

**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 I

Meeting Date: April 18, 2019

Agenda Item: **Variance – 2415 Fogarty Avenue - (RE# 00050340-000000)** – A request for variances to the maximum allowed building coverage and side setback in order to construct a covered porch in the rear yard on property located within the Single Family (SF) Zoning District pursuant to Sections 90-395, 122-238 (4) (a), and 122-238 (6) (a) (2) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: The applicant is seeking variances to the maximum building coverage and side setback to construct a covered porch in the rear yard of the property.

Applicant: Daniel Blanco JR

Property Owner: Daniel Blanco JR

Location: 2415 Fogarty Avenue - (RE# 00050340-000000)

Zoning: Single Family (SF) Zoning District



Background/Request:

The property at 2415 Fogarty Avenue is one lot of record and consists of a one story residential concrete block structure within a 5,000 square foot parcel.

The proposed request to construct a roof over the existing concrete patio in the rear yard will require variances to the maximum allowed building coverage and side setback. The maximum allowed building coverage in the Single-Family zoning district is 35% and the minimum side setback requirement is 5 feet. Currently, the building coverage on the property is conforming at 31.1%, 1,509 square feet. The applicant is proposing to add an additional 560 square feet of building coverage making the total building coverage on the lot 41.38 %, 2,069 square feet. Resulting in an overall 6.38%, 319 square feet increase from the maximum allowed building coverage. The principle structure has an existing non-conformity with the side setback from the eave of the one-story structure to the side property line there is a 4-foot 4-inch setback. The property owner is requesting to construct a roof to cover the existing concrete patio. The proposed roof design will increase the side setback non-conformity.

The following table summarizes the requested variances.

| Relevant SF Zoning District Dimensional Requirements: Code Section 122-238 | | | | |
|-----------------------------------------------------------------------------------|----------------------------------------|------------------------------------------|-------------------------------------------|-----------------------------------------------------------|
| Dimensional Requirement | Required/ Allowed | Existing | Proposed | Change / Variance Required? |
| Lot Size | 6,000 Square feet | 5,000 square feet | 5,000 square feet | Existing non- conformity In-compliance |
| Height | 25 feet | 8 feet 9 inches | 8-feet 9 inches | In compliance |
| Maximum building coverage | 35% (1,750 square feet) | 30.1% (1,509 square feet) | 41.38% (2,069 square feet) | Variance Required (6.38%, 319 square feet) |
| Maximum impervious surface | 50% (2,500 square feet) | 46% (2,322 square feet) | 46% (2,322 square feet) | In compliance |
| Minimum open space | 35% (1,750 square feet) | 54% (2,700 square feet) | 54% (2,700 square feet) | In compliance |
| Minimum front setback | 30 feet | 25 feet | 25 feet | Existing non-conformity In-compliance |
| Minimum side setback | 5 feet | 4 feet 4 inches | 4 feet 4 inches | Variance Required (- 6 inches) |
| Minimum side setback | 5 feet | 5 feet | 5 feet | In compliance |
| Minimum rear setback | 20 feet | 21 feet | 21 feet | In compliance |

Process:

Planning Board Meeting:

April 18, 2019

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 land, structures and buildings involved are located on the property within the SF zoning district. The required minimum lot size in the SF zoning district is 6,000 square feet. The 2415 Fogarty Avenue property has a lot size of 5,000 square feet. The lot was developed prior to the adoption of the current Land Development Regulations (LDRs).

However, many other land, structures and buildings within the SF zoning district were also developed prior to the adoption of the current LDRs. Therefore, there are no special conditions or circumstances that exist that are peculiar to the land, structures or buildings involved.

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 applicant has chosen to construct a roof that will expand the current side setback non-conformity and increase the building coverage over the allowed amount in the SF zoning district.

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 is currently non-conforming with the side setback requirement in the Single-Family zoning district. The drawings submitted require special privileges to go beyond the property owner's current non-conformity and increase it further.

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 not deprive the applicant of rights commonly enjoyed by other properties in the Single-Family zoning district. It is not a requirement to have a covered patio on your property. 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 following 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 not received any 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**.

However, if the Planning Board approves this request, staff would like to require the following conditions:

General Conditions:

1. The proposed development shall be consistent with the drawings dated, April 11, 2019 by Daniel Blanco JR. No approval granted for any other work or improvements shown on the plans other than the proposed construction of a roof over the existing rear yard concrete patio on the property.