

**PLANNING BOARD
RESOLUTION NO. 2017-**

A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD GRANTING A CHANGE OF NONCONFORMING USE FROM COMMERCIAL RETAIL TO RESTAURANT USE ON PROPERTY LOCATED WITHIN THE HISTORIC MEDIUM RESIDENTIAL (HMDR) ZONING DISTRICT PURSUANT TO SECTIONS 122-32(E) OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA.

WHEREAS, the applicant proposes to change an existing nonconforming retail use dedicated to a 552 square feet space in order to expand the existing non-conforming restaurant use on property located at 821-823 Whitehead Street (RE # 00017250-000000, 00017250-000000); and

WHEREAS, the property is located within the Historic Medium Density (HMDR) Zoning District; and

WHEREAS, Section 122-32(e) of the Land Development Regulations (the "LDRs") of the Code of Ordinances (the "Code") of the City of Key West, Florida (the "City") provides that a nonconforming use of a building or structure may be changed to another nonconforming use under certain findings of the Planning Board; and

WHEREAS, the new use is equally or more appropriate to the zoning district; and

WHEREAS, 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; and

WHEREAS, the Planning Board finds that the granting of the change of nonconforming use will be

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_____ Planning Director

in harmony with the general intent and purpose of the land development regulations and that such variances will not be injurious to the area involved or otherwise detrimental to the public interest or welfare; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on May 18, 2017; and

WHEREAS, the Planning Board finds that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other land, structures or buildings in the same district; and

WHEREAS, the Planning Board finds that the special conditions do not result from the action or negligence of the applicant; and

WHEREAS, the Planning Board finds that granting the variance requested will not confer upon the applicant any special privileges denied by the land development regulations to other lands, buildings or structures in the same zoning district; and

WHEREAS, the Planning Board finds that literal interpretation of the provisions of the land development regulations would deprive the applicant of rights commonly enjoyed by other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant; and

WHEREAS, the Planning Board finds that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure; and

WHEREAS, the Planning Board finds that the granting of the variance will be in harmony with the general intent and purpose of the land development regulations and that such variance will not be injurious to

the area involved or otherwise detrimental to the public interest or welfare; and

WHEREAS, the Planning Board finds that no nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts are grounds for the issuance of the requested variances; and

WHEREAS, the Planning Board finds that the applicant has demonstrated a “good neighbor policy” by contacting or attempting to contact all noticed property owners who have objected to the variance application, and by addressing the objections expressed by these neighbors.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. That a change of nonconforming use from commercial retail to restaurant use is hereby granted on property located at 821-823 Whitehead Street (RE # 00017250-000000, 00017250-000000) within the HMDR Zoning District pursuant to Section 122-32 (e) of the City of Key West Land Development Regulations.

Section 3. Full, complete, and final application for all permits required for which this resolution is wholly or partly necessary, shall be submitted in its entirety within 12 months after the date hereof.

Section 4. The failure to fully and completely apply the conditions of approval for permits for use and occupancy pursuant to this change of nonconforming use in accordance with the terms of the approval as described in Section 3 hereof, shall immediately operate to terminate this change of nonconforming use, which change of nonconforming use shall be of no force or effect.

_____ Chairman

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Section 5. This change of nonconforming use does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of applicant's assertion of legal authority respecting the property.

Section 6. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Section 7. This Resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit or development order will be rendered to the Florida Department of Economic Opportunity. Pursuant to Chapter 73C-44, F.A.C., this permit or development order is not effective for forty five (45) days after it has been properly rendered to the DEO with all exhibits and applications attached to or incorporated by reference in this approval; that within the forty five (45) day review period, the DEO can appeal the permit or development order to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement or order.

Read and passed on first reading at a regularly scheduled meeting held this 18th day of May 2017.

Authenticated by the Chairman of the Planning Board and the Planning Director;

Sam Holland, Planning Board Chairman

Date

Attest:

Patrick Wright, Planning Director

Date

Filed with the Clerk:

Cheryl Smith, City Clerk

Date

_____ Chairman

_____ Planning Director