

**THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report**



**To:** Chairman and Planning Board Members

**Through:** Katie P. Halloran, Planning Director

**From:** Melissa Paul-Leto, Planner I

**Meeting Date:** October 15, 2020

**Agenda Item:** **Variance – 13 Hilton Haven Drive - (RE# 00001870-000000)** – A request for variances to the maximum allowed building coverage, maximum impervious surface ratio, minimum open space ratio, coastal construction control line, wetland buffer zone, landscaping, and minimum front yard setback requirements in order to construct a single-family residence on property located within the Medium Density Residential (MDR) and the Conservation-Outstanding Waters of the State (C-OW) Zoning Districts pursuant to Sections 90-395, 122-270 (4)(a).1, 122-270 (b) (2), 108-346 (b), 122-1148 (a) (2), 110-91, 108-412 (a), and 122-270 (6)(a).1 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

**Request:** The applicant is proposing to construct a single-family residence on land in order to replace a liveaboard vessel/ houseboat.

**Applicant:** Trepanier & Associates, Inc.

**Property Owner:** William R. Grosscup Rev. Trust

**Location:** 13 Hilton Haven Drive - (RE# 00001870-000000)

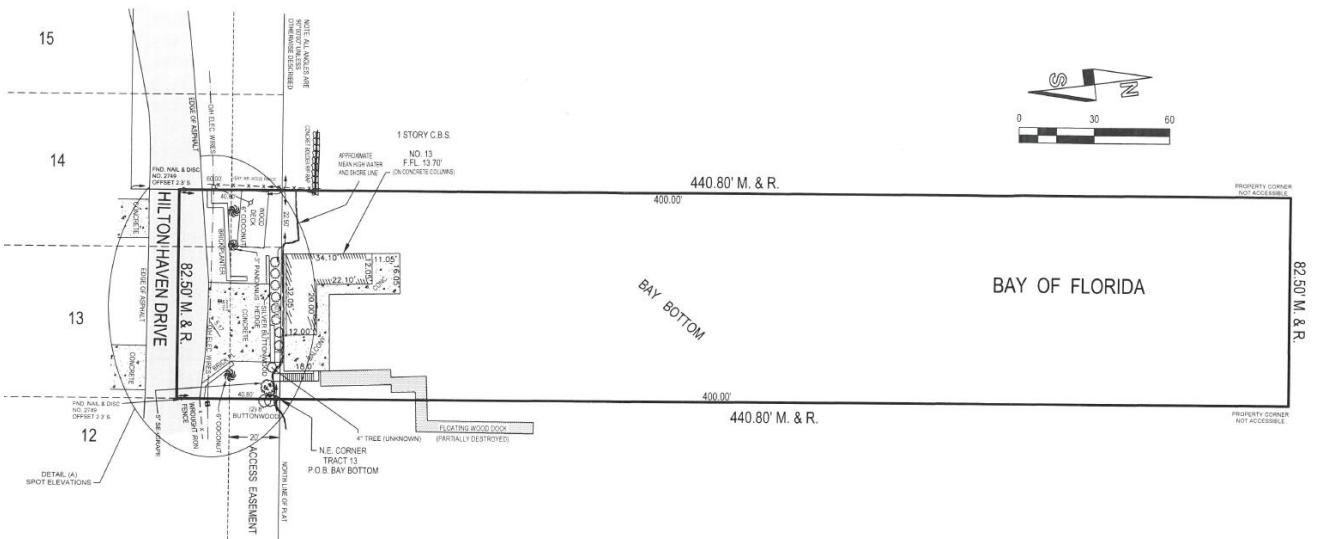
**Zoning:** Medium Density Residential (MDR) and the Conservation-Outstanding Waters of the State (C-OW) Zoning Districts



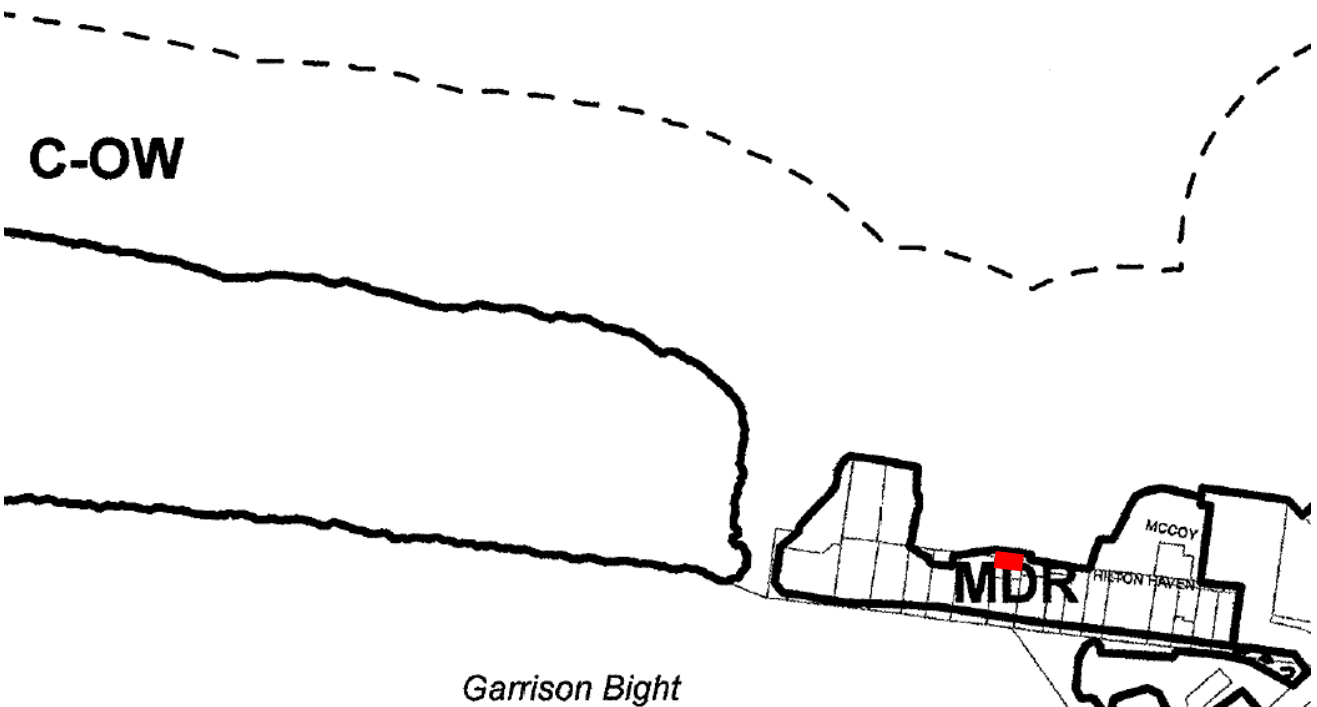
13 Hilton Haven Drive  
(subject property)

**Background/Request:**

The subject property is located within the Hilton Haven subdivision, a front portion of the parcel is upland with the front lot line located in the middle of Hilton Haven Drive, the rear upland area has a twenty (20) foot access easement, with the majority of the parcel being submerged land. The entire parcel size is 36,366.0 square feet. The parcel is positioned within two zoning districts. There is 3,380.5 square feet of upland that is located within the Medium Density Residential (MDR) zoning district. There is 32,985.5 square feet of bay bottom that is located within the Outstanding Waters of the State (C-OW) zoning district.



*2018 Boundary Survey of the Subject Property*



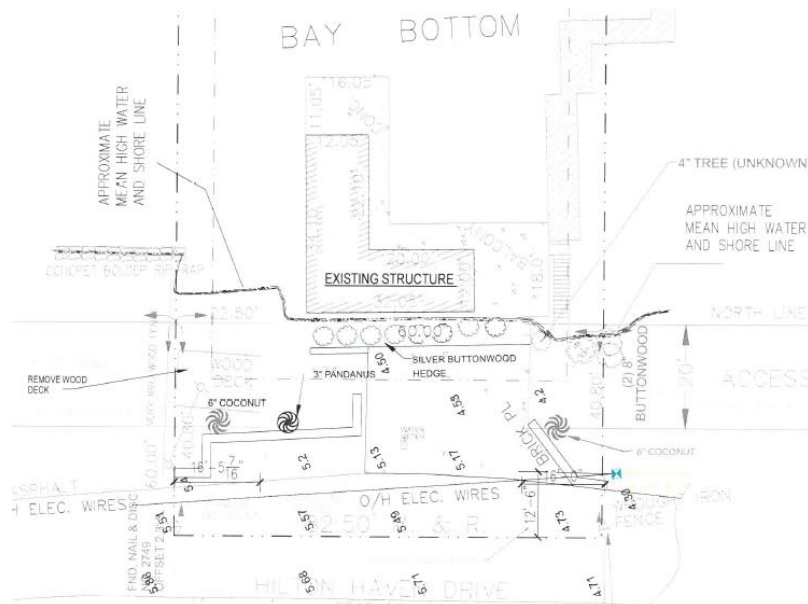
*Official Zoning Map – The red box indicates the upland portion of the subject property*

The subject property, 13 Hilton Haven, is owned by William R. Grosscup, as Trustee of the William R. Grosscup Revocable Trust.

- On April 2005 – the property owners floating home and a pile supported, two-story structure was destroyed by a fire.
- In July 2005 – The Florida Department of Environmental Protection (DEP) approved the replacement of the pilings located on the bay bottom adjacent to the property.
- On February 8, 2006 – The City’s Code Compliance Department issued a stop work order-based on Mr. Grosscup beginning construction of single-family dwelling approximately 3,200 square feet on concrete support pilings located partially over the bay bottom.
- On March 2006 – Mr. Grosscup applied to DEP for a permit to construct the dwelling unit. The Florida Department of Community Affairs (DCA) and DEP denied the permit.
- November 2006 – Mr. Grosscup filed a claim stating the DEP and DCA caused an inordinate burden to the property owner. Which resulted in the DCA offering a settlement which called for Mr. Grosscup to rebuild the original dock structure with a second story facility used exclusively for storage and to allow the replacement of the floating home, both in the original footprint. Included in the DEP response, they requested additional information in order to properly analyze the proposed project.
- On May 22, 2007 - Mr. Grosscup filed suit in circuit court against DCA and DEP for declaratory judgement and damages pursuant to Section 70.001, *Florida Statutes*.
- On May 28, 2009 – Mr. Grosscup brought a related action against Key West for declaratory judgement and damages pursuant to Section 70.001, *Florida Statutes*.
- On September 17, 2009 – The Plaintiff’s cases against DCA, DEP, and Key West were consolidated. All parties agreed to settle, fully, finally, all differences and disputes arising out of the consolidated cases styled, Grosscup v. Florida Department of Community Affairs and Florida Department of Environmental Protection, Case No. 2007-CA-680-K and Grosscup v. Key West, Case No. 2009-CA-925-K.
- On August 3, 2010 - The City Commission approved the settlement in the case of William R. Grosscup v. City of Key West. The settlement agreement provides that Mr. Grosscup may construct a pile supported concrete deck structure with a total footprint not to exceed 1,250 square feet with a non-habitable storage enclosure on the deck with a footprint not to exceed 650 square feet. In addition, he may rebuild his dock and replace the houseboat which was previously destroyed by a fire in 2005. The agreement required Mr. Grosscup to execute a deed restriction in perpetuity in favor of the City, preventing use of the storage space for living, sleeping, or cooking (Settlement Agreement attached).
- January 16, 2020 - The applicant submitted the requested variances to the planning department
- July 2, 2020 – The Planning director submits a determination letter based on the applicant’s request for a variance to the Coastal Construction Control Line.
- July 15, 2020 – The applicant appealed the Planning Director’s determination.

- August 11, 2020 – The City Attorney recommended the variance application to move forward to Planning Board.
- October 15, 2020 – The item goes forward to Planning Board

Currently, the property includes a concrete driveway, an elevated one-story concrete block structure on concrete columns located partially over the bay bottom area of the parcel, and docks. The structure is specifically classified as a boat house without any occupancy available. The building permit for the structure was issued on August 7, 2011 and the Certificate of Occupancy was finalized on September 24, 2019.



*Existing Site Plan - October 21, 2019*



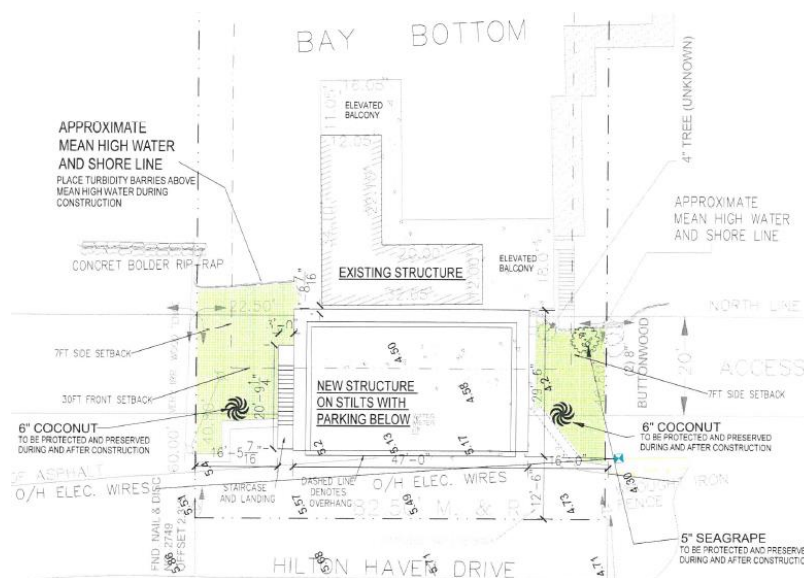
*2019 Elevation Certificate - Front View*



*2019 Elevation Certificate - Rear View*

The applicant is proposing to construct an elevated one-story single-family residence encompassing 1,500 square feet within the 3,380.5 square foot upland portion of the parcel. Based on the plans submitted, the proposed design would require variances to the following dimensional requirements:

- The required maximum allowed building coverage is 35%, or 1,183.2 square feet, existing building coverage on site is 0%. The applicant is proposing a total of 44.3% building coverage, or 1,500 square feet.
- The required maximum impervious surface is 50%, or 1,690.25 square feet, existing impervious surface is 61%, or 2,062.1 square feet. The applicant is proposing 78%, or 2,636.79 square feet.
- The required minimum open space 35%, or 1,183.2 square feet, existing open space is 15%, or 507 square feet. The applicant is proposing 22%, or 743.7 square feet.
- The required minimum front yard setback in the (MDR) zoning district is 30 feet, existing 23.4 feet. The applicant is proposing 12.5 feet.
- Finally, the required coastal construction control line setback is 30 feet. The applicant is proposing 0 feet.



*Proposed Site Plan*

Although planning staff is bringing forward requested variances to the maximum building coverage, maximum impervious surface ratio, minimum open space ratio, and to the minimum front yard setback requirements, the request for a variance to the Coastal Construction Control Line (Section 122-1148, City of Key West Code of Ordinances) is inconsistent with the City's Comprehensive Plan and reflects State law per Section 110-188 (2) a. "State and local regulations establish coastal construction control lines, as well as applicable State and local construction codes regulating construction activity in coastal areas." In Section 110-184 (a), the City code again states that the coastal construction control line is established by State law, "All water-related uses shall be built on uplands landward of the high velocity hurricane storm surge zone (V zone) and the coastal construction control zone established by the state department of environmental protection and enacted as the Florida Keys Coastal Management Act of 1974, excepting structures approved by the state department of environmental protection. Within the coastal building zone all construction activities shall be predicated on plans compliant with applicable state and local building codes. Dredging and filling of wetlands or open water in order to accommodate water-related uses shall not be permitted."

Please see Comprehensive Plan Policy 5-1.3.1: Shoreline Setback and Policy 5-1.3.2: Natural Shoreline and Beach / Dune Stabilization and related Land Development Regulations.

- Comprehensive Plan Policy 5-1.3.1: Shoreline Setback. The City shall require minimum coastal setbacks of ten to 20 feet from the mean high tide line of man-made water bodies and/or lawfully altered shorelines of natural water bodies, dependent on the particular shoreline characteristic.
- Comprehensive Plan Policy 5-1.3.2: Natural Shoreline and Beach / Dune Stabilization. To protect natural rock outcrops which form most of the City's shoreline as well as the limited beach, shoreline development and access shall continue to be restricted in order to preserve the shoreline and the limited beach. Rigid shore protection structures are not permitted, except when used as part of a comprehensive plan for beach restoration and when non-structural alternatives are not acceptable. When beach nourishment projects are needed, the dune system should be restored, as necessary, utilizing natural, indigenous vegetation. The shoreline setback from natural shorelines shall be 30 to 50 feet dependent upon the particular shoreline characteristic identified in the Land development Regulations.
- Section 122-1148 - Coastal construction control line: (a) No building or other structure shall be constructed: (1) Within 50 feet of the mean high water along the Atlantic Ocean, southwest from the COW Key Channel Bridge to the southwest corner of the Truman Annex property, inclusive of the Fort Taylor State Park, which fronts on the Atlantic Ocean; or (2) Within 30 feet of the mean high water along the main ship channel, Key West Harbor, Garrison Bight, and the Bay of Florida, which shoreline is generally described as running north and east from the southeast corner of Truman Annex property, inclusive of the Fort Taylor State Park property which fronts on the Bay of Florida, the north end of the COW Key Channel Bridge and also extending along the entire outer limits of North Stock Island. (b) Restrictions set forth in subsection (a) of this section shall not be applicable to any pier, dock, seawall, or other water-dependent use, or to any construction on property not within the jurisdiction of the city. (c) If any portions or applications of subsection (a) of this section are judicially determined to be legally improper or unconstitutional, such holding shall not affect the remaining portions or applications thereof.
- Section 110-189(d) - Shoreline access and protection of natural shoreline and limited beach/dune system: The coastal construction control line (CCCL) established in section 122-1148 shall not be disturbed and shall be maintained in its natural state as open space. The city shall coordinate the development review process for projects impacting the coastal construction control line by forwarding all applications for construction seaward of the coastal construction control line to the state department of environmental protection for jurisdictional action. The applicant shall be responsible for receiving permits from all other public agencies having jurisdiction. In addition, such activities shall comply with applicable provisions of the comprehensive plan and land development regulations.

Hilton Haven historically was created from fill through dredging to construct the East Coast Railways for the purpose of hauling freight via rail. In 1912 Henry Flagler arrived aboard the first train into Key West, marking the completion of the Florida East Coast (FEC) Railways Over-Sea Railroad to Key West. That was over 110 years ago. The shoreline is not a hardened shoreline such as a seawall, it is a natural shoreline, and the shoreline along this side of Hilton Haven includes native wetland type vegetation, including mangroves, although none have been identified at this time on this lot. This property remains available for beneficial use and has been recognized for a houseboat; however, an upland single-family structure is not appropriate for this parcel given dimensional standards and other Land Development Regulations. This land is appropriate for docks and houseboats. In addition to zoning district conflicts, it is unlikely the applicant will be able to comply with a storm water runoff regulation.

Relevant MDR Zoning District Dimensional Requirements: Code Sections 122-270				
Dimensional Requirement	Required/ Allowed	Existing	Proposed	Change / Variance Required?
Flood Zone	AE-8			
Maximum Density	16 (du/acre)	N/A	1.0	In compliance
Maximum Height	35 feet	N/A	26 feet 1 inch	In compliance
Minimum Lot Size	One-Half Acre 21,780 square feet	Entire site is 457,380 square feet	Entire site is 457,380 square feet	In compliance
Minimum Lot Size	One-Half Acre 21,780 square feet	3,380.5 square feet	3,380.5 square feet	Existing Non-Conformity
Maximum Building Coverage	35% 1,183.2 square feet	N/A	44.3% 1,500 square feet	Variance Required (9.3%) = 316.8 square feet
Maximum Impervious Surface Ratio	50% 1,690.25 square feet	61% 2,062.1 square feet	78% 2,636.79 square feet	Variance Required (28%) = 946.75 square feet
Minimum Open Space	35% 1,183.2 square feet	15% 507 square feet	22% 743.7 square feet	Variance Required (-13%) = -439.52 square feet
Minimum Front Yard Setback	30 feet or the average depth of front yards within 100 feet of the subject lot but not less than 20 feet 23.4 feet	42.1 feet from the front lot line to the existing boat house structure	12.5 feet	Variance Required 18.7 feet
Minimum Side Yard Setback	7 feet	N/A	16 feet 5 7/16 inches	In compliance



<b>Dimensional Requirement</b>	<b>Required/ Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Change / Variance Required?</b>
Minimum Side Yard Setback	7 feet	N/A	16 feet	In compliance
Minimum Rear Yard Setback	20 feet	398.7 feet	398.7 feet	In compliance
<b>Coastal construction Control Line Sec. 122-1148 (a).2</b>	<b>Within 30 feet of the mean high water along the main ship channel, Key West Harbor, Garrison Bight, and the Bay of Florida, which shoreline is generally described as running north and east from the southeast corner of Truman Annex property, inclusive of the Fort Taylor State Park property which fronts on the Bay of Florida, to the north end of the Cow Key Channel Bridge and also extending along the entire outer limits of North Stock Island.</b>	<b>N/A</b>	<b>0-foot setback</b>	<b>Variance Required 30 feet</b>

**Process:**

**Planning Board Meeting:** October 15, 2020

**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:

- 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 existing dimensions and size of the parcel pre-dates the dimensional requirements of the current LDR's, and therefore is legally non-conforming in the MDR zoning district.

The applicant is proposing to construct an elevated one-story single-family structure in the upland portion of the parcel. The structure will be situated a few inches away from an existing elevated



one-story concrete block boat house structure located over the bay bottom portion of the parcel. This boat house structure cannot be used for habitation.

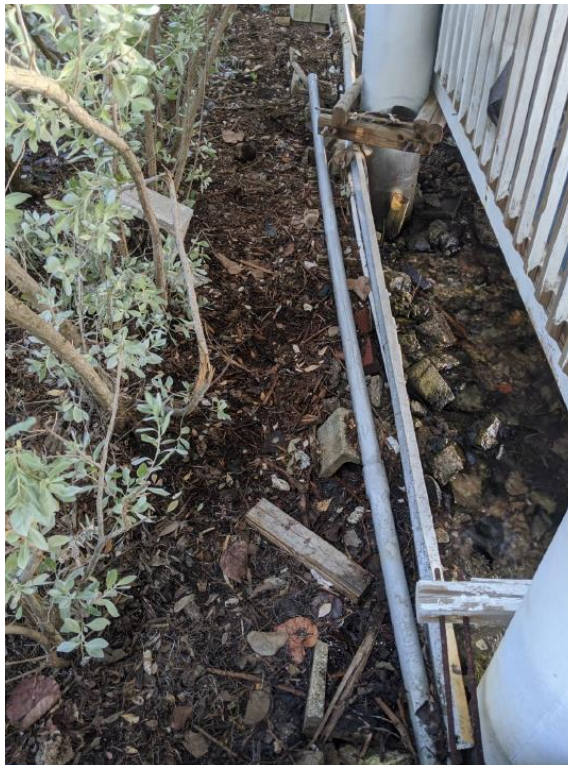
Approximately 2/3 of the upland area is located within the Coastal Construction Control Line setback area and this area is natural shoreline and shall be regulated by the following sections of the comprehensive plan:

*Comprehensive Plan Policy 5-1.3.1: Shoreline Setback.* The City shall require minimum coastal setbacks of ten to 20 feet from the mean high tide line of man-made water bodies and/ or lawfully altered shorelines of natural water bodies, dependent on the particular shoreline characteristic.

*Comprehensive Plan Policy 5-1.3.2: Natural Shoreline and Beach/ Dune Stabilization.* To protect natural rock outcrops which form most of the City's shoreline as well as the limited beach, shoreline development and access shall continue to be restricted in order to preserve the shoreline and the limited beach. The shoreline setback from natural shorelines shall be 30 to 50 feet dependent upon the particular shoreline characteristic identified in the Land Development Regulations.

Based on the Comprehensive Plan Policy 5-1.3.1: Shoreline Setback and Policy 5-1.3.2: Natural Shoreline and Beach / Dune Stabilization, the Planning Board is not able to issue this kind of variance.

The Land Development Regulations implement these comprehensive plan policies and coastal construction control line requirements in sections 122-1148 and 110-189(d).



*Site Visit: October 2, 2020 – the area between the upland portion and the Bay Bottom*

The depth of the upland portion of the property is approximately 40 feet. The minimum required front yard setback is 30 feet or the average depth of front yards within 100 feet of the subject lot

but not less than 20 feet. The front yard setback for the property is approximately 23.4 feet.

Therefore, there are special conditions or circumstances that exist that are different from other fully upland MDR properties, but not different from other parcels on Hilton Haven that are partly upland and partly submerged.

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.***

This variance request is a result of the actions of the applicant proposing to construct a single-family unit on the upland portion of the parcel to replace the houseboat/ floating home that was destroyed by Hurricane Irma. Currently, the property owner can purchase another houseboat/ floating home to replace the houseboat/ floating home that was destroyed and continue the use of the elevated boat house for a storage facility.

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 maximum allowed building coverage , maximum allowed impervious surface, minimum front yard setback, and minimum open space variances for the construction of a upland single family unit to replace a houseboat/ floating home will confer special privileges to the applicant that are denied by the Land Development Regulations to other lands, buildings or structures in the same zoning district. The Planning Board cannot provide a variance to the coastal construction control line for natural shorelines. This is a State law Section 161.053, Florida Statutes (F.S.), charges DEP with the responsibility of protecting the beach and dune system, establishing coastal construction control lines (CCCL), and regulating construction, excavation, dune vegetation removal and other activities seaward of the CCCL.

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 MDR zoning district. The applicant is proposing to construct a single-family house on the upland portion where adjacent properties have live boards or house boats on similar properties on the west side of Hilton Haven Drive. The property would not be denied beneficial use if the requested variances are to be denied. The property owner at any time may replace the houseboat that was destroyed in the hurricane. 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, it is 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 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 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 received twelve (12) 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.***

Staff does not recommend approval of these variances.

**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**.

If Planning Board chooses to approve the request for variances, then staff suggests the following condition:

1. The proposed design shall be consistent with the plans dated, October 21, 2019 by James C. Reynolds, P.E., Reynolds Engineering Services, Inc. No approval granted for any other work or improvements shown on the plans other than for the construction of the one-story single-family residence.
2. The proposed upland single-family residence would replace the floating home on the property. The owner may not construct this upland residence and acquire a floating home, unless they receive an additional unit through the Building Permit Allocation System.
3. Per Utilities – The near-shore water/shoreline protection plan shall be revised prior to building permitting – The following revisions are needed:
  - a. Please revise the proposed protection plan to remove the culverts beneath the planter.
  - b. Please provide depth dimensions and retention volume for each swale.
  - c. Please provide a detail for the concrete berm, including footer construction, berm height and width.The applicant must demonstrate compliance with coastal and stormwater runoff regulations.
4. The power line shall be relocated as required by Key Energy.
5. This application shall be forwarded to FDEP as required by Section 110-189(d).