



THE CITY OF KEY WEST
PLANNING BOARD
STAFF REPORT

To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Mario Duron, AICP, The Corradino Group

Meeting Date: March 16th, 2023

Agenda Item: **Variance – 901 Fleming Street (RE# 00005650-000000):** A request for a variance from off-street parking requirements as provided in Section 108-572 and Section 108-575(5) to permit a restaurant at 901 Fleming Street located in the Historic Neighborhood Commercial (HNC-2) zoning district, pursuant to Section 90-395 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: Along with a conditional use request to allow the use of a restaurant without drive through, the applicant is also requesting a variance for parking requirements for the proposed use and parking requirements for the increase in consumption area.

Applicant: Kava Culture Key West Co

Property Owner: 901 FLEMING STREET LLC

Zoning: Historic Neighborhood Commercial (HNC-2)

Background/Request: Per Monroe County Property Appraiser's data, the property on the corner of Fleming and Margaret Street was originally developed with a structure built in 1918. The two-story frame vernacular building is a historically contributing structure, and today serves as a mixed-use development. Per City records, the second floor of the building is equipped with two (2) dwelling units. The legal status of the 2 units is currently under review by the City. The ground floor provides for approximately 1,500 square feet of commercial space, which today houses the "Kava Culture Kava Bar". The property owner is "901 FLEMING STREET LLC".

The Applicant, Kava Culture Key West Co, owner of Kava Bar has been in operation at the property since May 2022. The business was issued a business license to operate at the location as "Specialty Retail". However, due to the sale of non-alcoholic beverages, the business was required to apply for a "Food Service" license. The license designation change from Specialty Retail to Food Service, triggered a change in land use from Commercial Retail Low Intensity to Restaurant, Excluding Drive-Through. Restaurants, excluding drive-through are classified as conditional uses in the HNC-2 zoning district. A separate application has been prepared for the conditional use request.

"Restaurant, excluding drive-through, means any establishment, which is not a drive-through service establishment, where the principal business is the sale of food, desserts and beverages to the customer in a ready-to-consume state. This includes service within the building as well as takeout or carryout service." (Sec. 86-9 - Definition of Terms)

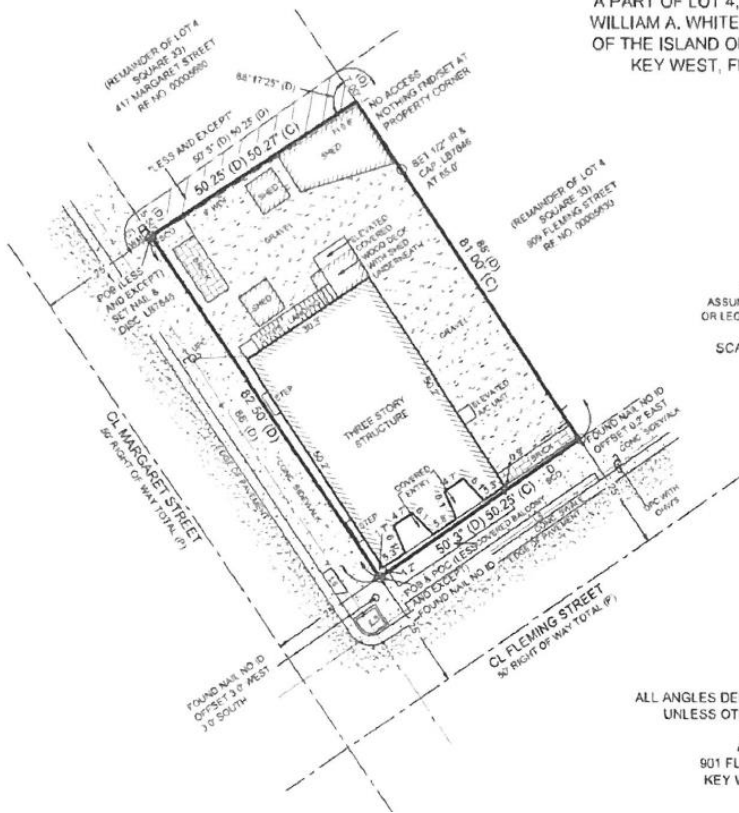
During the review of the conditional use request for a restaurant excluding drive-through, it was determined that a parking variance is required. Per the property survey, there is no designated parking area on the property. The rear and west side of the property are open space areas topped with loose gravel. Based on historic aerial imagery, vehicles park in the gravel areas. For the existing residential units and proposed restaurant, a total of twelve (12) vehicular spaces and four (4) bicycle parking spaces are required.

The applicant is requesting variances from Sections 108-572(9) for the ten (10) vehicular spaces required for the restaurant use. The 10 required parking spaces result from the 413 square feet of consumption area proposed by the Applicant. Additionally Sec. 108-575(5) applies given there is a change of use creating a need for a greater number of parking spaces, and retail requires less parking than restaurant consumption area; additionally, the applicant is requesting to expand commercial activity to outdoor consumption area. Per code, "Whenever a building or use is enlarged in floor area, number of dwelling units, seating capacity or in any other manner so as to create a need for a greater number of parking spaces than that existing, such spaces shall be provided in accordance with this section".

Survey: The property is located within the HNC-2 zoning district. The site has a total land area of 4,108 SF, and is developed with a two-story building with a gross floor area of approximately 3,010 SF. The survey does not note the location of parking facilities on the property, but parked vehicles have been observed on the rear and side gravel areas. In addition to the survey, the images below serve to clarify the existing conditions of the site.

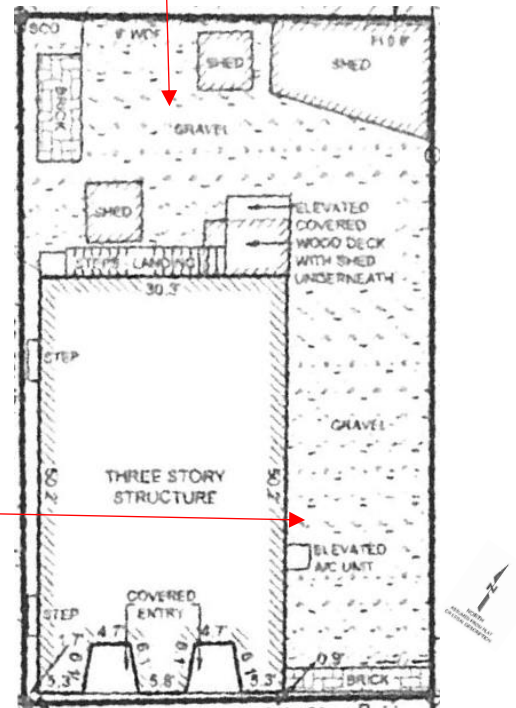
MAP OF BOUNDARY SURVEY

A PART OF LOT 4, SQUARE 33
WILLIAM A. WHITEHEAD'S MAP
OF THE ISLAND OF KEY WEST
KEY WEST, FLORIDA

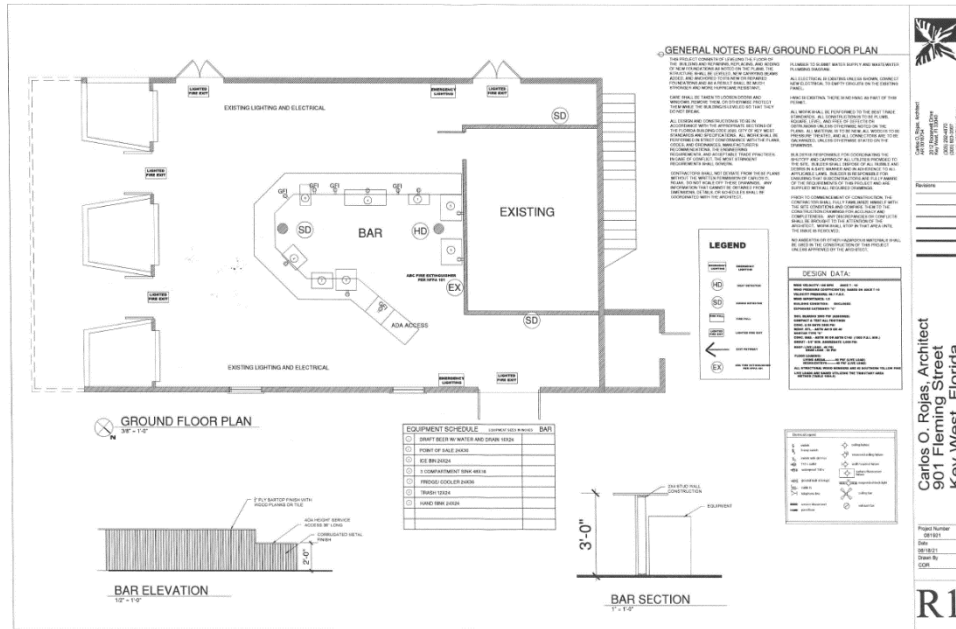


ALL ANGLES DEPICTED ARE 90 DEGREES
UNLESS OTHERWISE INDICATED

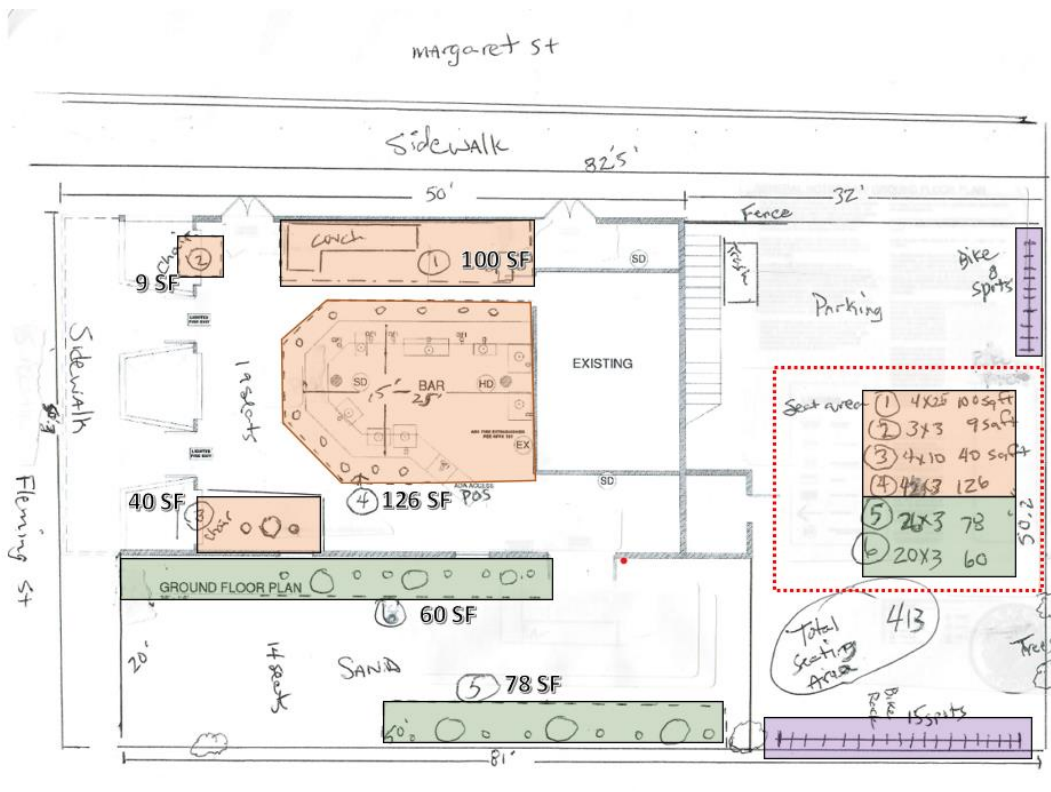
ADDRESS:
901 FLEMING STREET
KEY WEST, FL 33040



Existing Ground Floor Plan: The floor plan below provides a general layout of the tenant space on the ground floor. The gross floor area is approximately 1,500 square feet.



Proposed Consumption Areas: The Applicant prepared the consumption area plan below showing the proposed configuration. It includes 275 SF of interior area and 138 SF of exterior, for a total of 413 square feet of consumption area. The proposed outdoor consumption area will impact the prior use of the side gravel area for parking. However, the site will maintain the necessary residential parking area in the rear of the property, in addition to 23 bicycle parking spaces proposed.



Parking Data Table: The parking data table below identifies the required parking spaces per Sec. 108-572, for the residential and restaurant uses identified for the property. That includes two unrecognized residential units and 413 square feet of consumption area. Based on the proposal, a total of 12 vehicular and 4 bicycle parking spaces are required.

PARKING REQUIREMENT	PARKING	
	REQUIRED	PROPOSED
Residential (w/in Historic District): 1 per unit	2 Auto	2
10% bicycle parking	0.2 Bicycles	
Restaurant: 1 space for every 45 SF of consumption area	9.2 Auto	0
25% bicycle parking	2.3 Bicycles	
TOTAL	12 Auto* 4 Bicycles*	2 Auto Spaces 23 Bicycle Spaces

**Sec. 108-575(2) Interpretation of computation with fractions. When calculation of required parking results in requiring a fractional space, any fraction shall be rounded off to the next highest number.*

The applicant is requesting a variance from the following sections of the City of Key West Land Development Regulations:

- Section 108-572(9) – Schedule of off-street parking requirements for “Restaurants, bars, lounges”
- Sec. 108-575(5) – Computation of parking spaces: Applicability of standards to expanding uses. Whenever a building or use is enlarged in floor area, number of dwelling units, seating capacity or in any other manner so as to create a need for a greater number of parking spaces than that existing, such spaces shall be provided in accordance with this section. Any parking deficiency shall be brought into conformity concurrently with the enlargement or change of use.

Process:

Development Review Committee:	N/A
Planning Board:	March 16 th , 2023
HARC:	TBD
Local Appeal Period:	10 days
DEO Review:	Up to 45 days

Staff Analysis- Evaluation:

The criteria for evaluating a variance are listed in Sections 90-391 through 397 of the City of Key West Land Development Regulations (LDRs). 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.*

Similar to many properties developed prior to adoption of the City Code, the subject property does not comply with current City requirements, particularly in regard to required parking and compliant parking

facilities. Unfortunately, noncompliant parking is a prevalent condition for historic properties in Key West and does not present a special condition or circumstance peculiar to the property.

NOT IN COMPLIANCE

2. *Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.*

The conditions for a parking variance are being created by the applicant. Given the proposed expansion for the Kava Bar consumption area, the site does not satisfy the parking requirements by ten spaces. Additionally, the applicant has proposed outdoor consumption areas along the side yard area, impacting vehicular circulation at the site.

NOT IN COMPLIANCE

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.*

Granting of the requested variances will confer special privileges to the applicant. It will allow expansion of a commercial use without the provision of vehicular parking.

NOT IN COMPLIANCE

4. *Hardship Conditions Exist. That literal interpretation of the provisions of the land development regulations would deprive the applicant of rights commonly enjoyed by the other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.*

Hardship conditions do not exist. The applicant could reduce the consumption area and improve the onsite parking facilities to improve the site conditions and reduce the parking variance request; or, the property could be used differently to avoid a variance.

NOT IN COMPLIANCE

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.*

The variances requested are not the minimum variances that will make possible the reasonable use of the property. Prior to the Kava Bar, the site was occupied by a sign shop, a low intensity commercial use.

NOT IN COMPLIANCE

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.*

The variances requested are not directly injurious to the public welfare, they would allow for increased outdoor commercial activity, and to an extent encourage pedestrian activity. The mix of uses in the area and limited parking promote walkability and support pedestrian activity. The proposed parking variances are not injurious to the public welfare given the limited extent of the proposed expansion.

IN COMPLIANCE

7. *Existing nonconforming uses of other property shall not be considered as 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.*

Existing non-conforming uses of other properties, use of neighboring lands, structures, or buildings in the same district, or other zoning districts, are not the basis for the request.

IN COMPLIANCE

The Planning Board shall make factual findings regarding the following:

That the standards established by the City Code have been met by the applicant for a variance.

- The standards established by the City Code have not been met in full by the applicant for the variance requested.

That the applicant has demonstrated "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 Planning Department has not received any public comment for the variance request as of the date of this report.

The Planning Board shall not grant a variance to permit a use not permitted by right or as a conditional use in the zoning district involved or any use expressly or by implication prohibited by the terms of the ordinance in the zoning district.

- No use not permitted by right or as a conditional use in the zoning district involved or any use expressly or by implication prohibited by the terms of the ordinance in the zoning district would be permitted.

No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and no permitted use of lands, structures, or buildings in other zoning districts shall be considered grounds for the authorization of a variance.

- No such grounds were considered.

No variance shall be granted that increase or has the effect of the increasing density or intensity of a use beyond that permitted by the comprehensive plan or these LDRs.

- No density or intensity of a use would be increased beyond that permitted by the comprehensive plan or these LDRs.

RECOMMENDATION:

Based on the existing conditions, the Planning Department recommends to the Planning Board **DENIAL** of the proposed variances given all review criteria have not been fully met.

If the Planning Board chooses to approve the variances, the Planning Department recommends the following conditions:

1. The proposed construction shall be consistent with the plans prepared by Carlos O. Rojas, Architect dated August 18, 2021 and the Consumption Area Floor Plan.
2. The applicant has a deficit of ten (10) on-site vehicular parking spaces. Prior to the issuance of a Business License, the Applicant shall be required to install a total of two (2) post & hitch/post & loop style bicycle racks within City Right-of-Way; or donate the equivalent of \$385.00 for each bicycle rack, plus any additional installation fees, in order to subsidize bicycle racks in the immediate area. The location and installation of the bicycle racks shall be coordinated with the City's Engineering Department.
3. The applicant, in good faith effort, shall advise guests of the availability of on-site bicycle parking at the rear of the property via their website, social media, or marketing material.