



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

**To:** Chairman and Planning Board Members  
**From:** Angela Budde, Planner  
**Through:** Katie P. Halloran, Planning Director  
**Meeting Date:** March 19, 2020 (Cancelled)  
April 16, 2020 (Cancelled)  
April 28, 2020 (Special)

**Application:** **Exception for Outdoor Merchandise Display - 501 Greene Street, Unit C (RE# 00000520-000000)** - A request for an Exception for Outdoor Merchandise Display on property located within the Historic Residential Commercial Core Duval Street Gulfside (HRCC-1) zoning district pursuant to the Land Development Regulations of the Code of Ordinances of the City of Key West.

**Request:** To allow an Exception for Outdoor Merchandise Display of cigars and tobacco related products sold in-store located on the open doors and within model ships through a sixty (60) consecutive month time span.

**Applicant:** Alon Croitoru

**Property Owner** Duval Group, Inc.

**Location** 501c Greene Street - RE# 00000520-000000



**Background:**

The subject property is located on Greene Street between Duval and Ann Streets, located in the Key West Historic District. The building is historic, built circa 1899, and is recognized as contributing to the Key West Historic District.



The proposed outdoor commercial retail use is a permitted use in the HRCC-1 Zoning District. The store features cigars, tobacco and related merchandise for sale. In 2012, Planning Board Resolution 2012-43 granted an Exception to Outdoor Merchandise Display to the applicant for the maximum allowed timeframe of sixty (60) consecutive months. The applicant is seeking to continue displaying merchandise in the exterior of the building, for the maximum allowed timeframe of sixty (60)-consecutive months.

A notice of code violation was issued on December 19, 2019, after the code officer observed the merchandise was displayed on wooden boats outside the business and additional merchandise was displayed on the doors. Upon further investigation, the officer found the prior approval for an Exception to Outdoor Merchandise Display expired in 2017 and advised the business owner to apply for Exception to Outdoor Merchandise Display to the Planning Department to become compliant with the Code. This violation prompted the applicant to apply for an Exception to Outdoor Merchandise Display with the Planning Department. Staff conducted a site visit on February 21, 2020 and took the following photographs of the current merchandise displays.



**Analysis - Evaluation - Compliance with City of Key West Land Development Regulations:**

The purpose of Section 102-282 of the Land Development Regulations is to regulate merchandise displays in the Historic District and to regulate Historic Preservation in the Historic District. According to Section 102-282, “vending booths, carts, and other merchandise displays are discouraged in the front-yard or side-yard of any structure adjoining a public street (i.e. between the front or side façade and the public sidewalk)”. According to Section 106-51 of the Code, “the outdoor display of merchandise in the historic zoning districts of the City is prohibited unless an exception is granted by the Planning Board”. Additionally, the definition provided in Section 106-51 of the City’s code states “merchandise shall mean any good or product or sample or likeness of any good or product offered for sale by a business. Outdoor display shall mean the placement of merchandise on the exterior of a business structure, including a wall, roof, overhang, entranceway, or window, or within a required setback area. In no event shall outdoor display be permitted in the public right-of-way. The prohibitions of this section shall not apply to automotive, bicycle and moped rentals and sales and to plant sales and shall not apply to art festivals or other special events duly permitted by the City Commission”. Granting or denying a proposed exception on a case-by-case basis gives the Planning Board the discretion to approve or deny proposed displays based on the identified criteria provided in Section 106-52 of the City’s code:

**(1) Factors favoring the Exception are as follows:**

- a. The location of the proposed Exception, while outdoors, is an interior courtyard of a building or buildings, or is a space specifically designed and permitted for use by outdoor merchants.**

The location of the proposed Exception is not an interior courtyard or in a space specifically designed or permitted for use by indoor merchants. The proposed exception is located adjacent to the sidewalk immediately in front of the business.

- b. The Exception (for either the type of merchandise or the type of display) is compatible or in visual harmony with the character of the neighborhood.**

The type of merchandise, cigars and tobacco related products, is compatible with historic Key West and the neighborhood. The type of display is arguably compatible with the character of the neighborhood. The City of Key West Code of Ordinances established the intent of the HRCC-1 Duval Street Gulfside zoning district incorporates as follows, “The HRCC-1 Duval Street Gulfside district incorporates the city's intensely vibrant tourist commercial entertainment center which is characterized by specialty shops, sidewalk-oriented restaurants, lounges and bars with inviting live entertainment; and transient residential accommodations....” While the proposed Exception is not necessarily in visual harmony with the associated building’s architecture, it is generally in keeping with the types of window displays, sidewalk activity, and related commercial activity in this neighborhood.

- c. **The Exception’s visual incongruity with the historic character of the neighborhood is reduced by substantial setback from public places and rights-of-way.**

The proposed exception is not reduced by substantial setback from public places and rights-of-way. The proposed Exception is located within the applicant’s private property in the HRCC-1 Duval Street Gulfside zoning district where there is no minimum front-yard setback. On March 12, 2020, Code Enforcement Director Jim Young measured and reported the width of the public right-of-way from the curb of the sidewalk to the private property to be 48”.

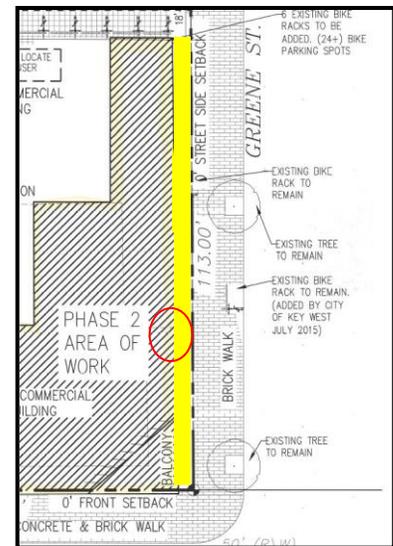
**(2) Factors disfavoring the Exception are as follows:**

- a. **Architecture contributing to the historical fabric or visual character of the neighborhood is obscured by the Exception.**

As proposed, the Exception will not obscure the surrounding architecture contributing to the historic fabric or visual character of the neighborhood. The proposed Exception would be located on the interior of two (2) doorways and on model ships located on private property. The proposed Exception is located in front of a small business on the inside of approximately seven (7) foot high doors on the bottom floor of a two-story structure.

- b. **The location of the proposed Exception abuts, with minimal setback, a street of the historic district, thus the Exception is visible from heavily used public places and rights-of-way.**

In the HRCC-1 zoning district, there is no minimum front-yard setback. As noted above, the proposed Exception would be located adjacent to the 48” wide sidewalk. The Exception includes material on the interior of doors and model ships. The Exception would be visible from the heavily used, relatively narrow sidewalk and Greene Street which is located in the historic district. The proposed location abuts Greene Street in Key West’s Historic District.



*Yellow highlight represents private property. Red circle represents applicant's store*

- c. **The Exception presents a hazard to public safety.**

The applicant’s photos along with the site photos provided by staff indicate a clear path to the proposed location. As of the date of this report, the Department is not aware of any life safety violations. The City’s Chief Building Official (CBO) commented in an e-mail, “The shop *appears* to meet the minimum requirement for a wheelchair to turn around (60” min diameter circle)” and added “As long as the

outdoor displays don't encroach into the minimum clear egress width of 32 inches, they should be fine." The City Fire Marshal's staff commented, "We have no fire concerns as long as the minimum clear egress is met."

- (3) Exceptions to Section 106-51 granted by the Planning Board shall be for a term of no more than 60 consecutive months and may be granted subject to terms and conditions specified by the Board in order to protect the architectural heritage and visual character of the district:**

Within the last four (4) months, the Planning Board has recommended approval of Exception to Outdoor Merchandise Displays for a term of twelve (12) consecutive months due to the proposed review changes noted below.

The Planning Board expressed to staff their concerns regarding the evaluation of Exceptions to Outdoor Merchandise Display proposals. These proposals have a visual impact on the built environment that may create adverse effects on areas within the City of Key West Historic District. The Planning Board opined that these determinations would be more appropriately evaluated by the Historic Architectural Review Commission (HARC). Staff has begun drafting language to amend the current Code to transfer review authority for Exceptions to Outdoor Merchandise Display applications to HARC. The transfer of responsibility requires a text amendment to the Code and is currently scheduled for discussion on the HARC agenda on March 26, 2020.

- (4) Exceptions to Section 106-51 may be revoked by the Planning Board after notice and hearing on grounds that:**

- a. The applicant has failed to comply with terms and conditions specified pursuant to the grant of an Exception in this section;**
- b. The Exception was granted pursuant to mistaken or misleading information; or**
- c. The Exception is not compatible or in visual harmony, with development of the neighborhood occurring subsequent to grant of the Exception.**

If the Exception for Outdoor Merchandise Display is approved by the Planning Board, and if at any time the applicant is out of compliance with any conditions of approval, the approval can be revoked by the Planning Board, under Section 106-52 (4) of the City Code.

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**Recommendation:**

The factors favoring versus disfavoring this approval are roughly equal. This proposed Exception would be granted for twelve (12) consecutive months, a relatively brief period of time, after which it is likely HARC will have the opportunity to re-evaluate the design and impact of this Exception on this historic neighborhood. Therefore, the Planning Department, based on criteria in the City Code, recommends the request for Exception to Outdoor Merchandise Display be **approved** per the proposed plan to allow merchandise as currently displayed with the following conditions:

1. The Exception for Outdoor Merchandise Display shall not be placed in the City right-of-way and shall not extend beyond the applicant's private property.
2. The Exception for Outdoor Merchandise Display shall only be present during hours of operation.
3. The Exception for Outdoor Merchandise Display is specific to the current tenant, Alon Croitoru, and granted for no more than twelve (12) consecutive months.
4. The Exception shall provide clear access for ADA and fire accessibility, with a minimum pathway of thirty-six (36) inches around each display. A specific site plan depicting the established location of the elements with approval from the Chief Building Official (CBO) and Fire Marshal shall be filed with the City of Key West.
5. The Exception is limited to two (2) open doors and two (2) wooden model ship displays.
6. Seating and furniture are not outdoor displays and shall not be counted as such. Display items can be rotated but cannot be increased.
7. All signage installed without benefit of a permit will be removed. Any new signage shall require HARC approval.