THE CITY OF KEY WEST

PLANNING BOARD

Staff Report

To:	Chairman and Planning Board Members
Through:	Taylor Brown, Planning Director
From:	Ben Gagnon, Planner II
Meeting Date:	March 12th, 2026
Application:	**After-The-Fact Variance - 712 Eaton Street (RE# 00006090-000000) -** Applicant requests a variance to the required accessory rear yard setback from the required 5 feet to the proposed 0 feet 0 inches to move a pavilion that is currently 2 feet 4 inches over the property line at an existing residential property located in the Historic Medium Density Residential zoning district (HMDR) pursuant to sections 90-395 and 122-600 of the Code of Ordinances of the City of Key West, Florida.
Request:	The subject property requests an after-the-fact variance to maintain an accessory pavilion on site.
Applicant:	Richard Pesce
Property Owner:	712 Eaton St Land Trust C/O
Zoning:	Historic Medium Density Residential (HMDR)

Background & Request

The subject property is a 9,442 square-foot parcel located at 712 Eaton Street, within the HMDR Zoning District. The site is currently developed with a historic two-story single-family residence more commonly known as the "Richard Peacon" House. The applicant is requesting an after-the-fact variance for a pavilion in the rear yard that was built over the neighbor's property line. The structure is the subject of an active code case CC2022-00328.

The pavilion is not only located within the required accessory rear yard setback, but it also encroaches onto the adjacent property by approximately 2 feet 4 inches. A variance, if granted, would only address required setbacks under the Land Development Regulations and would not authorize the structure to remain on property not owned by the applicant.

It is important to note that the Key West Fire Department only supports this request if the structure is not demolished, any demolition would require the accessory structure to meet the 5' setback.

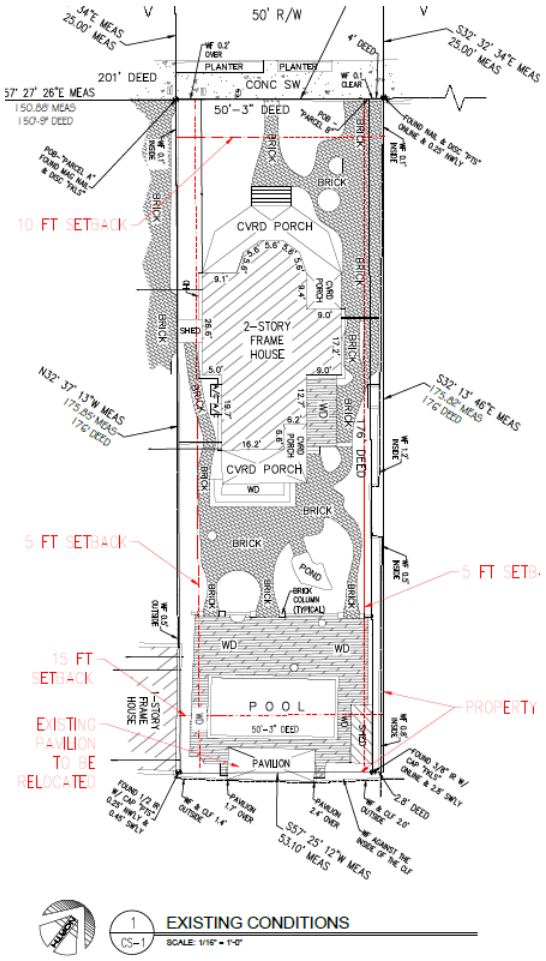
Pavilion Photograph

SITE DATA

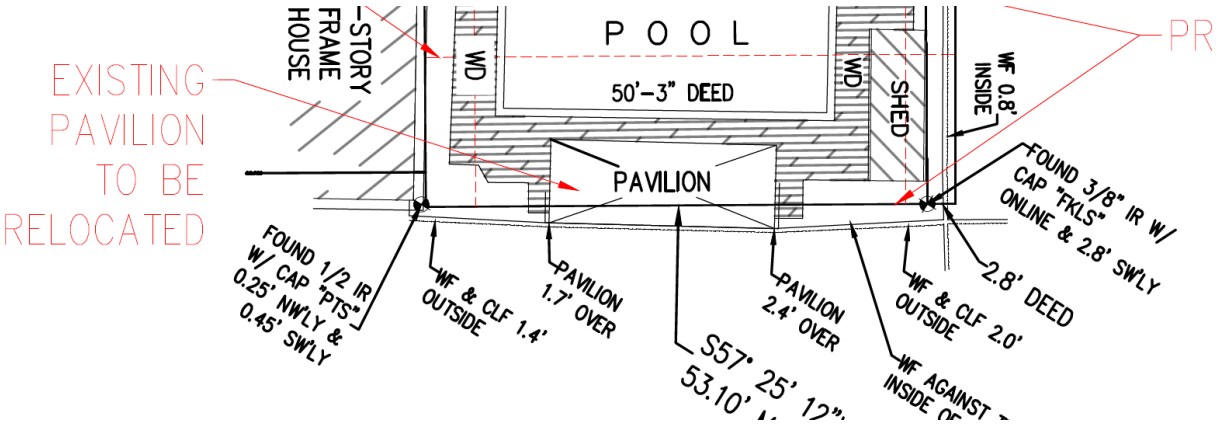
Zoned	Permitted	Existing	Proposed	Variance?
Lot Size	4,000 sq. ft. MIN	9,442 sf sq. ft.	No Change	
Building Coverage	40% MAX	2,349 (24.9%)	2394 (25.4%)	No
Impervious Surface	60% MAX	2,747 (29.1%)	2,792 (29.6%)	No
Open Space*	35% MIN	2,853 (30.2%)	2,853 (30.2)	No
SETBACKS				
Front Setback	10’	27’-10”	No Change	No
West Side Setback	5’	0’-5”	No Change	No
East Side Setback	5’ Accessory	3’	No Change	No
Rear Setback	5’ Accessory	2’-4” Over	0’-0”	YES

*Open space was not affected as the pavilion was put over a current deck which did not count towards open space prior to the construction of the pavilion.

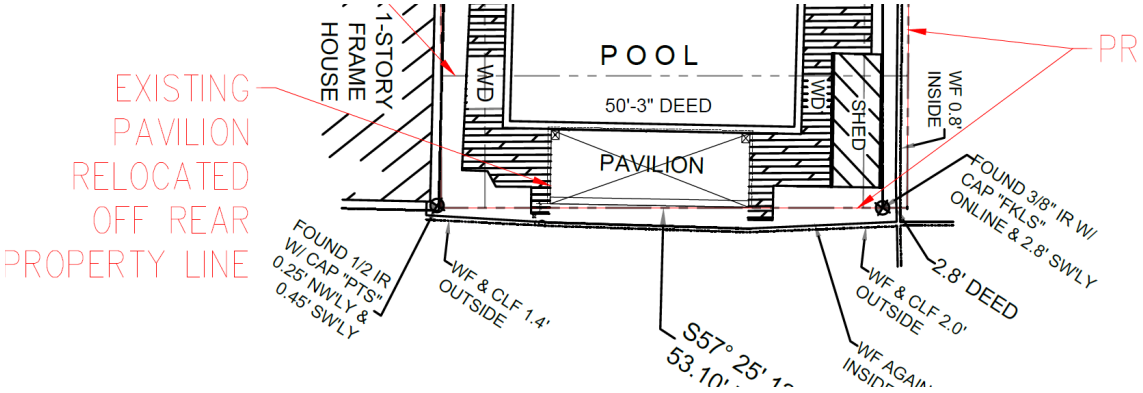
Existing Site Plan Full Layout



Existing Site Plan Zoom



Proposed Site Plan Zoom



Process:

Planning Board Meeting:	March 12th, 2026
Local Appeal Period:	10 Days
Planning renders to DOC for review:	Up to 45 days

Staff 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.*

There are no special circumstances which exist that 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.

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 need for the requested variance arises from the applicant's placement and construction of the pavilion in a location that does not comply with the accessory rear yard setback and that extends beyond the applicant's property line. Any hardship associated with correcting this condition is self-created and cannot form the basis for granting a variance.

   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.*

   Granting the variance would confer on the applicant the ability to construct a pavilion on their property line which is not allowed for other lands, buildings, or structures in the same zoning district.

   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 need for the requested variance arises from the applicant's placement and construction of the pavilion in a location that does not comply with the accessory rear yard setback and that extends beyond the applicant's property line. Any hardship associated with correcting this condition is self-created and cannot form the basis for granting a variance.

   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 minimum variance criterion is evaluated in relation to reasonable use of the property, not the retention of an encroaching structure. Reasonable residential use of the property exists independent of this pavilion, and compliance can be achieved through removal, relocation, or redesign on the applicant's parcel.

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 variance is not likely to be injurious to the area involved or otherwise detrimental to the public interest.

   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 nonconforming uses of other properties are not the basis of 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 or utility service capacity issues.

The Planning Board 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.*

   Staff has found that the standards established by Section 90-395 of the City Code have not been met by the applicant.

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.*

   While not a strict variance criterion it is important to note for the report that as of February 27th, staff have received no letters of objection and no letters of support for this item.

Recommendation:

Regardless of the Board's action on the variance, any portion of the structure located on the neighboring parcel is a private property matter and must be resolved by the property owner through removal and or authorization from the affected owner. The City's variance process does not create property rights or authorize trespass.

Staff believe that the pavilion could have been moved further onto the property and complied with the 5' setback, whether relocating elsewhere on the lot or reducing the size further. The lot is large as seen on page 3 of this report and could most likely accommodate the pavilion in compliance with the required setbacks.

The variance request to the minimum required accessory rear yard setback to maintain the after-the-fact construction of an accessory pavilion at the property located at 712 Eaton Street does not meet all the criteria stated in Section 90-395. Therefore, the Planning Department recommends that the request for a variance be **DENIED**.

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

General Conditions:

1. The proposed work shall be consistent with the attached signed and sealed plans on January 31, 2026 by Richard Milelli PE.