

Staff Report to the
Board of Zoning Adjustment
October 27, 2020

VAR2020-10042

IRON COW—PARKING



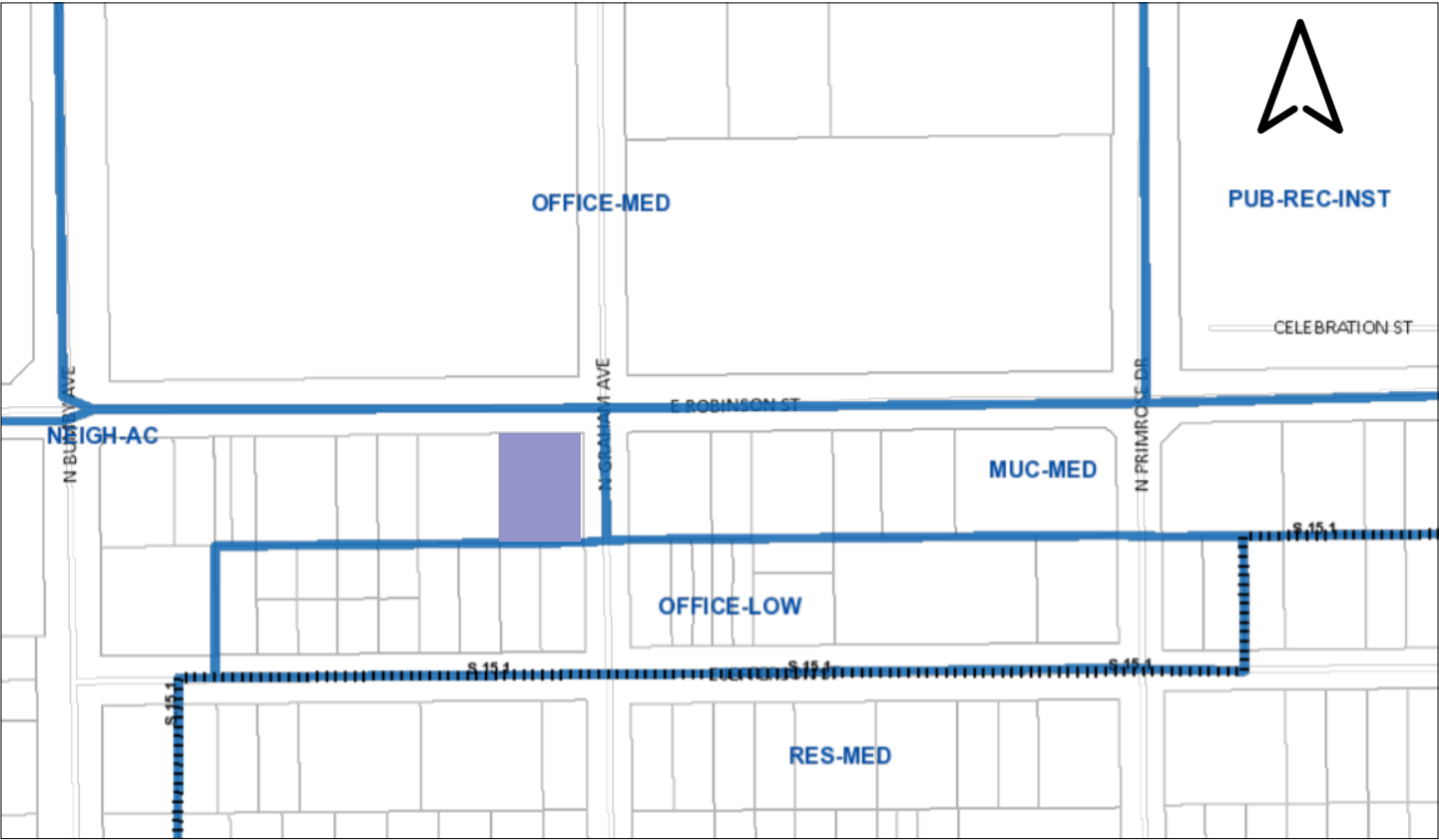
Location Map

 Subject Site

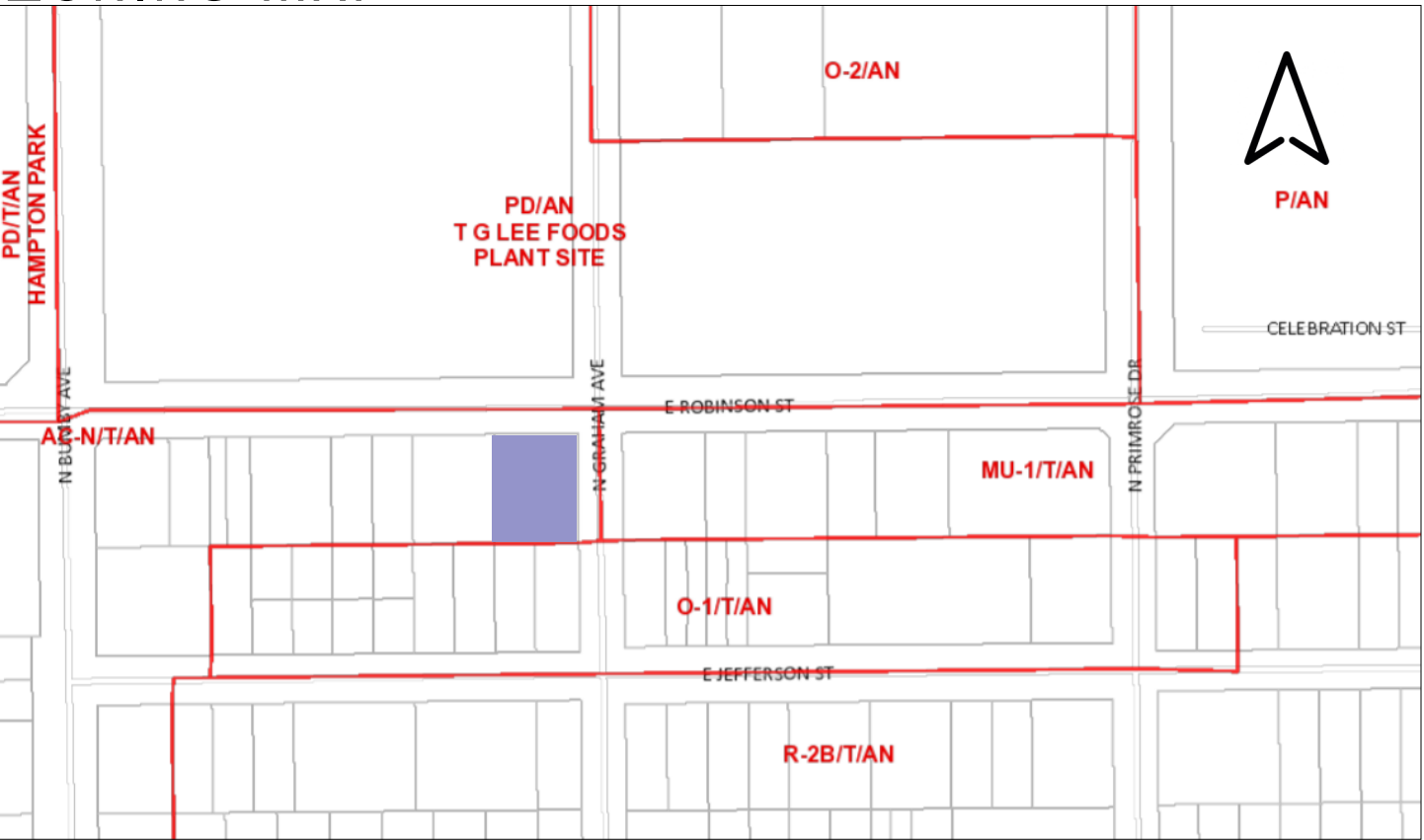
SUMMARY

<p>Applicant Heather Ramos, GrayRobinson, P.A.</p> <p>Owner A&D Harris Properties</p> <p>Project Planner Katy Magruder, Planner II</p> <p>Updated: October 21, 2020</p>	<p>Property Location: 2438 E. Robinson St. (east of Larkin Ave., north of E. Jefferson St., west of N. Graham Ave. and south of E. Robinson St.) (±0.32 acres, District 4)</p> <p>Applicant's Request: The subject property is developed with a 6,392 sq. ft. multi-tenant building and associated surface parking. The tenants include a hair salon, a retail space, and a restaurant called the Iron Cow. In 2016, a variance was granted to the owner of Iron Cow for 7 parking spaces to the required 27 parking spaces. (VAR2016-00130)</p> <p>The applicant now requests to amend that variance for 14 spaces to the required 27 parking spaces.</p>	<p>Staff's Recommendation: Denial of the request.</p> <p>Public Comment Courtesy notices were mailed to property owners within 300 ft. of the subject property during the week of October 12. As of the published date of this report, staff has received one neutral inquiry from the public regarding this case.</p>
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FUTURE LAND USE MAP



ZONING MAP



PROJECT ANALYSIS

Project Description

The subject site has a 6,392 sq. ft. multi-tenant building and associated surface parking. Today those uses include retail, a hair salon and the Iron Cow, which was approved as restaurant via variance for parking in 2016. The Iron Cow makes up 2,691 sq. ft. of the building.

The applicant requests an amendment to the previously approved variance for 7 parking spaces to the required 27 parking spaces, where 13 spaces are located on-site and 7 are required to be obtained through an off-site parking agreement. (VAR2016-00130) The applicant's request today is for a variance of 14 spaces to the required 27 spaces.

The subject property consists of a rectangular-shaped lot in the East Central Park neighborhood. The property is zoned AC-N/T/AN (Neighborhood Activity Center/ Traditional City/ Aircraft Noise Overlay) and is designated as Neighborhood Activity Center on the City's Future Land Use Map. Surrounding uses, zoning, and future land uses of the subject property are shown in Table 1 below.

Table 1 - Project Context

	<i>Future Land Use</i>	<i>Zoning</i>	<i>Adjacent Use</i>
North	Office Medium Intensity	PD/AN	T G Lee Factory
West	Neighborhood Activity Center	AC-N/T/AN	Commercial
South	Office Low	O-1/T/AN	South
East	Mixed Use Medium Intensity	MU-1/T/AN	Office

Previous Actions:

1922: Property platted as part of the Flower C W Subdivision.

1954: Existing structures constructed on parcel.

2016: Variance approved for 7 spaces to the required 27 spaces for a restaurant to locate at the subject property. (VAR2016-00130) Applicant secures off-site parking agreement for the 7 required off-site parking spaces.

2018: Planning staff was informed by the neighboring business owner that the parking agreement was no longer valid.

2018-present: Applicant has been informed of the need to acquire additional off-site parking spaces to comply with the terms of VAR2016-00130. The subject site remains out of compliance with the previously obtained parking variance.

Intent of District

The AC-N district is intended to provide for concentrated areas of neighborhood-serving commercial, office, residential, recreational and cultural facilities, at intensities compatible with surrounding neighborhoods. Although some Neighborhood Activity Centers may be composed of a single type of use, a mixture of land uses is specifically encouraged. These activity centers are intended for locations where arterials and collectors are available, providing convenient access to the surrounding neighborhood.

The t Overlay District is intended to establish urban design standards to perpetuate the positive design elements and the residential and commercial development patterns found within the Traditional City. The traditional City shall be defined by recognizable geographic boundaries of subdivisions platted prior to World War II in which there is a concentration of the positive design elements as defined in Urban Design Goal 1.

Analysis

For eating and drinking uses city code provides a minimum and maximum parking ratio based on gross square footage (see Table-2 Parking Requirement). According to the 2016 variance, there were three tenants on the site and a total of 27 parking spaces were needed for the site, 14 spaces for the restaurant use alone.

Since the approval of the variance in 2016, the applicant has constructed an unpermitted patio in the rear yard, adding to the area of the restaurant. For a restaurant that is compliant with the parking standards, outdoor

Table 2—Parking Requirements (2016)

<i>Use</i>	<i>Sq. Ft.</i>	<i>Minimum Ratio</i>	<i>Min Spaces Required</i>
Retail	1,850.5	2.5 / 1,000 gsf	4.6
Beauty Salon	1,850.5	5 / 1,000 gsf	9.3
Eating/ Drinking	2,691	5 / 1,000 gsf	13.5
Total Required:			27
Total Provided:			13

PROJECT ANALYSIS

seating is permitted to be added to the site. Per LDC2015-00442, outdoor eating and drinking areas that constitute less than 25% of the total eating and drinking establishment may be constructed without additional parking requirements, in this case 672.7 sq. ft. The total area of the new outdoor seating area is 780 sq. ft., leaving 107.3 sq. ft. subject to additional parking for the Iron Cow.

It is important to note that the placement of the unpermitted patio area for outdoor seating shortens four of the on-site parking spaces that were once considered compliant to approximately 15 ft. deep. The Code requirement is for 18.5 ft. deep parking spaces. As shown in the aerial below from 2017, these parking spaces were beyond the 18.5 ft. depth required when the variance for parking was approved in 2016 and have since been rendered noncompliant and therefore will not count towards the required parking on-site. Additionally, when conducting a routine site visit, staff observed that the four parking spaces adjacent along the west side of the property are being used for outdoor storage. See the images below.

The applicant proposes to count a parking space which is located in the right-of-way (ROW) and blocks the public sidewalk. The Land Development Code also prohibits parking between the building and the street for the Traditional City Overlay District. Per Sec. 62.611(b), "Parking facilities shall be permitted at the rear or interior side of the principal structure." For these reasons, the proposed 14th parking space cannot be counted or utilized.


The new parking table below more accurately reflects the requested variance amendment today, requesting a total variance of 19 parking spaces.



Table 2—Parking Requirements (2020)

<i>Use</i>	<i>Sq. Ft.</i>	<i>Minimum Ratio</i>	<i>Min Spaces Required</i>
Retail	1,850.5	2.5 / 1,000 gsf	4.6
Beauty Salon	1,850.5	5 / 1,000 gsf	9.3
Eating/ Drinking	2,691	5 / 1,000 gsf	13.5
Outdoor Seating	107.3	5 / 1,000 gsf	.5
Total Required:			28
Total Provided:			9

2017 Aerial Legend:

 4 parking spaces meeting the 18.5 ft. required depth

SITE PHOTO



PROJECT ANALYSIS

COVID-19: City Initiatives for Businesses

The City has created temporary relief programs for businesses affected by COVID-19.

Before COVID-19: Typically, restaurants are permitted to create up to 25% of the gross floor area of their business as an outdoor patio or seating area without the need to provide additional parking spaces through a Zoning Official Determination.

Temporary COVID-19 Allowance: Retail and restaurant businesses can expand into private parking lots and walkways (not public streets and sidewalks) without permits or applications, impact fees or parking requirements, if the expanded outdoor area meets the following:

- No permanent improvements are made requiring building permits
- In private parking lots, the location must not conflict with the traffic circulation of the site (e.g. must be located within parking spaces)
- On private walkways, a minimum 4 ft. clear space for pedestrians is maintained
- No outdoor loudspeakers are allowed
- Small farmer's market style tents, up to 12 ft. by 12 ft. in size, may be used without the need for a tent permit

The applicant could have taken advantage of these temporary programs, but instead moved forward with permanent improvements that require planning and permitting approval, of which neither were sought out. The addition of the patio area increased the parking deficiencies.

Code Amendments

Since the approval of the variance in 2016, a few Code amendments have occurred that are pertinent to this case.

Any required offsite parking is now subject to a shared parking agreement from property owner to property owner for a minimum term of 5 years. The location of the parking must be in a zoning district which permits the use of the parking generator. For example, a restaurant may not acquire required off-site parking on at an office in an O-1 district, because a restaurant is not permitted in O-1. Additionally, the location of the parking spaces must be within 600 ft. from this subject property zoned for activity center. Lastly, the parking must be excess parking and not required for the use on the property intending to share parking. (Sec 61.303(b))

Secondly, new parking reduction requests are no longer subject to variance requests to the Board of Zoning Adjustment. New parking requests up to 10% can be granted by the Zoning Official through an administrative determination application. Requests for reductions more than 10% go to the Municipal Planning Board through a Conditional Use Permit and are subject to specific criteria for eligibility.

Sec. 61.323 indicates the eligibility requirements for adjustments to parking requirements. Figure 27-A provides the circumstances under which a specific percentage of parking relief may be obtained. The Iron Cow would not qualify for any of the following provisions.

In consideration of the above stated analysis, staff recommends denial of the requested variance of 19 parking spaces.

Figure 27-A	Maximum Reduction
Proximity to Premium Transit:	Up to 10%
Proximity to Public Parking Facilities:	Up to 5%
Complementary Land Uses in the same Building or Site:	Up to 5%
Provision of onsite Car Share	Up to 5%
Inclusion of Affordable Housing Element:	Up to 5%
Separation from Residential Neighborhoods with On-Street Parking	Up to 5%
Provision of Enhanced Bike & Pedestrian Facilities	Up to 5%

PERTINENT BACKGROUND INFORMATION

The information below is provided for background purposes only, and is not included in the analysis of the six standards for a variance.

Code Enforcement Analysis

Since October of 2018, 20 complaints have been filed with the City's Code Enforcement Division regarding the subject property.

- 12 related directly to noise late at night, including hosting concert events in the rear parking lot
- 7 mention a lack of parking and/ or usage of on-street parking spaces which do not exist
- One citation indicates the business places a "detour" sign in the travel lane to protect patrons waiting in line to be let into the ticketed concert events
- 11 indicate that the Iron Cow was operating late at night during the required COVID-19 lockdown between April—July

Florida DBPR

City staff was contacted by the Florida Department of Business and Professional Regulation to relay that the state revoked the Iron Cow's restaurant alcohol license (SFS) on May 4, 2020, effective for 120 days for failure to meet the 51% non-alcoholic food and beverage sales required for this type of alcohol license. Following the passing of the required 120 day revocation, the applicant is permitted to reapply for a new SFS license. The state license requires a signature from the City's Zoning Official, which will not be signed until the parking issue is resolved. The property is out of compliance with the approved variance for a restaurant for parking.

The next step for the applicant to obtain an alcohol license is to comply with the terms of VAR2016-00130, which according to the applicant, cannot be done. Therefore the applicant has applied for this amendment to the previously approved variance for the Board of Zoning Adjustment to reassess the parking demands and the request for parking reductions.

Land Use Analysis

In 2016, Planning staff was presented with a variance application for an eating and drinking establishment. While the Land Development Code does not define nightclub, the Zoning Official has published a determination to assist in identifying businesses which are approved as an eating or drinking or other commercial use that morphs into a nightclub. (LDC2015-00441) These criteria include:

1. Charges a cover to gain entry, and
2. Has either a live band or plays recorded music at a sound level conducive to dancing, and
3. Has large open space (either inside or outside) that is designed for, and routinely and primarily used for dancing and/or entertainment uses, and
4. Is NOT primarily an Eating and Drinking establishment as prima facie evidence to be a discotheques/ dance hall (indoor recreation) and may only be located in a zoning district that permits such uses.

Since the variance was approved, City staff has visited the establishment's website to discover that the Iron Cow offers ticketed live music events. There are photographs on Instagram showing the tenant space as a music venue and reminiscent of a nightclub scene, where the restaurant tables and chairs are removed from the floor to accommodate dancing and standing assemblies. See the image from Instagram to the right, posted in Feb 2020.

There are often advertised concert events with bottle service and cover charges at the door on both the Iron Cow's Facebook and Instagram websites. These types of events are not indicative of a restaurant.



PERTINENT BACKGROUND INFORMATION

Most recently, the Iron Cow posted an upcoming ticketed event on their Facebook page where tickets are required for entry.

Upcoming Events

Share Events

OCT
29

STACEY PULLEN | IRON COW | ORLANDO

Thu 10 PM · 69 guests

IRON COW cafe

Orlando

Get Tickets

★ Interested

These details are important to note as background information. There is some evidence to support the claim that the Iron Cow is operating as a nightclub, and meets three of the four criteria as outlined in the Zoning Official's Interpretation Concerning Clubs, Discotheques, Dance Halls, and Associated Outdoor Uses, LDC2015-00441. This Zoning Official Interpretation also indicates that nightclubs shall be considered an indoor recreation use, which would require a Conditional Use Permit in the AC-N/T zoning district.

Lastly, a nightclub use requires more parking spaces than an eating and drinking establishment, where the minimum is 7 parking spaces per 1,000 sq. ft. of gross floor area. There is evidence to support that the business operates as a nightclub at night and the minimum parking requirement for the establishment would be 19 spaces for the Iron Cow tenant space alone.

AERIAL PHOTO



SITE PHOTOS



View of the parking along the west side

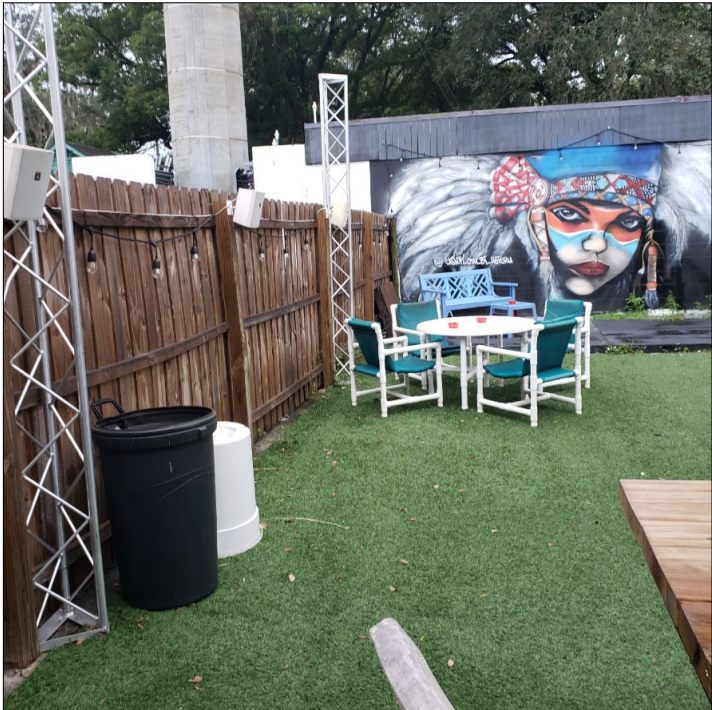


View of the four northernmost parking spaces



View of the proposed 14th parking space which cannot be counted because it is half in the ROW

SITE PHOTOS

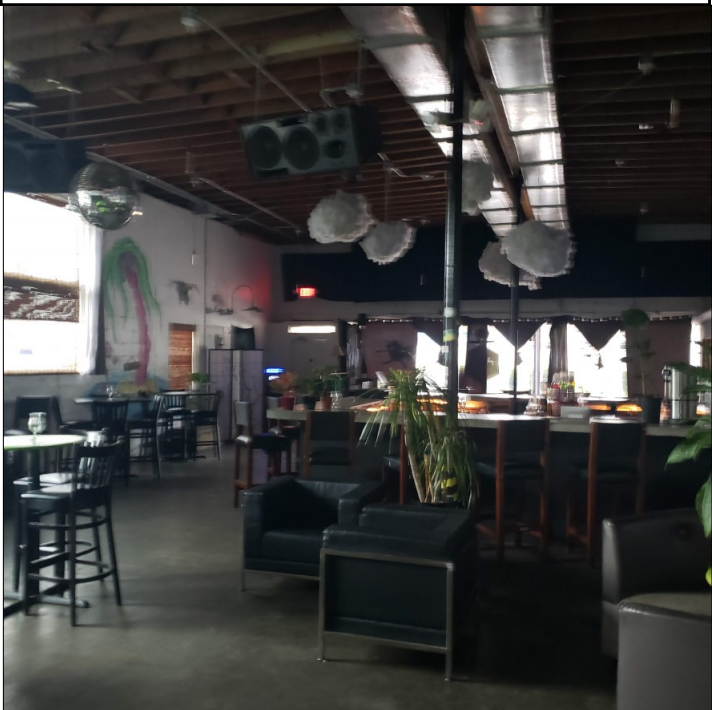


View of the back patio/bar area

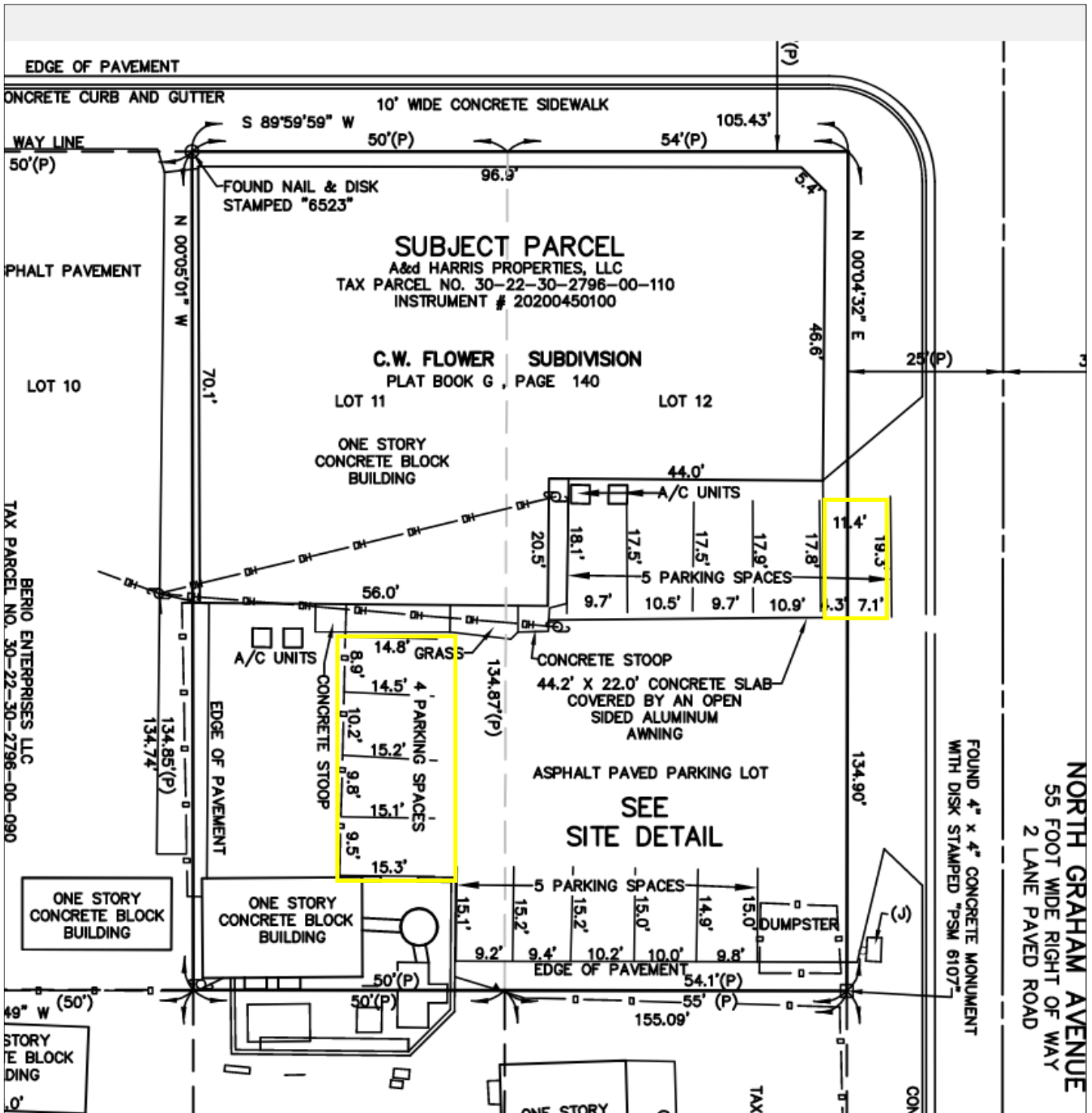
View of the internal stage area



View of the internal seating options



SURVEY/SITE PLAN



FINDINGS

Requested Variance

In 2016, a variance was granted to the owner of Iron Cow for 7 parking spaces to the required 27 parking spaces. (VAR2016-00130) The applicant now requests to amend that variance for 14 spaces to the required 27 parking spaces.

Staff Recommendation: Denial of the requested variance, based on the finding that the variance does NOT meet the six (6) standards for approval of a variance.

Note to Applicant: *The proposed variance only addresses the Land Development Code standards expressly represented in this staff report and any relief to such standards as approved. The relief granted through the variance(s) is restricted to the subject property as noted in the staff report and is not transferable to other parcels of land.*

The next step in this variance request is City Council consideration of the Board of Zoning Adjustment's recommended action (provided it is not appealed) at an upcoming City Council meeting. Possible City Council approval of this variance request does not constitute final approval to carry out the development proposed in this application. The applicant shall comply with all other applicable requirements of the Land Development Code, including any additional review requirements, and shall receive all necessary permits before initiating development. Please contact the Permitting Services Division of the City of Orlando to inquire about your next steps toward receiving a building permit.

CONTACT INFORMATION

Land Development

Contact Katy Magruder at 407.246.3355 or kathleen.magruder@orlando.gov.

Transportation

Contact Yameli Herschelman at 407.246.3322 or at yameli.herschelman@orlando.gov.

<h2>STANDARDS FOR VARIANCE APPROVAL</h2>	<p>The applicant requests to amend VAR2016-10130 for a variance of 14 spaces to the required 27 parking spaces.</p>
<p><i>Special Conditions and Circumstances</i></p> <p>Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. Zoning violations or nonconformities on neighboring properties shall not constitute grounds for approval of any proposed Zoning Variance.</p>	<p><i>Meets Standard</i> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>The business and property owner were aware of the need to obtain additional parking for the chosen eating and drinking use since the previous variance was approved in 2016. The only special circumstance is that the business owner's shared parking agreement was terminated.</p>
<p><i>Not Self-Created</i></p> <p>The special conditions and circumstances do not result from actions of the applicant. A self-created hardship shall not justify a Zoning Variance; i.e., when the applicant himself by his own conduct creates the hardship which he alleges to exist, he is not entitled to relief.</p>	<p><i>Meets Standard</i> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>While the business owner did not develop this property, the property owner has been the same throughout the operation of the Iron Cow. Since 2016, the business owner has constructed a back patio without City approval which exacerbates the parking deficiencies.</p>
<p><i>No Special Privilege Conferred</i></p> <p>Approval of the Zoning Variance requested shall not confer on the applicant any special privilege that is denied by this Chapter to other lands, buildings, or structures in the same zoning district.</p>	<p><i>Meets Standard</i> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Approval of the variance would be viewed as conferring a special privilege, based on the special conditions and circumstances of the property.</p>
<p><i>Deprivation of Rights</i></p> <p>Literal interpretation of the provisions contained in this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Chapter and would work unnecessary and undue hardship on the applicant. Financial loss or business competition shall not constitute grounds for approval of any variance. Purchase of property with intent to develop in violation of the restrictions of this Chapter shall also not constitute grounds for approval.</p>	<p><i>Meets Standard</i> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Denial of the variance would not deprive the owner/applicant of rights enjoyed by others in a similar circumstance. The business owner has continued to make the parking situation worse on the subject property and has resisted communicating with staff to secure offsite parking since it became apparent that the shared parking agreement had been terminated in 2018.</p>
<p><i>Minimum Possible Variance</i></p> <p>The Zoning Variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure.</p>	<p><i>Meets Standard</i> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>The variance requested is not the minimum possible variance. The business owner could restore the 4 spaces that have been shortened and remove the unpermitted patio to request a lesser variance.</p>
<p><i>Purpose and Intent</i></p> <p>Approval of the Zoning Variance will be in harmony with the purpose and intent of this Chapter and such Zoning Variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.</p>	<p><i>Meets Standard</i> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Approval of this variance would be detrimental to the public welfare. Due to the long list of Code Enforcement complaints regarding this specific business, staff feels that granting this variance would be detrimental to the public welfare.</p>

RESPONSES TO VARIANCE QUESTIONS

Standards for Variance Approval

All six standards for a parking variance for this location are met by the applicant, as follows:

Special Conditions and Circumstances – the number of on-site parking spaces which are dedicated to 2438 East Robinson Street are inadequate to meet the City's code requirements for an eating and drinking establishment and for all tenants at 2438 East Robinson Street.

Not Self-Created – The applicant did not develop or build the structure located at 2438 East Robinson Street.

Minimum Possible Variance – No additional parking spaces can be accommodated on-site. The variance requested is the minimum possible variance to align the parking requirements for the location with the number of available on-site parking spaces. There is on-street parking available in the evenings, along with ample public parking available a block away in the parking lot for Festival Park. Regardless, patrons for Iron Cow and the Milk District in general use alternative methods for traveling to and from the location. Specifically ride-sharing such as Uber and Lyft and the bikes and scooters from the downtown area to travel to and from the location.

No special Privilege Conferred -- Approval of the variance would not confer a special privilege to the applicant, based on the special conditions and circumstances of the property. There is no alternative on-site parking available to serve this location. Any tenant of this location (or owner of this location) will have the same issue with the number of on-site parking spaces.

Deprivation of Rights – Denial of the variance would preclude the applicant from doing business at this location, and would result in undue hardship because there are special circumstances limiting the number of on-site parking spaces which exist for the site.

Purpose and Intent -- Approval of the variance as requested is harmonious with the purpose and intent of the City's Code, especially in light of the alternative transportation and mobility options that have been provided by the City in the last few years. Continued use of the property as an eating and drinking establishment promotes the character of the neighborhood. Granting of the variance would not be detrimental to the public welfare or injurious to the immediate neighborhood which is evidenced by the fact that since 2018, the tenants located in the building at 2438 East Robinson Street have been operating with 14 parking spaces.