

THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report



To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Daniel Sobczak, Planner I

Meeting Date: May 21<sup>st</sup>, 2020

Application: Variance – 825 Duval Street (RE # 00016830-000000) – A request for a variance to extend a permanent awning into required rear setback and an increase in allowed building coverage in the Historic Residential Commercial Core Duval Street Oceanside zoning district (HRCC-3) pursuant to sections 90-395 and 122-750 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: The applicant is requesting a variance to encroach into the rear setback as well as increase building coverage above the zoning requirement. The applicant is proposing to extend a current awning 12.38-feet into the prescribed rear setback. The applicant is also proposing to increase their total building coverage from 7,423 sqft to 7,575 sqft which is 2,210 sqft over the maximum building coverage allowed in the HRCC-3 zoning district, for a total of .5% over existing building coverage.

Applicant: T. Seth Neal

Property Owner: SUBA 825 LLC

Location: 825 Duval Street (RE # 00016830-000000)



**Background:**

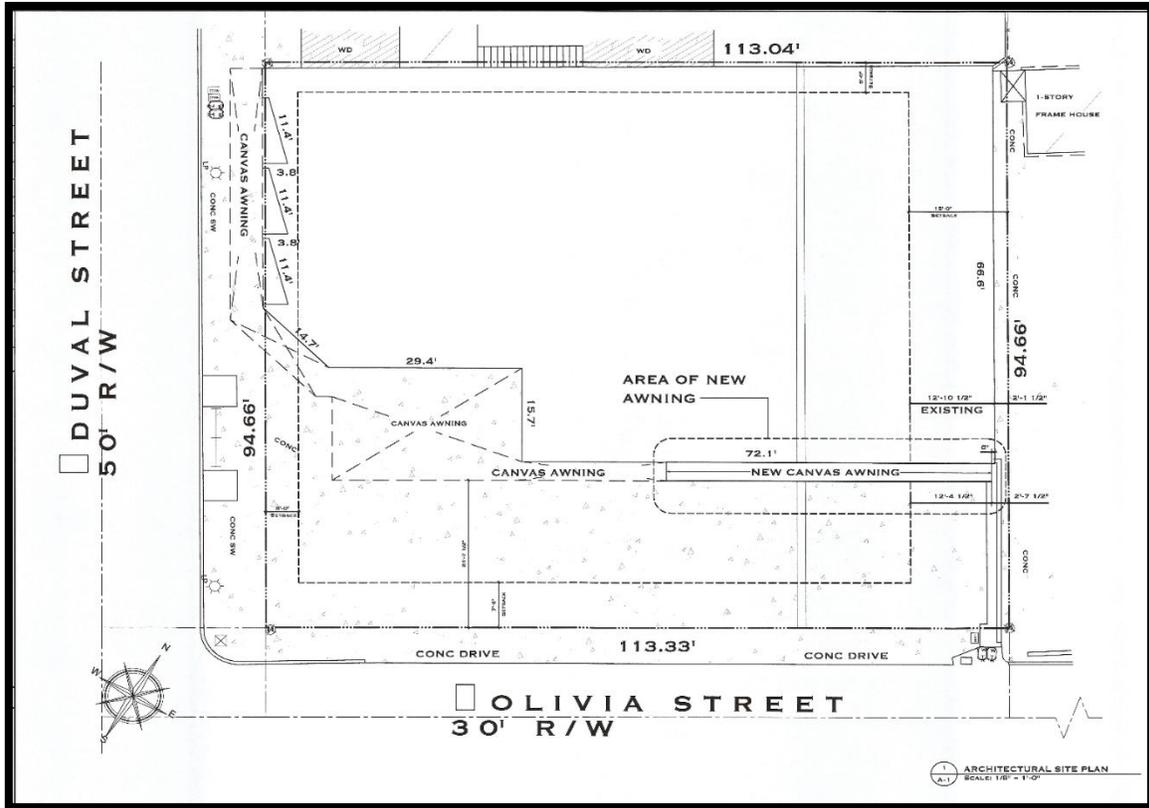
The subject parcel is located at 825 Duval Street on the corner of Duval and Olivia. The property was recently acquired by Suba 825 LCC and will be going through renovations and opening as Robusto Bar. According to the Monroe County Property Appraiser, the commercial structure was constructed in 1958 and is a contributing structure to the Key West Historic District. The parcel is surrounded by HRCC-3 zoned properties to the north, south, east, and west.

Resolution 2012-40, a variance to parking requirements, allowed a total of eight (8) off-street parking spaces to be on the property with the substitution of four (4) bicycle spaces for one (1) vehicle parking space. Resolution 2012-48, a waiver to landscaping requirements, waived landscaping regulations per Section 108-415 of the Land Development Regulations upon condition that the applicant install landscaping per the Planting Plan submitted and plant no less than six shrubs in planters in the “no parking” area. Resolution 2014-03 allowed a variance for the construction of a vinyl canopy over an existing outdoor dining area created from the reduced parking variance granted in Resolution 2012-40. The applicant is currently not in compliance with the conditions of approval denoted in Resolution 2012-40 nor Resolution 2014-03; including the installation of six shrubs in planters placed in the no parking area, the planting and care of one Simpson Stopper tree between parking spaces three and four, and bicycle parking placed between parking spaces six and seven. The parking lot has been repaved since March 2019, paving over the curb cuts that were a condition of approval in Resolution 2014-03. The existing historic structure has been in its current form since 1958. The building is encroaching into the rear setbacks by almost thirteen (13) feet. The proposed awning would not exceed the current non-conforming rear setbacks. Rigid awnings are included in building coverage calculations, the proposed awning would add 152 sqft of building coverage.

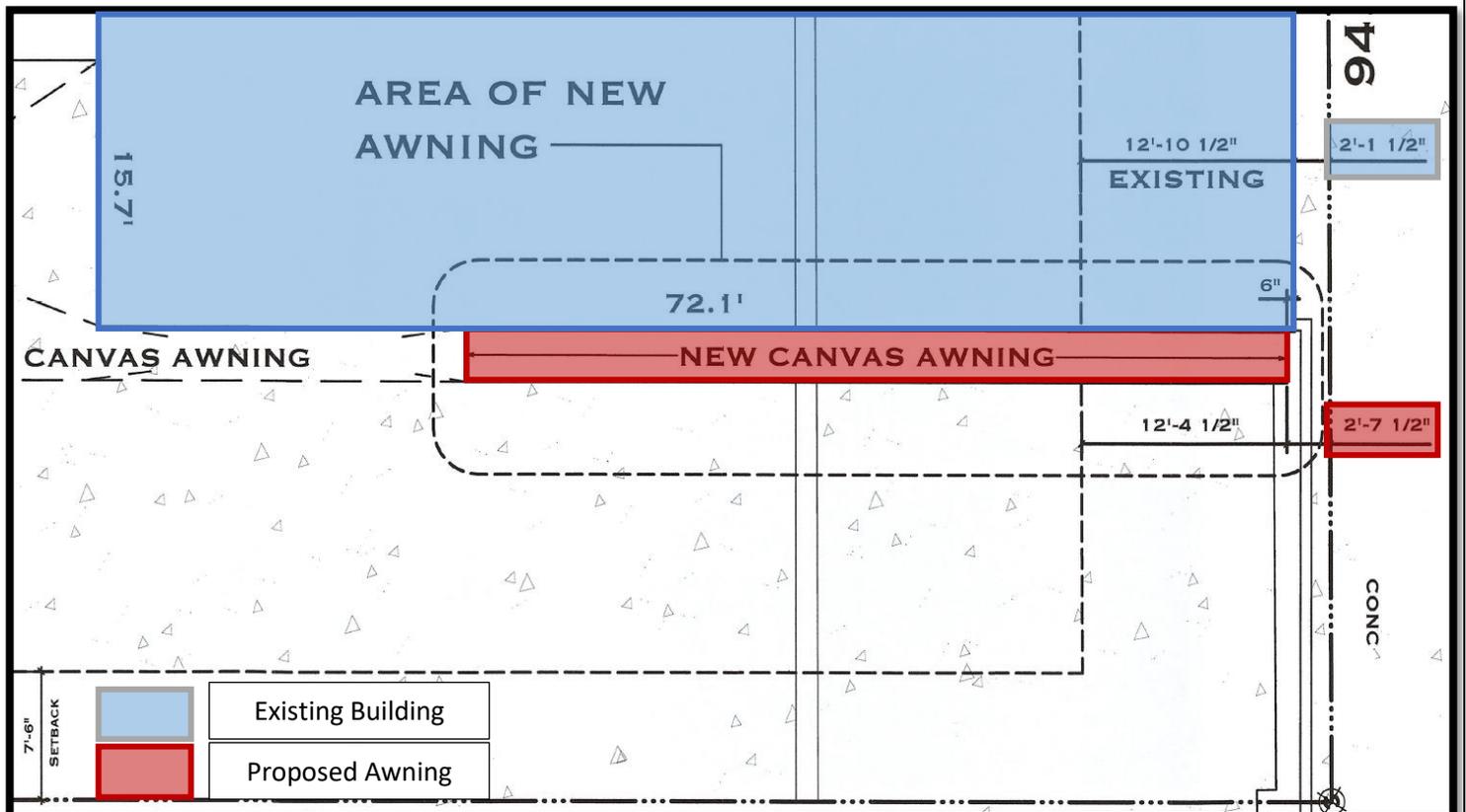
The site table below details the current and proposed site data for the property.

Site Data Table				
	Code Required	Existing	Proposed	Variance Request
Zoning	HRCC-3			
Flood Zone	X			
Size of Site	10,730 sqft			
Height	35	18' 6"	n/a	n/a
Front Setback	5'	0"	n/a	n/a
Side Setback	5'	1"	n/a	n/a
Street Side Setback	7.5'	24' 7.5"	24' 7.5"	n/a
Rear Setback Building	15'	2' 1.5"	2' 1.5"	legal non-complying
Rear Setback Awning	15'	52' 1.5"	2' 7.5" (awning)	12' 4.5"
Building Coverage	50% -- 5,365 sqft	69% -- 7,423 sqft	70.5% -- 7,575 sqft	2,210 sqft
Impervious Surface	60% -- 6,436 sqft	99% -- 10,659 sqft	99% -- 10,659 sqft	legal non-complying
Parking	9 Spaces	6 Spaces	n/a	n/a
Accessible Parking	1 Space	1 Space	n/a	n/a
Bicycle Parking	n/a	0	n/a	n/a
Open Space	30% -- 3,219	1% -- 71 sqft	1% -- 71 sqft	legal non-complying
Consumption Area	n/a	45 Seats	n/a	n/a

Site plan of proposed awning at 825 Duval Street, T.S. Neal Architects Inc, 2020



Proposed Site Drawing Altered for Clarification, Planning Department, 2020



Staff conducted a site visit on March 26<sup>th</sup>, 2020 and took photographs of the property to document the existing canopy awning as well as the violation of conditions of approval in Resolution 2014-03. Conditions of approval must be maintained per Section 4 of Resolution 2014-03.

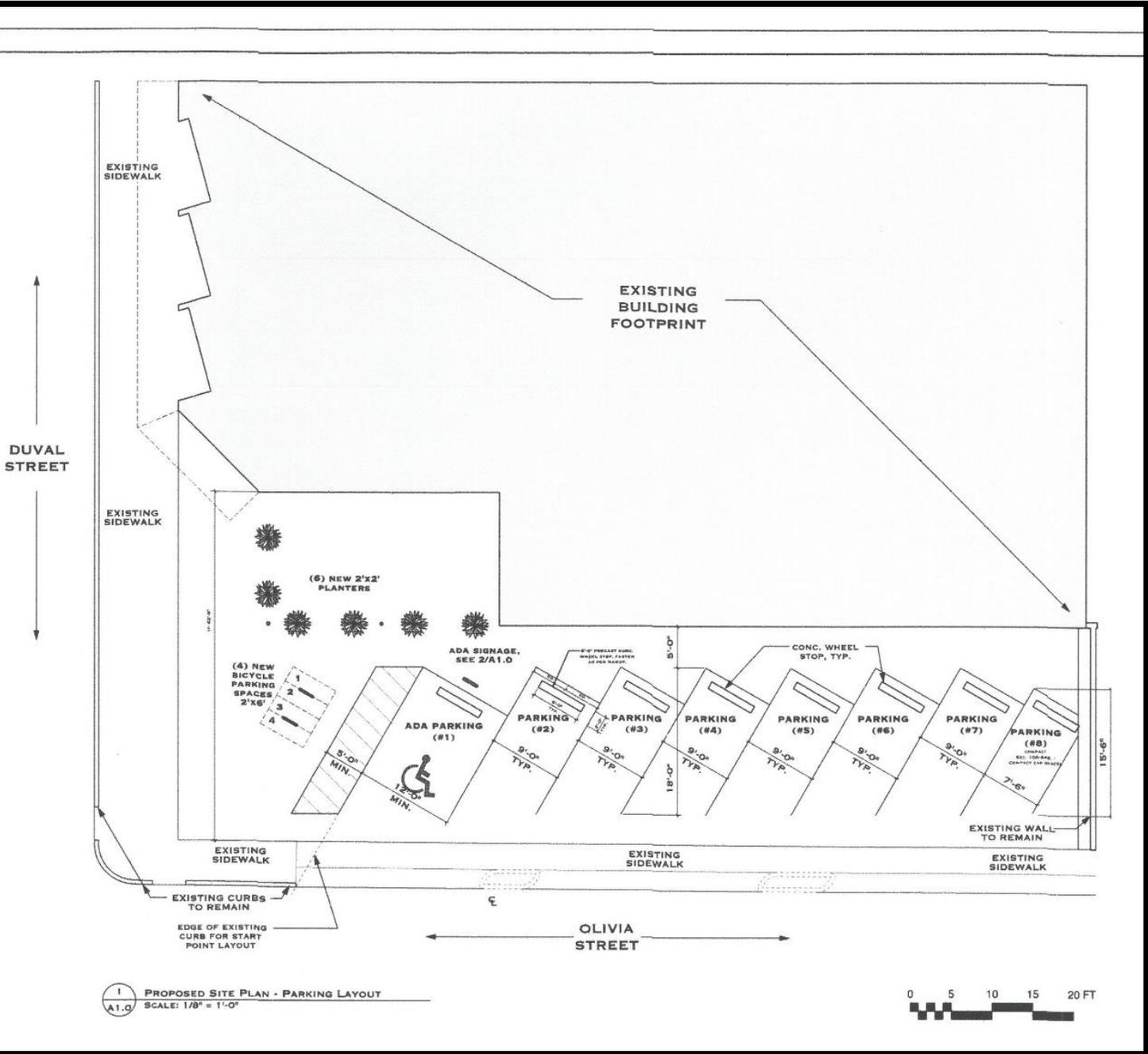
825 Duval Street, 2015



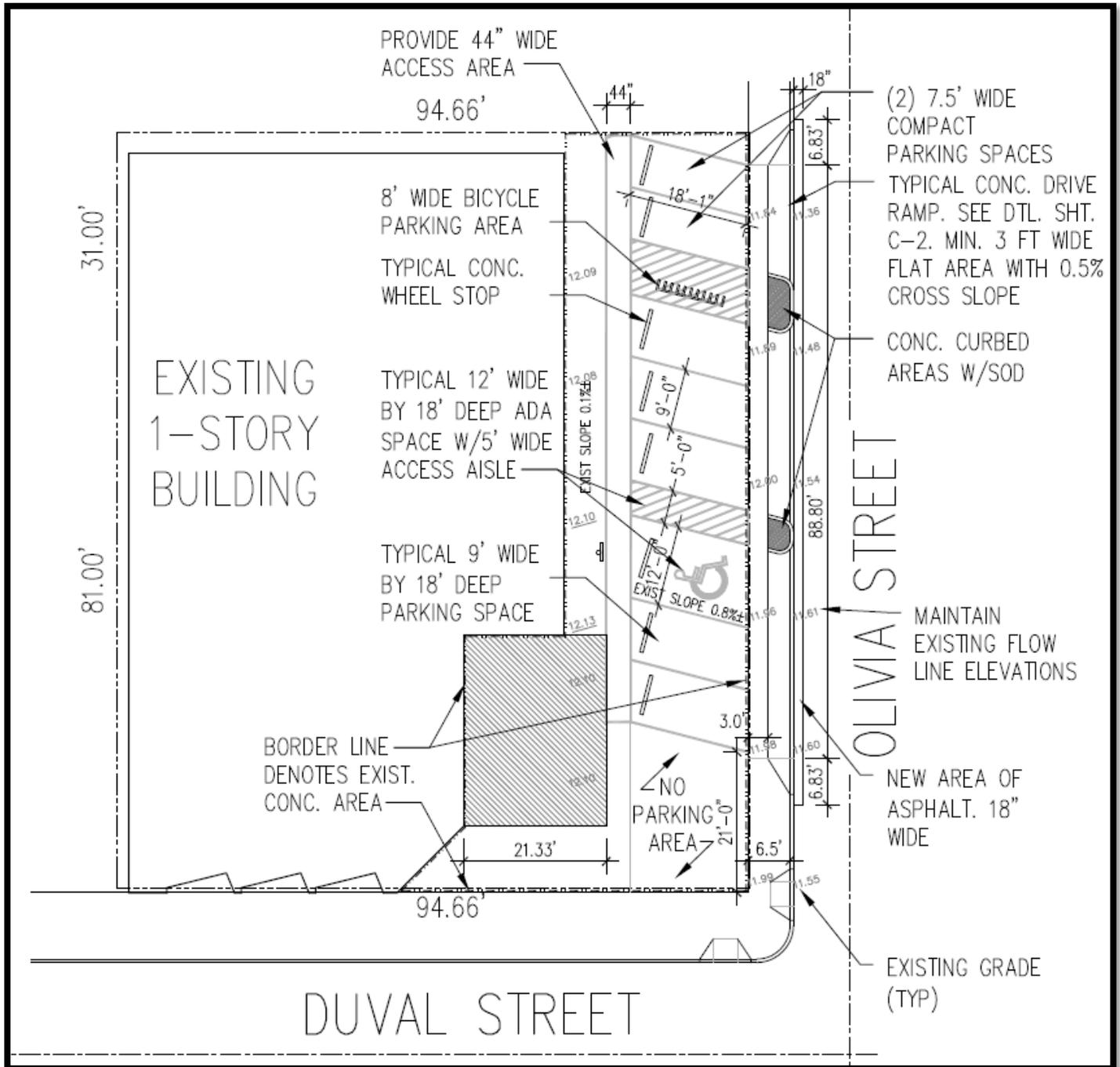
825 Duval Street, 2020



Propose Parking Plan, 2020



Parking Plan per Resolution 2012-40



**Process:**

Planning Board Meeting:	May 21, 2020
Local Appeal Period:	10 Days
Planning renders to DEO for review:	Up to 45 days

**Staff Analysis - 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.*

The parcel has been noncomplying in impervious surface, with pavement or a built structure covering 99% of the property since the site was developed in 1953. The building coverage, open space, and rear setbacks are also noncomplying. The parcel has several resolutions including; a resolution for parking, a resolution for a landscape waiver, and a resolution for a canopy which brought the building coverage from conforming to non-conforming. This variance would not substantially add building coverage to the already non-compliant parcel. It is possible the applicant could remove some impervious surface or building coverage so that they would be closer to complying to city code before constructing the awning.

**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 former owner applied for a variance for an awning to cover an existing seating area, this variance was granted and increased building coverage from 50% to 69%, thus making the parcel non-conforming. The former owner did not maintain all conditions of approval in Resolution 2014-03, these conditions must be adhered to by the current owner.

**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 27 of the Land Development Regulations discourages the expansion of site nonconformities. This variance would expand and enlarge the current nonconformity on the property. Permitting the expansion of the permitted awning and intensifying the nonconforming building coverage currently on the parcel would confer special privileges upon the applicant.

**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 parcel at 825 Duval Street, owned by Suba 825 LLC, is nearly all paved and/or built out, leaving little room for exterior building improvements. The existing conditions are a result of the original historic gas station built on the property in 1952. The applicant is proposing to increase the existing nonconformity by constructing an additional awning over two commercial

entranceways. This awning would provide shade and shelter from sun and rain over these two entranceways, similar to the awnings on surrounding buildings. However, the noncomplying pavement is a self-determined occurrence, not a hardship.

Literal interpretation of the provisions of the Land Development Regulations would deprive the applicant of rights commonly enjoyed by other surrounding properties under the terms of this ordinance but would not work unnecessary and undue hardship on the applicant.

**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 requested is not the minimum required that will make possible the reasonable use of the land, building and/or structure. It is reasonable that the applicant could place awnings only over the two entranceways instead of the entire length of the building.

**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.*

Although the variance will not be in harmony with the general intent of the land development regulations, due to the already non-conforming building coverage, open space, and impervious surface, the granting of this requested variance would not be injurious to the area involved and would not be 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 or utility service 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 not 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 comment for the variance request as of the date of this report.

**Recommendation:**

Pursuant to Section 122-750 of the Code, the current parcel is non-conforming in building coverage, open space, and impervious surface ratio. Furthermore, according to Section 122-32, nonconformities shall not be expanded, extended, enlarged, or increased in intensity. The awning in question would increase the intensity of both the nonconforming building coverage and the nonconforming rear setbacks. Since the parcel is 99% impervious, additional building coverage in the form of an awning, would not add to the impervious problem, as well as, it would not add any square footage to the building or consumption area. The expansion of the awning into the rear setback would allow the shop owners and consumers to enter and exit the shops free from the elements. While the minimum variance applied for would be two separate awnings, one above each shop entrance, the applicant has request to extend the awning to span most of the distance of the building, ending six inches before the building.

Based on a review of the application according to the stringent evaluation criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for a variance be **denied**. If the Planning Board chooses to approve the variance, the Planning Department recommends the following conditions:

1. The applicant must bring the property into compliance with Planning Board Resolution 2012-40, Resolution 2012-48, and Resolution 2014-03, including but not limited to the installation of six shrubs in the "No Parking Area," four (4) bicycle spaces, and eight (8) off-street vehicle parking spaces per site plan in Resolution 2012-40.
2. The applicant must install shrubbery that reaches no more than 30 inches tall in the concrete curbed area created in Resolution 2012-48.
3. The applicant is to add an additional planter with shrubbery, as identified in Resolution 2012-48 and Resolution 2014-03, in-between Retail Space #2 and Retail Space #3, as well as a planter with shrubbery in-between Retail Space #3 and Retail Space #4.
4. All required landscaping is to be maintained in good health and to be landscaped per the Planting Plan submitted with Resolution 2012-48
5. Fireproofing of the awning material shall be required as approved by the City Fire Marshall and Chief Building Official.