

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



To: Chairman, and Planning Board Members

Through: Katie Halloran, Planning Director

From: Ben Gagnon, Planner I

Meeting Date: April 18, 2024

Agenda Items: **Variance – 801 Eaton Street (RE# 00003340-000000)** – A request for a variance to minimum parking requirements to allow for the expansion of a food service establishment on property located within the Historic Neighborhood Commercial 2 (HNC-2) Zoning District pursuant to Chapter 90 (Administration), Article V (Permits, Certificate of Occupancy, Variances, Appeals), Division 3 (Variances), and Chapter 108 (Planning and Development), Article VII (Off-Street Parking and Loading), Division 2 (Regulations for Required Spaces) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: A request for a variance to the minimum parking requirements to allow for an expansion of consumption area at a food service establishment, in conjunction with a request for a conditional use approval to allow for the amendment of Planning Board Resolution #2015-33 to increase the number of seats from 9 to 16.

Applicant: Oropeza, Stone & Cardenas, PLLC

Property Owner: 801 Eaton Street, LLC

Location: 801 Eaton St, Key West, Florida
(RE # 00003340-000000)

Background:



This staff report has been updated to reflect a modified site plan and request submitted by the applicant since the February Planning Board hearing. The subject property, with a total lot size of 2,847 sq. ft., is situated in the Historic Neighborhood Commercial-2 Zoning District. The restaurant is located in a historic contributing gas station originally built in 1945. According to the property card, this property last transferred ownership in March of 2017.

The applicant is seeking a parking variance for four (4) vehicle spaces, required in order to expand their consumption area from 135 sf to 259.6 sq. ft. and seating from nine (9) seats to twenty (20) seats.

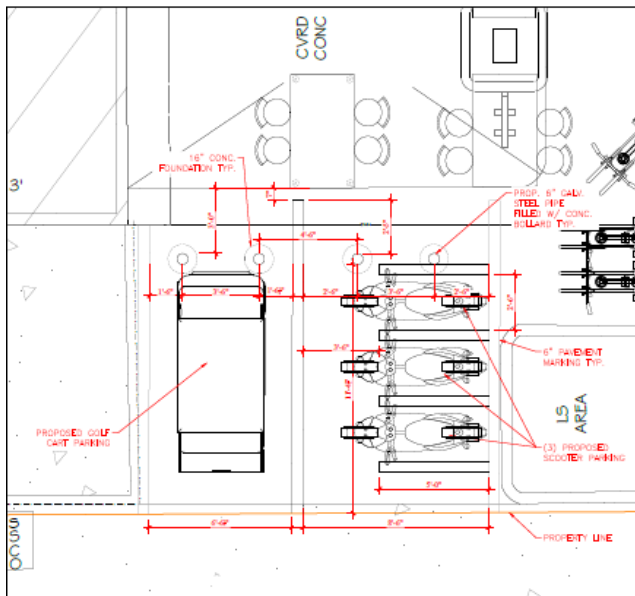
The following parking table was created by Planning staff:

Use	Req.	Existing			Proposed			Variance Needed
		Sq Ft	Req Spaces	Provided Spaces	Sq Ft	Req Spaces	Provided Spaces	
Restaurant	1 per 45 sf consumption area	135 (9 seats)	3.0		259.6 (20 seats)	5.79		
Retail	1 per 300 sf	661.5	2.2		644.4	2.14		
TOTAL			6	4*		8	4*	Yes, 4 spaces

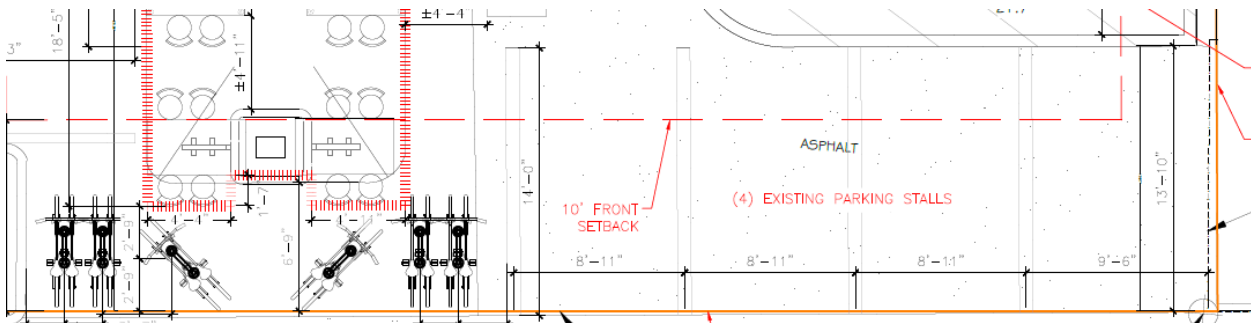
*The previously approved site plan under Resolution 2015-033 includes 4 vehicular spaces along Eaton Street and two spaces along William Street. However, only the 4 spaces along Eaton Street are currently available for parking. The applicant proposes to reestablish parking along the William Street side of their site to accommodate 3 moped spaces and 1 golf cart space.

The parking variance is being triggered by the following conditional use amendment: The applicant wishes to amend Planning Board Resolution 2015-033, which granted conditional use approval for the operation of a restaurant in the HNC-2 district. The resolution was signed into effect on August 1st, 2015, allowing the operation of a restaurant with up to nine (9) seats and a consumption area not exceeding 135 sq. ft. The applicant would like to add seven (7) additional seats for a total of sixteen (16) seats. The applicant is proposing to expand the existing consumption area of 135 sq. ft. by 107.5 sq. ft. for a total of 242.5 sq. ft. of outdoor consumption area in order to fit the additional seats.

Minimum Required Parking: The application involves a parking variance of four (4) spaces. A minimum of eight (8) spaces are required per code. The site plan approved under Resolution 2015-33 contains six (6) parking spaces. The applicant is proposing to convert the two parking spaces along William Street to three (3) moped spaces and one (1) golf cart space. A twelve (12) space bicycle rack is also proposed. Proposed parking is shown below:



Proposed golf cart and moped parking along William Street



Proposed bicycle and vehicle parking along Eaton Street

The application was sent to the Development Review Committee (DRC) members for comment on December 7, 2023. The following comments are notable to the Board:

Utilities:

- Utilities would like to condition the additional seats on the installation of gates across the dumpster enclosure area and confirmation of grease interceptor installation, such as photographs and dimensions or flow rate.
- Grease interceptor was included in Planning Board Resolution No. 2015-33 general condition #2, requiring Building permits for the installation of necessary kitchen equipment, ADA accessible restroom, fire suppression system, grease interceptor and any life/safety improvements.

Staff Analysis -Variance Criteria Evaluation:

The criteria for evaluating a variance are listed in Section 90-395 of the City Code. The Planning Board, before granting a variance, must find all the following:

1. *Existence of special conditions or circumstances. 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 zoning district.*
2. *Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.*
3. *Special privileges not conferred. 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.*
4. *Hardship conditions exist. 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.*
5. *Only minimum variance granted. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.*
6. *Not injurious to the public welfare. 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.*
7. *Existing nonconforming uses of other property not the basis for approval. 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 shall be considered grounds for the issuance of a variance.

Staff has found that the application is in compliance with the variance criteria contained within Section 90-395. Specifically, the restaurant has been in existence since 2015 and represents an adaptive reuse of a former service station. As a result, the existing site design creates special conditions and circumstances which are peculiar to the specific land and structure. In addition, as this is a historic structure, the existing site conditions were not created by the applicant and are not a result of action or negligence on the applicant's part. The literal interpretation of the Land Development Regulations in this instance would create a hardship upon the applicant based upon the existing site conditions and historic nature of the property.

The variance criteria also specify that only the minimum variance necessary should be granted. In this instance, the applicant is requesting a modest increase in seating in order to accommodate existing business demand. After several inspections of the property, there is no indication that the granting of the variance would be injurious to the public welfare. In fact, due to the pedestrian nature of Eaton St, it is highly likely that a significant portion of visitors will arrive on foot.

Finally, it has been noted that this business has received some complaints with respect to the waste storage area. However, staff believes that with the inclusion of the condition recommended by Utilities staff, this site feature can be sufficiently managed to be compatible with the surrounding neighborhood.

The Planning Board shall make factual findings regarding the following:

That the standards established by Section 90-395 of the City Code have been met by the applicant for a variance.

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. The applicant has provided three letters of support from neighbors and there have been no objections to date to the Planning Department as of February 9th, 2024.

The application is in compliance with the variance criteria contained within Section 90-395. Planning Department respectfully recommends approval of the request subject to the following conditions:

RECOMMENDATION:

The Planning Department recommends that the request for variances to the minimum parking requirement be **Approved**. If the Planning Board elects to approve the variance amendment, staff recommends the following conditions:

The following conditions are organized such that any conditions from the 2015 approval are in plain text, while new conditions are underlined.

General conditions:

1. The proposed design shall be consistent with the plans dated, July 19th, 2023, by James C Reynolds. for the property located at 801 Eaton St.
2. The 12 new proposed bicycle parking spaces shall be installed in accordance with the design, lighting, and security criteria of Section 108-643.
3. All required Certificates of Appropriateness shall be obtained for the proposed development prior to building permit issuance.
4. Building permits shall be obtained for the installation of the necessary kitchen equipment, ADA accessible restroom, fire suppression system, grease interceptor and any life/safety improvements to the satisfaction of the City's Building Official and Fire Marshall.
5. In order to offset the solid waste generated by the proposed use, staff recommends the owner participate in Waste Management's commercial recycling program and/or participate in a certified green business program, such as through Florida Keys Green Living & Energy Education (GLEE).
6. Except as otherwise provided herein, applicant/owner agrees to comply in all respects with State, County and local rules and regulations.

Conditions prior to issuance of a Certificate of Occupancy and/or Business Tax Receipt:

7. The owner shall obtain and maintain a Conditional Approval Permit, pursuant to City Code Chapter 18, Article XII, Division 1. The City Code Compliance shall inspect the property on an annual basis upon reasonable notice to determine compliance with the above general conditions.

Conditions subject to a Conditional Approval Permit, and subject to an associated annual inspection:

8. The consumption area of the approved restaurant use shall not exceed twenty (20) seats or ~~135~~ 259.6 square feet, whichever is greater, unless further City approvals are obtained. Impact fees shall be paid through the City Licensing Official on all restaurant seats.
9. In order to avoid any adverse impacts on surrounding residential uses, the restaurant shall close by 10:00 PM each day.
10. The applicant shall work with the building owner and/or other tenants to screen the solid waste dumpsters from view daily, pursuant to City of Key West Land Development Regulations, Sec. 108-279.