

THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report



To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Zoe Porter, Planner I

Meeting Date: January 19, 2023

Agenda Item: **Variance – 10 Lowes Lane (RE# 00007530-000000)** – A request for a variance to the minimum required front, side, and rear setbacks, and the minimum required open space in order to remodel an existing single-family home on a parcel located within the Historic High Density Residential (HHDR) zoning district pursuant to Section 90-395, 122-630(6)a., 122-630(6)b., 122-630(6)c., and 108-346(b) of the Land Development Regulations of the City of Key West, Florida.

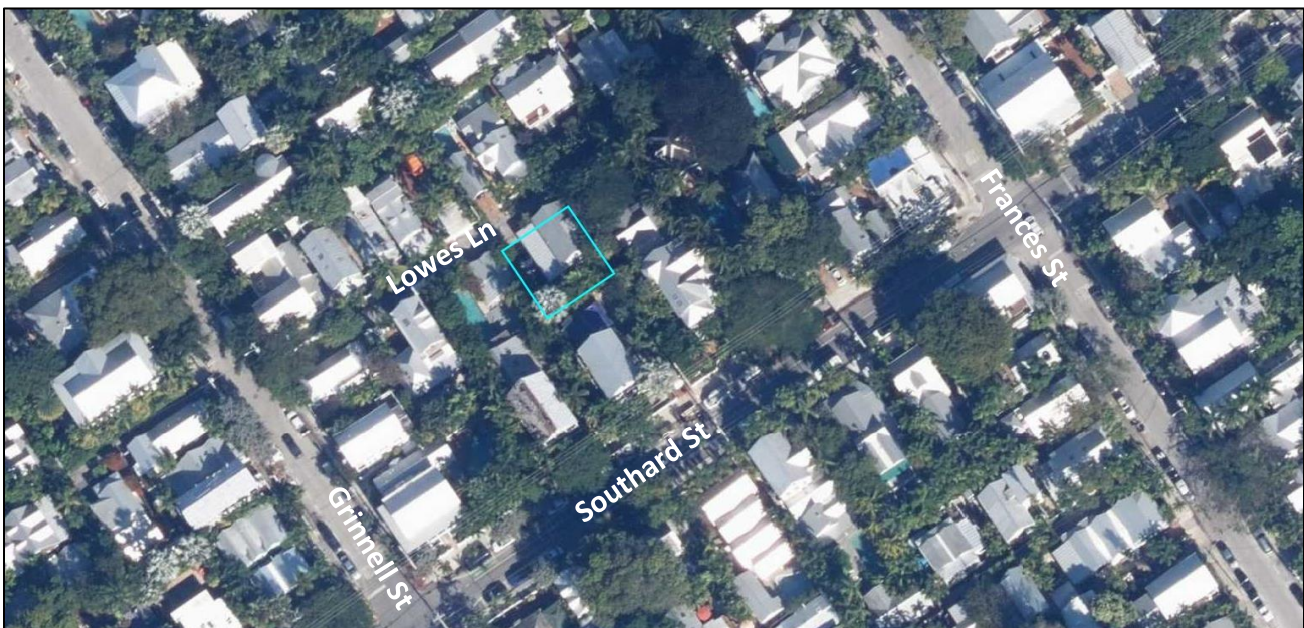
Request: The applicant is requesting a variance in order to remodel an existing two-story home; including demolition of an existing covered porch, opening the façade of the house to construct a new porch, and enlarging a non-conforming dormer.

Applicant: Serge Mashtakov

Property Owner: Darek Lyzwinski

Location: 10 Lowes Lane (RE# 00007530-000000)

Zoning District: Historic High Density Residential (HHDR) zoning district

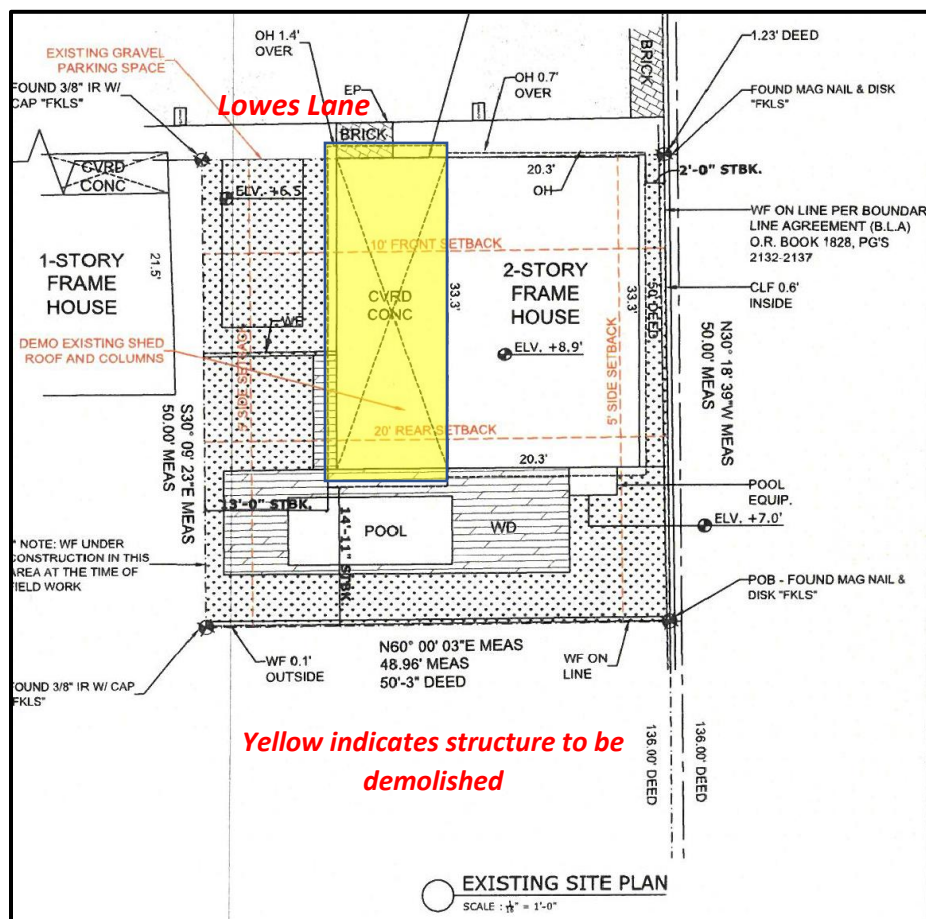


*This item was postponed from the November and December Planning Board meetings at the applicant's request due to objections expressed by several adjacent property owners. These objections include concerns regarding the size of the proposed construction, unauthorized tree trimming on the subject property and adjacent properties conducted by the property owner, commencement of construction without proper permits, work being done by unlicensed contractors, privacy concerns, and several other complaints. Code case 2022-01542 was opened due to unpermitted electric work on the property; the property owner has since obtained relevant work permits. At the time of the publishing of this report, the applicant had attempted to contact the opposing property owners' representative several times to no avail.*

**Request:**

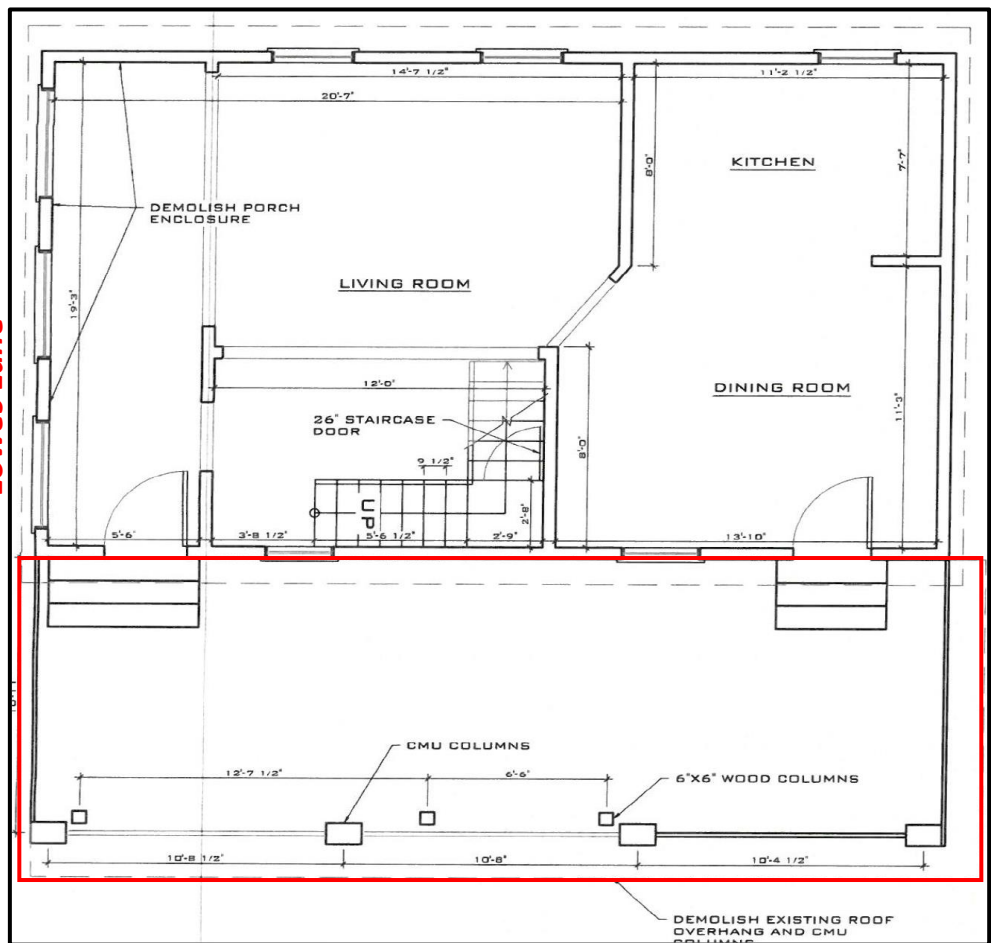
The applicant has requested a variance to the front, right-side, and rear setback, as well as a variance to the minimum open space requirement, in order to partially reconstruct an existing single-family home. The existing site plans depict a covered porch encroaching over City right-of-way; the covered porch is proposed to be demolished in order to construct a new one-story side addition. The proposed addition will not adhere to the required front and rear setbacks, though it will not encroach onto City right of way. The façade of the principal unit will be opened to allow construction of a front porch. The footprint of this section will not be altered, therefore a 0'-0" front setback with a 0.7' overhang over City right-of-way will remain, in addition to a 1.4' brick path over City right-of-way. Additionally, the site plans depict an enlargement of an existing dormer that encroaches into the required right-side setback. The existing non-conforming right-side setback will remain the same (2'), but a variance is necessary due to a vertical increase of the existing three-dimensional building envelope.

The proposed reconstruction allows for minimal improvements to the property's rear setback and open space ratio. The plans allow for an additional bedroom to be constructed, as well as 2 ½ new bathrooms.

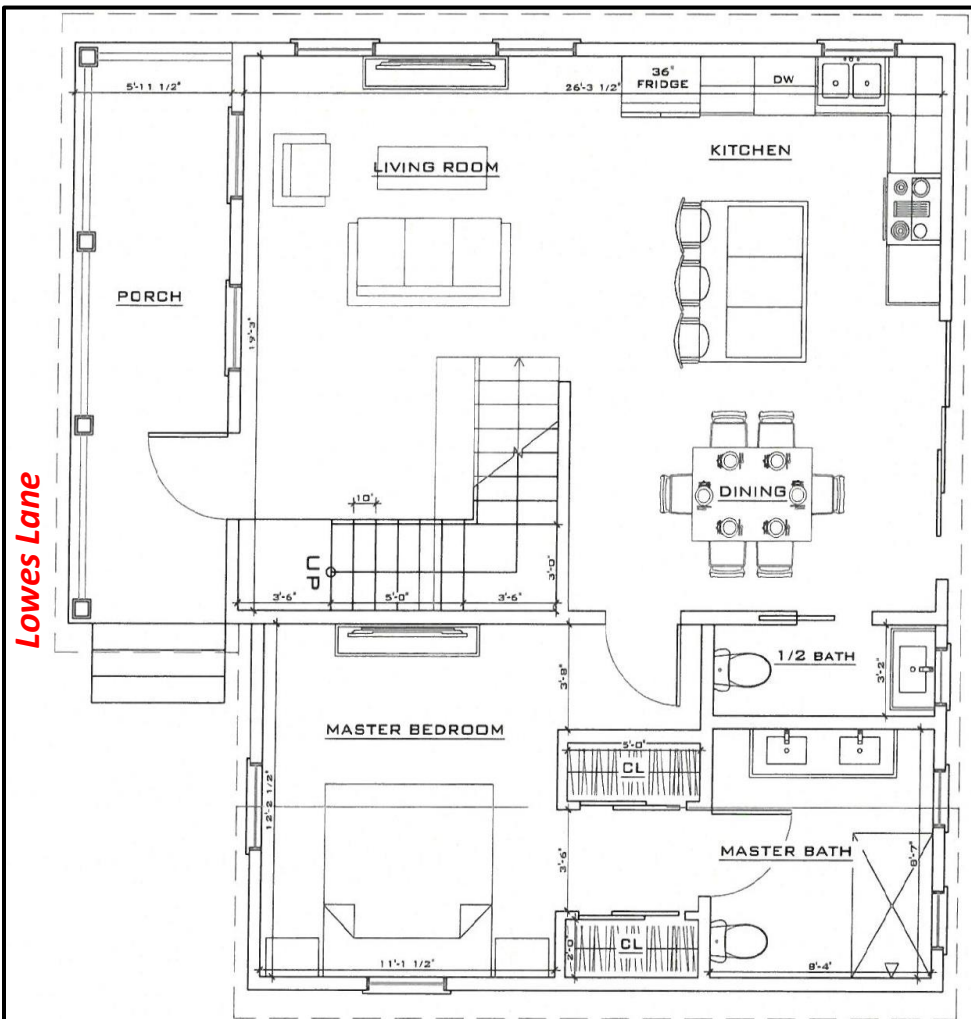


# Existing and Proposed First Story Floor Plan

Lowes Lane

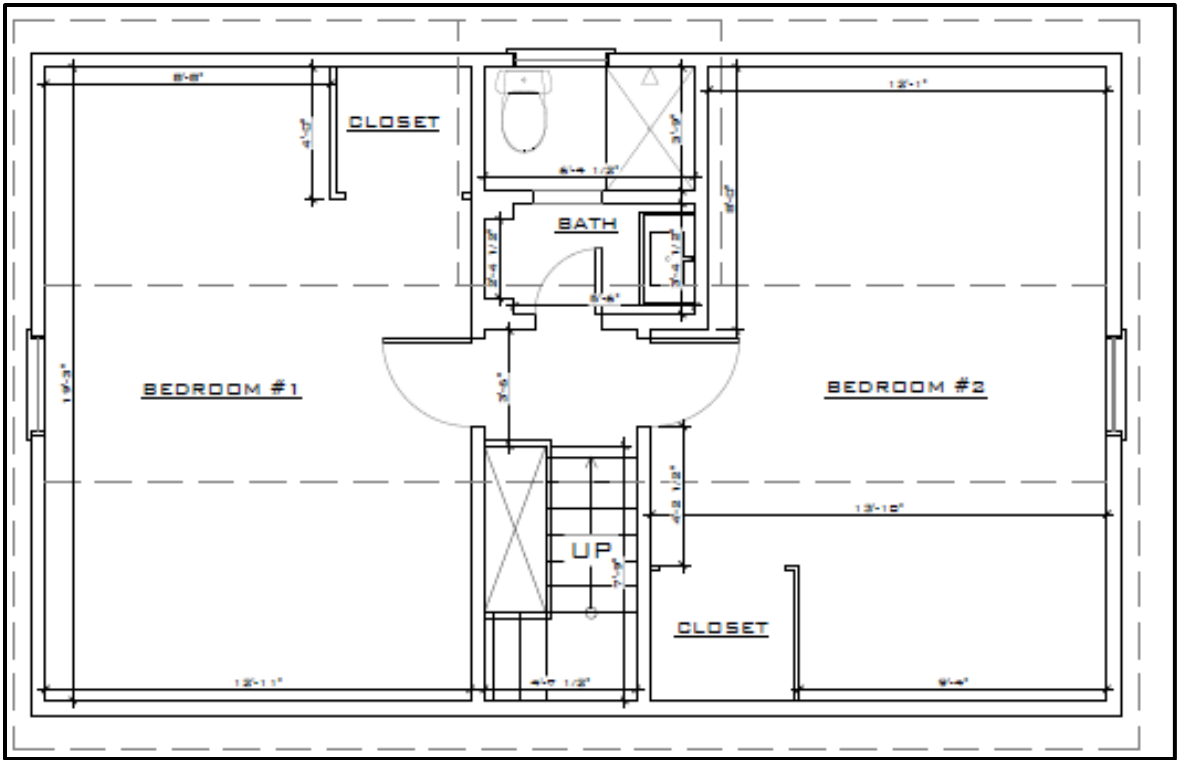


Red square indicates area to be demolished on the first floor.



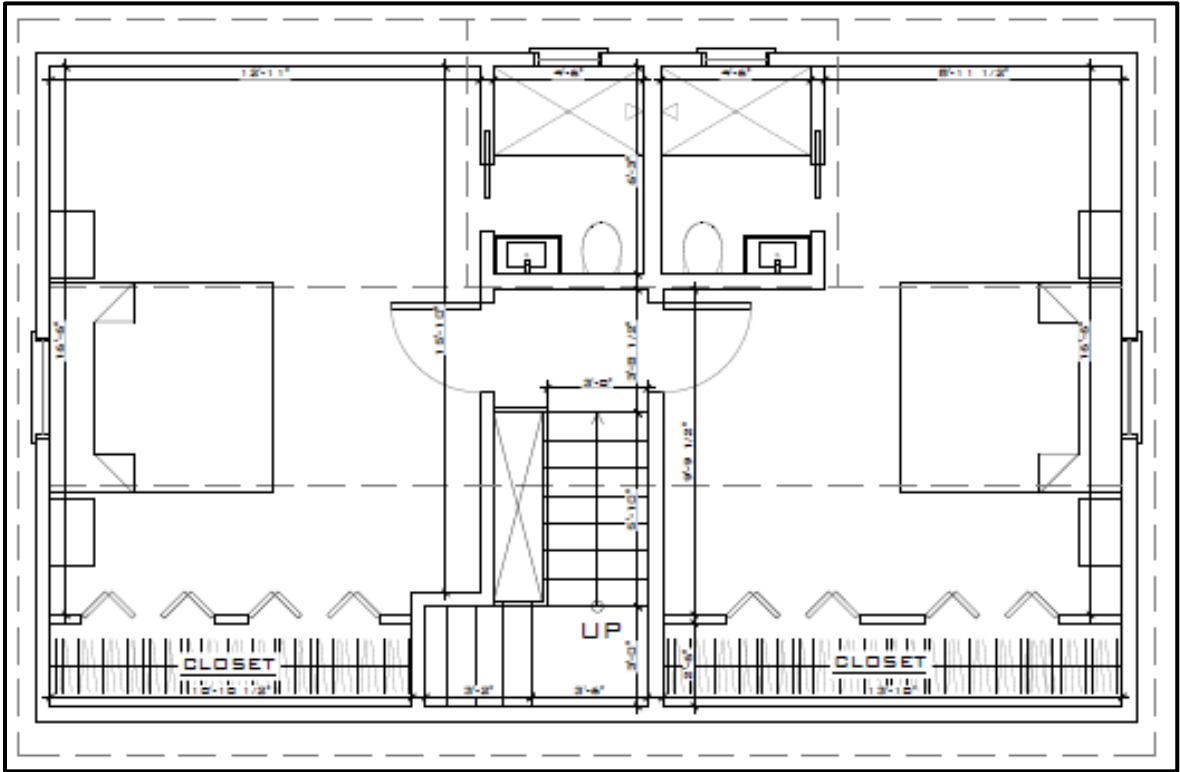
Proposed first story floor plan includes a master bedroom, master bathroom, and 1/2 bath to be constructed within the required front and rear setbacks.

Existing and Proposed Second Story Floor Plan

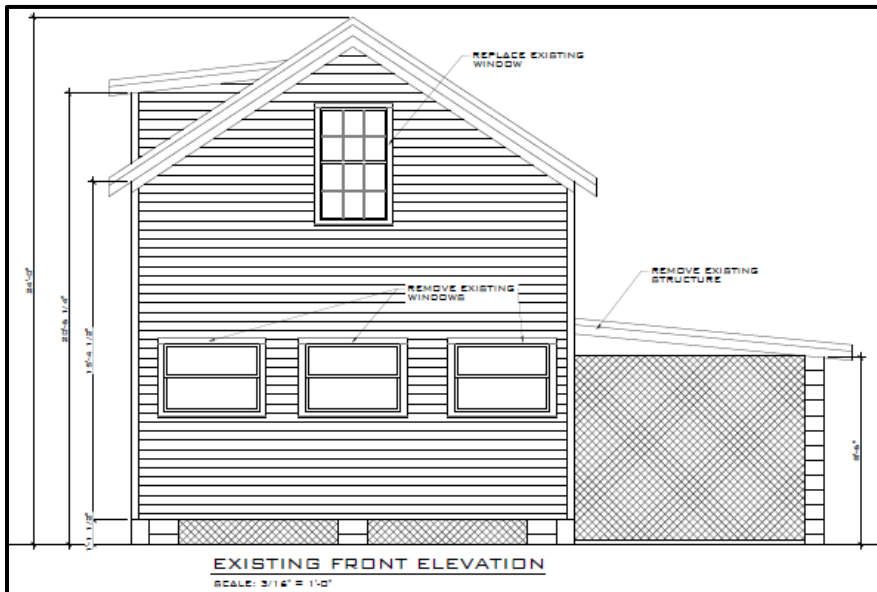


Existing second story floor plan

Proposed second story floor plan includes one new restroom and one new closet.

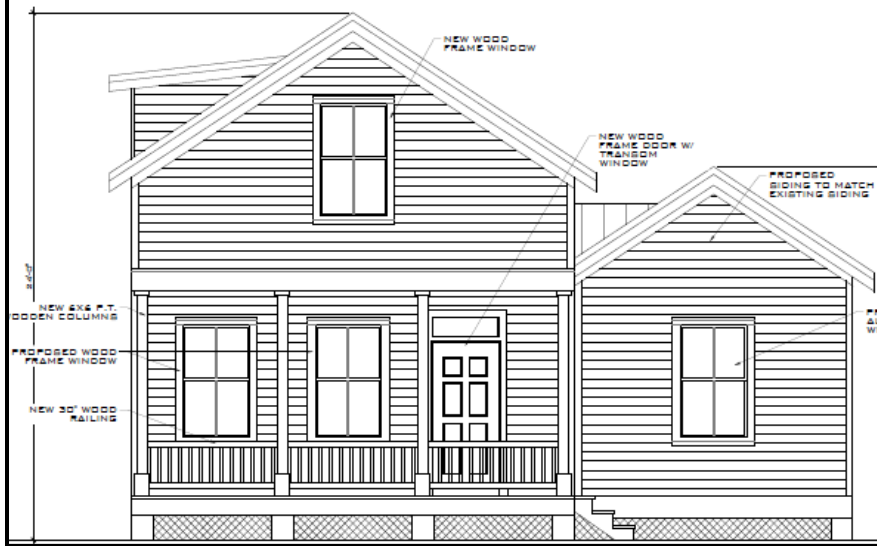






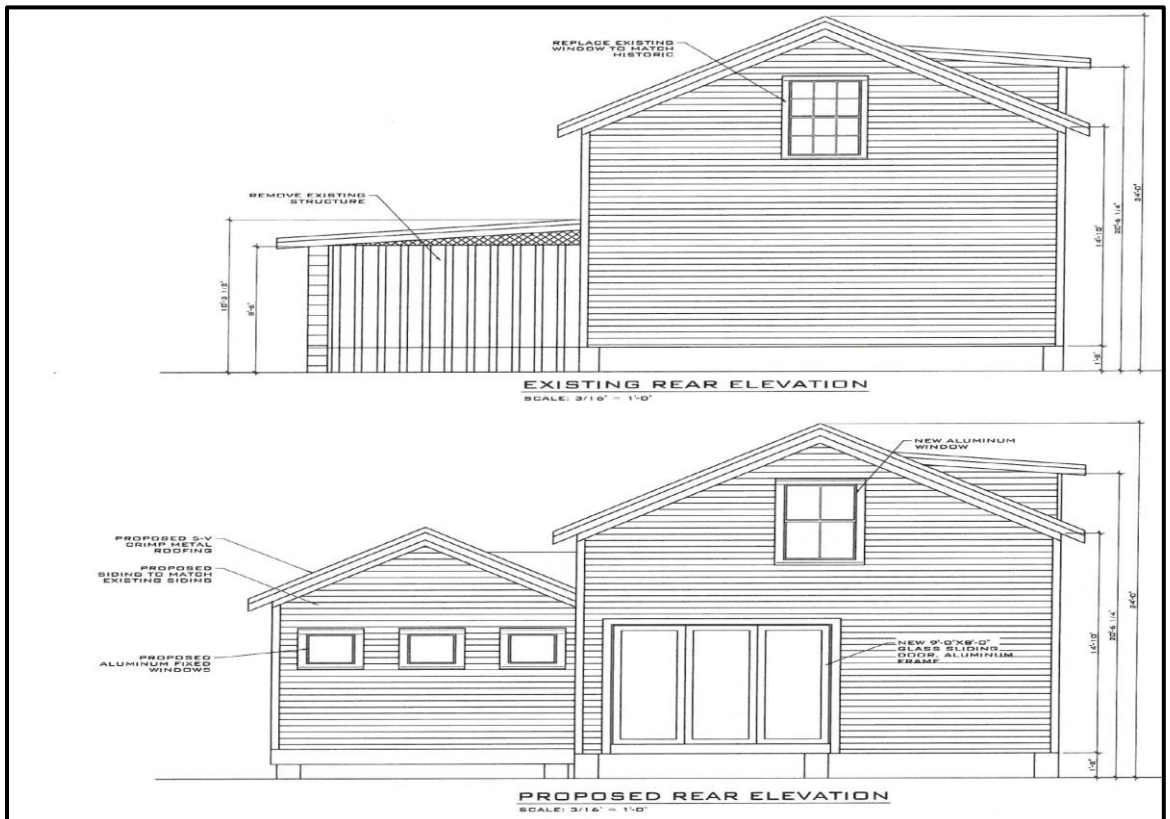
### Existing and proposed front elevation

Plans depict existing covered porch will be demolished and reconstructed into habitable space. The front of the structure will be opened to allow for a new porch, though the existing 0-0" setback and 0.7' overhang over City right-of-way will remain.



### Existing and proposed rear elevation

Plans depict new structure elevated 1'-8".

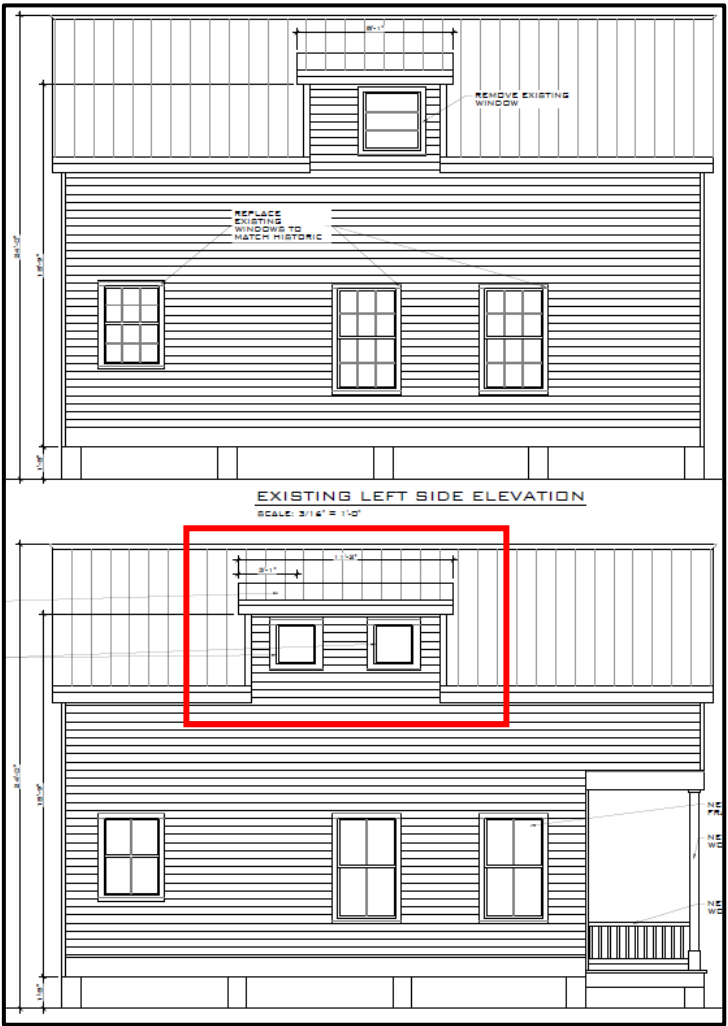


*Existing and proposed west-side elevation*



*Existing and proposed east-side elevation*

*Red square indicates dormer site work area.*



**Proposed Development:**

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

<b>Site Data Table</b>				
	<b>Code Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Variance Request</b>
Zoning District	HHDR			
Flood Zone	AE6			
Lot Size	4,000 sq. ft.	2,466 sq. ft.		
Height	30' maximum	24'	Unchanged	
Front Setback	10'	0'-0"	0'-0"	<b>10'</b>
Right Side Setback	5'	2'	2'	<b>3'</b>
Left Side Setback	5'	13'	11'-10"	
Rear Setback	20'	14'-11"	16'-8"	<b>3'-4"</b>
Building Coverage	50% (1,233 sq. ft.)	47.54% (1,172.34 sq. ft.)	44.34% (1,093.33 sq. ft.)	
Impervious Surface	60% (1,479.6 sq. ft.)	53.12% (1,309.83 sq. ft.)	53.16% (1,310.86 sq. ft.)	
Open Space	35% (863.1 sq. ft.)	29.68% (732 sq. ft.)	31.66% (781 sq. ft.)	<b>4.34% or 82.1 square feet</b>

The applicant is requesting variances pursuant to the following sections of the City of Key West Land Development Regulations:

- Section 122-630(6) a. – Minimum front setback
- Section 122-630(6) b. – Minimum side setback
- Section 122-639(6) c. – Minimum rear setback
- Section 108-346 (b) – Minimum open space

**Process:**

Planning Board Meeting:	Jan. 19 <sup>th</sup> , 2023
Local Appeal Period:	10 Days
Planning renders to DEO for review:	Up to 45 days

**Staff Analysis - Evaluation:**

The criteria for evaluating a variance are listed in Section 90-395 of the City of Key West Land Development Regulations. 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 subject property consists of 2,458 square feet, which is 1,542 square feet less than the minimum required lot size for the HHDR zoning district. However, there are many legal non-conforming lots located within the Historic District. The applicant has proposed improvements on an existing non-conforming home; though such improvements are not necessary to maintain a practical single-family home, the remodeling work will decrease an existing encroachment onto City right-of-way and improve non-compliance with the rear setback. However, the variance request to the right-side setback will increase the vertical height of an existing nonconformity.

**PARTIAL 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 applicant has proposed to enlarge an existing nonconformity within the right-side setback by expanding an existing dormer; and has proposed improvements to the rear setback, open space ratio, and an existing overhang over City right-of-way by demolishing an existing covered patio and reconstructing it into habitable space. Though the property owner did not create the existing nonconformities, the proposed remodeling plans maintain them.

#### **PARTIAL 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 applicant were to leave the structure as it stands today, special privileges would be conferred due to the existing overhang over City right-of-way without the benefit of an easement agreement. The requested variances to the front and rear setbacks allow for the existing carport to be removed from City property and reconstructed into a side addition within the property owners' parcel. The principal structure will still encroach about 14.21 square feet of City property, but the overall encroachment will be reduced due to the removal of the carport. However, the requested variance to the right-side setback would intensify an existing nonconformity, which is discouraged by the LDR's. Special privileges would be conferred upon the applicant.

#### **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.***

Approval of the variance request would allow the applicant to construct a new addition, as well as expand an existing dormer, to increase the number of bedrooms and bathrooms on a non-conforming single-family home. Single-family homes are a permitted use within the HHDR zoning district, however, all site work in this district is subject to the regulations stated in the Land Development Regulations (LDR's). Strict compliance with these regulations would not pose as a hardship, as the property owner is adding onto an existing single-family home. Literal interpretation of the provisions of the LDR's would not deprive the applicant of rights commonly enjoyed in this 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 requested variance is not the minimum variance to make possible the reasonable use of the land, building, or structure. Though the proposed plans do allow for some improvements, the



additional habitable space and dormer expansion are not necessary for a reasonably sized single-family home.

#### 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 general intent of the Land Development Regulations (LDR's) is to promote public health, safety, and general welfare. Setbacks are necessary to ensure safety and privacy. Though the site plans propose a side addition and enlarged dormer, the existing structure is already encroaching into the front, rear, and right-side setbacks and will remain in these setbacks. The requested variances are due to changes to the building footprint and three-dimensional envelope.

#### 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 variance 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(a) of the City Code have been met by the applicant for a variance.*

The standards established by Section 90-395(a) of the City Code have not been met.

*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 support from two surrounding property owners, and objections from three surrounding property owners. The applicant has attempted to contact all opposing neighbors hired representative.

*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 or 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 increase or has the effect of the 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:**

The requested variance for exceeding the minimum required front, side, and rear setbacks, and to open space does not comply with all the criteria established within the Land Development Regulations. The Planning Department recommends **DENIAL** of the requested variance.

If the Planning Board chooses to approve the variance, the Planning Department recommends the following conditions:

1. The proposed construction shall be consistent with the plans signed, sealed, and dated June 30, 2022, by Artibus Design.
2. Per Urban Forestry: The trees along the eastern and western property lines (1009 Southard and 1017 Southard) will need tree protection for roots and tree canopies during project construction.
3. Per Utilities: Gutter and downspouts shall be installed on the new roof eave on the east side (right side) of the structure prior to issuance of final building permits.
4. Per Planning: The property owner shall apply for an easement agreement or contact the Planning Department in regard to the existing encroachments over City right-of-way prior to obtaining building permits.