
THE CITY OF KEY WEST
PLANNING BOARD
Staff Report



To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Nicholas Perez-Alvarez, AICP, Stantec

Meeting Date: December 12th, 2023

Application: **Variance – 821-823 Whitehead Street (RE# 00017250-000000, 00017250-000100)**
A request for variances for seating requirements and an amendment to the Planning Board Resolution Number 2017-18 to redistribute the existing authorized seats for an existing commercial building located within the Historic Medium Density Residential Zoning District (HMDR) pursuant to sections 122-32 and 90-395 of the Code of Ordinances of the City of Key West, Florida.

Request: An Amendment to the Planning Board Resolution Number 2017-18. The owner is seeking to redistribute the existing authorized seats to allow the back patio to become a usable consumption area.

Applicant: Gregory S. Oropeza, Esq., Oropeza Stones & Cardenas

Property Owner: Butanella 821, LLC, a Florida Limited Liability Company

Location: 821-823 Whitehead St (RE# 00017250-000000, 00017250-000100)

Zoning: Historic Medium Density Residential (HMDR)



Background:

The subject properties are two separate parcels, 821 Whitehead St consisting of 2,784 square-feet, and 823 Whitehead St a 2,208 square foot parcel. Both operate as a restaurant, “Moondog Cafe”. The restaurant is considered a legal-nonconforming use in the Historic Medium Density Residential Zoning District, that opened in August of 2018 after being granted a change of non-conforming use through Planning Board Resolution 2017-019. The Planning Board also granted a parking variance for the property through Planning Board Resolution 2017-018.

Planning Board Resolution 2017-18 included nine conditions including condition #8 which states in part that, “The rear deck area will not be used for consumption...”. Seating is therefore limited to the front patio and interior bar and floor area. The restaurant is currently licensed for 107 seats. The applicant proposes to amend Resolution 2017-18 to remove conditions #3 and #8, which state as follows:

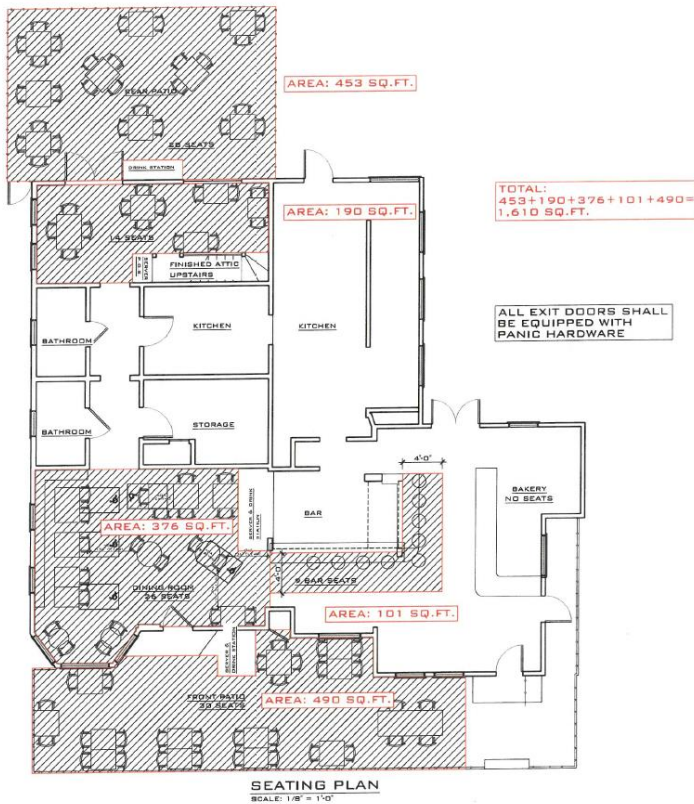
- 3. All additional consumption area confined to the current interior of the premises.*
- 8. The rear deck will not be used for consumption and any sound shall comply with the requirements of Sec. 26-191 and 26-192.*

The applicant provides that currently, the property has a total consumption area of 1,610 square feet, which equates to 1 seat every 18.5 square feet of consumption area, or 107 total seats. The property is currently permitted for 60 total interior seats and 47 total exterior (front) patio seats. The amendment would redistribute the total permitted seats by reducing the total number of interior seats from 60 to 49, reducing the total number of permitted front patio seats from 47 to 30, and would add 28 seats in the rear patio area. This redistribution results in no additional seats being added to the property and according to the applicant, allows the owner to space the seating out more appropriately for the setting as well as for safety of all patrons, employees and invitees of the property, and for emergency responses in the event of an emergency. The applicant indicates that the front of the property provides far less shade than the rear and that seating in the rear will allow a more enjoyable experience for patrons and employees.

The applicant states further that the owner has discussed this proposed amendment with the neighbors, who are in full support of the proposed change requested herein, as evidenced by the enclosed letters of support prepared by the neighbors. The owner proposes that all other provisions of Resolution Number 2017-18 remain in full force and effect.

Staff notes that the two comments in support are from the owner of 819 Whitehead St, which shares a side lot line with the business and the owner of 824 Shavers Lane, which shares a rear lot line with the business. A previous comment not in favor were from a different owner at 819 Whitehead St.

Originally the restriction to disallow back patio use was due in part to the neighboring property owners. The owner of 819 Whitehead St has since changed their viewpoint and is now in support of this application.



SEATING CALCULATION

EXISTING CONSUMPTION AREA: 1,610 SF
 PROPOSED CONSUMPTION AREA: 1,610 SF
 (1 PER 15 SF)

PROPOSED OCCUPANCY:

INTERIOR TABLE DINING	40 SEATS
INTERIOR BAR COUNTER	9 SEATS
TOTAL INTERIOR:	49 SEATS
FRONT PATIO DINING	30 SEATS
REAR PATIO DINING	28 SEATS
TOTAL SITTING:	107 SEATS

The proposed seating plan and seat calculation is shown above. The applicant would move 28 seats from the front and interior floor to the rear patio for dining. Upon review of the application, and the existing site, no actual changes, or variance requests are being made or requested by the applicant. Based on the plans submitted, the applicant wants to relocate seats only through a modification of conditions associated with the approved parking variance.

Process:

Planning Board Meeting:	December 12 th , 2023
Local Appeal Period:	10 Days
Planning renders to DOC for review:	Up to 45 days

The application was sent to the Development Review Committee (DRC) members for comment on November 9, 2023. Requests and comments have been summarized below:

1. Utilities: provide a site plan that shows the location and dimensions of the solid waste storage area and the locations of the proposed and existing seats.

Note: These comments were resolved by the applicant on November 28, 2023.

2. Utility Administrator: solicit input from the neighbor at 817 given the rear patio is only 25’ from (the restaurant seating).
3. Urban Forestry: There is an existing open tree permit on the property that requires the planting of 1-8ft tall approved tree, minimum 1” diameter, on the property (T2019-0084). This open tree permit needs to be resolved.

Note: This comment was resolved by the applicant on November 27, 2023.

Staff Analysis - Evaluation:

The criteria for evaluating a variance are listed in Section 90-395 of the City Code, however, the city planner, currently the Planning Department Director, recommends a modified review and approval approach pursuant to Code Section 108-91(D)(1). This application does not include any variance requests, the request is to modify/delete conditions of the parking variance resolution which functioned to authorize the expansion of the existing legal non-conforming restaurant use, the Moondog Café. The analysis provided below contemplates Code provisions that are most applicable to the scope of the request. Planning staff recommend that the Planning Board consider the request in light of the analysis below together with neighbor input (the “good neighbor policy” associated with Section 90-395).

Compliance with legal nonconforming use regulations (Section 122-32(d): The City of Key West includes provisions to guide the continuation of legal nonconforming uses, such as the business at the subject property, through Chapter 122, Article II, “Nonconformities”, Section 122-32, “Additional regulations” of the Land Development Regulations. Applicable language is provided below:

- *Section 122-32(a): “A nonconforming use, nonconforming density or a noncomplying building or structure may be continued, subject to this article . . .”*

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- *Section 122-32(d): “A nonconforming use shall not be extended, expanded, enlarged, or increased in intensity. This prohibition shall include but not be limited to the extension of a nonconforming use within a building or structure or to any other building or structure.”*

The City Code recognizes the benefits and rights of property owners to continue legal nonconforming uses. The Planning Board has also reestablished the right of this business owner to operate through recent Resolution 2017-19, through approval of a change of legal non-conforming use. However, the Planning Board also provided conditions associated with this use on this property, through a parking variance approval, and the conditions function to limit the extent of the restaurant use.

Through Resolution 2017-19 the Planning Board previously established the following condition for this property, “8. *The rear deck area will not be used for consumption and any sound shall comply with the requirements of Sec.26-191 and 26-192.*” The requested deletion of this condition would expand the allowable consumption area to the rear deck, although it would not increase the total number of seats allowed onsite at this time. The prohibition on expansion of nonconforming uses established in Section 122-32(d) are not limited to buildings or structures, so the rear deck would be an expansion. Increase in consumption area generally allows for additional seats, so staff would recommend conditions include a maximum number of seats in this area, if the expansion is approved.

Extent of the request (derived from Section 90-395): There is no requested change to the number of seats, parking, density, setbacks, coverage, or other site data associated with this property. Intensity of the legal nonconforming restaurant use will not increase with respect to the number of seats or business hours, but the impacts of the restaurant use on the adjacent properties may shift, given the potential impact to the rear residential properties.

The applicant provides that moving the seats decongests the interior and front patio for safer workspace for employees and guests and would provide more shading for guests. The applicant is asking for relocation of 24 seats to the rear patio which would also result in new consumption area in the rear patio. The requested seats could be represented by, for example, six four-person tables. Unless limitations are established, through conditions or a site plan, the applicant could request additional seats, depending on the size of the rear patio consumption area.

Potential adverse impacts of the proposed modifications given the applicable zoning district (derived from 122-62 and Section 122-596):

As noted, the subject property is within the Historic Medium Density Residential zoning district. The intent of this district is in part to preserve the, “. . . residential character and historic quality” of the area. The Code also states in Section 122-596(b), “*Lawfully existing office or commercial uses shall be permitted to continue to exist as lawful nonconforming uses if such uses continue to comply with conditions invoked when the respective uses were approved.*” The applicant has approached the City to modify the conditions of approval, so impacts to current and future residential properties must be carefully considered. Staff notes that there have been recent conflicts in the neighborhood between residents and businesses, with residents noting commercial impacts on their quality of life.

Mitigative techniques (derived from 122-62): Although the current rear property owner is in support of the applicant’s request, the prior owner was concerned about impacts such as noise. The property will change

hands again, so Planning staff recommend an approach that balances the rights of the business owner to make reasonable adjustments to their operations, while protecting the quality of life of adjacent residents. Planning staff recommend additional conditions to restrict amplified music in the rear dining area, to limit hours of operation, and restrict location of any bar seating or structures in the rear patio. These recommendations are to ensure that regardless of new business owners, the rear patio is reserved for a quieter dining experience that does not convert into later evening entertainment and noise complaints from nearby residents.

Good neighbor policy (derived from Section 90-395):

In accordance with the "good neighbor policy" included in Section 90-395, the applicant has demonstrated compliance by contacting or attempting to contact all noticed property owners who have objected to the application, and by addressing the objections expressed by these neighbors. Two of the neighboring properties are now in support of rear patio seating, which will offer patrons greater shade and comfort. The applicant provides that the conditions at issue were created due to neighboring property demands. This neighboring property has since changed ownership and the owner is now in support of the request.

Recommendation:

The Planning Department respectfully recommends that the variance request to allow rear patio dining be **DENIED**. The primary basis for the recommendation is the potential impact on the quality of life and property values of immediate residential neighbors (current and future), given that commercial use of the rear patio would constitute an expansion of a legal nonconforming use and is likely to increase noise to a degree that may be a nuisance. If the Planning Board elects to approve dining on the rear deck through modification of conditions of the Resolution #2017-18, staff recommends the following modifications:

General Conditions:

1. No live music on the premises at any time, without a duly approved Special Event Permit pursuant to Sec. 66-98.
2. No amplified music anywhere on the exterior of the premises, shall exceed the requirements of Sec. 26-191 and 26-192. If there is amplified music on the front deck, they shall comply with Chapter 6 of Article 5 whereas, the amplified music must not exceed 75 decibels in the daytime up until 8 p.m.. After 8 p.m. the amplified music may not exceed 60 decibels.
3. ~~All additional~~ The rear deck consumption area confined to the current interior of the premises shall be as depicted on the site plan prepared by Artibus Design, dated September 25, 2023, and total indoor and outdoor consumption area shall be limited to 1,610 square feet. The total

number of licensed seats shall not be increased from 107 seats.

4. No patrons are seated past 10 p.m., and the kitchen closes no later than 11 p.m.
5. A landscape buffer of at least six feet in height is maintained between the front deck and the adjacent residential property.
6. Gate that is at the Southwest corner of neighbor's property will be reversed to open outward, if approved by the City of Key West Building Department (to facilitate the landscape buffer).
7. Property owners shall instruct waiting patrons to wait on the front porch adjacent to the front entrance and / or inside the restaurant. Patrons will be discouraged to congregate adjacent to neighboring residential properties and shall be informed they may not be seated and directed to the waiting area.
8. The rear deck area will only be used for lunchtime seating and no patrons shall be seated in the rear deck area after 3 p.m. Live music and amplified music are prohibited in the rear deck. ~~not be used for consumption and any sound shall comply with the requirements of Sec. 26-191 and 26-192.~~
9. This approval shall be enforced consistent with Sec. 122-63(f).