

## Natalie Hill

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**From:** Owen Trepanier <owen@owentrepanier.com>  
**Sent:** Tuesday, May 16, 2017 6:25 AM  
**To:** Natalie Hill  
**Cc:** Patrick Wright; Melissa Paul-Leto; Lori Thompson; Jamille Cucci; dominique falkner  
**Subject:** FW: 6 Toe

Hi Natalie,

Please see below. We have been working with the adjacent property owner's law firm to understand the property owner's concerns. I believe all of the issues, that can be resolved, will be resolved prior to the PB hearing. Thanks a lot.

Owen

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**Trepanier & Associates, Inc.**  
Land Planners & Development Consultants  
305-293-8983

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**From:** Owen Trepanier  
**Sent:** Tuesday, May 16, 2017 6:21 AM  
**To:** 'Wayne Smith' <wayne@thesmithlawfirm.com>  
**Subject:** RE: 6 Toe

Hi Wayne,

Thank you for enumerating your client's conditions for support. We reviewed them in detail and propose the following (the proposed revisions are underlined and ~~struck through~~, with our rationale explained in *italics*):

6-Toed Cat Property Owners agree to:

1. No live music on the premises at any time, without a duly approved Special Event permit pursuant to Sec. 66-98. *Jamille and Dominique would like to be able to participate in City-sanctioned festivals, street fairs, etc. The Special Event permit process is the mechanism. They are publicly noticed and each has to receive a public hearing of the City Commission*
2. No amplified music anywhere on the exterior of the premises, shall exceed the requirements of Sec. 26-192. *Jamille and Dominique have already dealt with the noisy old system of the prior owners. We must have some low-key background ambiance to filter street noise. Other neighbors have already acknowledged this action and thanked them in their letters to the City.*
3. All additional consumption area confined to the current interior of the premises.
4. No patrons are seated past 10 9 pm, and the kitchen closes no later than 11 10 pm. *We need to have reasonable hours. There are no limitations now and the only expansion is interior. 10pm seating is reasonable for a restaurant and generally earlier than the surrounding restaurants in the neighborhood.*
5. Landscape buffer of at least six feet in height is maintained in area marked with green highlighting on the attached survey copy (however, an access way shall be maintained to the rear of the property). *They need to have free access to their own property. I understand your client believed this was her property when she purchased, but it is 6-Toe's property and 6-Toe needs the access.*
6. Gate that is at the Southwest corner of your client's property will be reversed to open outward, if approved by the City of Key West Building Department, (to facilitate the landscape buffer) ~~and the gate will not be used by your client or their employees or contractors except in an emergency or when necessary for maintenance, in which event your client will provide advance notice to Denise Roberts.~~ *If gates are allowed to swing out into the public right of way, we will do so. However, this gate is access to the 6-Toe's own property. They need to have*

*free access to their own property. I understand your client believed this was her property when she purchased, but it is 6-toe's property and 6-Toe needs the access.*

7. Property owners will make a good faith effort to discourage waiting patrons from congregating on the sidewalk. The existing waiting area is near the front door and on the adjacent porch. Patrons will be encouraged to use continue waiting in this area through signage and verbal directions ~~Area highlighted in yellow on attached survey copy is reserved for waiting patrons (so that they do not congregate on the sidewalk, if possible) with benches or other appropriate amenities to encourage waiting patrons to congregate there. Signage and verbal direction to patrons will also be employed to encourage use of this area when patrons are waiting to be seated. The area your client wants patrons to wait is where the oil storage and other back of house operations are located. They are located here to keep them away from your client's property. If we dislodge those uses to create waiting areas, then we will need to utilize the remaining rear area for such uses, which will place them immediately adjacent to your client's rear yard.~~
8. Area highlighted in blue on the attached survey copy will not be used for consumption area and any sound shall comply with the requirements of Sec. 26-192. ~~be used only for storage (this area is immediately adjacent to Denise Roberts' rear yard and any activity taking place on a regular basis is likely to intrude on her peaceful enjoyment of her rear yard) and no activities or equipment will be placed there that causes noise that can be heard beyond the boundary of your client's property. Rather than attempting to create a whole new enforcement standard, we suggest using the existing City Code.~~
9. Your client will provide and update as needed a 24/7 contact person or persons who can respond to any complaints or problems.
10. This approval shall be enforced consistent with Sec. 122-63(f). City of Key West Code Compliance will be specifically empowered to enforce these conditions in the same manner as enforcement of any City Code provision. In the event that your client or any successor owner is found to have violated any of these conditions, in a final decision of the Special Magistrate (or any applicable appeal tribunal), the consequence shall be that this Planning Commission approval of a change in non-conforming use and parking variance will be automatically revoked and the property returned to its current status quo of the non-conforming uses as they exist today. Rather than attempting to create a whole new enforcement standard, we suggest using the existing City Code.

Denise Roberts agrees to:

1. Take such measures, with City approvals and permits, to eliminate encroachments, and storm water runoff, onto the 6-Toe property. The existing encroachment is causing water damage to the 6-Toe property. The correction needs to be permitted by the City to ensure it resolves the storm water runoff issue.
2. Restore the 6-Toe's concrete walkway which was demolished by Ms. Roberts, leaving a 1 foot planting strip along the 6-Toed's deck for the landscape strip requested in No. 5 (above). The 6-Toe owners were dismayed that your client demolished their property without permission. They feel it is the right action for her to restore the damage.
3. Provide reasonable advance notice to the 6-Toe's manager when construction events are anticipated to disrupt regular business operations of the 6-Toe. The construction has disrupted the 6-Toes business several times with no advance notice.

Owen

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**Trepanier & Associates, Inc.**  
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**From:** Wayne Smith [<mailto:wayne@thesmithlawfirm.com>]

**Sent:** Monday, May 15, 2017 10:12 AM

To: Owen Trepanier <[owen@owentrepanier.com](mailto:owen@owentrepanier.com)>

Subject: 6 Toe

Owen,

Denise Roberts is willing to withdraw her objections to the proposal before the Planning Board, provided the following conditions are attached to the approval:

1. No live music on the premises at any time.
2. No amplified music anywhere on the exterior of the premises.
3. All additional consumption area confined to the current interior of the premises.
4. No patrons are seated past 9 pm, and the kitchen closes at 10 pm.
5. Landscape buffer of at least six feet in height is maintained in area marked with green highlighting on the attached survey copy.
6. Gate that is at the Southwest corner of your client's property will be reversed to open outward (to facilitate the landscape buffer) and the gate will not be used by your client or their employees or contractors except in an emergency or when necessary for maintenance, in which event your client will provide advance notice to Denise Roberts.
7. Area highlighted in yellow on attached survey copy is reserved for waiting patrons (so that they do not congregate on the sidewalk, if possible) with benches or other appropriate amenities to encourage waiting patrons to congregate there. Signage and verbal direction to patrons will also be employed to encourage use of this area when patrons are waiting to be seated.
8. Area highlighted in blue on the attached survey copy will be used only for storage (this area is immediately adjacent to Denise Roberts' rear yard and any activity taking place on a regular basis is likely to intrude on her peaceful enjoyment of her rear yard) and no activities or equipment will be placed there that causes noise that can be heard beyond the boundary of your client's property.
9. Your client will provide and update as needed a 24/7 contact person or persons who can respond to any complaints or problems.
10. City of Key West Code Compliance will be specifically empowered to enforce these conditions in the same manner as enforcement of any City Code provision. In the event that your client or any successor owner is found to have violated any of these conditions, in a final decision of the Special Magistrate (or any applicable appeal tribunal), the consequence shall be that this Planning Commission approval of a change in non-conforming use and parking variance will be automatically revoked and the property returned to its current status quo of the non-conforming uses as they exist today.

If these conditions are acceptable, Denise Roberts will both notify the Planning Commission in writing and will appear in person to confirm her support with these conditions.

With regard to the issues that your client has raised:

Denise Roberts was unaware that the orange canvas awning on the Southeast side of her house presents a stormwater run-off issue. Denise is obtaining bids from awning companies to reduce the width of the awning so that the stormwater run-off is directed onto her own property, rather than falling on the fence and your client's property. If another solution occurs to you, Denise is certainly willing to consider it.

Denise Roberts understands from her contractors that they have endeavored to give notice of their activities to your client's employees, and have routinely adjusted the timing of their activities in an attempt to minimize any annoyance to your client's patrons. Assuming this is so, there may be a communications breakdown between your client's employees and your clients. If you can provide us with contact information for the person or persons who should be kept abreast of the construction plans, Denise's contractors will continue to endeavor to both give notice of planned construction activities and to accommodate reasonable timing requests for any activity that might be, by its nature, particularly intrusive.

I will not be going out of town this week as planned, so we should be able to meet if that would be helpful.

I look forward to hearing from you.

Wayne

Wayne LaRue Smith\*  
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**Please consider the environment before printing this e-mail**

Hi Ms. Rivas,

We are the planners working with the 6-Toed Cat. I'm afraid the information your neighbor gave you is incorrect.

The proposal is to eliminate the gift shop. The area where the gift shop is now will just become part of the restaurant. We are not expanding any seating outside, front or back. We are not seeking to expand hours, we are offering to limit them. We are also agreeing to limit outside and inside sound and have no live music.

If there is anything we could do that would allow you to support, please let me know. If there is a good time to speak on the phone or in person, if you'd prefer, I would appreciate the opportunity.

Thanks and best regards.

Owen

## Vicky Walker

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**From:** Owen Trepanier <owen@owentrepanier.com>  
**Sent:** Thursday, May 18, 2017 11:38 AM  
**To:** Melissa Paul-Leto  
**Cc:** Patrick Wright; Jamille Cucci; dominique falkner; Vicky Walker; Lori Thompson  
**Subject:** 821 Whitehead Street – Additional Conditions of Approval

Dear Melissa,

After actively engaging our immediate neighbor's attorney, and other neighbors' directly, over the past month for the purposes of the working out concerns between property owners, the owners of 821 Whitehead would like to offer the following set of additional conditions to accommodate the neighbor's concerns. We are trying to meet with the neighbor this afternoon and we are hopeful she will ultimately support the 6-Toed Cat.

### Additional Conditions of Approval:

1. No live music on the premises at any time, without a duly approved Special Event Permit pursuant to Sec. 66-98.
2. No amplified music anywhere on the exterior of the premises, shall exceed the requirements of Sec. 26-191 & 26-192.
3. All additional consumption area confined to the current interior of the premises.
4. No patrons are seated past 10 pm, and the kitchen closes no later than 11 pm.
5. Landscape buffer of at least six feet in height is maintained between the front deck and the adjacent residential property.
6. Gate that is at the Southwest corner of your client's property will be reversed to open outward, if approved by the City of Key West Building Department, (to facilitate the landscape buffer)-
7. Property owners will make a good faith effort to discourage waiting patrons from congregating on the sidewalk. The existing waiting area is near the front door and on the adjacent porch. Patrons will be encouraged to continue waiting in this area through signage and verbal directions.
8. The rear deck area will not be used for consumption area and any sound shall comply with the requirements of Sec. 26-192.
9. Property owners will provide and update as needed a 24/7 contact person or persons who can respond to any complaints or problems.
10. This approval shall be enforced consistent with Sec. 122-63(f).

The owners of the are requesting the following from adjacent neighbor:

1. Take such measures, with City approvals and permits, to eliminate encroachments, and storm water runoff, onto the 6-Toe property.
2. Restore the 6-Toe's concrete walkway which was demolished by Ms. Roberts, leaving a 1 foot planting strip along the 6-Toed's deck for the landscape strip requested in No. 5 (above).
3. Provide reasonable advance notice to the 6-Toe's manager when construction events are anticipated to disrupt regular business operations of the 6-Toe.

Owen Trepanier

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