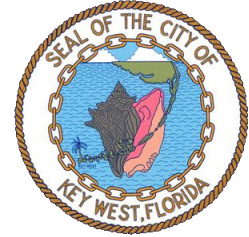


**THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report**



**To:** Chair and Planning Board Members

**From:** Melissa Paul-Leto, Planner I

**Through:** Katie P. Halloran, Planning Director

**Meeting Date:** April 28, 2020

**Agenda Item:** **Change of Nonconforming Use – 408 Greene Street (RE # 00001500-000000)** – A request for a change of non-conforming use in order to change the use from commercial retail to restaurant , excluding drive-through on property located within the Historic Residential / Office (HRO) zoning district pursuant to Section 122-32(e) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida

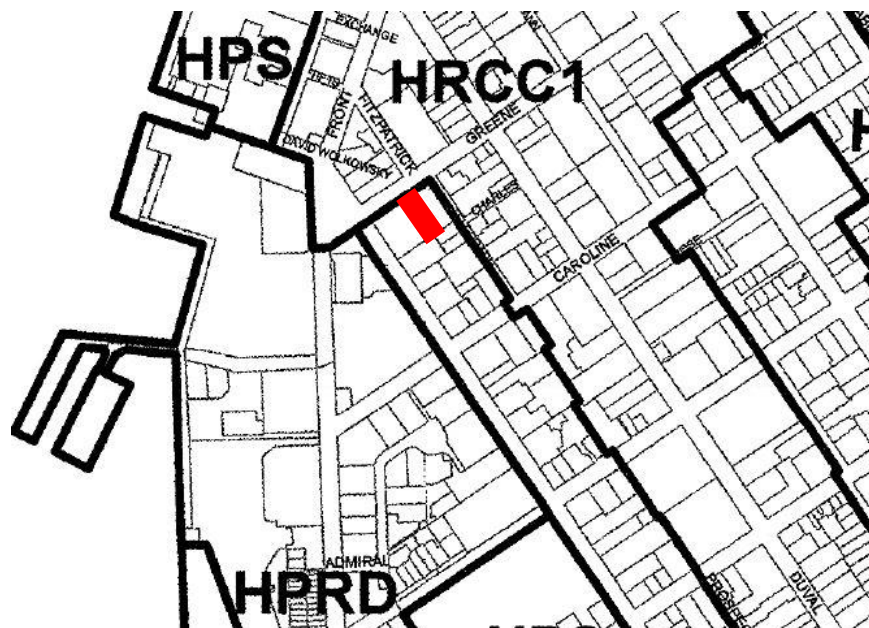
**Request:** Approval to change a former retail space into a restaurant with indoor consumption area.

**Applicant:** Richard McChesney – Spottswood, Spottswood, Spottswood & Sterling, PLLC

**Property Owner:** C & D Properties of Key West, LLC

**Location:** 408 Greene Street (RE # 00001500-000000)

**Zoning:** Historic Residential / Office (HRO) zoning district



**Request:**

The Applicant proposes a change of nonconforming use from retail use to a café use within the first floor of the interior of the building. The square footage of the first floor of the inside of the building is 1,078. The total proposed consumption area would be 638 square feet which would include no more than sixty (60) seats. The application does not include outdoor consumption area.



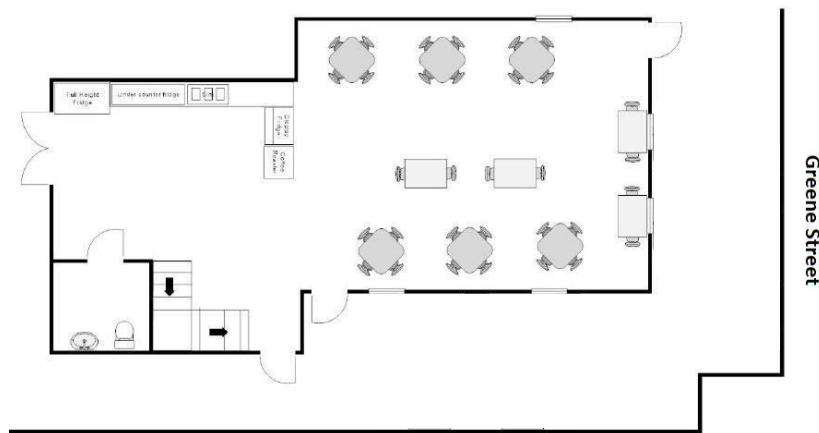
408 Greene Street – Subject property



Front yard



Side yard



The proposed conceptual café seating plan for no more than (60) sixty seats.

**Background:**

The subject property at 408 Greene Street is located near the southwesterly corner of Greene and Whitehead Streets between Telegraph and Whitehead Streets. The parcel includes a one-story structure with an upper loft space. The interior square footage has a total of 1,907-square feet. According to Monroe County Property Appraisers records, the building was constructed in 1933 and is recognized as a historic and contributing structure to the Historic District. The property is located within the Historic Residential / Office (HRO) Zoning District as well as the Historic Commercial Pedestrian-Oriented Area.

The parcel and one-story structure have historically been residential, which is a permitted use in the HRO zoning district. The most recent business at the subject property was the Lucky Street Gallery which was a non-conforming land use in the HRO zoning district. The business license for that retail use expired on September 30, 2019. As of the sate of this report, this nonconforming use has not been considered abandoned because Key West Code Section 122-30 on abandonment states a nonconforming use shall be considered abandoned, when such use has ceased for a period of 24 months. The subject property has also established retail use prior to the adoption of the current zoning ordinance in 1997, and those nonconforming uses have continued despite different zoning ordinances through the decades. There is evidence in The Polk Cities Directories, and the City’s business tax receipts that the property has hosted a variety of retail uses for over 28 years (see table below). Multiple surrounding properties are retail and/ or small food sale/restaurants, and the HRO zoned properties immediately to the east of this property are also functioning as non-conforming retail type land uses.

According to City records, the following businesses have been issued Business tax numbers for this subject property:

<b>Business Name</b>	<b>Start Year</b>	<b>End Year</b>	<b>Number</b>	<b>Classification</b>
Lucky Street Gallery	2018	2019	City # 000317	Retail Wholesale or Mail Order
Island Safari Rentals, Inc.	2017	2018	City # 33582	Miscellaneous Other Services- Body Paint
Island Safari Rentals, Inc.	2017	2018	City # 32611	Miscellaneous Other Services
Island Safari Rentals, Inc.	2017	2018	City # 32610	Retail Wholesale or Mail Order
The Island Tea House Company	2016	2017	City # 28469	Retail Wholesale or Mail Order
The Island Tea House Company	2014	2015	City # 29186	Miscellaneous Other Services
Sunshine Scooter Inc.	2012	2013	City # 26850	Transportation Services
Sunshine Scooter Inc.	2012	2013	City # 26849	Miscellaneous Other Services
Dazzle Studios, LLC	2012	2013	City # 27388	Retail Wholesale or Mail Order
Free Bikes of Key West, LLC	2012	2013	City # 27631	Miscellaneous Other Services
Caribbean Adventures	2002	2003	City # 8173	Retail Wholesale or Mail Order
Jolies	1997	1997	City #5959	Retail Wholesale or Mail Order

**Surrounding Zoning and Uses:**

North:	HRCC-1	Tropical Vibes Cones & Bowls
South:	HPRD	Mel Fisher Maritime Museum
East:	HRO	Hank’s Hair of the Dog Saloon & Garbo’s Grill
West:	HRCC-1	Tropical Vibes Cones & Bowls



Retail uses adjacent to 408 Greene Street



Whitehead Street on Greene Street



Greene Street toward Duval Street



Tropical Vibes Cones & Bowls, Greene Street

**DIVISION 10. - HISTORIC RESIDENTIAL/OFFICE DISTRICT (HRO)**

Sec. 122-926. - Intent.

The Historic Residential/Office (HRO) is established to implement comprehensive plan policies for areas designated “Historic Commercial” on the future land use map. The HRO district shall accommodate business and professional offices as well as residential structures. Cultural and civic activities are allowed anywhere in the district and those same uses with accessory/associated commercial sales are allowed on Whitehead Street between Greene Street and Southard Street. Low-med intensity retail, transient residential, restaurants and small recreational power-driven equipment rentals are allowed along the Appelrouth Business Corridor, generally described as the properties adjacent to Appelrouth Lane within the HRO

including the parcel located on the Northern corner of Whitehead Street and Southard Street, excluding the parcel located on the South-Eastern corner of Whitehead Street and Appelrouth Lane. Customary accessory uses and community facilities may also be located within the HRO district.

Notwithstanding the Appelrouth Business Corridor, the HRO district shall not accommodate new transient lodging or guesthouses. In addition, the HRO district shall expressly exclude general retail sales, warehousing, and outdoor storage. In order to manage the impacts of future development on transportation and public facilities, the city shall limit the intensity of development within the HRO district to activities generating no more than 50 trips per 1,000 square feet of gross leasable floor area per day.

**HRO Permitted Uses Per City Code Section 122-927:**

- (1) Single-family and two-family residential dwellings.
- (2) Group homes with less than or equal to six residents as provided in section 122-1246.
- (3) Multiple-family residential dwellings.
- (4) Places of worship.
- (5) Business and professional offices.
- (6) Parking lots and facilities.
- (7) Medical services.
- (8) Veterinary medical services, without outside kennels.
- (9) Commercial retail low medium intensity less than or equal to 5,000 square feet, as provided in division 11 of article V of this chapter, within the Appelrouth Business Corridor.
- (10) Commercial retail high intensity less than or equal to 2,500 square feet, as provided in division 11 of article V of this chapter, within the Appelrouth Business Corridor.
- (11) Hotels, motels, and transient lodging within the Appelrouth Business Corridor.
- (12) Restaurants, excluding drive-through, within the Appelrouth Business Corridor.

**\*Note: Appelrouth Business Corridor is several blocks away from 408 Greene Street (subject property).**

**HRO Conditional Uses Per City Code Section 122-928:**

- (1) Group homes with seven to 14 residents as provided in section 122-1246.
- (2) Cultural and civic activities with or without associated / accessory commercial sales on Whitehead Street from Greene Street to Southard Street.
- (3) Community center, clubs and lodges.
- (4) Educational institutions and day care.
- (5) Nursing homes, rest and convalescent homes.
- (6) Parks and recreation, active and passive.
- (7) Protective services.
- (8) Public and private utilities.
- (9) Funeral homes.
- (10) Commercial low and medium intensity greater than 5,000 square feet as provided in division 11 of article V of this chapter, within the Appelrouth Business Corridor.

(11) Commercial retail high intensity greater than 2,500 square feet as provided in division 11 of article V of this chapter, within the Appelrouth Business Corridor.

(12) Small-recreational power-driven equipment rentals within the Appelrouth Business Corridor.

**Process:**

Development Review Committee:	November 21, 2019
Planning Board:	March 19, 2020 (meeting was cancelled)
Planning Board:	April 16, 2020 (meeting was postponed)
Planning Board:	April 28, 2020
DEO Review Period:	Up to 45 days

**Analysis – Evaluation for Compliance with The Land Development Regulations:**

The Planning Department has reviewed the proposed restaurant use pursuant to City Code Section 122-32(e) subsection (1) and (2). These subsections outline how the Planning Board shall determine whether a nonconforming use of a building or structure may be changed to another nonconforming use:

**(1) The new use is equally or more appropriate to the zoning district; and**

The appropriate uses within the HRO zoning district are the following:

- Permitted uses: residential dwellings, places of worship, business and professional offices, parking lots and facilities, medical and veterinary services
- Conditional uses: group homes with 7-14 residents, cultural and civic activities, community centers, clubs, and lodges, educational institutions and day cares, nursing homes, parks and recreation, protective services, public and private utilities, and funeral homes.

The HRO zoning district has two specific geographical areas located within the district itself that allows for additional permitted and conditional uses which are not allowed in the remaining areas of the HRO zoning district.

- Cultural and civic activities with or without associated / accessory commercial sales are a conditional use for properties located specifically on Whitehead Street from Greene Street to Southard Street.
- The Appelrouth Business Corridor consists of properties located on Appelrouth Lane and 517-519 Whitehead Street.
  - The permitted uses within the Appelrouth Business Corridor are Commercial retail low medium intensity less than or equal to 5,000 square feet, Commercial retail high intensity less than or equal to 2,500 square feet, hotels, motels, and transient lodging, restaurants, excluding drive-throughs are all permitted and appropriate uses.
  - The conditional uses within the Appelrouth Business Corridor are commercial low and medium intensity greater than 5,000 square feet, commercial retail high intensity greater than 2,500 square feet, and small-recreational power-driven equipment rentals.

As of September 30, 2019, the subject property, 408 Greene Street, had an active license with the City as Lucky Street Gallery, a retail establishment. The subject property is not located within the Appelrouth Business Corridor and as a result, retail use is not permitted, however retail use was established on this property prior to the adoption of the current zoning ordinance in 1997, and has been in existence continually, and is therefore considered an existing non-conforming use.

The proposed use would be a café serving beverages, breakfast and lunch items with a total interior consumption area of 638 square feet.

The proposed use is not more appropriate for the HRO zoning district, but it is arguably equally appropriate to the zoning district for the following reason:

This property is located within the Historic Commercial Pedestrian-Oriented Area. City Code Section 108-573 (c) states, “Change of existing commercial pedestrian-oriented uses. No additional off-street parking shall be required within the Historic Commercial Pedestrian-Oriented Area if a commercial structure is the subject of a change from one type of commercial use to another type of commercial use, so long as no additional or expanded floor area is created.” The proposed site plan does not include expansion of floor area therefore Section 108-573 (c) would apply to this project.

In this instance, neither retail nor restaurant use are permitted or conditional in the HRO zoning district (outside of Appelrouth Lane). It is notable that uses in the immediate area includes assorted retail including food sales. Given that this is a contributing structure in the City’s historic district, the structure’s integrity will remain protected. Finally, the subject property is on Greene Street, in a block that enjoys heavy pedestrian and bicycle traffic and is considered a tourist-oriented area. The subject property is also located within the Historic Commercial Pedestrian-Oriented Area. Therefore, the Planning Department concludes that this use is roughly equally appropriate for this district.

IN COMPLIANCE.

**(2) The change of use would not intensify the use of the premises by increasing the need for parking facilities; increasing vehicular traffic to the neighborhood; increasing noise, dust, fumes or other environmental hazards; or by having an adverse impact on drainage.**

***Intensity of Proposed Use: Parking***

Section 108-572 states retail use is (1) one vehicular space per 300 square feet of gross floor area whereas, restaurant uses is (1) one vehicular space per 45 square feet of serving and/or consumption area. However, this property is located within the Historic Commercial Pedestrian-Oriented Area. Section 108-573 (c) states that no additional off-street parking shall be required within the Historic Commercial Pedestrian-Oriented Area if a commercial structure is the subject of a change from one type of commercial use to another type of commercial use, so long as no additional or expanded floor area is created. The City therefore would not require off-street parking for this proposed use. Greene Street is a highly pedestrian oriented street connecting pedestrians to Duval and Whitehead Streets and the assumption is that this business will be accessed by foot or bicycle.

IN COMPLIANCE.

***Intensity of Proposed Use: Traffic***

According to the ITE Trip Generation Manual 9<sup>th</sup> Edition (attached), café use would increase vehicular traffic to the neighborhood. However, as previously noted, the subject property is located within the Historic Commercial Pedestrian-Oriented Area. The Historic Commercial Pedestrian-Oriented Area's intent is to acknowledge the density and pedestrian flow that currently exists in this area as well as encourage more pedestrian traffic and alternative modes of transportation.

IN COMPLIANCE.

***Intensity of Proposed Use: Noise, Dust, Fumes and Other Environmental Hazards***

The proposed use is not anticipated to increase noise, dust and fumes or other environmental hazards.

IN COMPLIANCE.

***Intensity of Proposed Use: Drainage***

No changes are proposed to the exterior of the building or property that would affect drainage. The change of use would not have an adverse impact on drainage.

IN COMPLIANCE.

**Recommendation:**

Based on the above analysis of the standards for considering changes of nonconforming uses in Section 122-32(e) of the Land Development Regulations, the Planning Department recommends the request be APPROVED as a change of non-conforming use, based on review criteria in Section 122-32 (e). If approved, staff recommends the following conditions:

1. The proposed restaurant shall be restricted to interior seating. No approval granted for any other work or improvements other than the proposed restaurant with no more than (60) sixty seats.
2. The existing front yard fence shall be demolished or moved within the property lines of the subject parcel.
3. The building and property shall be ADA accessible.
4. Certificates of Appropriateness shall be obtained for any new signage or other applicable work.
5. A business tax receipt shall be obtained, and any applicable impacts paid within 30 days of effective date of the proposed Resolution.



<b>ITE Trip Generation Manual 9<sup>th</sup> Edition – Existing use</b>		
<b>Time Period</b>	<b>Setting/ Location</b>	<b>Retail - Apparel Store - Trip Generate Rate per 1,000-SF GFA</b>
Weekday/ AM Peak/ Vehicle	General Urban/ Suburban	Averages a total of 5 vehicular trips
Weekday/ AM Peak/ Pedestrian	Dense Multi- Use Urban	Averages a total of 30 pedestrian trips
Weekday/ PM Peak/ Vehicle	General Urban/ Suburban	Averages a total of 4 vehicular trips
Weekday/ PM Peak/ Pedestrian	Dense Multi- Use Urban	Averages a total of 56 pedestrian trips
Saturday/ Peak/ Vehicle	General Urban/Suburban	Averages a total of 5 vehicular trips
Saturday/ Peak/ Pedestrian	Dense Multi- Use Urban	Averages a total of 77 pedestrian trips
Sunday/ Peak/ Pedestrian	Dense Multi- Use Urban	Averages a total of 51 pedestrian trips
Weekday/ Vehicle	General Urban/Suburban	Averages a total of 66 vehicular trips
Weekday/ Pedestrian	Dense Multi- Use Urban	Averages a total of 385 pedestrian trips

<b>ITE Trip Generation Manual 9<sup>th</sup> Edition – Existing use</b>		
<b>Time Period</b>	<b>Setting/ Location</b>	<b>Coffee/Donut Shop without Drive -Through Window - Trip Generate Rate per 1,000-SF GFA</b>
Weekday/ AM Peak/ Vehicle	General Urban/ Suburban	Averages a total of 80 vehicular trips
Weekday/ AM Peak/ Pedestrian	Dense Multi- Use Urban	Averages a total of 86 pedestrian trips
Weekday/ PM Peak/ Vehicle	General Urban/ Suburban	Averages a total of 28 vehicular trips
Weekday/ PM Peak/ Pedestrian	Dense Multi- Use Urban	Averages a total of 102 pedestrian trips
Saturday/ Peak/ Vehicle	General Urban/ Suburban	Averages a total of 59 vehicular trips
Saturday/ Peak/ Pedestrian	Dense Multi- Use Urban	Averages a total of 78 pedestrian trips
Sunday/ Peak/ Pedestrian	Dense Multi- Use Urban	Averages a total of 423 pedestrian trips
Weekday/ Pedestrian	Dense Multi- Use Urban	Averages a total of 755 pedestrian trips