



THE CITY OF KEY WEST
PLANNING BOARD
Staff Report

To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Mario Duron, AICP, Corradino

Meeting Date: February 17th, 2022

Agenda Item: **Variance – 529 United Street (RE# 00028790-000100):** A request for approval of a variance to permit the reduction of a housing unit for conversion to commercial use, a variance to conform with parking deficiencies, and a variance to off-street required parking, to allow for the expansion of consumption area in a restaurant located within the Historic Neighborhood Commercial – Truman/Simonton (HNC-1) Zoning District pursuant to Sections 108- 572 and 108-575 (5) and 122-776(b) of the City of Key West Land Development Regulations.

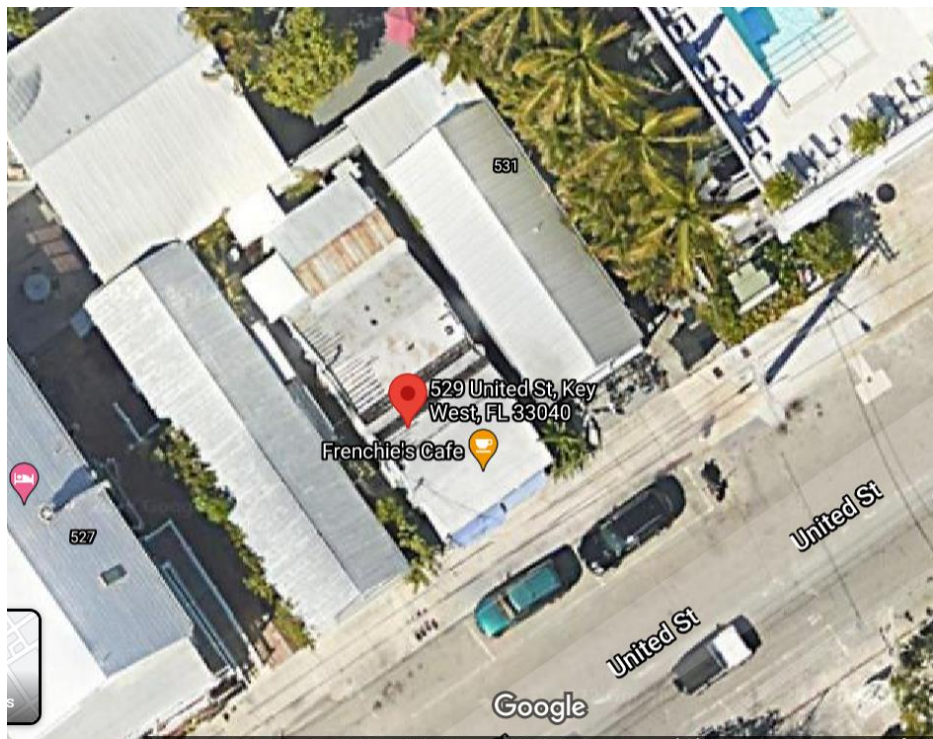
Request: A request to eliminate an existing residential unit to convert to commercial space, and variances from the required parking. In an accompanying application, the Applicant is requesting a revision to a conditional use approval to expand the consumption area of the existing restaurant. The proposed expansion results in the variances requested.

Applicant: Owen Trepanier

Property Owner: Xavier Bellin

Location: 529 United Street (RE# 00028790-000100)

Zoning: Historic Neighborhood Commercial – Truman/Simonton (HNC-1)



Background/Request:

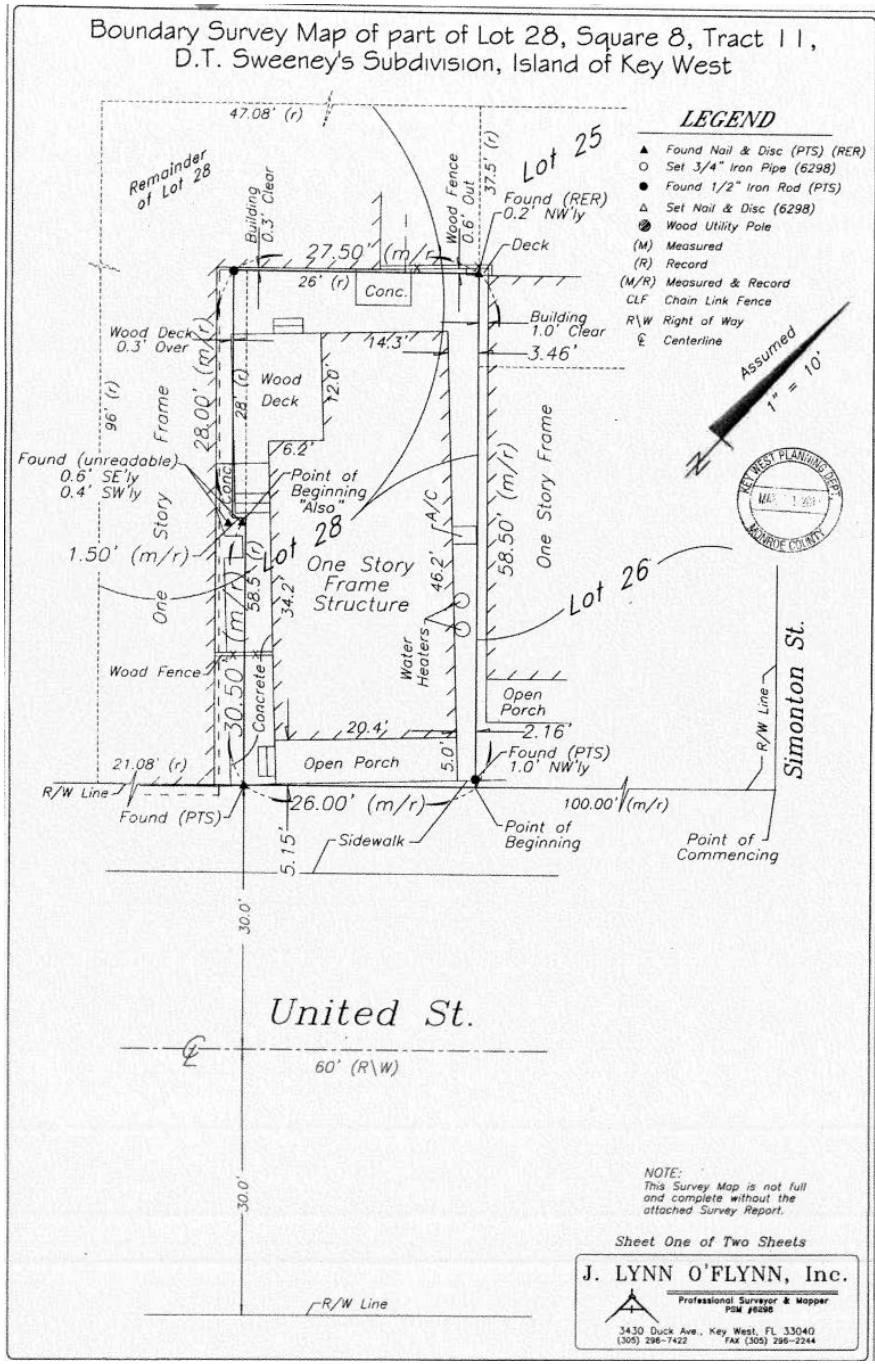
The subject property is located on the 500 block of United Street near the corner of Simonton Street, within the Historic Neighborhood Commercial – Truman/Simonton (HNC-1) Zoning District. The property is currently improved with a one-story frame structure built in 1928, with approximately 900 square feet in gross floor area. No off-street automobile or bicycle parking spaces exist.

In July 2011, under City Resolution Number 2011-037, the property was granted approval of a conditional use request for the operation of a restaurant with a 194 square foot consumption area, including 40 square feet of outdoor and 154 square feet of indoor consumption space. The request was approved with no requirements for off-street parking as the site is within the Historic Commercial Pedestrian-Oriented area. Section 108-573 (c) of the City Code provides that no additional off-street parking shall be required within the historic commercial pedestrian-oriented area if a commercial structure is the subject of a change of commercial use, as long as additional floor area is not added. There was no additional floor area added and the conditional use request was approved with no off-street parking required.

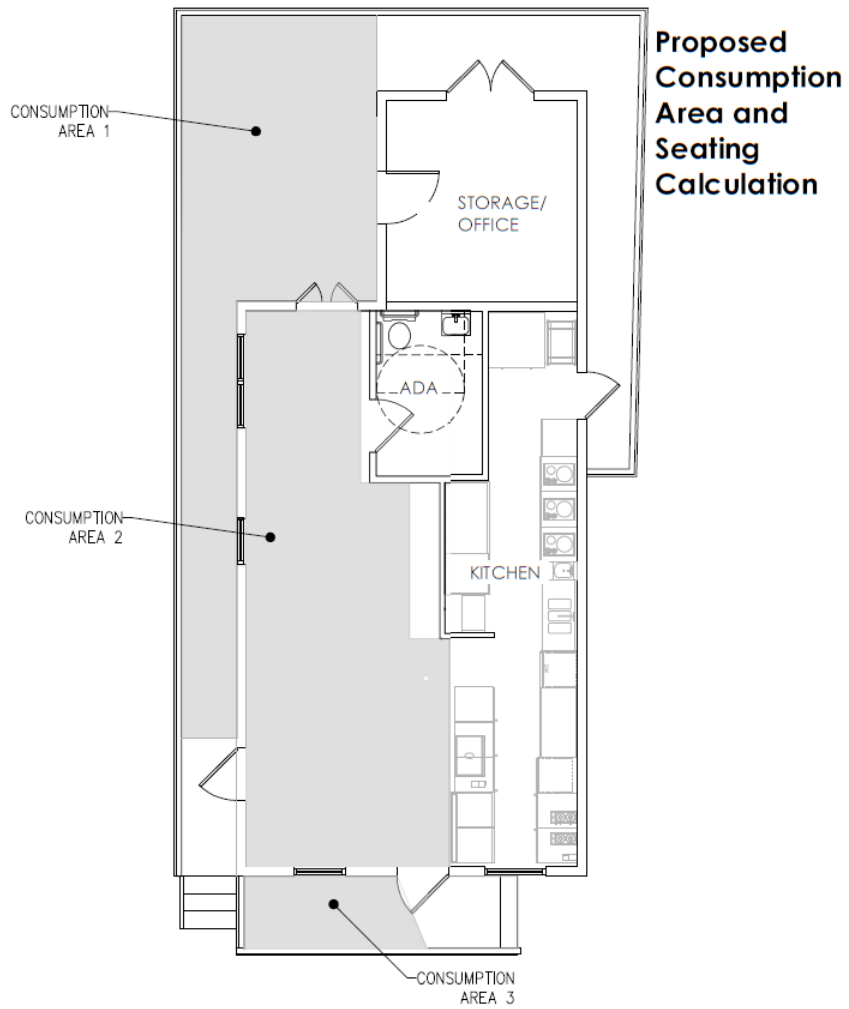
Today, the Applicant is requesting a revision to the conditional use approval to expand the consumption area for a total of 592 SF, including 298 SF of indoor and 294 SF of outdoor consumption area. The proposed expansion will require the property to comply with parking requirements. A variance from Section 122-776(b) is also requested to allow the conversion of the residential unit to commercial space. The applicant seeks to eliminate an existing residential unit on the property and convert the space for commercial use. The existing residential unit is less than 750 SF and does not comply with the minimum unit size requirement. City of Key West Fire Department staff have also written that there are life safety and Code concerns with the location/configuration of this unit. Staff is recommending that this non-transient residential unit be placed in “unassigned” status, and remain attached to the property, given the substantial need for housing units. The intent is to allow this residential unit to return to the property in the future, in compliance with City Codes, when and if desired by future occupants or owners.

The restaurant use with the proposed expansion will require fourteen (14) vehicle parking space and four (4) bicycle parking spaces. The applicant is requesting a variance from Section 108-575(5) which requires existing parking deficiencies to come into conformity with the expansion, and from Section 108- 572 for required parking for restaurant uses. The applicant is proposing zero (0) automobile and zero (0) bicycle parking on-site.

Survey



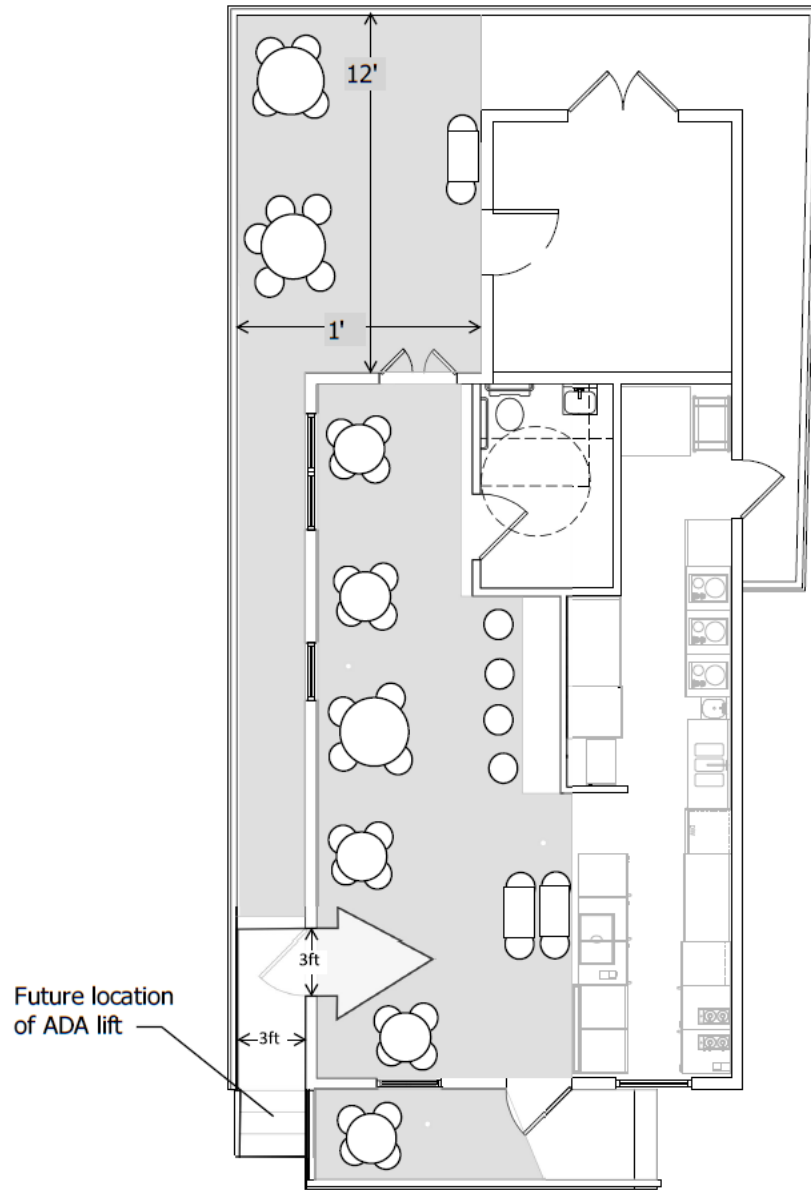
Proposed Consumption Area Floor Plan:



**Proposed
Consumption
Area and
Seating
Calculation**

CONSUMPTION AREA 1 = 255 SF
CONSUMPTION AREA 2 = 298 SF
CONSUMPTION AREA 3 = 39 SF
TOTAL = 592 SF
ASSEMBLY OCCUPANCY UNCONC. TABLES AND
CHAIRS = 15 NET (FBC TABLE 1004.5)
TOTAL OCCUPANCY = $592/15 = 39.5$ (39 PEOPLE)

Proposed Seating Floor Plan:



529 United Street
Seating Sketch

Site Data Table for 529 United Street				
	Code Required	Existing	Proposed	Variance Requested
Zoning	HNC-1			n/a
Flood Zone	AE – 6			n/a
Minimum Lot Size	4,000 SF.	1,563 SF.	n/a	Legal nonconforming
Height	35 FT.	< 35 FT.	n/a	n/a
Front Setback	5 FT.	0 FT.	n/a	Legal noncomplying
Side Setback	5 FT.	2.1 FT.	n/a	Legal noncomplying
Side Setback	5 FT.	0 FT.	n/a	Legal noncomplying
Rear Setback	15 FT.	6.5 FT.	n/a	Legal noncomplying
Maximum Building Coverage	50% -- 781.5 SF.	62% -- 971 SF.	n/a	Legal noncomplying
Maximum Impervious Surface	60% -- 973 SF	87% -- 1,357 SF.	n/a	Legal noncomplying
Consumption Area	n/a	190 SF.	592 SF.	n/a
Parking	1/45 SF of consumption area	0	0	14 spaces*
Bicycle Parking	25%	0	0	4 spaces*

Site Data Table:

*Sec. 108-575(2): Interpretation of computation with fractions. When calculation of required parking results in requiring a fractional space, any fraction shall be rounded off to the next highest number.

The applicant is requesting a variance pursuant to following sections of the City of Key West Land Development Regulations:

- **Sec. 108-572:** provides the minimum motorized vehicle and bicycle parking requirements for restaurant uses; and
- **Sec. 108-575(5):** requires any parking deficiency be brought into conformity concurrently with an enlargement or change of use.
- **Sec. 122-776(b):** requires that within the HNC districts, redevelopment or conversion of permanent housing structures to allowable commercial uses shall be permitted only if no on-site reduction in housing units for permanent residents occurs.

Process:

Development Review Committee:	May 27, 2021*
Planning Board:	February 17, 2022
HARC:	TBD
Local Appeal Period:	10 days
DEO Review:	Up to 45 days

** Project did not move to the Planning Board due to the concerns brought forward prior to and during the DRC meeting. The applicant submitted a revised application reviewed by City Staff December 2021.*

Staff Analysis- Evaluation:

The criteria for evaluating a variance are listed in Sections 90-391 through 397 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.*

The parcel located at 529 United Street is smaller than the code required minimum lot size. The parcel is 1,563 square feet. The minimum lot size in the HNC-1 zoning district is 4,000 square feet. It also does not comply with development regulations regarding front, rear, and side setbacks, building coverage, and impervious surface coverage.

The one-story building on the property was built in 1928 as a single-family home. It changed uses from a home to an office with a residential unit, and in 2011 it was converted into a mixed-use development with a restaurant and one housing unit. Per the Key West Fire Department the existing dwelling unit is not permissible in its current location/configuration given its noncompliance with City Fire Code. The unit is also less than the minimum unit size of 750 SF required by Code. As such, there are special conditions with respect to the residential unit variance request.

Historically, the property has not provided any off-street parking spaces. Because the property is located in the HNC-1 zoning district and is a part of the Historic Commercial Pedestrian-Oriented area, no additional off-street parking was required when the property changed from commercial use as an office to commercial use as a restaurant with-no change to the floor area. Today, the applicant's proposed expansion to the existing consumption area increases the amount of off-street

parking required and further increases the property's noncompliance with current code regulations. There are no special conditions with respect to the parking variance request.

PARTIALLY 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 one-story structure on the property does not have off-street parking spaces. Prior to the establishment of the restaurant and residential unit in 2011, the uses on the property included a commercial use (professional office) in the front of the building, and a residential unit to the rear. Section 108-573(c) of the City Code provides that no additional off-street parking shall be required within the Historic Commercial Pedestrian-Oriented area if a commercial structure is the subject of a change of commercial use, as long as additional floor area is not added. In 2011, when the conditional use request was approved for the restaurant, a total consumption area of 194 SF was permitted. However, due to the applicant's current request to eliminate the residential unit and expand the consumption area by 398 SF, per Sec. 108-575(5), any parking deficiency must be brought into conformity concurrently with the proposed enlargement. The request to eliminate the non-conforming dwelling unit to convert to commercial use also deviates from City Code regulations, which seeks to preserve residential units in the HNC districts. With respect to the removal of the unit, the applicant could reconfigure the unit to achieve Code compliance but does not desire to do so at this time.

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.*

While parking variances have been granted to other properties in the HNC-1 zoning district, the applicant's requests for a parking variance to provide zero (0) required off-street parking spaces, would be unique to this property in this zoning district.

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.*

Hardships exist. The parcel located at 529 United Street is improved with a historic structure that does not comply with the City's current Land Development Regulations. The site's configuration does not allow for the installation of parking spaces and would require the demolition of the historic structure and reconfiguration of the site. In addition, the nonconforming residential unit is smaller than the minimum dwelling unit size required by Code. The City's Fire Department provided a memo indicating that due to life safety and Fire Codes, the existing residential unit cannot be in the same spaces at the current assembly use (a restaurant).

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 existing historic structure on the property is non-conforming to City's Land Development Regulations (including building setbacks, building coverage, and impervious surface area). Historically, the property has not included the provision of off-street parking spaces. Due to the site constraints, there is no space available for the installation of automobile parking. However, the variances requested are not the minimum required that will make possible the reasonable use of the land and building. The applicant may reduce the proposed expansion of the consumption area to mitigate parking deficiencies. The applicant also has the option to potentially increase their overall consumption area via the City's Sidewalk Café Permit and provide additional seating in the City's right-of-way.

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 parking variances are partially mitigated by the fact that many of the restaurant's patrons are guests associated with the nearby hotels and lodging accommodations who walk to the property; the property is within the Historic Commercial Pedestrian-Oriented Area. Staff is recommending that, if the parking variance is approved, the Planning Board consider a request to the applicant to subsidize bicycle racks to be placed off-site nearby. Separately, the existing residential unit has been deemed unsafe by City's Fire Department and its reconfiguration to restaurant space is in the interest and welfare of the community as it eliminates existing inadequate housing and provides for additional employment opportunities with the proposed expansion.

PARTIALLY 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 not received any public comment for the variance request as of the date of this report.

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

No density or intensity of a use would be increased beyond that which is permitted by the comprehensive plan or Land Development Regulations.

RECOMMENDATION:

The applicant is requesting a parking variance, as well as a variance to eliminate an existing residential unit by converting into a commercial space. In a companion application, the applicant is requesting a revision to a conditional use approval to increase the consumption area within an existing restaurant for a total of 592 square feet. The expansion of the consumption area would increase parking requirements. Due to the proposed expansion, the Code requires the parcel at 529 United Street to have fourteen (14) off-street parking spaces and four (4) bicycle spaces. The applicant is seeking variances from required parking to provide zero (0) automobile and zero (0) bicycle parking spaces.

The Planning Department of the City of Key West believes that it is a reasonable request for the applicant to eliminate the nonconforming residential unit for the conversion to commercial space, given life safety concerns. However, staff finds that the variance to the off-street parking requirements does not meet the criteria stated in Section 90-395. The Planning Department recommends **denial**.

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

1. The applicant will subsidize bicycle racks to be placed off-site nearby; a \$1,000 contribution would subsidize approximately four (4) bicycle racks per the City's Engineering Department.

2. The applicant shall surrender one non-transient residential dwelling unit to the City of Key West to be added to the BPAS Beneficial Use pool from property at 529 United Street (RE# 00028790-000100).