



THE CITY OF KEY WEST

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

Date: September 20, 2023

To: Amanda Brady, Chief Licensing Official

From: Katie P. Halloran, Planning Director

Subject: Seating Request – 409 Caroline Street

Background

This memo is provided in response to a June 27, 2023 email requesting additional seating at 409 Caroline Street.

When the bar/lounge business commenced, the property was located in the area of the city designated HP-2, which permitted eating and drinking establishments. However, when the current zoning regulations were enacted, the subject property was included in the area of the city designated Historic Residential/Office (HRO). Section 122-926 of the city code provides, in part, that the “HRO district shall accommodate business and professional offices as well as residential structures”. In the HRO district, outside of the Appelrouth Business Corridor, neither a bar/lounge or restaurant is a permitted or conditional use.

Section 122-26 of the city code provides that that a nonconforming use is a use “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”. In that the bar/lounge and restaurant uses appear to have been established prior to the implementation of the current city code, those uses would fall within this definition.

In 1997, the attorney representing the owner of the property at that time corresponded with Robert Tischenkel, the City Attorney at that time, for the purpose of documenting the seating capacity for the business. In that letter, which was acknowledged by the signature of the City Manager at that time, the parties agreed that the owner was entitled to 40 outdoor seats and that the number of indoor seats would be reduced from 20 seats to 9 seats in order to eliminate the need for additional parking.

In 2018, the owner obtained a business tax receipt for a restaurant with 49 seats and a business tax receipt for an entertainment permit for live or recorded amplified music. In 2019, the owner obtained a business tax receipt for dogs in a public service establishment.

In early 2023, the City’s Licensing and Code Compliance Department performed a restaurant seat license compliance audit. The Code Compliance Department cited the business on January 31, 2023 for 69 unlicensed seats. As a result, the Planning Department received a request from the owner’s representative requesting to increase the number of indoor seats from 9 to 22 and the number of outdoor seats from 40 to



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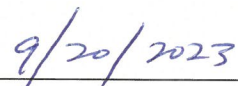
134. Section 122-32(d) of the city code provides that “a nonconforming use shall not be extended, expanded, enlarged, or increased in intensity”. The seating plan proposal received on June 27, 2023 does not contemplate a physical expansion of the footprint of the area occupied by the business; however, the proposed seating request is an expansion and increase in intensity of a legal non-conforming use.

Following the seat license compliance audit, but prior to the submission of the seating plan, the owner of the subject property executed and recorded a unity of title which joined the subject property with an adjoining parcel, formerly 407 Caroline Street, creating one parcel. The historical uses associated with 407 Caroline Street include skin care technician (no activity requiring a state license), retail hats & caps, and a sports card shop. The last retail license expired on September 30, 2000. When these retail establishment licenses were active, the property was located in the area of the city designated HP-2, which permitted retail stores, sales and display rooms except automotive uses. However, the legal nonconforming use has been abandoned. The lot at 407 Caroline Street is now included in the area of the city designated Historic Residential/Office (HRO). In the HRO zoning district, outside of the Appelrouth Business Corridor, commercial retail low, medium or high intensity is not a permitted or conditional use. Also, as noted previously, in the HRO district, outside of the Appelrouth Business Corridor, neither a bar/lounge or restaurant is a permitted or conditional use.

Determination

The language contained in section 122-32(d) of the city code is that it was intended to allow legally created nonconformities to exist in their present condition. The current request would result in an increase in occupancy from 49 seats to 156 seats. This would constitute an intensification of the use and the impacts resulting from such an increase would violate both the spirit and intent of this provision. Therefore, the Planning Department cannot approve the request to increase seating.


Katie P. Halloran, Planning Director


Date

cc: Ronald Ramsingh, City Attorney
Eric Norback, Assistant City Attorney
Lori Thompson, Spottswood Law