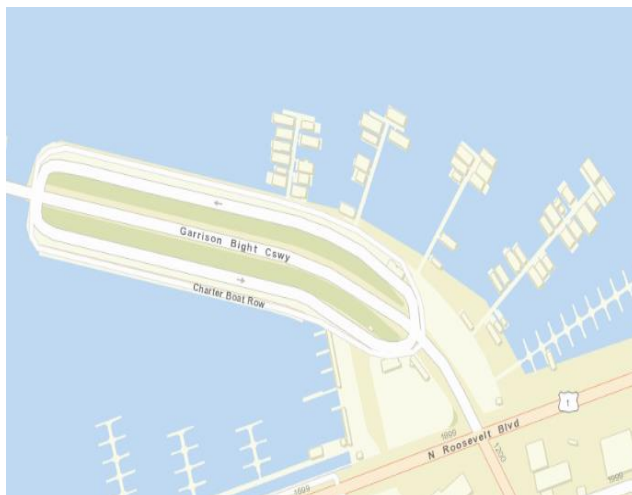
Request: To consider a height variance of +/- 6' increase from the 25' maximum building height allowed to the 30.67' proposed, for non-habitable space for a new Dock Master building in the PS zoning district.

Applicant: William P. Horn Architect, P.A.

Property Owner: City of Key West and Florida Fish and Wildlife Conservation Commission

Location: 1801 North Roosevelt Boulevard (RE# 00072070-000000 Alt. Key 1075868 and RE# 00072070-000200; Alt. Key 8842635)

Zoning: Public and Semipublic Services District (PS)



Background:

The subject property is comprised of two lots of record: one encompassing the parking area at the corner of Palm Avenue and North Roosevelt Boulevard and the other consisting of the remainder of all

infrastructure associated with Garrison Bight and Palm Avenue up to Eisenhower Drive. The total of the two parcels accommodates “Charter Boat Row” and the boat ramp, bathrooms and bathing facilities and administration offices for the Dock Master and associated maintenance personnel.

The Minor Development Plan request received Planning Board approval on July 24, 2013 via PB Resolution 2013-37. The approval subsequently expired prior to the height variance being heard by the Board of Adjustment due to confusion regarding land ownership. However, the property on which the building will be sited is City owned and does not require a Lease Hold.

The City has maintained and operated the City Marina at Garrison Bight since the mid 1960’s. A portion of the land is owned by the Florida Fish and Wildlife Conservation Commission. Therefore, the proposed minor development plan will require coordination with the Florida Fish and Wildlife Conservation Commission during Phase three which consists of adding the remaining landscaping and resurfacing the main parking area.

Request:

The proposed request is associated with the Minor Development Plan. A height variance for non-habitable space is necessary to accommodate the proposed entry feature. The request is for a +/- 6’ increase from the 25’ height allowed to the 30.67’ proposed. The City Charter allows that variances to height regulations be granted by the Board of Adjustment. The full provision is provided as follows:

City Charter Section 1.05, Height Restriction:

- a) Building height restrictions in the City's Land Development Regulations and building code in effect as of the adoption of this charter section are subject to change only upon approval of a majority of the qualified electors casting ballots at a general municipal election.
- b) If the Board of Adjustment approves a height variance for habitable building space, this approval shall be submitted to the voters for ratification in the next regularly scheduled election. Board of Adjustment approval shall not become effective until voter ratification. **Board of adjustment height variances for non-habitable purposes, including, but not limited to, radio towers, antennae and spires, shall be final and not be subject to referendum.** (Emphasis added.) Board of Adjustment height variances for build back of involuntarily destroyed structures which are nonconforming in their height shall also be final and not subject to referendum.

Relevant PS Zoning District Dimensional Requirements: Code Section 122-1020			
	Required/Allowed	Existing	Proposed
Zoning	PS		
Height	25’	+/- 16’	30.67’

Process:

Development Review Committee Meeting: March 28, 2013
Planning Board: January 21, 2016 (Minor Development Plan)
Board of Adjustment Meeting: February 17, 2016 (Height Variance)

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 Board of Adjustment 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 property is located in the FEMA AE-8 flood zone. The finish floor must be one foot higher than the mean high flood level. With the allowed height limited to 25 feet, designing a structure that meets both requirements becomes difficult.

2. **Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.**

This design has been created by the applicant.

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 of the variance request will confer the privilege of a larger building, even though the space is neither habitable nor can be occupied.

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.**

If the height variance for the proposed reconstruction is denied, the applicant would not be deprived of reasonable use of the land and structure with a smaller roof. Therefore, hardship conditions do not exist.

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 the minimum necessary to carry out the construction as currently designed.

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.**

Granting the variance will not be injurious to the area involved or otherwise detrimental to the public interest or welfare.

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 nonconformities of other properties do not form the basis for this analysis.

The Board of Adjustment shall make factual findings regarding the following:

1. **That the standards established by Section 90-395 of the City Code have been met by the applicant for a variance.**

The applicant meets some, but does not meet all the standards established by the City Code for a variance.

2. **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 the time of this report, the Planning Department did not received neighborhood objections related to the height variance.

RECOMMENDATION:

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