



THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report

To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Daniel Sobczak, AICP, Planner II

Meeting Date: October 21, 2021

Agenda Item: **Official Zoning Map Amendment** – 700 Front Street (RE # 00000210-00000) – A request for approval of an amendment to the Official Zoning map to rezone the subject property from Historic Residential Commercial Core – Key West Bight (HRCC-2) to Historic Residential Commercial Core – Duval Gulfside District (HRCC-1); pursuant to Sections 90-516, 90-521, and 122-93 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida providing for severability; providing for an effective date

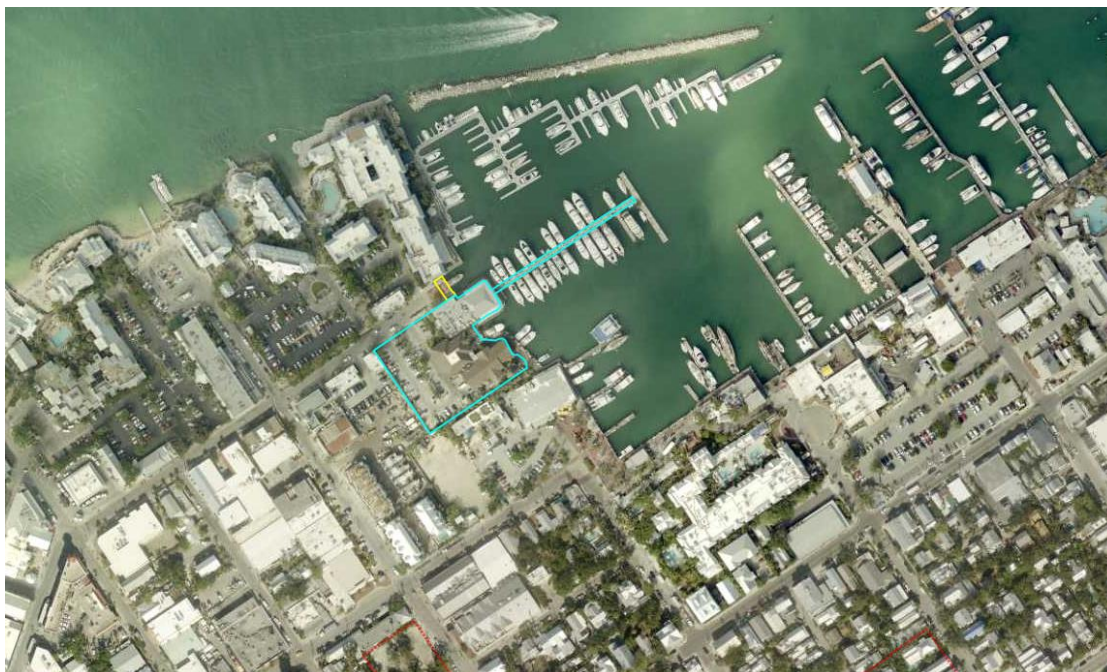
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Request: An amendment to the Official Zoning Map to rezone one parcel at 700 Front Street from HRCC-2 to HRCC-1.

Applicant: Smith/Hawks

Property Owners: Smith Family Fund 1 LLC, FOD Marina 1 LLC, Benicia Partners LLC

Location: 700 Front St.

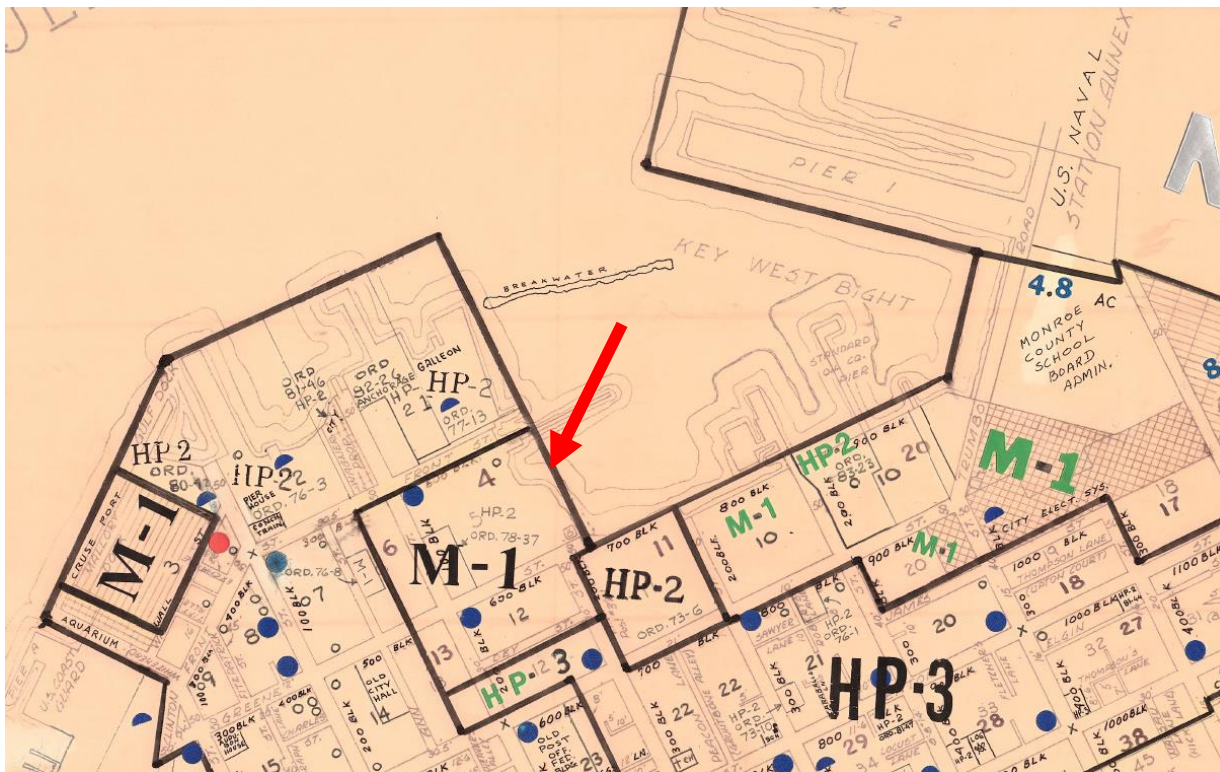


**Background:**

At the applicant's request, this item has been postponed from the July, August and September Planning Board meetings. There has been no change to the applicant or staff report during this time. The applicant has applied to amend the City's Official Zoning Map. The applicant has applied to rezone one parcel located at 700 Front Street.

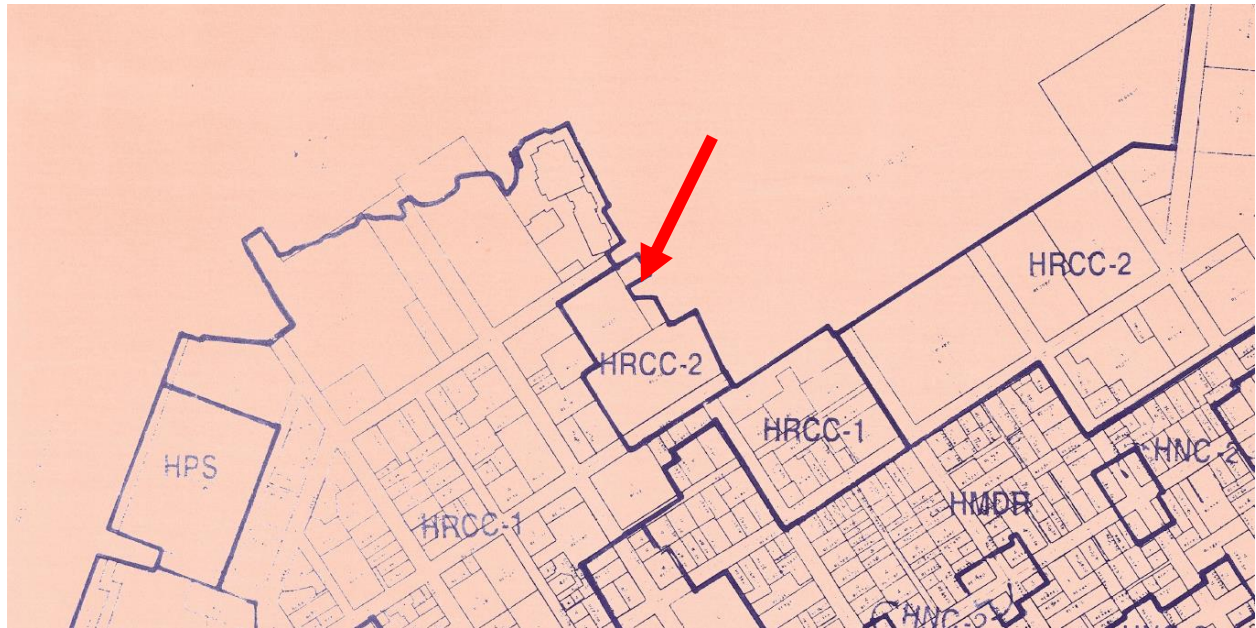


Excerpt from the 1974 Key West Zoning Map

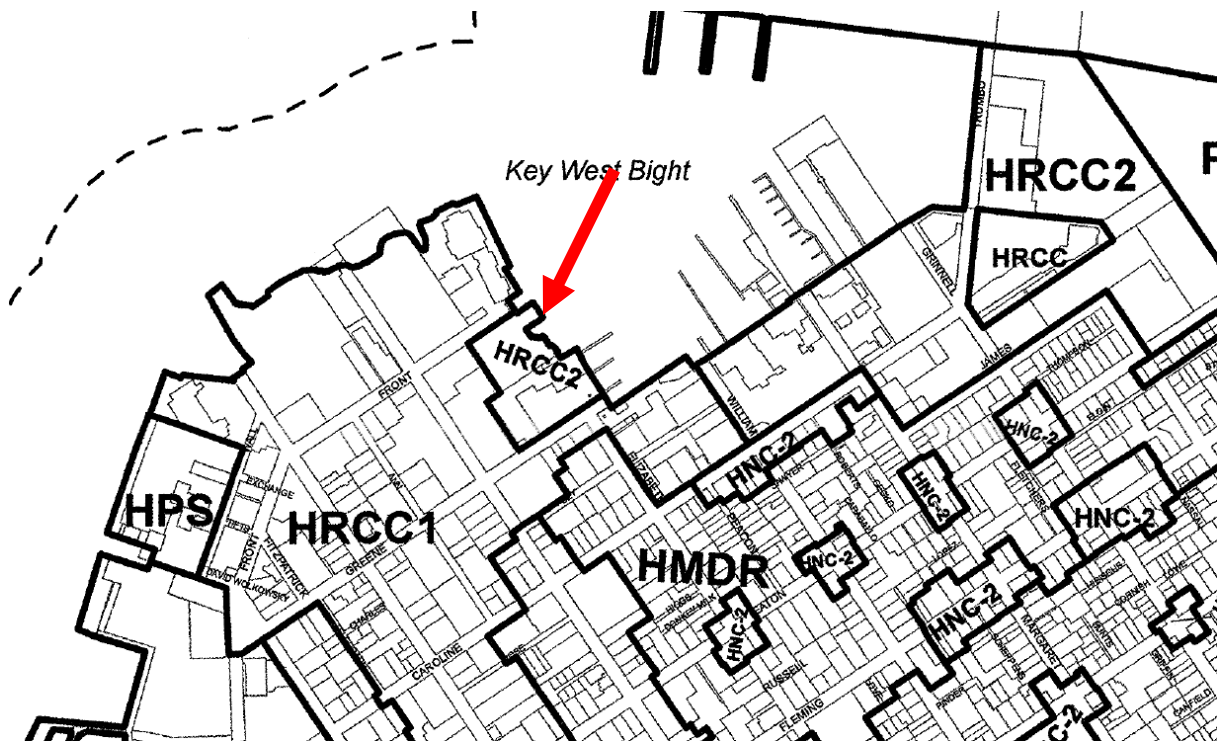


Excerpt from the 1985 Key West Zoning Map

Excerpt from the 1993 Key West Zoning Map



The Key West Bight since 1974 has had a separate zoning apart from the Duval uses and the uses on Lazy Way Lane. In 1974, the Bight was labeled as M-1, Light Industrial and Warehousing District, a distinct callback to the historic working waterfront that the Key West Bight embodies. The M-1 district was surrounded by the Commercial Historic Preservation Districts, HP-1, and HP-2. The use of the historic zoning designations followed through to the 1985 Zoning map and were renamed in the 1993 zoning map as Historic Residential Commercial Core, HRCC, instead of Light Industrial and Warehousing. Since the creation of Key West zoning maps, there has been an effort to preserve the Key West Bight as its own unique portion of Historic old town. This preservation is followed through in today's official zoning map (excerpt below), which shows the Key West Bight separate from other zones as HRCC-2.



The proposed amendment to the official zoning map is for the property of 700 Front St. which is about 1.23 acres or 53,552 sqft of upland. The parcel consists of two 2-story buildings, a 3-story dockmaster tower, and a marina. The property received Minor Development Plan approval for an elevated walkway, with the condition that safe pedestrian access be granted along the waterfront.

700 Front St. current HRCC-2 Zoning

Permitted Uses	Conditional Uses	Dimensional Reg.
Single-family and two-family residential dwellings.	Group homes*	Height – 35' *
Multiple-family residential dwellings.	Community centers, clubs, and lodges.	Building Coverage – 50%
Group homes*	Cultural and civic activities.	Impervious Surface – 70%*
Business and professional offices.	Educational institutions and day care.	Except for 100-foot of mean high-water line – 50%
Commercial retail low + medium intensity*	Nursing homes	Lot size – 5,000 sqft
Medical services.	Parks and recreation, active and passive.	Lot Width – 40'
Parking lots and facilities.	Protective services.	Lot depth – 100'
Restaurants	Public and private utilities.	Front Setback – 10'
Veterinary medical*	Bars and lounges.	Side – 7.5'
	Boat sales and service.	Rear – 15'
	Commercial retail low and medium intensity*	Street Side – 7.5'
	Commercial retail high	FAR - .5
	Funeral homes.	
	Light industrial.	
	Marinas	
	Small recreational equipment rentals	

Proposed HRCC-1 Zoning

Permitted Uses	Conditional Uses	Dimensional Reg.
Single-family and two-family residential dwellings.	Group homes*	Height – 35' *
Multiple-family residential dwellings.	Community centers, clubs, and lodges.	Building Coverage – 50%
Group homes*	Cultural and civic activities.	Impervious Surface – 70%
Business and professional offices.	Educational institutions and day care.	Lot size – 4,000 sqft
Commercial retail low + medium intensity*	Nursing homes	Lot Width – 40'
Commercial retail high*	Parks and recreation, active and passive.	Lot depth – 100'
Hotel, motel, transient lodging	Protective services.	Front Setback – 0'
Medical services.	Public and private utilities.	Side – 2.5'
Parking lots and facilities.	Bars and lounges.	Rear – 10'
Restaurants	Boat sales and service.	Street Side – 0'
Veterinary medical*	Commercial Amusement	FAR – 1.0
Adult entertainment	Commercial retail low + medium intensity*	
	Commercial retail high	
	Funeral homes.	
	Light industrial.	
	Marinas	
	Small recreational equipment rentals	

\*Highlighted portions are likely legal nonconforming dimensional regulations on the site (site data table not submitted)

The applicant has stated that their general goal in the rezoning is to expand outdoor seating and reduce their noncompliance with the Land Development Regulations by changing their zoning from HRCC-2 to HRCC-1. The LDRs state “In the HRCC-2 Key West Bight district, only water-dependent uses shall be located within the first 30 feet landward of the mean high water (MHW) or the bulkhead. Similarly, only water-related uses shall be located between the 30-foot setback and the 100-foot setback from the mean high water or the bulkhead.” A water-dependent use includes waterborne transportation, marinas, etc. A water-related use is any use which provides goods and services that are directly associated with water-dependent or waterway uses and/or provide supportive services to persons using the marina. These uses could include retail for people using the marina, food service establishments for marina users, bars and lounges for persons using the Bight, etc.

The applicant has stated that the “current development is not compatible with the HRCC-2 district while it is compatible with the HRCC-1 regulations.” Currently the development at 700 Front St. is legal noncomplying, in the event of a storm or other disaster that involuntarily destroys the property, the property owner would be able to rebuild the property and maintain the legal noncomplying uses as is without a variance. The A+B Lobster House structure was constructed in 1947 and is historic, the A+B Lobster House Sign is a historic contributing sign to the Key West Historic District. As the applicant states, tropical storms are more intense and more frequent than ever, if any structure located at 700 Front St. were to be involuntary destroyed by a natural disaster, per City Code the structure would be able to be rebuilt in its current legal noncomplying three dimensional envelope without the need for a variance.

The applicant also states that outdoor seating is a priority. The property has steadily received seating and additional outdoor seating on the property through the years. Planning Board Resolution 2002-033 allowed the White Tarpon/Wahlburgers structure located at 700 Front St. to add 16 seats to the former liquor store. White Tarpon expanded their seating in 2012 and added an additional 32 seats for a total of 48 seats. The White Tarpon restaurant then expanded seating from 48 seats to 94 seats in 2018. The White Tarpon was converted into Wahlburgers which is now authorized for 181 seats. The applicant has also expanded the seating for the restaurant formally called the Commodore, now called Bel Mare. The Bel Mare is also licensed for 181 seats and is using the former Commodore license. The applicant has two additional active restaurant licenses, one for Alonzo’s which is authorized for 176 seats, and one for A&B Lobster House which is authorized for 293 seats. In total, the applicant is authorized for 831 restaurant seats, there is no distinction between indoor and outdoor licensed seats.

The applicant states in their application that adding additional floor area and outdoor seating would require a variance and that “...variances are frequently denied even when everyone agrees the proposal is a good idea and would benefit the community.” The applicant has been able to increase their seating from 0 seats to 181 in the Wahlburgers restaurant location without the benefit of a variance and has a total of 831 restaurant seats. The applicant is able to use the 831 seats as they choose, for indoor or outdoor dining. If the applicant were to propose additional floor area for additional seats, the applicant would be required to abide by parking requirements even though they are located in the Historic Pedestrian Oriented Zone.

Request / Proposed Map Amendment:

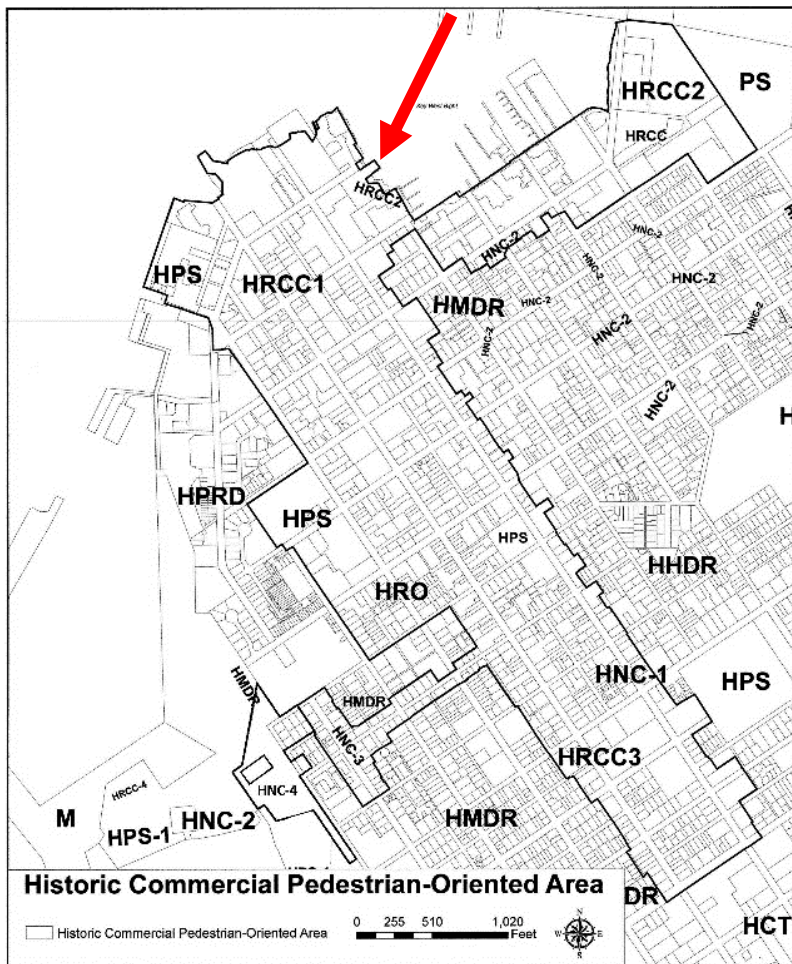
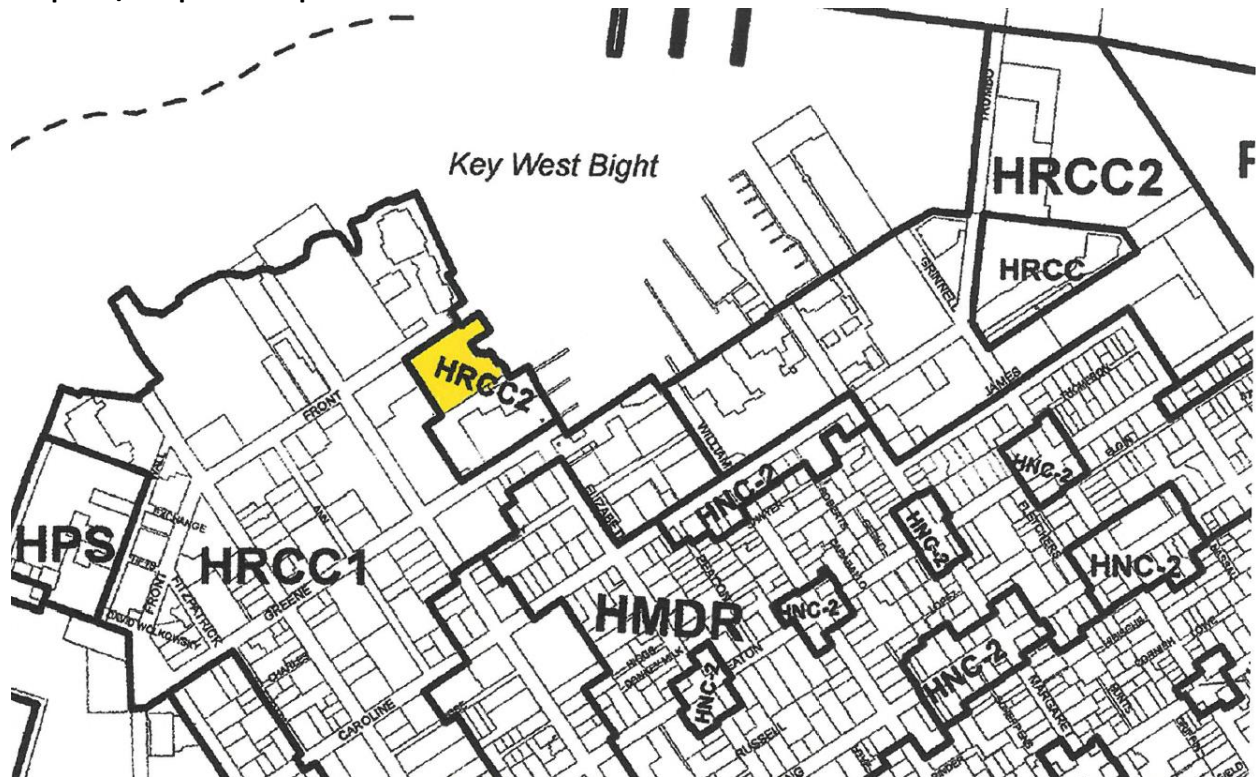


Image of a portion of the Official Zoning Map with subject parcel shaded in yellow. Subject parcel is proposed to be rezoned from HRCC-2 to HRCC-1

**Surrounding Zoning Designations and Uses:**

Direction	FLUM Designation	Property Uses
North	Historic Commercial	Recreation, Timeshare Condos
South	Historic Commercial	Restaurant, Non-Profit Office, Community Space
East	Historic Commercial	Marina, Key West Bight
West	Historic Commercial	Commercial, Bank

**Official Zoning Map Amendment Process:**

Planning Board Meeting: August 19th, 2021  
 City Commission (1st Reading / Adoption): August \_\_, 2021  
 Local Appeal Period: 30 days  
 Render to DEO: 10 working days  
 DEO Review: Up to 45 days  
 DEO Notice of Intent (NOI): Effective when NOI posted to DEO site

**Analysis:**

The purpose of Chapter 90, Article VI, Division 2 of the Land Development Regulations (the “LDRs”) of the Code of Ordinances (the “Code”) of the City of Key West, Florida (the “City”) is to provide a means for changing the text of the Land Development Regulations. It is not intended to relieve particular hardships nor to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the Planning Board and the City Commission shall consider, in addition to the factors set forth in this subdivision, the consistency of the proposed amendment with the intent of the Comprehensive Plan.

Pursuant to Code Section 90-552 the Planning Board, regardless of the source of the proposed change in the LDRs, shall hold a public hearing thereon with due public notice. The Planning Board shall consider recommendations of the City Planner, City Attorney, Building Official and other information submitted at the scheduled public hearing. The Planning Board shall transmit a written report and recommendation concerning the proposed change in the LDRs to the City Commission for official action. In its deliberations, the Planning Board shall consider the criteria in Code Section 90-521.

90-520 (6) Justification. The need and justification for the proposed change. The evaluation shall address but shall not be limited to the following issues:

- a. **Comprehensive Plan consistency.** Identifying impacts of the proposed change in zoning on the Comprehensive Plan. The zoning should be consistent with the Comprehensive Plan.

Chapter 1A: Historic Preservation Element of the City of Key West Comprehensive Plan is centered on the retention, revitalization, and redevelopment of historic structures, regardless of the zoning of those structures. The A&B Lobster House is a historic structure constructed in 1947 and has been used consistently since then. In the event of a catastrophic disaster the historic structure would be protected by the code and able to be rebuilt as is due to this historic nature of the structure. The A&B Lobster House sign is also protected due to its historic significance outlined in the Historic Architectural Review Commission's (HARC) Guidelines.

Policy 5-1.2.1 – Criteria for Prioritizing Shoreline Uses and Public Shoreline Access. In reviewing applications for shoreline development first priority shall be directed to the following shoreline uses:

2..Approved water-dependent shoreline uses such as: pile supported access ways and duly permitted dock facilities and commercial marinas. All such facilities shall satisfy all provisions of the City's Land Development Regulations and obtain requisite permits from all environmental permitting agencies prior to obtaining City building permits. Newly proposed marinas shall not be approved unless the applicant demonstrates that the marina site is consistent with the City's conservation and coastal management policies. Priority shall be directed to water dependent uses which are available for public use.

Policy 5-1.2.1 gives priority to shoreline development and redevelopment at 700 Front St. due to the public access boardwalk and the other water-dependent uses on the property. The applicant has a submerged land lease with the State of Florida for the boardwalk that connects Greene St. with Front St. A stipulation in the submerged land lease required public access and that the lessee shall not assess a fee to pedestrians using the boardwalk nor shall the applicant offer food or beverage service on the boardwalk.

Objective 1-1.5: Promote Community Appearance, Natural Amenities and Urban Design Principles and Policy 1-1.5.1: - Reinforce and Enhance the City's Community Appearance both strive to enhance, protect, and improve the natural resources on and around the island and the public's access to these areas. "Special emphasis shall be placed on preserving and/or improving the character of major natural and man-made corridors, including the waterfront shoreline, scenic views of the waterfront and tidal waters..."

The Comprehensive Plan for the City of Key West shows that protecting and improving the natural environment and the public's access of this natural environment is at the forefront of the City's policy. The parcel at 700 Front Street is an essential path for the public to be able to have waterfront access when walking along the Bight boardwalk from Green St. to Front St. HRCC-2 zoning preserves this path, HRCC-1 zoning would not require the future development to protect or preserves waterfront access or waterfront views. The proposed rezoning to HRCC-1 would not be consistent for a commercial waterfront parcel essential to public waterfront access.



**b. Impact on surrounding properties and infrastructure.** The effect of the change, if any, on the particular property and all surrounding properties. Potential land use incompatibility and impacts on infrastructure shall be identified.

The proposed rezoning would result in land use incompatibilities due to the change in zoning to 700 Front St. but not the other surrounding HRCC-2 properties, including 613-631 Greene St. The map below shows the three parcels zoned HRCC-2, the potential rezoning of 700 Front street may mean that future development would be able to disallow waterfront access to pedestrians and the Bight boardwalk would terminate at Green St. instead of Front St.



Excerpt of Zoning Map

Legend:	
HRCC-2	<span style="display: inline-block; width: 20px; height: 10px; background-color: red; border: 1px solid black;"></span>
HRCC-1	<span style="display: inline-block; width: 20px; height: 10px; background-color: blue; border: 1px solid black;"></span>
HMDR	<span style="display: inline-block; width: 20px; height: 10px; background-color: yellow; border: 1px solid black;"></span>

**c. Avoidance of spot zoning.** The proposed change shall not constitute a spot zone change. Spot zoning occurs when:

1. A small parcel of land is singled out for special and privileged treatment:  
The proposed change involves 1 parcel totaling approximately 1.31 acres, or 57,192-square-feet of land. Surrounding parcels with similar zoning are not a part of this application.
2. The singling out is not in the public interest but only for the benefit of the landowner.  
The applicant has stated that the proposed zoning change is to add additional outdoor seating and so that the applicant would be able to build back the historic structure. The applicant has been able to add seating without a variance and has a total of 831 seats. The applicant is also able to rebuild all the legal nonconforming structures on the lot in the case of an involuntary reconstruction. The City does not find that the City gains any benefit from the rezoning.

3. The action is not consistent with the adopted comprehensive plan.  
The proposed Official Zoning Map amendment is consistent with the Future Land Use Map; however HRCC-1 would not offer the same protection to waterfront access and waterfront views, which the comprehensive plan states as a policy to preserve and improve waterfront and the waterfront views in particular.

**Criteria for Approving Amendments to the LDRs pursuant to Code Section 90-521 and 90-**

**522 (a).** In evaluating proposed changes to the LDRs, the City shall consider the following criteria:

- (1) **Consistency with plan.** Whether the proposal is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

Consistency with the Comprehensive Plan

The City's Comprehensive Plan was developed in response to the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, Florida Statutes). The Plan and its updates are consistent with the State, Regional and County plans; and serves as the basis for all land development decisions within the City of Key West. In addition to fulfilling legislative requirements, the City's Plan:

Protects and maintains its natural, historic, and cultural resources;

preserves its community character and quality of life;

ensures public safety, and;

directs development and redevelopment in an appropriate manner.

The comprehensive plan gives priority to this parcel due to the public walkway connecting Greene Street with Front Street, as well as the historic structure at 700 Front St. The current zoning on the property ensures that this property in the Key West Bight is zoned for water related uses as it is a part of the Key West Bight and its current and future uses support the historic Bight. A change in the zoning would give no protections to the Key West Bight and would not ensure that future development is fitting with the Key West Bight Master Plan.

- (2) **Conformance with requirements.** Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.

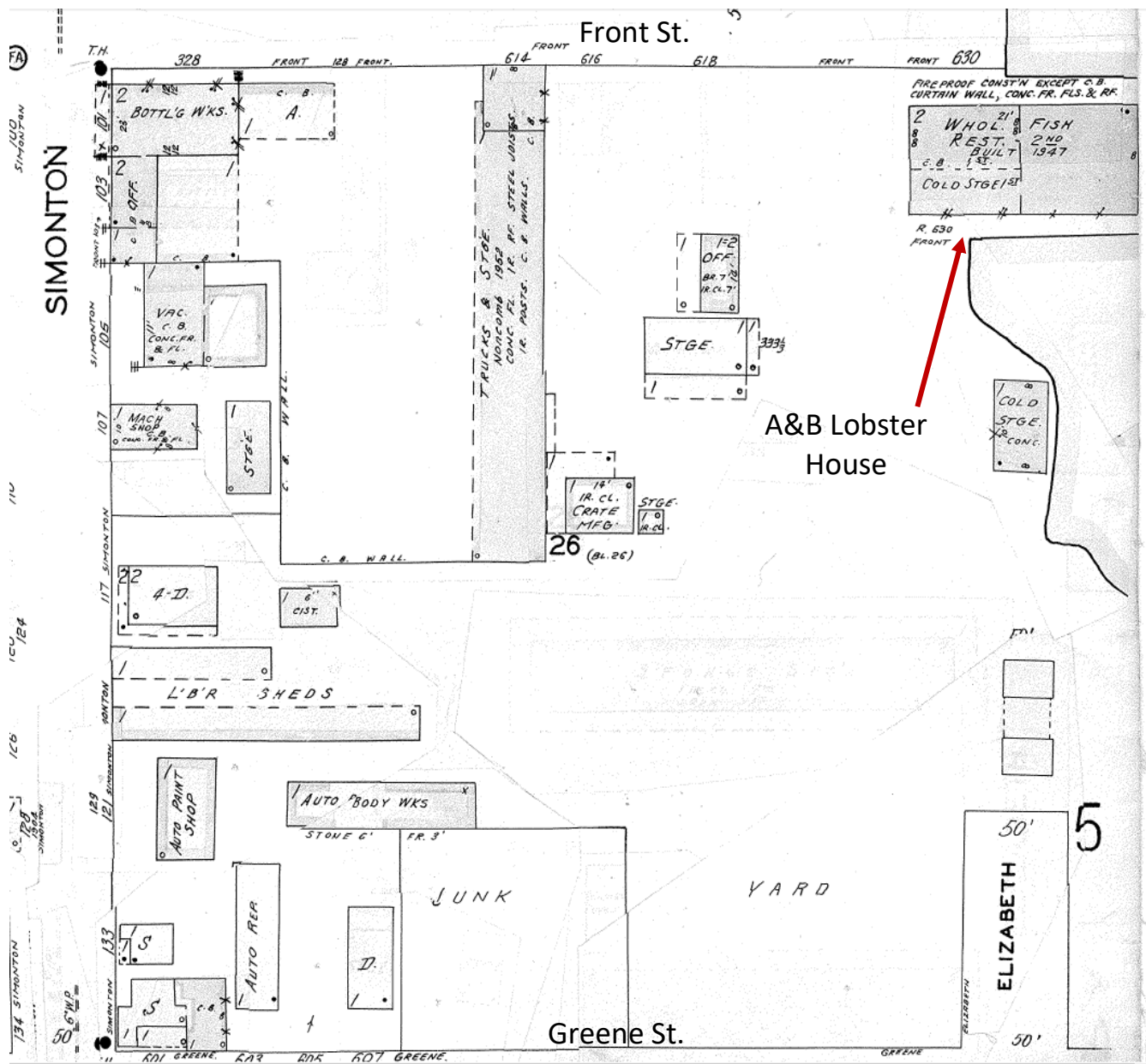
The proposal is in conformance with applicable requirements of the Code of Ordinances.

- (3) **Changed conditions.** Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations and whether such conditions support or work against the proposed rezoning.

The existing LDRs were adopted on July 3, 1997 through Ordinance No. 97-10 following adoption of the 1994 Comprehensive Plan. Over the years, the Comprehensive Plan and

LDRs have been amended from time-to-time. A new Comprehensive Plan was adopted on March 5, 2013 and became effective on May 2, 2013.

The proposed rezoning is not in line with the past 40 years of zoning at the property. Since at least the 1974 Key West Zoning Map, referenced above, the 700 Front St. parcel and the 613-630 Greene St. parcel have, the same zoning. The zoning for both parcels have had historically been separate and unique from the surrounding parcels due to the parcels unique historical connection to the Key West Bight. The map below is an excerpt from the 1961 Sanborn Maps, which have historically been used to document structures and uses for insurance purposes. The block from Front Street to Greene Street to the east of Simonton has historically been a working portion of the Bight, including auto-body shops, trucks and storage shops, lumber sheds, and a junk yard. The workers associated with these industrial uses no doubt dined at the *Whole Fish Restaurant*, today called A&B Lobster House. Similarly, Bight visitors and marina users likely dine at the associated restaurants on the block including Alonzo's, Wahlburgers, Conch Republic, etc.



- (4) **Land use compatibility.** Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.

The applicant has stated that a restaurant use is not allowed in the HRCC-2 District within 100-feet of the shoreline. However, water-related uses are located within the 100-feet of shoreline. A water-related use is any use that provides goods and services that are directly associated with a water-dependent or waterway use such as the Key West Bight, the boardwalk, or the marina. The applicant has had no issues in the past receiving additional seats for the present restaurants. Additionally, the applicant would not have any issues in rebuilding the structures if involuntarily destroyed; the change from HRCC-2 to HRCC-1 would not affect the rebuilding of any legal noncomplying structures.

- (5) **Adequate public facilities.** Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to Chapter 94.

The extent to which the proposal would have on demand on public facilities and services cannot be determined at this time as no development plans are a part of this proposal. All applications for development will be required to complete a concurrency determination pursuant to chapter 94 of the Land Development Regulations.

- (6) **Natural environment.** Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

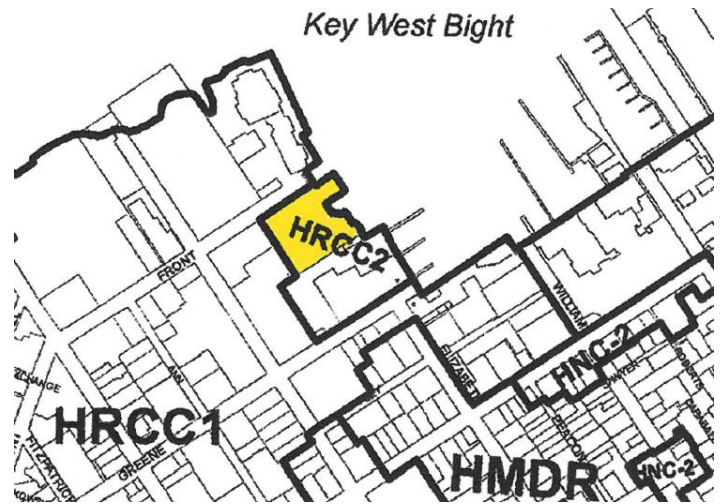
Any impacts on vegetative communities and the natural environment would be reviewed and mitigated at the time of a proposed development. The *Intent* of the HRCC-2 zoning is to protect, enhance, and preserve waterfront access, waterfront views, and the opportunities for water-related activities. The HRCC-2 zoning would prohibit any uses that would degrade the waterfront or waterfront views, or any use that would hinder waterfront access. The *Intent* of the HRCC-1 zoning district does not have the same protections of the waterfront and natural resources, but is concentrated on specialty shops, lounges, bars, live entertainment, and transient residential accommodations. Transient rentals are not approved for the HRCC-2 zoning.

- (7) **Economic effects.** Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.

It is possible that without the environmental protections and the access to the waterfront that HRCC-2 ensures, the subject property may redevelop in a way that does not provide waterfront access or protect or enhance the waterfront. In addition, the change of HRCC-2 to HRCC-1 would allow the applicant to add transient/hotel uses in any subsequent redevelopment, which may or may not affect property values.

- (8) **Orderly development.** Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

The proposal would create a disjointed zoning block, leaving a small island of HRCC-2 amongst HRCC-1 properties as seen in the adjoining map. The two parcels abutting 700 Front St. would remain HRCC-2, creating a further disjointed zoning map. As discussed previously, the change from HRCC-2 to HRCC-1 would remove all protections the city in the HRCC-2 code for waterfront access and waterfront protection for that property. If approved, the private property owner would be able to redevelop the lot in any fashion as long as it is within the guidelines of HRCC-1 which could include transient units, live entertainment, no public walkway access, and other uses seen on Front St. and Duval.



- (9) **Public interest; enabling act.** Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.

The proposed amendment to the Official Zoning Map may not be in the public's interest as all protections for waterfront access and preserving the waterfront will be removed from the private property.

- (10) **Other matters.** Other matters which the planning board and the city commission may deem appropriate.

**RECOMMENDATION:**

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends to the Planning Board that the request to amend the Official Zoning Map be **Denied**.