

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



**To:** Chair and Planning Board Members

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

**Meeting Date:** November 18, 2021

**Agenda Item:** **Variance – 408 Greene Street (RE # 00001500-000000)** – A request for a variance to the minimum parking requirements in order to create 1,000 square feet of an outdoor venue for small group retail/therapeutic events on property located within the Historic Residential/Office (HRO) zoning district pursuant to Sections 90-395, 108-573, 108-572 (16), 122-27 and 122-32(d) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida

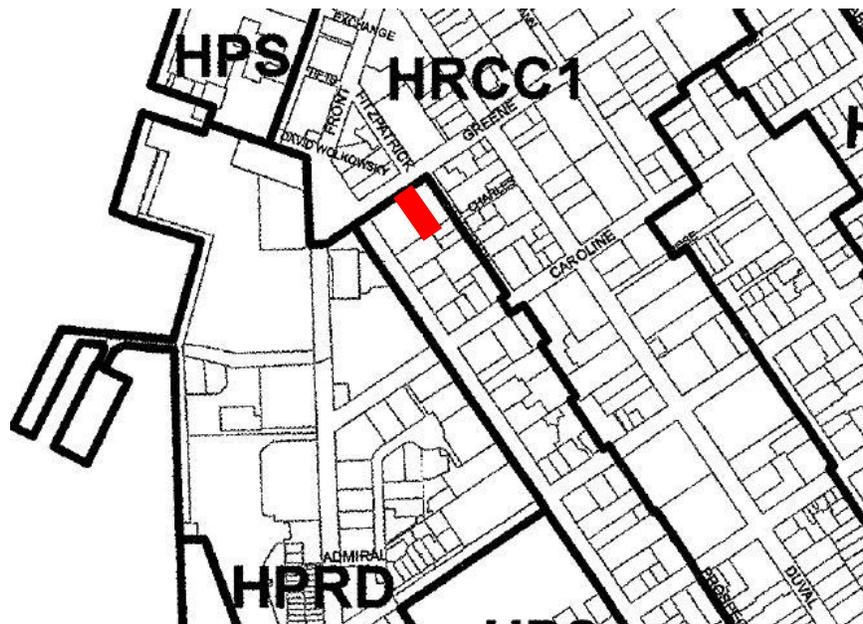
**Request:** Approval to allow outdoor venue rental (commercial retail) in the HRO zoning district and a parking variance.

**Applicant:** Richard McChesney – Spottswood, Spottswood, Spottswood & Sterling, PLLC

**Property Owner:** C & D Properties of Key West, LLC

**Location:** 408 Greene Street (RE # 00001500-000000)

**Zoning:** Historic Residential / Office (HRO) zoning district



**Request:**

The Applicant has proposed to rent 1,000 square feet of the courtyard to the public for “small group retail/therapeutic events”. This land use is considered commercial retail by the City of Key West Code, Section 86-9, “*Commercial retail use* means a use that sells goods or services at retail”. In this case, the service being sold would be venue rental. The Historic Residential / Office (HRO) zoning district states the following in Section 122-196- Intent, “. . . the HRO district shall expressly exclude general retail sales, warehousing, and outdoor storage. In order to manage the impacts of future development on transportation and public facilities, the city shall limit the intensity of development within the HRO district to activities generating no more than 50 trips per 1,000 square feet of gross leasable floor area per day.” As such, this use is not permitted in the zoning district.

However, the applicant seeks this request for a parking variance for the 1,000 square foot commercial retail activity, given their position that the previous legal nonconforming use on the property has not been abandoned.

The City Code Section 108-572, Schedule of off-street parking requirements by use generally, states that for “places of assembly” there shall be one off-street parking space per 150 square feet of floor area which would require a variance for seven (7) off-street parking spaces and one (1) bicycle parking space.



408 Greene Street – Subject property



Front yard



Side yard

Courtyard proposed for event venue rental at 408 Greene Street.

**Background:**

The subject property at 408 Greene Street is located near the southwesterly corner of Greene and Whitehead Streets between Telegraph and Whitehead Streets. According to Monroe County Property Appraisers records, the building was constructed in 1933 and is recognized as a historic and contributing structure to the Historic District. The property is located within the Historic Residential / Office (HRO) Zoning District as well as the Historic Commercial Pedestrian-Oriented Area.

The most recent business at the subject property was the Lucky Street Gallery which was a legal non-conforming land use in the HRO zoning district. The business license for that retail use expired on September 30, 2019. City of Key West Code Section 122-30 on abandonment states a nonconforming use shall be considered abandoned, when such use has ceased for a period of 24 months. The applicant applied to continue this legal non-conforming commercial activity within the 24 month period.

There is a new tenant at 408 Greene Street, a medical spa, which is a conforming use per City Code Section 122-927(7). The principal land use classification is now medical services.

With respect to the parking variance, as noted above, the property is located within the Historic Residential / Office (HRO) Zoning District as well as the Historic Commercial Pedestrian-Oriented Area. Generally, if no expansion of floor area is requested in this district, no additional off-street parking is required. In this case, the applicant seeks to expand outdoor business activity (for assembly/venue rental) by 1,000 square feet and seeks a variance for the required seven (7) off-street parking spaces. (Section 108-572(3)).

**Surrounding Zoning and Uses:**

North:	HRCC-1	Tropical Vibes Cones & Bowls
South:	HRPD	Mel Fisher Maritime Museum
East:	HRO	Hank’s Hair of the Dog Saloon & Garbo’s Grill
West:	HRCC-1	Tropical Vibes Cones & Bowls



Retail uses adjacent to 408 Greene Street



Whitehead Street on Greene Street



Greene Street toward Duval Street



Tropical Vibes Cones & Bowls, Greene Street

**Process:**

Planning Board:	November 18, 2021
Local Appeal Period:	10 days
Planning render to DEO for review:	Up to 45 days

**Staff Analysis- Evaluation:**

The criteria for evaluating a variance are listed in Sections 90-395 of the City of Key West Land Development Regulations. 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.*

This is a historic building in downtown Key West and there are no special conditions.

**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 submitted a request to operate a commercial activity, venue rental, in an outdoor area in the HRO zoning district, in addition to the principal use of medical spa. This requires a parking variance.

**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.*

Special privileges would be conferred with this variance.

**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 the 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 is currently operating a medical spa, a permitted use, on this property and there is no hardship.

**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 is not needed for reasonable use of the land, buildings and structures.

**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.*

The proposed commercial activity will increase the need for parking associated with this site.

**NOT IN COMPLIANCE**

7. *Existing nonconforming uses of other property shall not be considered as 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 the City Code have been met by the applicant for a variance.*

The standards established by the City Code have not been fully met by the applicant for the variance requested.

*That the applicant has demonstrated “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 two letters of support for the variance request as of the date of this report. One letter is from the immediate neighbor to the west, a bakery, and the other from the Opal Resort, which also operates a structured parking garage.

*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.*

Commercial retail is not permitted or conditional in the HRO zoning district, however the applicant maintains their intent to continue the legal nonconforming use associated with the previous tenant.

*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 increase or has the effect of the increasing density or intensity of a use beyond that permitted by the comprehensive plan or these LDRs.*

The applicant has requested a parking variance; if Planning Board chooses to approve this variance, staff recommends a limit on vehicle trips as provided below.

**RECOMMENDATION:**

The variances to the parking requirement does not meet all the criteria stated in Section 90-395. The Planning Department recommends **DENIAL**.

If the Planning Board chooses to approve the variance, the Planning Department recommends the following conditions:

1. In order to manage the impacts of future development on transportation and public facilities, the city shall limit the intensity of development within the HRO district to activities generating no more than 50 trips per 1,000 square feet of gross leasable floor area per day.
2. Provide on-site bicycle parking as required.