



THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report

**To:** Chair and Planning Board Members

**Through:** Katie P. Halloran, Planning Director

**From:** Mario Duron, AICP, The Corradino Group

**Meeting Date:** March 16<sup>th</sup>, 2023

**Agenda Item:** **Conditional Use – 901 Fleming Street (RE# 00005650-000000):** A request for conditional use approval to operate a restaurant, excluding drive-through, on the ground floor of a two-story building, located in the Historic Neighborhood Commercial (HNC-2) zoning district, pursuant to Section 122-62, 122-836, and 122-838 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

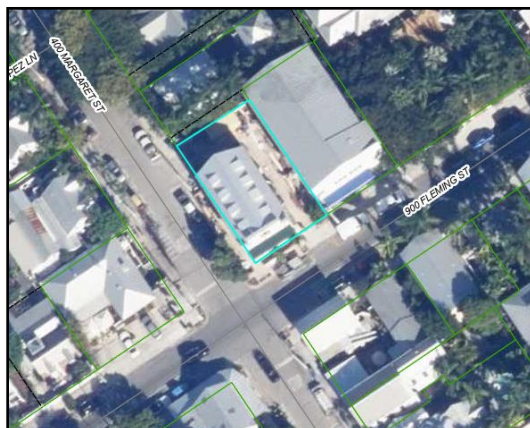
**Request:** To approve a conditional use request to operate a restaurant, excluding drive-through at property zoned HNC-2.

**Applicant:** Kava Culture Key West Co

**Property Owners:** 901 FLEMING STREET LLC

**Location:** 901 Fleming Street (RE# 00005650-000000)

**Zoning:** Historic Neighborhood Commercial (HNC-2)





Pictures of the interior and outdoor consumption areas for Kava Culture Kava Bar.

**Background:**

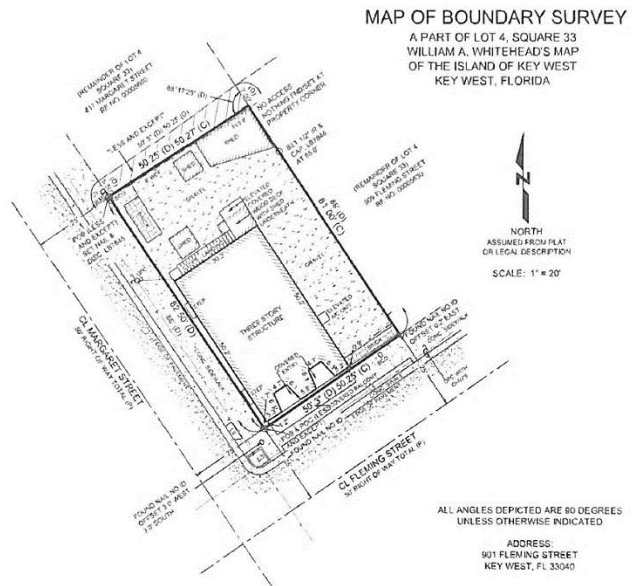
The subject property is in the 900 block of Fleming Street at the corner of Margaret and Fleming. The building was originally constructed in 1918 and is a historically contributing structure. The two-story mixed-use building is located within the Historic Neighborhood Commercial (HNC-2) zoning district and is currently configured with the tenant space for Kava Culture on the ground floor, and two (2) unrecognized residential units on the second story. The licensing status of the units is currently under review by the City.

In May 2022, Kava Culture was approved to operate as a Specialty Retail Business. Due to the sale of non-alcoholic beverages like botanical cocktails, coffee, espresso, and tea, the applicant is required to obtain a Food Service License. In turn, this results in a change of land use designation from Commercial Retail Low Intensity to Restaurants, Excluding Drive-Through. Restaurants, excluding drive-throughs are classified conditional uses in the HNC-2 zoning district.

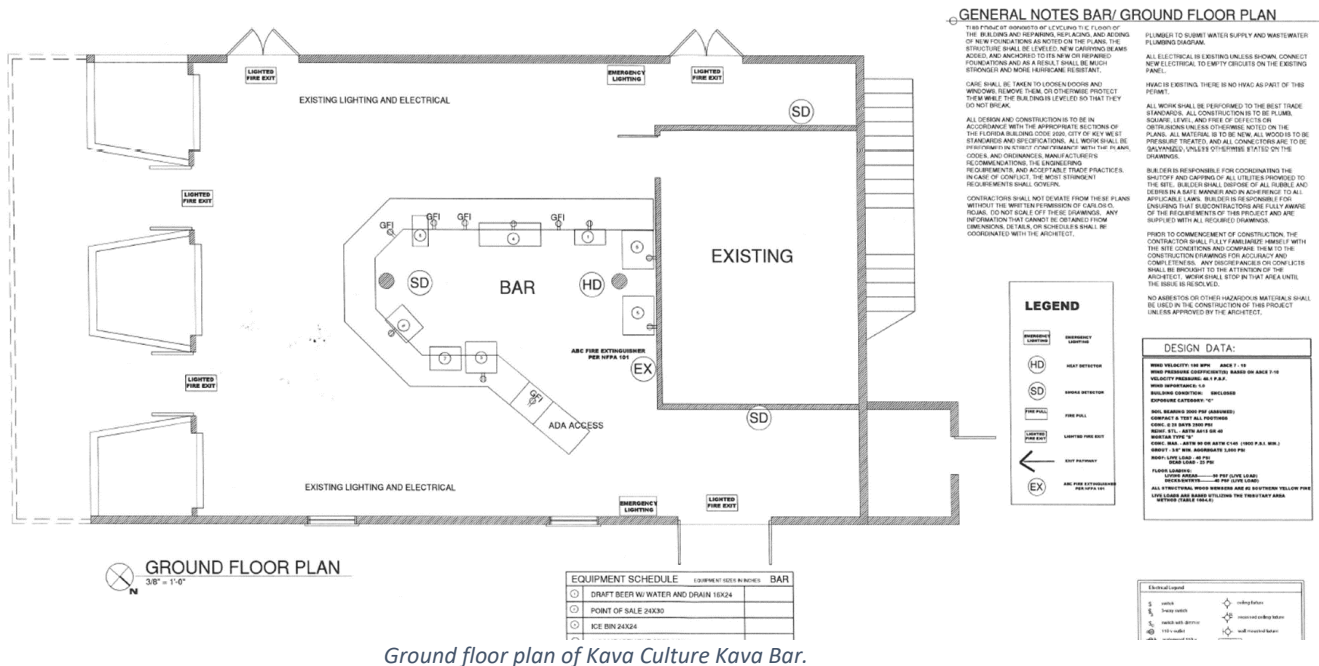
**Request:**

The applicant is proposing to continue the sale of goods, as it has been doing since opening in May 2022. However, the applicant is requesting approval of a condition use to operate as a Restaurant, excluding drive-through. The code defines restaurants as any 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).

The conditional use request requires evaluation of parking conditions. In reviewing, it was determined that variances are needed for the restaurant use parking requirements. A separate staff report was prepared for the variance request.



*Survey of subject property.*



**Surrounding Zoning and Uses:**

- North: HMDR; Residential Use
- South: HNC-2; Residential Use
- East: HNC-2; Commercial, Office Use
- West: HNC-2; Retail/Commercial and Hotel Uses

**Process:**

- Development Review Committee: December 15, 2022
- Planning Board: March 16, 2023
- HARC: TBD
- Local Appeal Period: 10 days
- DEO Review: Up to 45 days

**Conditional Use Review:** The purpose of conditional use review, pursuant to City Code Section 122-61, is to ensure that a conditional use shall only be permitted on specific sites where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity. City Code Chapter 122, Article III sets forth provisions and criteria for consideration of conditional uses on specific sites. Conditional uses shall be permitted only upon a finding that the proposed use satisfies this article.

**Conditional Use Specific Criteria pursuant to Code Section 122-62:**

*(a) Findings*

Code Section 122-62(a) provides, in part, that "a conditional use shall be permitted upon a finding by the Planning Board that the proposed use, application, and, if applicable, development plan comply with the criteria specified in this section, including specific conditions established

by the Planning Board and/or the City Commission during a review of the respective application in order to ensure compliance with the comprehensive plan and land development regulations.” This section also specifies that “a conditional use shall be denied if the city determines that the proposed use does not meet the criteria provided in this section and, further, that the proposed conditional use is averse to the public’s interest.”

*(b) Characteristics of Use*

Restaurants, excluding drive throughs, are a conditional use in the HNC-2 zoning district. The HNC-2 zoning district is restricted to single and multiple family residential dwellings, businesses and professional offices, places of worship, commercial retail low intensity, parks and recreation and other uses similar in character to traditional neighborhood commercial services which have very limited square footage and generate low volumes of traffic.

**(1) Scale and intensity of the proposed conditional use as measured by the following:**

**a. Floor area ratio (FAR):** The proposed use will not add any additional permanent floor area.

**b. Traffic generation:** Using the 11th edition of the ITE’s Trip Generation Manual, staff prepared a trip generation analysis comparing low intensity commercial uses like a small strip retail and hardware store, to a coffee/donut shop without drive-through. These uses analyzed were selected based on the known prior use at the property– a sign shop, and the proposed use, a non-alcoholic beverage establishment or a use similar to a coffee shop. The analysis concluded that compared to a low intensity commercial retail use, a coffee/donut shop will generate approximately 136 more AM trips and 38 more PM trips. However, considering the site’s heavy pedestrian activity, these values may be offset.

In addition, the Code Section 122-776, entitled “Intent” in Division 8, “Historic Neighborhood Commercial District” states the following in subsection (d)(1), “Within the HNC-2, HNC-3, and HNC-4 subdistricts, land use activities shall generate no more than 50 trips per 1,000 square feet of gross leasable floor area per day.” Although the total estimated trip generation for a coffee shop type use would surpass 50, the Code does not provide clarity as to how pedestrian and bicycle trips are considered. In this instance, the Planning Department does not find that the proposed use will necessarily violate this “Intent” section of the City’s Code, provided that this area of the historic district is heavily utilized by pedestrians, bicyclists, and recreational vehicle users.

	Total Trip Generation	
	AM	PM
Strip Retail Plaza (<40,000 SF)	4	10
Hardware/paint Store	1	4
Coffee/Donut Shop without Drive-Through Window	140	48

Source: Institute of Transportation Engineers, Trip Generation Manual, 11<sup>th</sup> Edition

**c. Square feet of enclosed space for each specific use:** The indoor consumption area is approximately 275 square feet, and the outdoor area is approximately 138 square feet, for a total of 413 square feet. No other space is proposed as part of this application.

d. **Proposed employment:** The current number of employed individuals will remain at six (6).

e. **Proposed number and type of service vehicles:** There are no proposed service trucks.

f. **Off-street parking needs:** The current uses at the property are commercial on the ground floor and two (2) residential units in the floor above. Pursuant to Sections 108-572(2)a. and 108-572(9), 1 parking space is required for each residential unit (2 units total), and 1 for each 45 square feet of consumption area proposed for the restaurant use (413 SF total). In total, 12 vehicular spaces and 4 bicycle spaces are required. The site has an existing gravel area along the rear and side yard, that appear to be used for parking. There are no complying parking facilities on the property.

PARKING REQUIREMENT	PARKING	
	<i>REQUIRED</i>	<i>PROVIDED</i>
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.*

(2) **On- or off-site improvement needs generated by the proposed conditional use and not identified above including the following:**

a. **Utilities:** The property has adequate utilities to support the proposed use.

b. **Public facilities, especially any improvements required to ensure compliance with concurrency management as provided in City Code Chapter 94:** None expected. Compliance with building codes and life safety codes would be required prior to building permit issuance or licensing.

c. **Roadway or signalization improvements, or other similar improvements:** None.

d. **Accessory structures or facilities:** None.

e. **Other unique facilities/structures proposed as part of site improvements:** None proposed.

(3) **On-site amenities proposed to enhance site and planned improvements, including mitigative techniques such as:**

a. **Open space:** No modification to the existing open space is being proposed. However, the applicant intends to provide outdoor furnishings for the proposed outdoor consumption area of approximately 138 square feet.

b. **Setbacks from adjacent properties:** There is adequate setback between the adjacent properties and the building on the property.

c. **Screening and buffers:** Appropriate screening is required for the trash/recycling area. Additional waste and recycling needs will be handled as required.

d. **Landscaping berms proposed to mitigate against adverse impacts to adjacent sites:** Existing landscaping is provided between the residential property to the north and the subject property.

e. **Mitigative techniques for abating smoke, odor, noise, and other noxious impacts:** There is no expected excessive noise, odor, heat, or smoke from the business. Although there will be some noise associated with outdoor music for the outdoor consumption area, the applicant will follow the code as laid out in Sec. 26-192 "Unreasonably Excessive Noise Prohibited".

(c) *Criteria for conditional use review and approval*: Pursuant to City Code Section 122-62(c), applications for a conditional use shall clearly demonstrate the following:

(1) **Land use compatibility:** The conditional use as a Kava Bar selling non-alcoholic beverages in ready-to-consume state is compatible and harmonious with adjacent land use and will not adversely impact land use activities in the immediate vicinity. The neighborhood contains multiple bars, cafes and retail shops and is also made up of commercial and transient/residential uses and is heavily tourist-oriented with pedestrian traffic. Kava Culture Key West has been operating as a Kava bar at this location since May 2022 under a Special Retail Business License and has not received complaints from neighboring properties.

(2) **Enough site size, adequate site specifications and infrastructure to accommodate the proposed use:** The existing configuration of the site size does not provide for the necessary parking facilities for the proposed restaurant. The applicant has submitted a variance application.

(3) **Proper use of mitigative techniques:** Staff recommends mitigating for the lack of existing parking for guests. Mitigation could include providing bicycle parking and payment into the City parking fund.

- (4) **Hazardous waste:** None expected or anticipated.
- (5) **Compliance with applicable laws and ordinances:** The use will comply with all applicable laws and regulations that would be required, including Sec. 26-192 "Unreasonably Excessive Noise Prohibited" and Sec. 26-194 "Citation Procedure and Penalties".
- (6) **Additional criteria applicable to specific land uses:** Applicants for conditional use approval shall demonstrate that the proposed conditional use satisfies the following specific criteria designed to ensure against potential adverse impacts which may be associated with the proposed land use:
- a. **Land uses within a conservation area:** The site is not located in a conservation area.
  - b. **Residential development:** No new residential development is proposed.
  - c. **Commercial or mixed-use development:** The proposed use is compatible with similar uses within this zoning district as well as district regulations.
  - d. **Development within or adjacent to historic district:** The conditional use application is within the historic district.
  - e. **Public facilities or institutional development:** No development of public facilities or institutions are proposed.
  - f. **Commercial structures use and related activities within tidal waters:** The site is not located within tidal areas.
  - g. **Adult entertainment establishments:** No adult entertainment is being proposed

**RECOMMENDATION:**

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends to the Planning Board that the request for Conditional Use be **APPROVED with the** following conditions:

**General conditions:**

1. Any outdoor speakers shall be oriented to minimize noise disturbances to neighboring properties. No outdoor amplified music shall be permitted after 10:00 p.m.
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.
4. The owner shall obtain any required HARC approvals for signage.
5. The restaurant shall contain no more than 19 seats indoors and 14 seats outdoors.

**Conditions prior to issuance of a Certificate of Occupancy and/or Business Tax Receipt:**

6. The owner shall obtain and maintain a Conditional Approval Permit, pursuant to City Code Chapter 18, Article XII, Division 1. The City Code Compliance Department shall inspect the property on an annual basis upon reasonable notice to determine compliance with the conditions of the Planning Board resolution.