

**The City of Key West
Planning Board
Staff Report**



To: Chair and Planning Board Members

From: Melissa Paul-Leto, Planner I

Through: Roy Bishop, Planning Director

Meeting Date: February 20, 2020

Agenda Item: **After-the-Fact Variance - 1607 Laird Street – (RE# 00060500-000000)** – A request for after-the-fact variances to the maximum allowed building coverage, minimum side yard setback requirement, and to allow for an accessory structure to be located within the required front yard in order to install a propane tank on property located within the Single Family (SF) zoning district pursuant to Sections 90-395, 122-238 (4) (a), 122-238 (6) (a) (2), and 122-1181 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: To allow an after-the-fact propane tank to be located within the required front yard.

Applicant: Suburban Propane

Property Owner: Massicotte Christopher William

Location: 1607 Laird Street – (RE# 00060500-000000)

Zoning: Single Family (SF) zoning district



Background:

The property at 1607 Laird Street is located within the Single-Family zoning district and is two lots of record. On August 21, 2019, the applicant submitted a building permit application #2019-3003 to install a 100-gallon propane tank on the subject property. When the applicant called for an inspection, the building department realized the permit had been issued without planning reviewing the permit application. Planning then reviewed the permit and found that the propane tank will be 5 feet high once installation is complete and the tank location was placed within the required front yard. Per section 122-1181, “No accessory uses, or structure shall be erected in any required front or side yard”.

This item was postponed from the January 16, 2020 Planning Board. The Fire department had concerns regarding the location of the propane tank being close to the carport. The applicant relocated the propane tank farther away from the carport. The agreed upon location between the Fire department and the applicant results in an additional variance to the minimum side yard setback. As the propane tank is now being proposed directly adjacent to the side property line.

The property has an existing non-conformity with building coverage. The propane tank adds an additional 4 square feet to the overall onsite building coverage.

The site plan submitted, and the site visit attended, indicates the after-the-fact propane tank installation requires the following variances: the maximum allowed building coverage, minimum side setback requirement, and to allow an accessory structure to be located within the required front yard.



The temporary propane tank location will be relocated to meet fire requirements to the left of the of the property line. The final installation will include a concrete slab, and a 4-foot-high propane tank tied to the slab.

The following table summarizes the requested variances.

Relevant SF Zoning District Dimensional Requirements: Code Section 122-238				
Dimensional Requirements	Required/ Allowed	Existing	Proposed	Variance required
Minimum lot size	6,000 square feet	5,412 square feet	5,412 square feet	Existing non-conformity in compliance
Maximum height	25 feet	N/A	5 feet (propane tank)	In compliance
Minimum front setback	20 feet	N/A	15.7 feet (propane tank)	Variance required for an accessory structure located within the required front yard - 5 feet 5 Inches
Minimum side setback	5 feet	N/A	0 feet	Variance required -5 feet
Minimum rear setback	25 feet	N/A	63 feet (propane tank)	In compliance
Maximum building coverage	35% 1,894.4 square feet	43.9% 2,381 square feet	44% 2,385 square feet	Variance Required over 490 square feet
Maximum impervious Surface	50% 2,706 square feet	49 % 2,654 square feet	49% 2,658 square feet	In compliance
Minimum open Space	35% 1,894.2 square feet	50.9% 2,758 square feet	50.8% 2,754 square feet	In compliance

Process:

Planning Board Meeting: February 20, 2020
January 16, 2020 (Postponed by Staff)

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 the following in compliance:

- 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 zoning district. The applicant would have been informed by planning staff to relocate the tank to a conforming location so there would be no need for a variance to an accessory structure located within the required front yard and, a variance to the minimum side setback requirement. Planning staff would have also notified the applicant that the addition of the tank would require a variance to the maximum building coverage requirements. However, the applicant was notified after-the-fact due to the building department issuing the permit in error. There are special conditions or circumstances.

IN COMPLIANCE

- 2. Conditions not created by applicant. That the special conditions are circumstances that do not result from the action or negligence of the applicant.***

The propane tank installation was installed by the applicant as a result of the building department issuing a permit to the applicant in error. After the applicant installed the propane gas lines and set the concrete pad for the tank, planning was able to review and submit comments that variances were required. The special conditions and circumstances do not result from the action or negligence of the applicant.

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.***

If the applicant had been informed prior to the building permit being issued there would have been time to relocate the tank to a conforming location. Planning staff could have informed the applicant that the property has an existing non-conformity with building coverage and the addition of the propane tank on the property would further increase that non-conformity. However, the applicant did not have the courtesy of this information until after-the-fact. Section

122-27 of the Land Development Regulations discourages the expansion of site nonconformities. Therefore, allowing an accessory structure in the required front yard, adding building coverage to an existing non-conforming site, and encroaching into the minimum side yard setback would confer special privileges upon the applicant.

NOT IN COMPLIANCE

4. ***Hardship conditions exist. That literal interpretation of the provision 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 applicant could have located the propane tank in a conforming location and possibly under an area that is already considered building coverage on the property. The applicant was provided this information after-the-fact by planning staff. Denial of the requested variance would deprive the applicant of rights commonly enjoyed by other properties in the Single-Family zoning district.

IN COMPLIANCE

5. ***Only the 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 other area involved or otherwise detrimental to the public interest or welfare.***

Due to not following all 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):

Based on comments received through internal departmental reviews, 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:

The standards established by Section 90-395 of the City Code have been fully met by the applicant for the variances 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 requests as of the date of this report.

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 approved this request, staff would like to require the following conditions:

General Condition:

1. The after-the-fact propane tank installation shall be consistent with the site plan provided by Suburban Propane, January 27, 2020. No approval granted for any other work or improvements shown on the site plan other than the after-the-fact propane tank.
2. The propane tank shall be screened in.