




MEMORANDUM

Date: December 14, 2023

To: Honorable Mayor and Commissioners

Via: Albert P. Childress
City Manager 

From: Katie P. Halloran
Director, Planning Department

Subject: **Board of Adjustment Appeal of Seating Request Denial
409 Caroline Street – RE # 00001580-000000**

Introduction

On September 27, 2023, the City Clerk received a Notice of Appeal of the Planning Director's denial of a seating request for the property located at 409 Caroline Street, Key West, Florida 33040.

The Planning Department respectfully recommends that the Board of Adjustment uphold the Planning Director's decision and deny this appeal of the seating request memorandum for the property located at 409 Caroline Street (RE# 00001580-000000) dated and signed September 20, 2023.

Background

In early 2023, the City's Licensing and Code Compliance Department performed a restaurant seat license compliance audit. The Code Compliance Department cited the business on January 31, 2023 for sixty-nine (69) unlicensed seats. As a result, the Planning Department received a request from the owner's representative to increase the number of indoor seats from nine (9) to twenty-two (22) and the number of outdoor seats from forty (40) to one hundred thirty-four (134).

Upon receipt of a request for additional restaurant or bar seats, the Planning Department reviews the zoning district of the property, use of the property, impacts to parking, existing and proposed seating plans, square footage of consumption area, and the Key West Fire Department occupancy load.

When this bar/lounge business commenced, the property was located in the area of the city

designated HP-2, which permitted eating and drinking establishments. However, when the current zoning regulations were enacted, the subject property was included in the area of the city designated Historic Residential/Office (HRO). Section 122-926 of the city code provides, in part, that the “HRO district shall accommodate business and professional offices as well as residential structures”. In the HRO district, outside of the Appelrouth Business Corridor, neither a bar/lounge or restaurant is a permitted or conditional use.

Section 122-26 of the city code provides that a nonconforming use is a use “which was legally established in accordance with the zoning in effect at the time of its inception or which use predates all zoning codes and which use has not changed or been abandoned”. In that the bar/lounge and restaurant use appear to have been established prior to the implementation of the current city code, those uses would fall within this definition.

In 1997, the attorney representing the owner of the property at that time corresponded with Robert Tischenkel, the City Attorney at that time, for the purpose of documenting the seating capacity for the business. In that letter, which was acknowledged by the signature of the City Manager at that time, the parties agreed that the owner was entitled to 40 outdoor seats and that the number of indoor seats would be reduced from 20 seats to 9 seats in order to eliminate the need for additional parking.

In 2018, the owner obtained a business tax receipt for a restaurant with 49 seats and a business tax receipt for an entertainment permit for live or recorded amplified music. In 2019, the owner obtained a business tax receipt for dogs in a public service establishment.

Section 122-32(d) of the city code provides that “a nonconforming use shall not be extended, expanded, enlarged, or increased in intensity”. The seating plan proposal received on June 27, 2023 does not contemplate a physical expansion of the footprint of the area occupied by the business; however, the proposed seating request is an expansion and increase in intensity of a legal non-conforming use.

In conclusion, the language contained in Section 122-27 and 122-32(d) of the city code is intended to allow legally created nonconformities to exist in their present condition but prohibit expansion or increase in intensity. The current request would result in an increase in occupancy from forty-nine (49) seats to one hundred fifty-six (156) seats. This would constitute an intensification of the use and the impact resulting from such an increase would violate both the spirit and intent of these provisions.

Procurement

If the denial is reversed, the business owner would need to remit impact fees related to the additional one hundred seven (107) seats and update the business tax receipt.

Recommendation

The City Manager’s Office recommends the Board of Adjustment uphold the Planning Director’s decision and deny the appeal of the Planning Director’s September 20, 2023, denial of the seating request for 409 Caroline Street (RE# 00001580-000000).