



THE CITY OF KEY WEST PLANNING  
BOARD

Staff Report

**To:** Chairman and Planning Board Members

**Through:** Taylor Brown, City Planner

**From:** James Singelyn, Senior Planner

**Meeting Date:** June 18, 2026

**Agenda Item:** **Change of Nonconforming Use – 600 Whitehead Street (RE# 00012901-000100)** A request for a change of nonconforming use from retail/restaurant to restaurant at a property located in the Historic Residential Office (HRO) zoning district, pursuant to Section 122-32 of the Code of Ordinances of the City of Key West, Florida.

**Request:** A request for a change of nonconforming use to allow a restaurant with 18 indoor seats at a property located in the Historic Residential Office (HRO) zoning district, pursuant to Section 122-32 of the Land Development Regulations (LDRs) of the City of Key West, Florida.

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**Property Owner:** 600 Whitehead, LLC

**Applicant:** Owen Trepanier, Trepanier & Associates

**Location:** 600 Whitehead Street

**Zoning:** Historic Residential Office (HRO)

**Relevant Legal Context and Prior Litigation**

The City of Key West has recently been involved in litigation directly addressing the application of Section 122-32(d) of the Land Development Regulations to requests for increased seating within legal nonconforming restaurant uses.

In a recent case involving a property located within the Historic Residential Office (HRO) zoning district, an applicant sought to increase the number of seats associated with a legal nonconforming restaurant use. The Planning Director denied the request on the basis that the

additional seats would constitute an extension, expansion, or intensification of a nonconforming use under Section 122-32(d).

That determination was upheld by the Board of Adjustment and subsequently challenged through a Petition for Writ of Certiorari. The Circuit Court denied the petition, finding that the City correctly applied Section 122-32(d) and that an increase in seating constitutes an extension or expansion of a nonconforming use.

The applicant further appealed to the Third District Court of Appeal, which also denied the petition, leaving the City's interpretation and application of Section 122-32(d) intact.

These rulings affirm that increasing seating within a legal nonconforming restaurant use may be properly interpreted as an expansion, extension, or intensification of that use and may be denied on that basis.

Accordingly, staff finds that the proposed increase from zero seats to 18 seats is consistent with the type of expansion previously reviewed and upheld by the courts as prohibited under Section 122-32(d).

## **FINDINGS OF FACT**

1. The application does not constitute a valid change of nonconforming use under Section 122-32(e), as both the existing and proposed uses are restaurant uses within the same category.
2. The proposal represents an expansion and intensification of a legal nonconforming use through the addition of 18 indoor seats, which is prohibited under Section 122-32(d) of the LDRs.
3. Even if reviewed under Section 122-32(e), the application fails to satisfy required criteria, as:
  - o The use remains nonconforming and not permitted at this location in the HRO district
  - o The increase in seating constitutes intensification of use
4. Approval of the request would be inconsistent with the intent of the HRO zoning district, which is to limit commercial intensity and restrict restaurant uses to designated areas.
5. The City's interpretation of Section 122-32(d) as prohibiting increases in seating for legal nonconforming restaurant uses has been upheld by the courts, and the proposed increase is consistent with expansions previously determined by the courts to be prohibited.

## **Background**

The subject property is located within the Jackson Square Courthouse Condominium and consists of approximately 1,004 square feet of interior floor area. The structure was constructed circa 1948 and is located at the intersection of Whitehead and Southard Streets within the Historic District.

The surrounding area contains a mix of institutional, commercial, and quasi-commercial uses, including government offices, bars, restaurants, and retail establishments.

The property has historically operated as a nonconforming commercial use within the HRO zoning district.

The property is on the corner of Whitehead and Southard Streets. The surrounding land uses include a Day Spa to the southeast, The Green Parrott bar to the east, a retail clothing store to the north and the Monroe County Courthouse to the west.



**Process:**

**Planning Board Meeting:** April 16, 2026

**Local Appeal Period:** 10 days

**DEO Review Period:** Up to 45 days

## **ZONING CONTEXT**

The Historic Residential Office (HRO) zoning district is intended to:

- Accommodate residential and office uses
- Allow limited commercial uses only in designated areas (Appelrouth Business Corridor)
- Prohibit general retail sales
- Limit intensity to low-to-medium intensity development

The subject property is outside of the Appelrouth Business Corridor, and therefore:

- Restaurant uses are not permitted at this location
- The existing and proposed uses are both nonconforming

### **Staff Analysis – Code Criteria**

#### **1. Applicability of Change of Nonconforming Use**

As an initial matter, staff finds that:

- The existing use is a restaurant (nonconforming)
- The proposed use is also a restaurant (nonconforming)

Because both uses fall within the same general use category, the proposal does not constitute a true change of nonconforming use as contemplated under Section 122-32(e).

Instead, the request is more accurately characterized as an intensification and expansion of an existing nonconforming use.

#### **Staff Finding:**

The Planning Board should first determine whether the application is applicable under Section 122-32(e). If not, the request should be denied on that basis alone.

#### **2. Intensification of Nonconforming Use**

If the Board determines the application is applicable, staff finds that the proposal results in an increase in intensity of the nonconforming restaurant use.

Key considerations:

- Increase from zero licensed indoor seats to 18 indoor seats
- Greater concentration of patrons within the space
- Increased operational scale of the restaurant

### 3. Parking Demand and Trip Generation Analysis

Pursuant to the Land Development Regulations, the existing and proposed parking demand for the subject property has been evaluated based on the applicable standards for restaurant and retail uses.

Section 108-575, off-street parking requirements for restaurant use are based on one (1) off street parking space for every forty-five (45) square feet of serving and/or consumption area.

Section 108-75 off-street parking requirements for retail use are one (1) space per three hundred (300) square feet of gross floor area.

Planning finds that the proposed restaurant use represents a more intensive parking requirement than the existing restaurant/retail use and therefore results in an **increase in parking demand** under Section 108-575.

Trip generation was also evaluated utilizing the Institute of Transportation Engineers (ITE) Trip Generation Manual. The existing retail use, categorized under ITE Land Use Code 852 (Convenience Store), generates approximately 32.60 trips per 1,000 square feet during the weekday AM peak hour and 36.22 trips per 1,000 square feet during the weekday PM peak hour. The proposed restaurant use, categorized under ITE Land Use Code 931 (Quality Restaurant), is estimated to generate approximately 5.57 trips per 1,000 square feet during the weekday AM peak hour and 9.02 trips per 1,000 square feet during the weekday PM peak hour.

Based on these rates, the proposed change in use is anticipated to result in a reduction of approximately 27.03 trips per 1,000 square feet during the AM peak hour and 27.20 trips per 1,000 square feet during the PM peak hour.

The LDRs do not limit “intensification” solely to these metrics. The increase in seating capacity itself constitutes an expansion and intensification of the use, which is expressly prohibited under Section 122-32(d) and consistent with recent judicial determinations.

#### **Staff Finding:**

The proposed increase in seating constitutes an enlargement or intensification of a nonconforming use.

### 4. Criterion Review (If Considered Under 122-32(e))

Even if the Board proceeds with review under Section 122-32(e):

#### **Criterion 1 – Appropriateness**

- Concern: Restaurant use remains nonconforming and not permitted at this location

Staff finds that partial reduction in nonconformity does not outweigh the continuation and expansion of a prohibited use.

### **Criterion 2 – No Intensification**

Although technical studies show reduced impacts in some categories, staff maintains that:

- The increase in seating constitutes intensification
- Therefore, Criterion 2 is not satisfied

### **COMPREHENSIVE PLAN CONSISTENCY**

The property is designated Historic Commercial on the Future Land Use Map.

While the proposal removes retail and reduces certain impacts, it:

- Continues a nonconforming restaurant use outside the permitted corridor
- Introduces greater intensity within a district intended for low-to-medium intensity uses

### **Staff Recommendation**

Based on the foregoing analysis, staff finds that the request is not consistent with the Land Development Regulations and recommends that the Planning Board **DENY** the application.