

**IN THE CITY OF KEY WEST, HISTORIC ARCHITECTURAL REVIEW  
COMMISSION, BEFORE THE SPECIAL MAGISTRATE OF  
THE CITY OF KEY WEST, FLORIDA**

FAR NIENTE, LLC, a Minnesota limited liability company; ERIC DETWILER and ELIZABETH FORD; WALTER S. SZOT and DAWN SZOT; DAVID M. KELLER and JANINE C. KELLER; G.C.J., LLC, a Florida limited liability company; LAND TRUST #426KW dated 02/11/2010; DUCK AND DOLPHIN ANTIQUES, LLC, a Florida limited liability company; CONCH REPUBLIC CYCLE, LLC, a Florida limited liability company; and BIKE FIT KEY WEST, INC., a Florida corporation,

Appellants,

HARC Application No.: H15-01-0842

v.

Special Magistrate Donald E. Yates

CITY OF KEY WEST,

Appellee.

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**NOTICE OF APPEAL**

**NOTICE IS HEREBY GIVEN** that FAR NIENTE, LLC, a Minnesota limited liability company; ERIC DETWILER and ELIZABETH FORD; WALTER S. SZOT and DAWN SZOT; DAVID M. KELLER and JANINE C. KELLER; G.C.J., LLC, a Florida limited liability company; LAND TRUST #426KW dated 02/11/2010; DUCK AND DOLPHIN ANTIQUES, LLC, a Florida limited liability company; CONCH REPUBLIC CYCLE, LLC, a Florida limited liability company; and BIKE FIT KEY WEST, Inc., a Florida corporation, (“Appellants”) hereby appeals to the Special Magistrate of the City of Key West, Florida, the decision of the Historic Architectural Review Commission of the City of Key West, Florida rendered July 28, 2015.

The nature of the decision being appealed is the approval of a certificate of

appropriateness by the Historic Architectural Review Commission (“HARC”) of Application Number H15-01-0842 with respect to the property located at 616 Eaton Street, Key West, Florida 33040 (“616 Eaton Street”).

Appellants all have standing to bring this appeal pursuant to section 90-428(b)(2)a, Key West, Florida, Municipal Code, because all Appellants each have an interest in real property which is less than two hundred feet from 616 Eaton Street as required by section 90-428(b)(2)a. Dana Day and Stan Day are the Members of Far Niente, LLC, which is the owner of 416 Elizabeth Street, Key West, Florida. Karen O’Leary and John O’Leary are the Members of G.C.J., LLC, which is the owner of 412 Elizabeth Street, Key West, Florida. Jeffrey Cornfeld and Julie Cornfeld are the beneficiaries of Land Trust #426KW dated 02/11/2010, which is the owner of 426 Elizabeth Street, Key West, Florida. Eric Detwiler and Elizabeth Ford are the owners of 617 Fleming Street, Unit 4, Key West, Florida. Walter S. Szot and Dawn Szot are the owners of 617 Fleming Street, Unit 7 and 8, Key West, Florida. David M. Keller and Janine C. Keller are the owners of 617 Fleming Street, Unit 9, Key West, Florida. William Christopher Wild is the owner of Conch Republic Cycle, LLC, and Bike Fit Key West, Inc., which lease the commercial space located at 421 Simonton Street and 423 Simonton Street, Key West, Florida, respectively. Mark Jacob and Paul Cox are the Members of Duck and Dolphin Antiques, LLC, which leases the commercial space located at 601 Fleming Street, Key West, Florida.

The City of Key West Commission (“City Commission”) has held that the “preservation of the character and appearance of the historic preservation districts of the city, as well as buildings, structures, and properties... is a public purpose benefiting the educational, cultural, and economic welfare of the citizens of the city.” § 90.126, Key West, Fla. Mun. Code. The

City Commission created HARC in order to further the public beneficial goal of preserving the “character and appearance” of the City of Key West’s historic zoning districts. Id. Pursuant to the power granted unto HARC by the City Commission, HARC has the “authority to disapprove work which does not augment or preserve the character and appearance of the historic districts...[and] approve work which is deemed to augment or preserve the character and appearance of the historic districts.” § 90.139, Key West, Fla. Mun. Code. In addition to creating HARC, the City Commission adopted design guidelines with the purpose of assisting HARC in determining whether requested work on a property augments or preserves the character and appearance of the historic districts. *See* § 90.142, Key West, Fla. Mun. Code. A copy of the Historic Architectural Guidelines of the City of Key West (“HARC Guidelines”) is enclosed with this appeal.

The HARC Guidelines *permit* good contemporary design. Tab 2, p. 37. However, the Guidelines *require* that all designs be “compatible with Key West architectural characteristics in the historical zones. All new construction must be in keeping with the historic character in terms of size, scale, design, materials, color and texture.” Id. at p. 38(a)5. When dealing with the construction of new structures, the Guidelines state that the design “should have features that are compatible with the lines of historic architecture” and “[m]aterials used on new construction shall be of similar color, dimension, texture, and appearance as historic fabrics.” Id. at p. 38(a)6; p. 38(a)7. Further, new construction may not interfere with the “essential form and integrity of the historic properties *and their environment*”. Id. at p. 37 (emphasis added).

The design proposals for the addition to the existing structure and the new building at 616 Eaton Street fail all of the HARC Guideline criteria cited above. The design implements the

use of stucco material extensively on the new building, which neither keeps with the historic character in terms of materials and textures, nor is “compatible with Key West architectural characteristics in the historical zones.” Tab 2, p. 38(a)5. Additionally, the design utilizes green glass throughout, along with floor to ceiling sliding doors on both the upper and lower levels. Tab 11, A8-A12. Such materials offend the neighborhood aesthetic and do not comply with the HARC Guidelines. The design contains second floor balconies which are invasive to the neighboring properties site lines. Tab 4, A-7.3. One such glaring departure from the Guidelines is the use of a rooftop garden above a second floor which is unlike anything in the historic districts. Tab 4, A-7.4. The proposed addition and new building violate each of the cited HARC Guidelines as well as the more general requirement that HARC lessen the detracting of an addition, alteration or new structure upon the integrity of the historic district. Tab 2, p. 36-38(a). The City of Key West Staff Report focused only on mass and completely ignored other relevant criteria; thereby, leaving out a crucial analysis for the benefit of the HARC Commission. Tab 4, p. 1-3.

Although the applicants purport to be constructing a single family home, the proposed design of a 19,000 square foot, nine bedroom (potentially eleven), fifteen bath house dwarfs every single residential property in the neighborhood. The applicants compare 616 Eaton Street to other non-residential structures on the block that include the Key West United Methodist Church on 600 Eaton Street and other commercial, or formerly commercial and now mixed-use, buildings which are not comparable. The applicants compare commercial apples to residential oranges in an effort to obfuscate the true issue that the proposed design is utterly and completely incompatible with the HARC Guidelines; all to the detriment of the historic neighborhood.

HARC Guidelines require “new construction harmonize with the existing historical building stock and streetscapes.” Tab 2, p. 38. This addition and the proposed new construction do not. They not only violate HARC Guidelines as above described, but exceed mass, scale and symmetry limitations elsewhere described. *See* Tab 2, p. 37 - p. 38(a)4.

HARC commissioners during the July 28, 2015, meeting appeared to be enamored with the design of the proposals, describing them as “masterful” and that the project was a “beautiful contemporary piece of architecture”. Tab 8, p. 19, line 16-20, and p. 29, line 8-13, Commissioner Logan. HARC’s job is not to promote contemporary architecture, but instead preserve the “character and appearance” of the City of Key West’s historic zoning districts. In fact, the “Do’s and Don’ts for HARC Members (P12) expressly instruct the Commissioners not to “apply your idea of what is ‘pretty’ or ‘in good taste’” to decide if a proposal or alteration is appropriate.” HARC’s job is to “preserve the character and appearance” of the Historic District. § 90.139, Key West, Fla. Mun. Code.

Appellants, as well as the historic districts as a whole, have invested significantly into their homes and businesses within the historic districts in reliance upon the parameters applicable to the neighborhood, namely the HARC Guidelines. Appellants have property rights and purchased or leased their properties subject to the HARC Guidelines and rely on the enforcement of the HARC Guidelines by HARC. The HARC Commissioners are under a duty to enforce the rules and criteria as established by the City Commission, as opposed to taking it upon themselves to impose their idea of good taste in design in derogation of the Guidelines.

For the foregoing reasons, Appellant urges the Special Master to overturn the certificate of appropriateness issued by the Historic Architectural Review Commission of the City of Key

West, Florida rendered on July 28, 2015, with respect to Application Number H15-01-0842.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 7, 2015, a true and correct copy of the foregoing was personally served on Cheri Smith, Clerk of the City of Key West, Florida 33040.

/s/ Brett Tyler Smith  
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