

SMITH / HAWKS

ATTORNEYS AT LAW

Barton W. Smith, Esq
Telephone: (305) 296-7227
Email: Bart@smithhawks.com
Brandi@SmithHawks.com

HAND-DELIVERED

June 23, 2025

Keri O'Brien, CMC, City Clerk
City of Key West
1300 White Street
Key West, FL 33040
Email: KObrien@CityofKeyWest-FL.Gov

Re: Notice of Appeal of Planning Director's Administrative Interpretation

Dear Keri,


Please allow this correspondence to serve my client, HANK'S HAIR OF THE DOG, LLC's ("Appellant") Notice of Appeal of City of Key West Planning Director's Request for Interpretation - Hank's Hair of the Dog Saloon Entertainment License and Expansion of Use dated June 13, 2025.

Pursuant to Key West, FL, Code § 90-301(b) "[t]he city planner shall have the administrative responsibility to interpret the land development regulations. Such interpretations shall be in writing and accompanied by review and written consent by the city attorney." The planning director's interpretation was provided in response to Heritage House Key West, LLC's ("HHKW") Request for Interpretation from Planning Director – Hank's Hair of the Dog Saloon Entertainment License and Expansion of Use of May 5, 2025.

"Administrative and enforcement decisions by the city planner and chief building official may be appealed to the city commission." Key West, FL, Code § 90-426. HHKW's request and the planning director's administrative interpretation were provided via email to the Appellant on June 16, 2025, attached hereto as **Exhibit A**. Pursuant to Key West, FL, Code § 90-426, an applicant may appeal a decision of the planning director to the City Commission by providing the City Clerk notice of appeal within ten (10) calendar days following the decision of the planning director. Additionally, please find enclosed check no. 9224 in the amount of \$2,552.56 for the fee/costs associated with the appeal to the City Commission.

Thank you for your consideration and assistance, and please do not hesitate to contact me with any questions.

Sincerely,



Barton W. Smith

BWS/bg

Enclosures

4911-0020-1040, v. 1

138 SIMONTON STREET, KEY WEST, FLORIDA 33040 U.S.A.
T. 305-296-7227 F. 305-296-8448 SMITHHAWKS.COM



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

Date: June 13, 2025

To: Abrams Law Firm, P.A.
888 SE 3rd Ave, Suite 400
Fort Lauderdale, FL 33316

From: Katie P. Halloran, Planning Department Director

Subject: Request for Interpretation- Hank's Hair of the Dog Saloon Entertainment License and Expansion of Use

Background

Your correspondence dated May 5, 2025, requests an interpretation regarding Hank's Hair of the Dog Saloon Entertainment License and Expansion of Use. You have specifically asked whether the issuance of an entertainment license to the bar and restaurant doing business as Hank's Hair of the Dog Saloon ("Hank's") constitutes an expansion or intensification of a legal nonconforming use under Section 122-26 of the Code of Ordinances of the City of Key West. The business "Hank's" is located at 409 Caroline Street.

A nonconforming use is defined in Section 122-26, "*Nonconforming use means a use of a building or structure or a tract of land which does not, on the effective date of the ordinance from which this section derives or amendment thereto, conform to any one of the current permitted uses of the zoning district in which it is located, but which was legally established in accordance with the zoning in effect at the time of its inception or which use predates all zoning codes and which use has not changed or been abandoned. This definition shall not operate to make legal an unlicensed transient rental accommodation located in a residential structure.*"

Notably, Section 122-27, "Intent", includes the following statement, "*The intent of this article is to permit a nonconforming use and a noncomplying structure or building to be continued, to be reconstructed or replaced, or to be repaired or maintained under certain conditions, but not to encourage their expansion.*"

The Department has also previously established in our letter dated September 20, 2023, which you have referenced as Exhibit 2, that Section 122-32(d) states, "A nonconforming use shall not be extended, expanded, enlarged, or increased in intensity . . .". Additional, Section 122-32(b) states, "A casual, intermittent, temporary or illegal use of land, building or structure shall not be sufficient to establish the existence of a nonconforming use, nonconforming density or noncomplying building or structure."

As also noted in our aforementioned letter, the basis by which the City recognized 49 seats for the property at 409 Caroline, was a letter drafted by Robert Tischenkel, City Attorney for the City of Key West, also with signature by the City Manager, Julio Avel, dated July 17, 1997. This letter established seating but includes no description of entertainment.



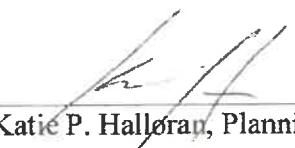
THE CITY OF KEY WEST

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The City's Land Development Regulations do not define "live music venue" or "outdoor music venue" in Section 86-9, Definition of terms. The City Code definition for restaurant is silent regarding entertainment; instead it states, "Restaurant, excluding drive-through, means any establishment, which is not a drive-through service establishment, where the principal business is the sale of food, desserts and beverages to the customer in a ready-to-consume state." Chapter 18, "Businesses" requires entertainment licensure in Section 18-57(a), "An establishment selling alcoholic beverages and desiring to provide live or recorded amplified music for the entertainment of its customers shall obtain an entertainment license from the city."

Determination

In summary, the property at 409 Caroline Street is located in the Historic Residential Office zoning district; restaurants are neither permitted or conditional uses in this district. The property at 409 Caroline has been recognized as containing a legal nonconforming use as a restaurant, based on a 1997 restaurant seating letter signed by the City Manager at the time. However, Section 122-32(e) states, "(d) A nonconforming use shall not be extended, expanded, enlarged, or increased in intensity. . .". Similar to the determination the City issued in our 2023 letter regarding Hank's seating, it is my determination that issuance of an entertainment license to a legal nonconforming restaurant use could constitute an increase in intensity of that use.


Katie P. Halloran, Planning Director

6/13/2025
Date


Kendal Harden, Interim City Attorney

6/13/2025
Date

cc: Patrick Wright, Growth Management Director
Amanda Shouldice, Interim Code Enforcement Department Director/Chief Licensing Official