

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



To: Chairman and Planning Board Members

From: Melissa Paul-Leto, Planner I

Through: Patrick Wright, Planning Director

Meeting Date: January 17, 2019

Agenda Item: **Alcohol Sales Exception – 821 Duval Street – (RE# 00016820-000000)**
– A request for special exception to the prohibition of alcoholic beverage sales within 300 feet of a church, school, cemetery or funeral property in order to serve beer, wine and liquor for a bar and lounge on property located within the Duval Street Oceanside (HRCC-3) zoning district pursuant to Sections 18-28(b) 2, of the Land Development Regulations of the code of Ordinances of the City of Key West, Florida.

Request: To grant a special exception to sell beer, wine and liquor for a bar and lounge located -within 300 feet of a church.

Applicant: Wayne LaRue Smith, Esq.

Property Owner: SUBA 821, LLC

Location: 821 Duval Street – (RE# 00016820-000000)

Zoning: Duval Street Oceanside (HRCC-3) zoning district



Background and Request:

Section 18-28 of the Code of Ordinances of the City of Key West prohibits the sale of alcoholic beverages where such place of business is within 300 feet of an established church, school, cemetery or funeral home. However, the Planning Board may grant a special exception if the criteria in City Code Section 18-28(b) (2) are met. An Alcohol Exception is granted exclusively to the property owner and is not transferable. The current applicant has requested a special exception to obtain a liquor license (5COP), which would allow the sale and consumption of beer, wine and liquor as an accessory use to the restaurant. The subject property received an Alcohol Sales Exception to serve beer and wine along with the Conditional Use approval for a bar and lounge on November 17th, 2011 per Planning Board Resolution No. 2011-061. The property, is located on the 800 block of Duval Street near the corner of Olivia Street. There are no funeral homes, schools, or cemeteries within 300 feet of the property. The property is within 300 feet of one church:

- St. Peter’s Episcopal Church, 800 Center Street

Process:

Planning Board Meeting:	January 17, 2019
Planning Board Meeting:	December 20, 2018 (cancelled meeting)
Local Appeal Period:	30 days
DEO Review Period:	up to 45 days

Evaluation for Compliance with Section 18-28 of the Code of Ordinances:

(a) Pursuant to Section 18-28 of the City Code of Ordinances, no person shall conduct in the City any business involving the sale of alcoholic beverages where such place of business is 300 feet of any established church, school, cemetery, or funeral home. Such distance shall be measured by following the shortest route of ordinary fare from the nearest point of the property line of the place of business to the property line of the church, school, cemetery, or funeral home facilities. However, any person licensed to conduct and legally conducting a business involving the sale of alcoholic beverages as of January 4, 1995, shall be governed by the provisions of this section which existed at the time of the original licensure of such business.

(b) The prohibition in subsection (a) above shall not apply if a property owner is granted a special exception to specifically sell alcoholic beverages:

(1) In conjunction with an approved conditional use application that includes consideration of the public welfare factors listed in subsection (2) below; or

(2) Pursuant to authorization granted by the Planning Board that the use will not detrimentally impact the public health, safety, or welfare after consideration of all of the following criteria:

A. Compatibility with surrounding existing uses;

The property is located within the Duval Street Oceanside (HRCC-3) zoning district includes the Duval Street Oceanside Corridor from Petronia Street south to United

Street. Located toward the southern end of Duval Street, this corridor serves as a center for arts, crafts, gifts, designer goods, restaurants, and tourist accommodations.

City staff took measurements utilizing a GIS geospatial measurement. The results are the following: 56.27 feet starting from the property line from Duval Street and ending at the nearest property line of, St. Peter's Episcopal Church, 800 Center Street.

The measurements confirm the subject site is located within 300 feet of, St. Peter's Episcopal Church; however, due to the scope of requested accessory alcohol sales; staff submits that the request does not appear to be incompatible with the surrounding existing uses.

B. The extent of conflict between the proposed use and the hours of operation of the facilities described in section (a) above;

As of the date this report is written, the applicant states the proposed restaurant with beverage sales would operate between Sunday through Thursday 10 a.m. to 2 a.m., Friday and Saturday from 10 a.m. to 4 a.m.

St. Peter's Episcopal Church holds services on the following days and times: Sundays at 10 a.m., Thursdays at 8 a.m. The sanctuary is open from 10 a.m. to 5 p.m. (1 p.m. on Sundays).

C. Mitigation measures agreed to be implemented by the applicant;

Applicant agrees to the hours and conditions set forth in resolution No. 2011-061 will be maintained with the addition of the sale of liquor. Applicant will follow Florida ABT regulation on alcohol sales occurring in conjunction with food sales and is receptive to any additional suggestions for mitigation made by planning staff, Planning Board or from neighborhood input.

D. Public input;

As of the date of this report, the Planning Department has received one public letter of support which is from St. Peter's Episcopal Church, the subject church.

E. That the applicant has demonstrated a "good neighbor policy" by contacting or attempting to contact all noticed property owners who have objected to the application, and by addressing the objections expressed by these neighbors;

As of the date of this report, there have been no objections to the applicants request to sell beer, wine and liquor as an accessory use to the restaurant.

F. Any other factors the approving body determines relevant to the public's health, safety, and welfare;

According to City Code Section 18-28(c), special exceptions granted for alcoholic beverage sales within 300 feet of churches, schools, cemeteries or funeral homes may be approved with conditions, which conditions shall be monitored through a conditional approval permit in accordance with City Code Section 18-610. Should the Planning Board approve the special exception request, City Code Section 18-28(c)

requires that the approval be specific to the property owner only, shall not be transferable, and shall only be effective in conjunction with the use(s) specified in the application. As a result, these operational controls would be embedded as conditions of approval. However, based on public input at the public hearing, additional conditions may be necessary to ensure continued neighborhood compatibility.

The Planning Board shall make factual findings regarding the following:

That the standards established by City Code Section 18-28(b) for special exceptions have been met by the applicant.

Per Section 18-28(e) which states “upon receipt of an application, the planning board shall hold a public hearing upon the application in accordance with the procedures cited in section 90-393 and shall render an order granting or denying such application. In granting such application the planning board must make specific findings respecting each of the matters specified in subsection (b) (2), above.”

As stated above, the Planning Board must make a specific finding on the criteria. Staff recommends to the Planning Board that the response to the criteria outlined in the staff report be taken into consideration in rendering an order to grant or deny the request.

If approved staff recommends the following conditions:

1. The special exception is granted exclusively to SUBA 821, LLC joined with Little Room Jazz Club, LLC and shall not be transferable.