

**THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report**



**To:** Chair and Planning Board Members

**From:** Ginny Haller, Planner II

**Through:** Patrick Wright, Planning Director

**Meeting Date:** August 17, 2017

**Agenda Item:** **Variance – 2312 & 2318 N. Roosevelt Boulevard (RE# 00065720-000000 & 00065730-000000)** - A request for a variance to parking requirements to four (4) vehicle parking spaces for the construction of a drive-through restaurant and two (2) workforce dwelling units on property located in the Commercial General (CG) Zoning District pursuant to Section 90-395, 108-572(9), and 108-572(2)(b) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

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**Request:** The applicant is requesting a variance 4 vehicle parking spaces in order to construct a new drive-through restaurant on the ground floor and two (2) workforce housing units on the second floor.

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

**Property Owner:** Reel Developers LLC

**Location:** 2312 & 2318 N. Roosevelt Boulevard (RE# 00065720-000000 & 00065730-000000)

**Zoning:** Commercial General (CG)



**Background:** The property is located at 2312- 2318 N. Roosevelt Boulevard. The properties currently consist of the commercial businesses of Banner Tire and the Blue Flamingo Café which are now vacant. In order to allow the proposed development, several development approvals would be necessary.

- Variance to parking requirements to four (4) vehicle spaces for construction of the drive-through restaurant and workforce dwelling units.
- Minor Development Plan review is required due to the reconstruction of 1,000 to 4,999 square feet of gross floor area, pursuant to Section 108-91.B.1(b).
- Conditional use review is required for the construction of the two-family dwelling units within the CG Zoning District, pursuant to City Code Section 122-418(1).
- The applicant is also requesting a waiver to landscape buffer requirements, pursuant to City Code Section 108-347.

The proposal is for the construction of a drive-through restaurant and two affordable dwelling units to be located on the second floor above the restaurant. The applicant was granted ten Affordable Building Permit Allocation System (BPAS) units for the property in BPAS Year 4. It is the intention of this project to use 2 of the awarded BPAS residential units. As stated in the attached Project Description for this minor development plan, the owner requests the use of the residential units by employees.

The applicant is proposing a total of 18 vehicle parking spaces where 22 spaces are required for the proposed drive-through restaurant and 2 workforce housing units. As shown in the following table, the vehicle parking requirements for the drive-through restaurant is 18 spaces, and for the 2 workforce housing units is 4 spaces for a total of 22 required vehicle parking spaces. The applicant is proposing 18 spaces and is requesting a variance for 4 vehicle parking spaces.

Dimensional Requirement	Required/ Allowed	Proposed on Plan	Change / Variance Required?
<b>TOTAL PARKING REQUIRED</b>	<b>22 Vehicle Spaces</b> 840 sf consumption area 840/4 is 18 vehicle spaces & 2 spaces per dwelling unit is 4 vehicle spaces	<b>18 vehicle spaces</b>	<b>Variance for 4 vehicle spaces.</b>

**Process:**

Planning Board:	July 20, 2017 (Postponed)
Planning Board:	August 17, 2017
Local Appeal Period:	10 days
DEO Review:	Up to 45 days

**Analysis – Evaluation for Compliance with the Land Development Regulations:**

The criteria for evaluating a variance are listed in Section 90-395 of the City Code. The Planning Board before granting a variance must find all of 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.***

The land, structures, and building involved are located on property within the CG Zoning District, and were developed prior to the adoption of the current land development regulations (LDRs). However, other structures within the CG Zoning District were developed prior to the adoption of the current LDRs. Therefore, there are no special conditions or circumstances that exist peculiar to the land, structures, or buildings involved.

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 City promotes the inclusion of affordable housing on mixed use sites. The decision to increase the need for parking on site over what can be accommodated by the construction of a drive-through restaurant and workforce housing is created by the applicant.

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.***

Section 108-572 (2) (b) identifies the parking requirements for multi-family residential housing outside of the historic district.

Granting a variance to parking requirements would confer special privileges upon the applicant denied by the land development regulations to other lands, buildings or structures in the same zoning district.

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 other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.***

Literal interpretation of Section 108-572 (2) (b) would not deprive the applicant of rights commonly enjoyed by other properties in the same district, nor would it work unnecessary and undue hardship on the applicant. Other multi-family residential uses in the CG Zoning District would have to meet parking requirements. Although hardship conditions do not exist, the approval of the variance would allow the property to maintain two workforce housing units.

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 variance requested is not the minimum required that will make possible the reasonable use of the land, building, or structure. However, they are the minimum necessary to accommodate the request.

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.*

Although the applicant is not in compliance with all of the standards for considering a variance, the proposal to construct workforce housing above the drive-through restaurant is not injurious, but beneficial to the public welfare.

IN COMPLIANCE.

7. *Existing nonconforming uses of other property not 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 this request.

IN COMPLIANCE.

**Concurrency Facilities and Other Utilities or Service (Section 108-233):**

It does not appear that the requested variance would trigger any public facility capacity issues.

**The Planning Board shall make factual findings regarding the following:**

*That the standards established by Section 90-395 of the City Code have been met by the applicant for a variance.*

The standards established by Section 90-395 of the City Code have not been fully met by the applicant for the variances requested.

***That the applicant has demonstrated a "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.***

Pursuant to Code Section 90-392, in granting such application the Planning Board must make specific affirmative findings respecting each of the matters specified in Code Section 90-395. However, hardship conditions shall not be a mandatory condition of obtaining the subject variance.

***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.***

Two-family residential dwellings are a conditional use in the CG Zoning District.

***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 increases or has the effect of 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 criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for variance be **denied**.