

To: City of Key West Planning Department
Date: January 8, 2025

RE: Minor Development Plan – 218 Duval Street (RE# 00001400-000000)

We are reaching out to you because we have learned that Linda Turek is applying for permits that will allow her to open an outside music venue on the corner of Caroline Street and Telegraph Lane. We want to make you aware of our personal experience when we lived across the street from Hank's, located at 409 Caroline Street. Hank's is also an outside music venue owned by Linda Turek, which adversely affected our lives in a profound way.

In December of 2021 we came to Key West and moved into one of the rental houses at 410 Caroline Street. Although the house is beautiful and in a very desirable location in Key West, nothing could have prepared us for the extremely loud hard rock/country "music" that Hank's played from 1:00 in the afternoon to midnight and beyond, sometimes to 2 am in the morning. Even sitting inside the house, the music was so loud you could barely carry on a conversation, and it was pointless trying to watch TV. As you can imagine, sleeping became very difficult.

We reached out to Key West code enforcement on numerous occasions. At first we would call them at night, when the music was unbearable. They said they would "investigate", but to our knowledge no action was ever taken. We then went to code enforcement during the day and were told that we would have to call code enforcement at night, when the music was loudest. Of course, calling them at night did nothing. One day Jimmy Young from code enforcement called. He said that there was nothing code enforcement could do because Hank's was located in a commercial district and was allowed to play music at extremely high levels. We knew this was not true as Hank's is actually located in an HRO which has very strict noise restrictions. I asked Mr. Young what noise readings they had obtained when code enforcement officers were sent out to Hank's to investigate our complaints. He told us that they had been unable to obtain any readings because every time code enforcement came out to Hank's the wind was blowing too hard for them to take a reading. At that point we realized that code enforcement was never going to take our complaint seriously or investigate the noise level in any way.

Due to the continuing and relentless noise coming from Hank's, we felt we had no choice but to move from our residence at 410 Caroline Street. In our opinion, the noise from Hank's made the house at 410 Caroline Street uninhabitable. We are now concerned that if Linda Turek is given the opportunity to open another outside music venue, the residents living on or around this new outside music venue will be subjected to a relentless barrage of loud music playing late into the night. We have already heard from tenants currently living at 410 Caroline Street, that if the owner of Hank's, Linda Turek, is allowed to open another outside music venue across the street from where they now live, they will have no choice but to move. Therefore, we are asking you to please deny the permits that would allow this to happen,

Sincerely,

Mary and Leonard Lind

From: [Belkis Lopez](#)
To: [planning-dept](#)
Subject: [EXTERNAL] 218 Duval Street (RE#00001400-000000) outdoor live music project
Date: Thursday, January 9, 2025 11:37:32 AM

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Esteemed City of Key West Planning Board-

My name is Belkis Susana Lopez and I am a long term tenant in one of the upstairs apartments located at 217 Telegraph Lane where I live with my two children Christian and Guadalupe. I saw the public notice posted outside the neighboring property and noticed the construction going on and it has come to my attention that the Smokin Tuna is intending to build a stage for the purpose of outdoor live music directly under (less than three feet away from) the windows of the bedroom where I sleep with my children. On the plans that have been presented it shows a deck being proposed but I know that the real purpose of that structure is a stage for outdoor live music as I saw the online advertisement for Mile 0 Fest that lists nineteen shows between January 21-25 2025 at the Smokin Tuna. Here is the advertisement I saw online that indicates this:

<https://www.mile0fest.com/schedule>

I contacted the kind people at Planning and they told me that the process before Smoking Tuna can open anything next door is Planning Board January 16, HARC January 28, and then City Commission March 4 and that they would have to get approval from all three government bodies, and specifically be permitted to have outdoor live music, before they could legally open anything next door directly under the window to where me and my children sleep.

This being the legal process, how is it possible that Smoking Tuna could be advertising nineteen live music shows for January 21-25 if they can not possibly be legally open on those dates? Also I heard that they do not have a proper liquor license for the property and are going to try to illegally use the Hank's liquor license and say they are doing a catering event at the smokin tuna. Please investigate this.

I please beg you to not allow Smoking Tuna to have an outdoor live music stage less than three feet away from the windows of the bedroom where I sleep with my children. They also own the building on the corner of Caroline and Telegraph (former Keyviche restaurant) so why cant they open their business in there and put the live music inside so they dont bother anybody ?

Thank you for your consideration

Belkis Susana Lopez
217 Telegraph Lane
305-391-6735

From: Matthew McCarthy <matthewjmccarthy@yahoo.com>
Sent: Wednesday, November 13, 2024 9:52 PM
To: DRC E-Mail Group <drc@cityofkeywest-fl.gov>
Subject: [EXTERNAL] application H2024-0050 218 Duval Street

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Esteemed Development Review Committee of the City of Key West-

I would like to express my opposition and grave concerns about the proposed project located behind 218 Duval Street/ 421 Caroline Street.

The first reason I oppose the proposed project is the principal owner of the business that intends to operate at the site (Smokin Tuna, principal owner Linda Turek) has a well documented history of blatant disregard for the City of Key West's noise ordinance. Her nearby business, Hank's Hair of the Dog Saloon, has at least three code violations for excessive noise over the last two years and her blatant disrespect for her neighbors has essentially destroyed the quality of life at my property located at 410/412 Caroline Street. I also own 217 Telegraph Lane (located directly next to the parcel where the proposed project would be constructed) and I fear that having outdoor live music directly on my property line operated by such a reckless and irresponsible operator such a Linda Turek would make my rental apartments uninhabitable and cause the value of my property to collapse. The proposed project contains a wooden deck, literally on my property line, which will actually function as a stage for outdoor live music with no sound mitigation whatsoever.

The second reason I strongly oppose this project is that there is simply not the space legally required on the parcel to build additional structures on it and still meet the minimum city requirements for uncovered square footage; there is not even space designated in the project's plans to accommodate garbage and recycling containers that would be clearly needed. The owner of the business that plans to operate on the site, Linda Turek, also owns the building located at 421 Caroline Street; this is a 7000 square foot building with more than 150 restaurant seats. When this building is eventually renovated and opens as a restaurant/bar, where will the garbage for such a facility be stored if the area currently used to store garbage for both 218 Duval Street and 421 Caroline (the exact parcel under consideration) is granted permission to build these new structures ?

The third reason I strongly oppose this project is that in mid October Linda Turek illegally built several dangerous, unapproved and unpermitted structures on the site and installed a massive (unapproved) foodtruck in the area that previously was used to store the garbage for both 218 Duval Street and 421 Caroline Street. Fortunately the Code Compliance department shut down the construction and ordered it to be torn down (there is an active code case regarding this). However, the foodtruck remains and the garbage containers block the sidewalk and are a smelly eyesore as there is nowhere for them to be properly stored. Linda Turek intended and attempted to build and operate an illegal and unlicensed outdoor bar/restaurant on a parcel that is not approved for such use.

I urgently request that the Development Review Committee not approve this project in any form on the outdoor parcel adjacent to my property located at 217 Telegraph Lane. Linda Turek could reopen the Smokin Tuna inside the building she owns at 421 Caroline Street without causing any quality of life, garbage, or environmental issues in the surrounding area and this is the course of action she should be required to take. My attorney Cara Higgins will be present at the HARC, DRC and Planning Board hearings to express and comment further on my concerns.

Thank You

Dr Peter Brawn
1413 South Street
Key West
305-896-5734

From: [Joseph Ribenson](#)
To: [planning-dept](#)
Subject: [EXTERNAL] 218 Duval Street rear project
Date: Thursday, January 9, 2025 12:45:02 PM

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City of Key West Planning Board

I am Joseph Ribenson and I am the tenant of 217 Telegraph Lane apartment D which is the apartment closest to the street. There has been noisy and smelly construction next door to my windows and I was wondering what was going on so I went to take a look and I saw the notice posted about the planning board meeting. My neighbor Belkis shared with me the information she was given by the planning department and it seems the Smokin Tuna is trying to build a stage for outdoor live music (disguised in the plans as a deck) directly below my windows less than one meter from my apartment. If smokin Tuna is allowed to do this, it will destroy my quality of life and I cannot afford to move to another apartment as I pay a very fair price where I live now. The same owner of Smokin Tuna owns Hanks and they have a long history of code violations for noise from out of control outdoor live music with at least three confirmed code violations as far as I could tell from research I did.

As much as the potential for outdoor music causes me anxiety, the proposed plans for the garbage are even worse. In the plans it shows only a proposed enclosure to accommodate two 5'10" dumpsters; the measurements shown in the plans DO NOT reflect the reality on the site as there is no more than 9' of length available and the two dumpsters shown in the plans have zero chance of fitting inside the proposed fenced enclosure. The real problem lies in that they are proposing only two dumpsters (which will not even fit in the space they proposed as they misrepresented the actual space available) for a total of THREE separate bars/restaurants that MUST use that space for garbage and recycling. Teasers, the proposed Smoking Tuna, and any future restaurant in the 421 Caroline street 7188 square feet more than 150 seat building. The two proposed dumpsters is totally inadequate and should in reality be AT LEAST six dumpsters which would require a walled off enclosure of at least 150 square feet versus the 25 square foot enclosure they are proposing.

Thank you and please take my concerns into consideration.

Joseph Ribenson
217 Telegraph Lane apartment D
574-355-4754



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March 31, 2025

City Commission

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**RE: PUBLIC COMMENT – Letter in Opposition
Minor Development Plan– 218 Duval St (#00001400) (the “Application”)
Smokin Tuna c/o Ramlo Development Corporation (the “Applicant”)**

This firm represents 217 Telegraph Lane LLC (“217 LLC”), 213 Telegraph Lane LLC (“213 LLC”) and 4 AND 6 Charles Street LLC (“Charles St LLC”) and their managing member, Peter Brawn (collectively the “Neighbors”). The letter is written to express opposition to agenda item no. 41 scheduled to be considered by the City Commission on April 1, 2025 at 5pm. The Neighbors own the properties adjacent to the subject site (the “Site”) in the above application, at the rear of 218 Duval Street (the “Property”). The project so glaringly violates the City’s Code, F.S. 380.0552 (areas of critical state concern) and applicable regulations in Ch. 28, F.A.C. in numerous ways as set forth below in detail. I trust that you will review this matter carefully.

STANDING

217 LLC owns the property immediately adjacent to the Site, to the Northwest, which contains apartments. The apartment nearest to the property is occupied by a tenant, a woman with two young children. Their unit has a window that is roughly 3 feet above the deck shown on the Applicant's site plan, which is intended to be used as a live music stage. The mother, Belkis Lopez, has submitted a letter in opposition to the project, which is part of the record and listed on the agenda. The 217 LLC will be damaged by any harm caused by this project to its tenants, including Ms. Lopez. The live music stage so close to the residences only 3 feet away will render them uninhabitable.

Smokin Tuna's owner, Linda Turek, has a history of violating the noise ordinance and the city's code in general. Mr. Brawn also owns a property at 410 and 412 Caroline Street through his company, Key West Heritage House LLC. That property is across the street from Hanks Hair of the Dog Saloon, also owned by Ms. Turek, which has a rampant history of sound ordinance violations. Hanks installed an outdoor live music stage right next to Caroline Street, without any sound barriers, just as Ms. Turek's Smokin Tuna proposes for the Site. The violations were so flagrant and regular, that the Heritage House residence became uninhabitable and it could not be rented. Hanks was cited by the city three different times, and instead of changing course, Ms. Turek sought to purchase the Heritage House property from Mr. Brawn. The disregard for neighbors' rights caused Mr. Brawn to have no choice but to sue for an injunction to stop the noise violations, and a temporary injunction order was entered by the Circuit Court against Hanks in December 2023. That injunction remains in effect.

The noise from Hanks has been recognized as a problem by others as well. The Planning Board member Ray Warren commented extensively on the abuse of neighbors by Hanks through loud noise from a stage next to Caroline Street. His comments were from personal experience and can be found here: [Planning Board on 2025-02-20 5:00 PM](#)

The noise from the outdoor stage, without sound barriers, will destroy the historic appeal of the Neighbors' properties, and reduce the charm and ambience of the block. It will cheapen the area, introducing loud noise without any historic architectural style to compliment it. There is no other property within any historic district of the City that is used for food service, full bar and live music, all entirely outdoors. There is no preservation of the area's history with this project, but it in fact does the opposite and seeks to rewrite that history.

The Neighbors' properties are within 50 feet from the northwest property line of the Site and will be directly impacted by the project. The Site is without any dedicated restrooms on-site. This will eventually result in customers of Smokin Tuna looking for the nearest bathroom and relieving themselves at the restrooms present at the Alamo establishment located at 213 Telegraph Lane, owned by 213 LLC and Charles St LLC. This will cause confusion and increased unauthorized foot traffic inside the Alamo property.

REQUEST TO BE RECOGNIZED WITH PARTY STATUS

The Code requires the City to consider the impacts of the Application to properties within 50 feet of the Site.¹ That includes the properties owned by the Neighbors, where the impacts are direct, numerous and immediate if the Application is approved. Thus, the Neighbors are entitled to due process rights inherent to quasi-judicial hearings, including the right to cross-examine witnesses and opportunity to be heard. See *Jennings v. Dade County*, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991). See also *Carillon Community Residential v. Seminole County*, 45 So.3d 7, 9 (Fla. 5th DCA 2010). Accordingly, on behalf of the Neighbors, the undersigned requests 20 minutes to present to the Commission and cross-examine any witnesses for the City and the Applicant.

DEVELOPMENT PLAN APPLICATION MUST BE DENIED

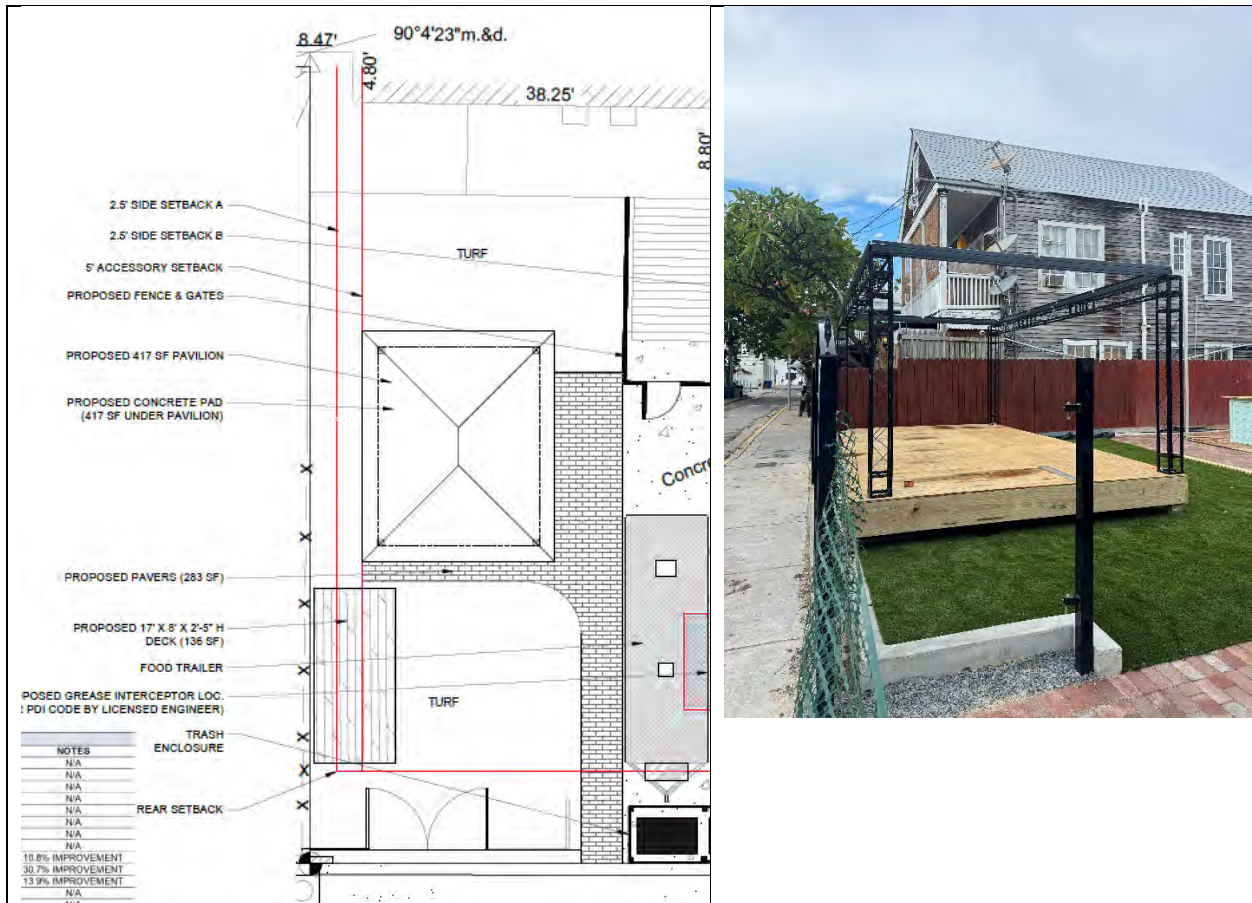
The development plan violates sound ordinance sec. 26-198

Code sec. 26-198 mandates a 15-foot setback of sound equipment from all property lines for retail establishments. Smokin Tuna sells alcohol under a 5-COP license issued by the state, which classifies it as a “retailer of alcoholic beverages” according to the State of Florida Department of Business and Professional Regulation. The site plan proposes a deck at a zero-setback adjacent to the property line shared with 217 LLC. The Applicant’s site plan deceptively calls it a deck, rather than stating its intended use as a live music stage. See below Table A for a comparison with what the Applicant previously installed in that location before the city cited the Applicant, after which it was removed. Therefore, the site plan violates the setback requirement in sec. 16-198.

TABLE A

<i>Proposed site plan</i>	<i>Photograph of live music stage before it was removed</i>
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¹ Sec. 108-235(c) states: “Adjacent land uses shall be identified including current zoning designation, conditional uses and/or special districts within 50 feet of the boundaries for a minor development, and 100 feet of the boundaries for a major development.”



Development plan violates code sec. 102-282 regulating merchandising booths/carts outdoors

Sec. 102-282 states:

“Vending booths, carts, and other merchandise displays are discouraged in the front yard or side yard of any structure adjoining a public street (i.e., between the front or side façade and the public sidewalk). Where vending booths or carts are otherwise appropriate, they are to be set back at least five feet from the front property line and may not exceed 64 square feet, including overhang.”

There is no disputing that the Smokin Tuna mobile food trailer is a “merchandise display” that includes a “booth”. The above provision states that a merchandise display may not exceed 64 square feet in total. The current dimensions of the trailer are 8 ft x 24 ft, totaling 192 square feet, which is more than double what the code permits. Further, there are two front yards for the

Property. The Site abuts Telegraph Lane, which makes it a front yard pursuant to code sec. 122-1145(c)². Therefore, the Smokin Tuna food trailer, as a merchandising display and booth, should not be permitted on the Site.

Development plan violates restrictions of mobile vendors in code sec. 18-324

Although state law preempts licensing of mobile food dispensing vehicles, it does not preempt regulation of size and location of these vehicles. The City's code clearly requires that mobile vendors may only operate from a public right of way, not on private property.³ Further, in HRCC-1, the regulations require that the mobile vendor cannot occupy more than a 4 by 7 feet space.⁴ The code also requires that for any mobile vendor in a historic district, the Historic Architectural Review Commission must approve of the "appearance" and "displays" of the vehicle.² The City's Mobile Vendor ordinance applies and must be enforced in this historic district.

HARC approval required for all structures, and that approval has not been given.

The Code expressly states that HARC must issue a certificate of appropriateness for all structures added to the Site, before a development plan is approved.⁵ Ch. 102 contains the regulations governing certificates of appropriateness in historic districts.

This development plan received a partial, limited approval from HARC on November 18, 2024. The HARC motion for approval was expressly limited to four posts and a roof. It was expressly stated in the record that all other structures, including the "bar" and elevations thereof, must come back to HARC for final review after the planning board's review is completed. This is made clear in the minutes of the HARC meeting. It is made even clearer by the video, which can be watched here: https://keywestcity.granicus.com/player/clip/1836?view_id=1&redirect=true⁶. The planning department recognizes that HARC still needs to review and approve of the final iteration of the site plan in its staff analysis, which states that the HARC meeting date is "TBD".

Development plan application violates code sec. 102-7

² Sec. 122-1145(c)(1) states: "Front yards shall be defined as the yard abutting a street".

³ Sec. 18-324(3): mobile vendors are permitted "only upon public roads", and only in certain zoning districts. In HRCC-1 district, "from 8:00 am until 5:00 am, except that no person shall conduct or offer to conduct any business sale of goods or services on...public property adjacent to Duval Street....however that a mobile vendor's license shall operate in an historic zoning district only after the historical architectural review commission has approved the appearance of the mobile vendor's license holder's vehicle(s) and/or displays".

⁴ Sec. 18-18-324(8): mobile vendors in HRCC-1 zoning district shall not occupy a space larger than "seven feet by four feet in dimension".

⁵ Sec. 108-235: "A review of the project's impact on archaeological and historic resources shall be included. In addition to compliance with development plan review procedures of this article, developments within the historic district shall be consistent with the U.S. Secretary of the Interior's Standards for Rehabilitation and the city's historic architectural review commission's (HARC) Design Guidelines in Key West's Historic District, as provided in [chapter 102](#). Include the written record of the historic architectural review commission's review of the project's impacts in the development plan."

⁶ Listen from time stamp 55:00 to 57:15

Sec. 102-7 requires a mitigation plan, which must address, among other items, “introduction of visual, audible, or atmospheric elements that are out of character with a property or alter its setting”. This was not addressed by Applicant. There is no explanation for how an outdoor, fully unenclosed street-side live music stage, which is misrepresented as a “deck”, is consistent with the “character of the property” or how it will “alter its setting”. There is no other stage in the zoning district that is fully unenclosed and street-side. All other live music stages are either fully or partially enclosed by masonry walls of a building, many of them with engineering sound buffering equipment to mitigate against excessive noise. No such mitigation plan is offered by the Applicant, and it seems they are aware of this fact based on their misrepresentation of the nature of the “deck” reflected on the site plan. If the Applicant thought a stage adjacent to the right of way would align with the historic character of the property and its setting, then it would have transparently called it what it is – an outdoor live music stage.

Development plan violates the city’s guidelines for development in historic districts and F.A.C. 28-36.003

The Smokin Tuna food trailer is out of character with the setting of the Property and Site. It is nothing like any other Property in the historic HRCC-1 district. Food trailers and trucks were never part of the history of Key West along Duval St. The proposed site plans, therefore, violate the City’s published Historic Architectural Guidelines due to the proposed project’s incompatibility with surrounding architectural, building massing, and “rhythm” as defined in the guidelines. More specifically, the guidelines which are violated include the following:

Analysis of Existing Building and Structures on Site

- ***Guideline 13: New additions must have a similar building form found in the existing structure. New addition massing shall be similar or smaller than the massing found in the existing building and adjacent structures.***
 - o There is nothing similar between the surrounding structures and a food truck, a gazebo bar and outdoor live music stage. The proposed Site is nothing like the existing structures in the vicinity.
- ***Guideline 14: New additions shall incorporate architectural forms found in the main building and surrounding structures. For additions to contributing or historic buildings, the use of building forms that are foreign to the existing building and adjacent historic structures are prohibited.***
 - o The gazebo, outdoor bar and live music stage, with a food trailer serving as a permanent kitchen, does not incorporate the architectural form of the main structures.
- ***Guideline 19: The new addition must keep an appropriate massing and form and must preserve and maintain the building-to-lot proportion found on adjacent lots.***
 - o The project has zero massing because it is entirely outdoor development. All properties adjacent are built close to the ROW line with structures that share the historically adapted style of the area.
- ***Guideline 25 (diminishment of historic character prohibited)***

- **Page 40:**

- ***“No accessory structure may be built in the front yard of a structure in the historic district.”***
- ***Temporary pre-fabricated metal ..structures are not allowed”***

Note that accessory structures and prefabricated metal structures (food trailers) are not allowed on the Site, which is considered a front yard.

State law requires that these historic development guidelines be enforced. The Florida Keys are designed as an area of critical state concern pursuant to F.S. 380.0552. The state has adopted regulations in F.A.C. 28-36.003 for Key West to guide development within its boundaries pursuant to its status as an area of critical state concerns. An express objective in the regulation is “Protection of the historical heritage of Key West and the Key West Historical Preservation District”. This regulation requires that the City require that designs and uses “shall be compatible with the existing unique architectural styles and shall protect the historical values of the District.” 28-36.003(2)(e)

The Application does not conform to the above guidelines.

Plan violates code provisions regarding solid waste storage and screening

A front-end loaded refuse container is required to be located at least 6 feet away from any building or structure. Sec. 108-280(c). The site plan proposes to place the container at the property line abutting the structure at the adjacent property, 421 Caroline St.

108-233(5) requires that the Applicant identify “projected average daily volumes of solid waste generated by the development at the end of each phase. Indicate proposed methods for treatment and disposal...and ability of...facilities to provide adequate service to the proposed development.”

The Applicant does not address this requirement. Further, the Neighbors have concern from current and past experience that there is insufficient service available to accommodate the large amount of solid waste already being generated from the existing structures on the Property. The trash container on the Site that is existing is regularly overflowed, and the Neighbors have confirmed with Waste Management that the Property is already on a seven day per week trash pickup schedule. The proposed use on the Site guarantees to expand the problem and cause trash overflow issues that will inevitably continue to be an eyesore for the Neighbors. See the photograph taken March 16, below, depicting the current situation with solid waste disposal at the Property:



Application is deficient and does not provide critical information required by code

The Application did not provide a topographic boundary survey, as required by sec. 108-240. There is no boundary survey that is legible provided with the application.

Violates standards in 108-235 regarding land use compatibility

There is a requirement to consider neighboring uses and the proposed design's compatibility. The issue is the Applicant is looking to create an outdoor music venue without any sound buffering or mitigation. That will be out of harmony with the surrounding uses. There is a residential apartment building adjacent to the property. The stage area will be 3 feet from the window of a mother and 2 children who rent there. (See letters in opposition). Table A shows that the intention is to utilize the deck as a stage for live music. The proposed site plan must be denied based on insufficient compatibility with the surrounding structures and uses.

There is no access to restrooms provided for on the same parcel, in violation of sec. 108-956

Sec. 108-956(2) requires that new development must be “effectively served by wastewater services”. Further, F.S. 509.221(2)(a) requires that food service establishments must be served by as least one public bathroom facility.

The site plan proposed by the Applicant shows that there is no on-site dedicated bathroom facility. Rather, it shows that the Site will be supported by existing bathroom facilities at the neighboring property at 421 Caroline Street, which is part of another property and existing restaurant structure, the owner of which is not a party to the Application. Further, no restrictive covenant has been proposed or is being required to permanently link the bathrooms at 421 Caroline Street with 218 Duval Street. Thus, the bathrooms shown on the plans are illusory and are not committed to the Site in a legally enforceable manner.

No stormwater management plan was provided, which violates the code and state law

There is no stormwater management plan from the Applicant. The planning department’s staff report stated that a plan must be provided. The Applicant’s site plan states that no such plan is required because it reduces impervious area by 13%, which is not supported by any evidence and is heavily disputed by the Neighbors. Regardless, a stormwater management plan is required that addresses: (a) “retention of runoff or discharge of such runoff into adequately sized natural vegetative filtration areas”; (b) “permanent drainage systems which make maximum use of natural drainage patterns, vegetative retention and filtration”; and (c) “Evidence that the proposed drainage improvements shall accommodate stormwater runoff without adversely impacting natural systems”. Sec. 108-233(4). The Applicant addresses none of this.

The reference to vegetative retention and drainage is intentional and mirrors a state law mandate for the Key West area of critical state concern. State regulations require the City to have “site alteration” regulations that provide for “retention of runoff or discharge of such runoff into adequately sized natural vegetative filtration areas in a manner approximating the natural runoff regime”. 28-36.003(2)(c), F.A.C. Further, the regulations must provide for “permanent drainage systems which make maximum use of natural drainage patterns, vegetative retention and filtration.” *Id.*

There is no option to ignore the above requirements as the Applicant has done. Further, the use of artificial turf is expressly in violation of state law and the City’s land development code, which require the use of “natural vegetative filtration areas” and “vegetative retention and filtration” for all development that occurs within the city.

Development plan would constitute illegal expansion of nonconformity in violation of sec. 122-27

Many issues stem from the Applicant’s argument that it is expanding an existing structure on the site, and not adding a new structure. This is false. The site has not been used for any restaurant or bar since before 2003. The Applicant appears to be making this misrepresentation with the goal of claiming legal nonconforming status for a pre-existing, grandfathered structure

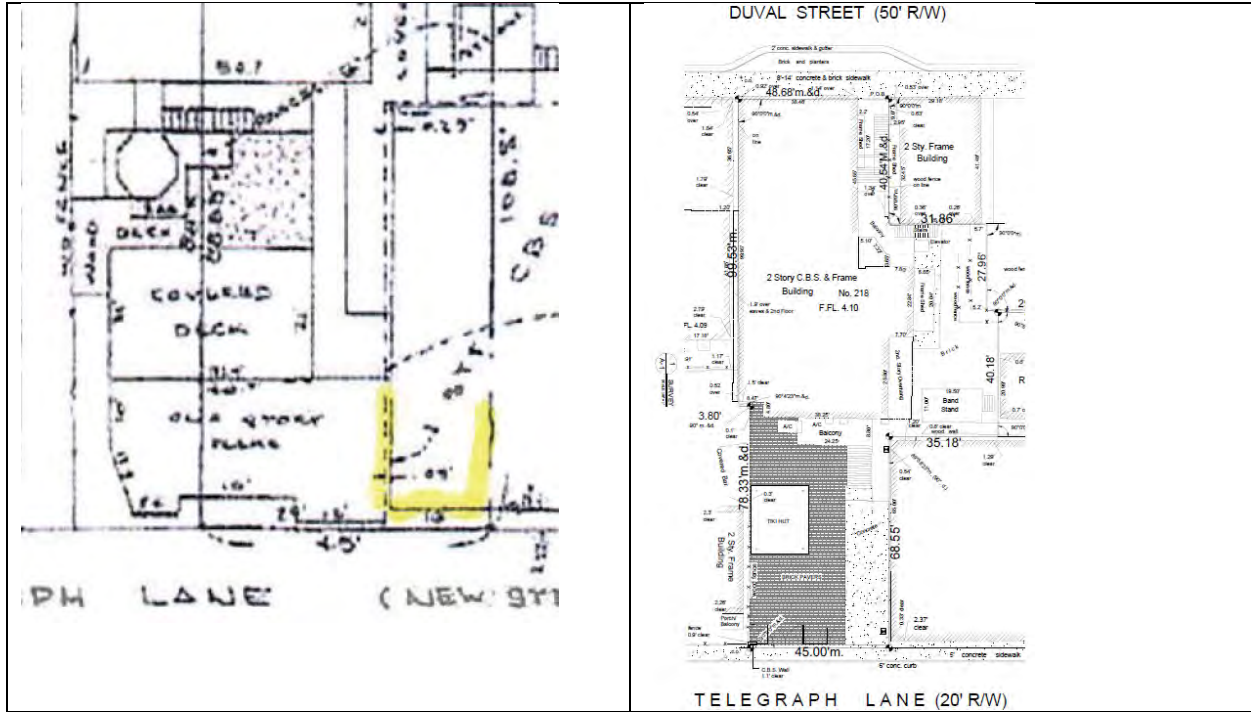
that does not exist. This would allow the Applicant’s improvements to not have to comply with the current code, including landscaping, open space, floor area ratio, parking and impervious area requirements.

Before 2003, a building was on the site known as Hideaway bar, and it was demolished in 2003. The application and the staff analysis state that the demolition included “provisions to allow for new construction within the same footprint.” However, no record of such provisions were provided, and even if the permit included language to that effect, it would not supersede the code, which specifically provides that nonconforming structures may only be replaced; it does not say demolished and replaced at any point in the future. The code also states that nonconforming structures may not be altered in a manner that expands the nonconformity. The legal nonconforming status is lost once the structure is demolished and there is no intention to replace the structure. Sec. 122-30 (nonconformity abandoned if equipment or inventory related to nonconforming use is removed for 24 months consecutive). It has been 22 years since the previous bar on this site was demolished, and the building was never replaced. Therefore, it is incorrect for the Applicant to represent in its application that it is replacing the Hideaway bar with structures that are within its original footprint⁷.

Furthermore, the staff report incorrectly represents that the pre-2003 layout of the site had a tiki hut, which has never been stated by the Applicant. In fact, the tiki hut was illegally constructed in or around 2021 by the Smokin Tuna without permits and has since been removed. See below.

Applicant older “site plan”, undated	Staff report: “site plan prior to 2003 demolition of rear structure”
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⁷ There is no evidence to show that what is being proposed is within the footprint of the Hideaway bar. The old site plan document provided, which is undated, is not legible and cannot be used to verify the claim that it is within the original footprint of the pre-2003 structures.



It should be noted that a small structure, the use and contents of which are unknown, evidently after 2003, was constructed on the site and was present for many years until approximately 2021. See Exhibit A. It was then demolished, though it may have never been permitted in the first place as it is not noted in the staff analysis. Next, the Applicant proceeded to develop the site with the current proposed use, except did not seek any approvals required by law. After they were cited by code enforcement for the violation, this process began to seek approval for the site improvements. The Applicant took a “better to ask for forgiveness than permission” approach. Now, they stand to benefit from that approach by the confusion caused by their illegal actions, evidenced by the staff analysis’ misstatement that the pre-2003 site included an open aired tiki hut structure.

The erection of the small structure demolished in 2021, apparently after the Hideaway bar was demolished in 2003, shows clearly that there was never an intention to replace that bar with a similar use. Any legal nonconforming or grandfathered status the Applicant would hope to benefit from was lost when the Hideaway bar was demolished in 2003. Thus, all current code provisions apply to this development plan application including:

- a. Floor area ratio and building footprint requirements
- b. Non-existent parking is noncompliant
- c. Impervious, open space, landscaping requirements are noncompliant

CONCLUSION

It is respectfully requested that the City Commission review carefully the foregoing and vote to deny the Application for all the reasons stated herein. The Applicant must comply with state law and the code. It is free to revise the development plan in a manner that is legally compliant. If the City were to approve the Application as it stands, it would be subject to reversal by circuit court or the State of Florida in its review capacity pursuant to F.S. 380.07.

Sincerely,



Ryan Abrams, Esq.

EXHIBIT A

2018 google:



Property appraiser 2017:



Property appraiser 2018:



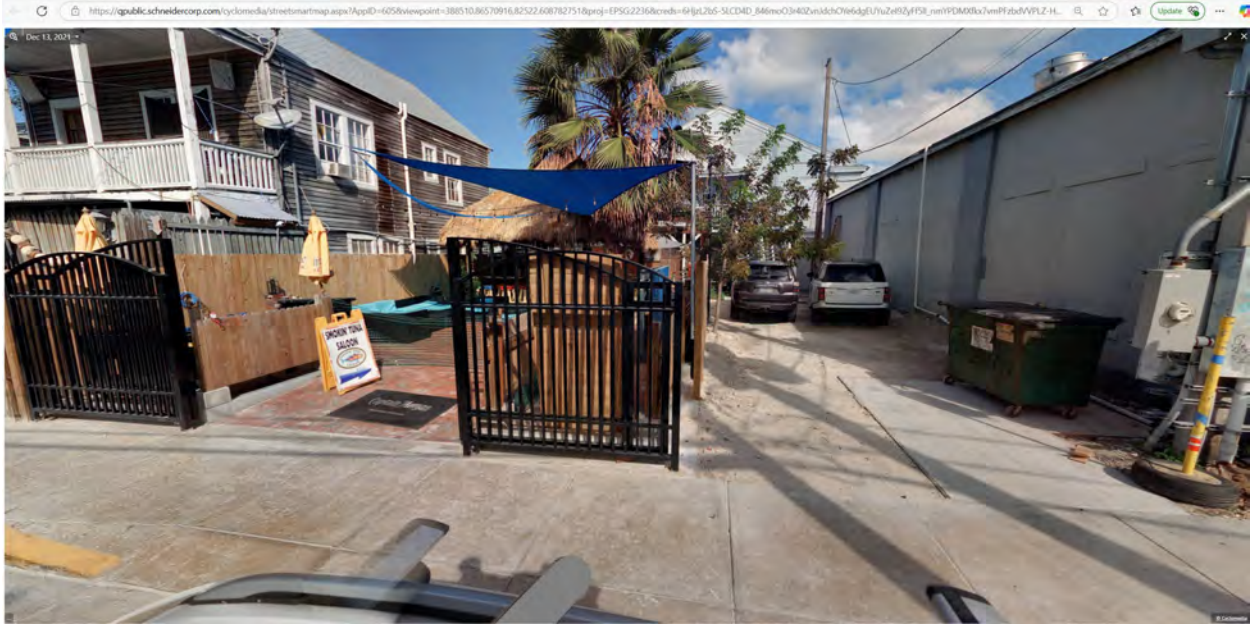
Property appraiser 2019:



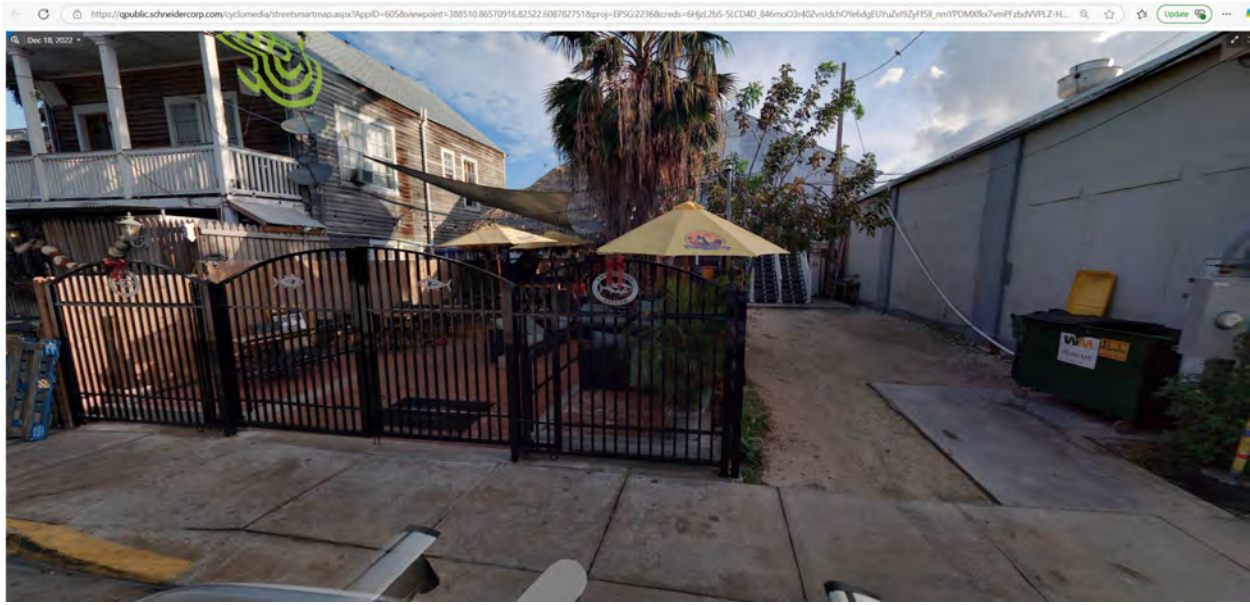
Property appraiser 2020:



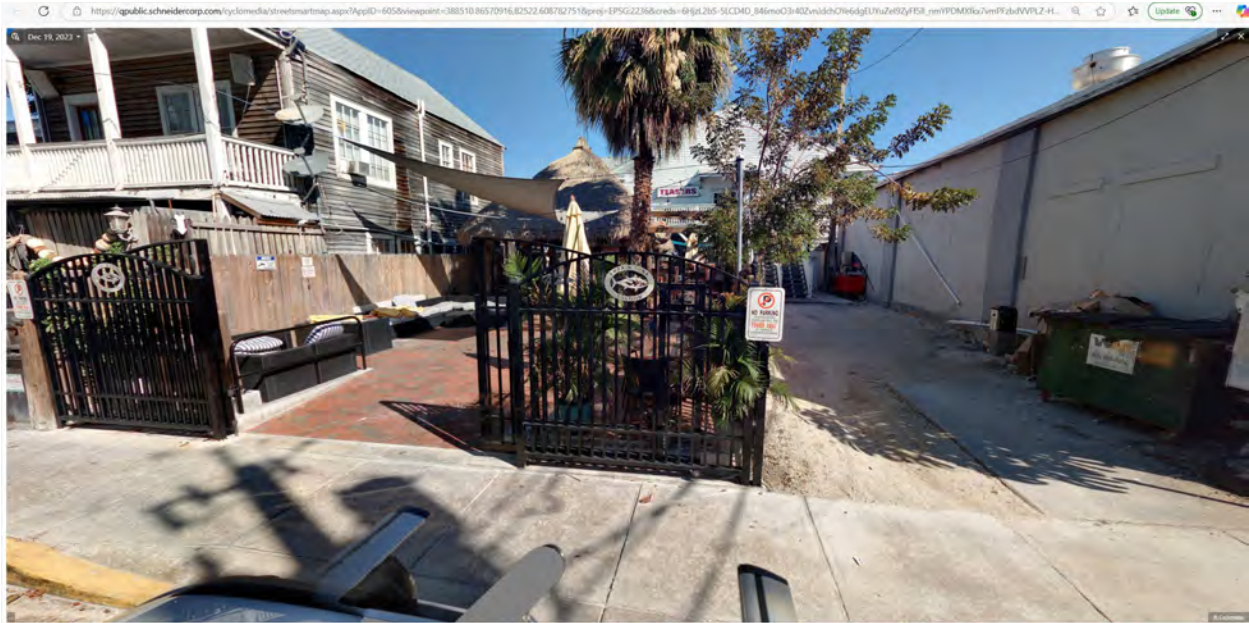
Property appraiser 2021:



Property appraiser 2022:



Property appraiser 2023:



Property appraiser 2024:

