

**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 20, 2017

**Agenda Item:** **Variance – 914 Emma Street (rear) (RE # 00015380-000000) – A** request for variances to the minimum front and rear setback requirements on property located within the Historic Medium Density Residential (HMDR) Zoning District pursuant to Sections 90-395, 122-600(6) A & C., of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

**Request:** The applicant is seeking front and rear setback variances in order to construct a single family residence.

**Applicant:** Gregory S. Oropeza, Esq. / Oropeza, Stones & Cardenas, PLLC

**Property Owner:** Phillip Crumbley, Tina Triggiani, and Stuart Preater

**Location:** 914 Emma Street (rear) (RE # 00015380-000000)

**Zoning:** Historic Medium Density Residential (HMDR) zoning district



**Background/Request:**

The subject property is currently a vacant parcel of land located to the rear of Emma Street facing Williams Alley, within the HMDR zoning district. The property recently was assigned an address change from 914 Emma Street (rear) to 914 Williams Alley. Currently, the subject property's RE# is addressed to the 914 Emma Street (rear) address. The applicant is proposing to construct a one and a half story single family residential structure. The applicant is requesting variances to the front and rear setback requirements of the property.

<b>Relevant HMDR Zoning District Dimensional Requirements: Code Section 122-600</b>				
<b>Dimensional Requirement</b>	<b>Required/ Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Change / Variance Required?</b>
Maximum Height	30 feet	Vacant parcel	25 feet 9 inches	In compliance
Minimum lot size	4,000 sq. Ft.	2,411 sq. ft.	2,411 sq. ft.	No change Nonconforming In compliance
Maximum building coverage	40% (964.4 sq. Ft.)	0	35.9% (866 sq. ft.)	In compliance
Maximum impervious surface	60% (1,446.6 sq. ft.)	0	41.1% (998 sq. ft.)	In compliance
Minimum open space	35% (843.8 sq. ft.)	100% 2,411 sq. ft.	46.3% 1,117 sq. ft.	In compliance
Minimum front setback	10 feet	0	4 feet 8 inches	<b>Variance Required</b> <b>-5 feet 4 inches</b>
Minimum side setback (South)	5 feet	0	17 feet 7 inches	In compliance
Minimum side setback (North)	5 feet	0	5 feet	In compliance
Minimum rear setback	15 feet	0	6 feet 8 inches	<b>Variance Required</b> <b>-8 feet – 4 inches</b>

**Process:****Planning Board Meeting:**

July 20, 2017

**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 property's lot depth is less than half the minimum lot depth required in the HMDR Zoning District thus making it challenging for the applicant to construct an adequate size single family residence onto the parcel. In addition, there is a large Sapodilla tree that is located near the center of the vacant lot. The applicant has chosen to incorporate the Sapodilla tree into the proposed design of the house rather than removing as the tree is a protected species. Therefore, there are special conditions and circumstances that exist which are peculiar to the land which are not applicable to other lands in the same zoning district.

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 proposed condition is created by the applicant, the special conditions result from the action of 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.***

Granting the front and rear setbacks will confer special privileges to the applicant that are denied by the land development regulations on 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.***

Denial of the requested variance would deprive the applicant of rights commonly enjoyed by other properties in the HMDR Zoning District. The applicant has chosen to include the large Sapodilla tree into the design of the single family residence therefore preventing the removal of a large canopy tree located within a parcel that is less than half the required depth required. Therefore, hardship conditions do exist.

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 one public comment of support 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**.