

**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 Analyst

**Meeting Date:** July 19, 2018

**Agenda Item:** **After-the-Fact Variance - 1221 Laird Street – (RE# 00059310-000000)**  
– A request for variances to the minimum front yard setback, and the maximum allowed building coverage in order to maintain and finish construction of an after-the-fact balcony for property located within the Single Family (SF) Zoning District pursuant to Sections 90-395, 122-238 (6) (a) (1), 122-238 (4) (a), of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

**Request:** The applicant is seeking the following variances: the minimum front yard setback, and the maximum allowed building coverage in order to maintain and finish construction of an after-the-fact balcony with an exterior staircase.

**Applicant:** Douglas A. Helliesen

**Property Owner:** Douglas A. Helliesen

**Location:** 1221 Laird Street – (RE# 00059310-000000)

**Zoning:** Single Family (SF) Zoning District



1221 Laird Street  
Subject property

**Background/Request:**

The property at 1221 Laird Street is located within the Single Family Zoning District, and is one lot of record. The two-story wood framed residential structure faces Laird Street and has a street side of Georgia Street.

The applicant received a code violation – 17-885 on June 9, 2017 for building without permits, and having an unsecured upstairs porch without railings. The property owner applied for an after-the-fact building permit 17-2545 for an upstairs walk around balcony. At that time, the property owner was informed by planning staff that they needed to apply for variances to the Planning Board or remove the after-the-fact structure. The balcony with a rear exterior staircase will add 421 square feet of building coverage, and impervious surface to the property.

The Plans submitted indicate the after-the-fact balcony requires the following variances: front yard setback, and the maximum allowed building coverage.

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</b>	<b>Proposed</b>	<b>Change / Variance Required?</b>
Lot Size	6,000 Square Feet	8,800 Square Feet	8,800 Square Feet	In compliance
Maximum Height	25 Feet plus an additional five feet for non-habitable purposes if the structure has a pitched roof.	23 Feet 6 Inches	23 Feet 6 Inches	In compliance
<b>Maximum building coverage</b>	<b>35% (3,080 Square Feet)</b>	<b>42.9% (3,782 Square Feet)</b>	<b>43.5% (4,203 Square Feet)</b>	<b>Variance Required 1,123 Square Feet</b>
Maximum impervious surface	50% (4,400 Square Feet)	43.5 % (3,832 Square Feet)	47.7% (4,253 Square Feet)	In compliance
Minimum open space	35% (3,080 Square Feet)	56.4% (4,968 Square Feet)	52.2% (4,547 Square Feet)	In compliance
<b>Minimum front setback (Balcony)</b>	<b>20 Feet</b>	<b>11.8 Feet</b>	<b>15.3 Feet</b>	<b>Variance Required - 4 feet 7 Inches</b>
Minimum side setback (Balcony)	5 Feet	17 Feet 2 Inches	13 Feet 7 Inches	In compliance
Minimum street side setback (Principle structure)	5 Feet	14 Feet 6 Inches (Principle Structure)	14 Feet 6 Inches (Principle Structure)	In compliance
Minimum rear setback (Balcony)	25 Feet	36 Feet 8 Inches (Principle Structure)	33 Feet 3 Inches (Balcony)	In compliance

**Process:**

**Planning Board Meeting:**

July 19, 2018

**HARC:**

TBD

**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 LDR's state the dimensional requirements for the SF district. The property owner would have been informed by planning staff that the wrap around second floor balcony and staircase would be going beyond the Single Family zoning dimensional requirements. The property owner constructed this structure without prior building permit approval. 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 after-the-fact second floor balcony was constructed by the property owner without any prior building permit approvals. The conditions were created by the applicant.

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 owner may maintain their existing principle structure which encroaches into the front setback. The after-the-fact second floor balcony and rear exterior staircase requires two variances: one for encroaching into the front setback of the parcel, and the second for increasing the property's building coverage requirement.

NOT IN COMPLIANCE

3. *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 Single Family Zoning District. A second floor balcony is not considered a hardship. 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, they are 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 being in compliance with all of 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 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 proposed development shall be consistent with the plans dated, July 12, 2018 by Michael Skoglund, P.A. No approval granted for any other work or improvements shown on the plans other than the proposed construction of second floor balcony and rear exterior staircase.