

KEY WEST PLANNING BOARD HEARING
APRIL 17, 2014

OBJECTION TO PARKING VARIANCE

The below named neighbors join in this Objection to the Parking Variance Application as revised by Applicant on February 27, 2014:

Linda Wheeler	1213 White Street
Robert Kruse	1213 White Street
Sean Cowles	1216 White Street
Adele Williams Cowles	1216 White Street
Ross and Jodie Williams	1217 White Street
Tim and Anne Sullivan	1204-1206 Duncan Street
Robert Koske	1208 Duncan Street
Barbara Haveland	1209 Duncan Street
Brian Schmitt d/b/a Coldwell Banker Schmitt	1201-1211 White Street
Lynn Kaufelt and David Kaufelt	1120 White Street
Dr. Ana Marie Camarotti	1220 Georgia Street
Cynthia Vinson Dean	1327 Duncan Street
Mrs. Valter Vinson	1215 Georgia Street
Robert Silver	1327 Duncan Street
Candida Andriole-Cobb	1016 Varela Street
Georgia and Thomas Favelli	1108 White Street
Bill and Ann Lorraine	1028 Catherine Street
Ronald Oldham and Patricia Kennedy	1120 Catherine Street

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A. Operative Facts Entirely Uncontested:

1. The site is located in the HARC district. It is zoned HNC-1, designated for residential and light-commercial mixed use.
2. The site consists of a single building located on the corner of White and Catherine Streets. The building contains approximately 4,875 sf of commercial space on the ground floor and 2 residential apartments on the 2nd floor (1,198 sf).
3. The adjacent parking lot is located mid-block. It will accommodate parking for a maximum of 3 vehicles.
4. The site previously hosted a walk-up coffee shop window (non-conforming use with "no seats" occupational license); a bakery (non-conforming use abandoned over 4 years ago¹); and a retail tile shop (permitted-use vacant for over 10 years).
5. Applicant's applications for parking variance and conditional uses have been pending since September 2012. During the pendency of the case, Applicant has amended or revised his applications at various times - including April 1, 2014. Other hearings before the planning board were September 19, 2013 (tabled after

¹ See Section 122-30 (Abandonment of nonconforming use) which states, in pertinent part: "If a nonconforming use ceases.... any and every future use of the building or structure and/or premise shall be in conformity with the use sections of the land development regulations..... A nonconforming use shall be considered abandoned when such use has ceased for a period of 24 months....."

approximately 2 hours of testimony and public comments) and March 20, 2014 (tabled after approximately 1.5 hours). Among Applicant's more recent revisions were the withdrawal of two conditional-use businesses earlier proposed for this site (moped rentals and service/repair shop).

6. Applicant's current application (revised 4/1/14) proposes the following uses:

15-seat Restaurant (1,585sf) (conditional use)

Retail sales of mopeds (2745 sf) (conditional use if floor area is over 2500sf)

Professional offices (426sf) (permitted use)

7. Each proposed use at this site must conform to the current land development regulations, including parking requirements, and other site amenities (waste bin screening, landscaping, open space, storm water management, ADA access, lighting, signage, etc.)²
8. Applicant's existing parking lot must be maintained in perpetuity as a parking lot.³
9. The Applicant has calculated that 18 parking spaces are required for Applicant's proposed mix of permitted-by-right and conditional-use businesses at this site.
10. Applicant's site can accommodate a total of 3 parking spaces.
11. Without any parking variance or any conditional-use approval, Applicant may enjoy 100% **reasonable economic use** of this site by operation (or lease) of permitted-by-right retail sales shop(s) and professional office(s).

² Sec. 108-571: "Parking shall be provided in all districts at the time any building or structure is erected or enlarged or increased in capacity by a change of use or the addition of dwelling units, transient units, floor area, seats, beds, employees or other factors impacting parking demand as stated in this article."

Sec. 108-575(5): "Applicability of standards to expanding uses. Whenever a building or use is enlarged in floor area, number of dwelling units, seating capacity or in any other manner so as to create a need for a greater number of parking spaces than that existing, such spaces shall be provided in accordance with this section. Any parking deficiency shall be brought into conformity concurrently with the enlargement or change of use."

³ Section 108-573 (c) "Any preexisting off-street parking serving the structure must be maintained to service the new use."

12. Mr. Mills may use 100% of his building for professional office space (any number of offices, of unrestricted sizes) , as well as lease the two (2) apartments on the second floor, without triggering any additional parking requirements or creating any need for a parking variance.⁴
13. Professional offices and retail sales stores (less than 2500sf) are “**reasonable uses**” for Applicant’s property in this HNC-1 district. These “permitted-by-right” uses are codified under the current LDR’s (Section 122-807 (5) and (6)).
14. The entire 1200 block of White Street contains approximately 19 on-street parking spaces.
15. It is only due to Applicant’s proposal to introduce conditional-use businesses which has resulted in the pending applications for conditional uses and a 15-space parking variance.⁵
16. During the pendency of this case, the Key West City Commission has unanimously approved a moratorium to **halt all proposed parking variances** “due to the city’s parking crunch, particularly in Old Town.” (See *Key West Citizen* 11/10/13, page 3A.) The City Commission has also halted the substitution of bicycle parking for vehicular parking requirements.

B. Standard of Review:

Section 90-394 (Action), states, in pertinent part: “***...No variance shall be granted that increases or has the effect of increasing density or intensity of use beyond that permitted by the comprehensive plan or these LDRs.***”

Section 90-395 (Standards, findings), states, in pertinent part: “*...Before any variance*

⁴ See memo from city planning director Donald Craig dated 4/4/14 and city planner Kevin Bond dated 4/15/14, attached to Exhibits.

⁵ See city planner Kevin Bond’s memo dated 4/15/14: “*It is Mr. Mills’s request for restaurant use that is triggering the need to bring his parking into compliance with the code, and thus his variance request. The restaurant use has a higher parking requirement than retail or office, which is what triggers bringing parking into compliance.*”

may be granted, the planning board must find **all** of the following:

- (1) Existence of special conditions or circumstances.
- (2) Conditions not created by Applicant.
- (3) Special privileges not conferred.
- (4) Hardship conditions exist.
- (5) Only minimum variance granted.
- (6) Not injurious to the public welfare.
- (7) Existing nonconforming uses of other property shall not be considered as the basis for approval.

C. Argument for DENIAL of Parking Variance Application:

Applicant has failed to satisfy any of the standards required pursuant to Section 90-395 for granting a variance. Specifically;

Criteria 1: Existence of special conditions or circumstances

There are no special conditions or circumstances peculiar to the site which are not applicable to other land, structures or buildings in the same zoning district.

All or most of the homes and businesses this White Street corridor are sited adjacent to the sidewalk with zero (-0-) setbacks and little or no off-street parking. The size and footprint of the building and the configuration of the parking lot have existed for decades, and were certainly known to Applicant prior to his acquisition of the property. All neighboring properties -residential and commercial,- are subject to the same HNC-1 zoning designation and restrictions as the Applicant.

Section 108.572 (schedule of off-street parking requirements) has been in effect since 1997 (15 years prior to Applicant's purchase of the property in July 2012). All other property owners in this zoning district are subject to the same conditions and circumstances and zoning regulations as Applicant.

Criteria 2: Conditions not created by Applicant

The conditions requiring a parking variance were directly created by Applicant's proposal to introduce a mix of "permitted-by-right" and conditional-use

businesses.

Applicant's proposal to introduce a 15-seat restaurant brings a myriad of intrusive elements into this residential and light-commercial district, including noise, odor, pollution, containment of solid waste and litter, increased traffic intensity, **as well as the obvious and overwhelming parking issues**. (See footnote 5 herein)

The conditions necessary for a 15-space parking waiver are the direct result of Applicant's intention to expand the uses, increase capacity, enlarge floor area, increase the number of seats, etc. Applicant has created the parking variance requirement due to his proposal to increase the intensity and density of use at this site.

Criteria 3: Special privileges not conferred.

Granting Applicant a 15-space parking variance would confer upon this Applicant special privileges denied by the land development regulations to all other lands, buildings or structures and property owners in the same HNC-1 zoning district.

Criteria 4: Hardship conditions exist.

No hardship conditions exist which would deprive the Applicant of rights commonly enjoyed by other properties in this same HNC-1 zoning district. Applicant continues to enjoy reasonable economic use of his 100% of his property. He may operate (or lease) **all** (4875sf) of the ground-floor commercial space (for "permitted-by-right" businesses) and he may lease the two residential apartments on the second floor.

Other new businesses in this HNC-1 district have done exactly that. The Coldwell-Banker opened its real estate and TDC offices directly across the street from this site in an abandoned tire store. That space is almost double in size to the applicant's property and it is 100% successfully occupied for permitted-by-right office use. The newly-built mixed-use commercial building on the corner of White and United (less than 300 feet away from applicant's site) has been successfully utilized for small retail shops and professional offices (along with 4 residential units on the 2nd floor).

Introduction of a conditional use restaurant would cause permanent and detrimental hardship upon this neighborhood. The use is too aggressive, intense, and dense for the size and location of Applicant's property - in addition to the excessive parking demands it would create.

Applicant (and all other business owners seeking special exception to introduce conditional-use businesses into this HNC-1 district) are required to provide sufficient parking and other required amenities to prevent the harmful impact such increased intensity businesses cause to their existing neighbors.

The existing residential and business owners in this neighborhood should not be burdened or adversely affected by Applicant's over-exploitation of the site. Approving the introduction of a full-service 15-seat restaurant and granting Applicant a 15-space parking variance would substantially increase the value of his property, however, his gain would be at a direct cost to his neighbors, who will suffer very real and permanent quality-of-life issues and a diminution of their own property values. It is one matter to voluntarily purchase a home in a neighborhood with a known nuisance. It is quite another for the planning board to approve the introduction of a nuisance into a neighborhood not otherwise burdened with such a use.

"Hardship conditions" would exist only if the Planning Board granted Applicant's parking variance or conditional use applications. Introduction of intrusive and invasive businesses create a hardship upon all other surrounding property owners in this district.

Criteria 5: Only minimum variance granted.

The variance sought **is not the minimum variance necessary** to make possible **reasonable use** of Applicant's land, building or structure.

Without any parking variance or any conditional-use approval, Applicant may enjoy 100% **reasonable economic use** of this site for professional office space (any number of offices, of unrestricted sizes). He may also continue to lease the two (2) apartments on the second floor, without triggering any additional

parking requirements or creating any need for a parking variance.⁶

Professional offices and retail sales stores (less than 2500sf) are “**reasonable uses**” for Applicant’s property in this HNC-1 district. They “permitted-by-right” uses are codified under the current LDR’s (Section 122-807 (5) and (6)).

Introduction of conditional-use businesses which have a higher parking requirement than retail or office space is inappropriate in this case and grossly exceed the intent and purpose of the city’s land use regulations which allows for a minium variance necessary to make reasonable use of the site.

Criteria 6: Not injurious to the public welfare.

Granting a parking variance to facilitate introduction of an incompatible and invasive conditional-use business into this neighborhood would not be in harmony with the general intent and purpose of the land development regulations to “maintain and improve the fabric of the city.” The designation of HNC-1 was intended to promote a harmonious mix of residential and light-commercial businesses.⁷

Applicant’s parking variance would allow introduction of conditional-use businesses which permanently and adversely impact this mixed-use neighborhood. It would create aesthetic and economic hardship. Adverse impacts include loss of quality-of-life rights from introduction of noise and odor pollution, intensity of traffic and trip generation, dangerous and unsafe ingress and egress from the parking lot for deliveries, solid waste and recycling containment and screening issues, litter control issues, as well as a severe parking shortage in this neighborhood.

⁶ See memo from city planning director Donald Craig dated 4/4/14 and city planner Kevin Bond dated 4/15/14, attached to Exhibits.

⁷ See Section 122-776 (Intent) (Historic Neighborhood Commercial districts) (c): “*Performance Standards shall restrict the allowable neighborhood commercial uses to very limited square footage in order to maintain land use compatibility with residential uses in the vicinity. In addition, the performance standards shall require minimum open space rations, restrict the floor area based on traffic-generating characteristics, **and incorporate other qualitative and quantitative standards which protect residential properties.**”*

Lack of parking has a harmful “domino-effect.” The parking in front of the residents in closest vicinity will be occupied by restaurant customers, who naturally will park nearest to the restaurant. As these neighbors must then find parking further from their properties, they disrupt the delicate parking balance in blocks even further away from this site.

Criteria 7: Existing nonconforming uses of other property shall not be considered as the basis for approval.

This White Street neighborhood is finally, and deservedly, experiencing renewed energy and positive improvements which are a welcome sight to the surrounding neighbors.

All recent additions to the business community in this urban, mixed-use neighborhood have provided off-street parking for their employees and customers, installed mature landscaping, provided meaningful “open space” and “green space,” screened their solid waste containers and recycle bins in order to comply with the city’s zoning, and have limited their uses permitted-by-right, light-commercial uses (offices and small retail stores).

This Applicant should be held to no less a standard than that required by all other parties doing business - or seeking to introduce additional new businesses- into this zoning district.

D. “Good Neighbor” Policy:

Applicant has offered only spurious solutions to the lasting and detrimental impacts his proposed business plan shall have on this neighborhood. Applicant previously attempted to submit “affidavits” for 25 off-site parking spaces in order to satisfy his parking requirements. The “affidavits” did not comply with the letter or the spirit of the law and were summarily rejected by the planning department. for failure to meet the requirements of Section 108-576.

In a later amended application, Applicant has “reduced” the parking requirements of the restaurant by expanding the floor area of the kitchen and food preparation area (1360 sf) and reducing the “consumption” area (from 630 sf to 225 sf). It defies logic or common sense that 15 patrons seated in 225sf of consumption area would generate any less parking demand than the same 15 patrons seated in a more spacious consumption

area. Such manipulation of the floor areas do not meet the threshold of “good faith” or “good neighbor” standards.

Lastly, the Planning Board should consider the past and current actions of the Applicant. Applicant is the least likely candidate for the granting of any special exceptions or variance requests. Applicant had a long and defiant history with the city at his former location on the corner of Whitehead and Southard Streets. (Copies of code compliance printouts were submitted to the Planning Board at the last hearing on September 26, 2013 and are incorporated by reference hereto.) The printouts detail multiple incidents and investigations (30+) by the city code compliance department. While his applications have been pending for the last 17 months, the Applicant has operated a moped rental business and engine repair shop at this site, without licenses or certificate of occupancies. (The city’s code enforcement department finally forced Applicant to “cease and desist” in January 2014. Further, he has presented his neighbors and the passing public with an unsightly parking lot used primarily as a dumping ground for cannibalized mopeds, and an illegal waste transfer site. He has been “red-tagged” and he has been warned, or cited, by code enforcement due to un-permitted construction work and use of the public ROW for storage and display of his moped inventory.

While Applicant’s neighbors were initially encouraged by the cosmetic improvements to a building, the parking lot has been used as an unsightly junkyard and the intermittent construction work proceeds behind taped windows on weekends and after hours. “Better-than-it-was” is not the criteria for any parking variance or justification for over-exploitation of the site at the expense of the neighboring properties. The parking demands and the adverse impact of the introduction of a full service restaurant into this residential and light-commercial business district simply cannot be successfully mitigated by a new stucco job or any landscaping plan.

Despite the “good neighbor” policy required by code, Applicant has become a bullying, threatening and divisive force with those neighbors opposed to his expansion plans. Applicant has in the neighborhood. Applicant’s neighbors should not be belittled or intimidated simply because they expect this Applicant to abide by the same zoning and land development regulations applicable to everyone else in this mixed-use zoning district.

E. CONCLUSION:

The Applicant has failed to meet any of the criteria for the granting of a parking variance.

White Street is flourishing. We have had many recent and positive contributions to our neighborhood. Residential properties have been renovated and several new re-purposed commercial buildings have been successfully integrated into this mixed-use neighborhood. All of the existing and newly-introduced businesses are light-commercial in nature and have opened permitted-by-right businesses (offices and retail sales). We now have several doctor's offices, real estate offices, a florist, clothing shops, yoga and exercise studios, a gym, professional offices, open-air laundries, small cafes, hair salons, and art galleries. We share this district with 3 schools and 4 churches. The National Weather Station on the corner of White and United Street replaced dense, temporary military housing. Our new City Hall will soon be just a few doors from this site. Parking is, and will continue to be, a precious and limited commodity in Old Town and particularly our highly dense blocks of White Street.

New businesses which increase the density by seeking expansion, or special exceptions, or a change of their zoning designation should not be encouraged if they cannot adequately accommodate their use on their own site.

It is contrary to the intent and purpose of the Land Development Regulations, and contrary to the Planning Board's mission, to approve a waiver of parking spaces for the purpose of allowing a single business owner to increase the value of his property at the direct expense of all other property owners in the district. Approval of Applicant's pending parking variance application would be a very big step in the wrong direction for our neighborhood and our community.

The Planning Department has recommended DENIAL of the parking variance. There is a parking moratorium currently in effect (Applicant's applications were submitted in September 2012, prior to adoption of the moratorium.)

The residential and commercial neighbors joining in this objection live, work and own properties within the immediate vicinity of the site. The combined assessed values of their properties are over \$7.8 million. They are the neighbors most adversely impacted by the proposed variance and conditional use applications and they request the Planning Board to uphold the pertinent sections of the Land Development Regulations and follow the Planning Department's recommendation for DENIAL of the application for a parking

variance.

Thank you for your consideration of these matters of great and lasting importance to our neighborhood and to this City.

Respectfully submitted on behalf of above-named objecting neighbors,

Linda B. Wheeler, Esq.
Attorney at Law
1213 White Street
Key West, Florida 33040
Telephone 305 294-0683
Facsimile 305 296-2155
Mobile 305/509-2145