

Legal Opinion

OFFICE OF THE CITY ATTORNEY



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THE CITY OF KEY WEST

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May 27, 2009

Adele V. Stones
Stones & Cardenas
221 Simonton Street
Key West, FL 33040

Re: Alcoholic beverage license/512 Eaton Street

Dear Ginny:

This will confirm our recent conversations regarding the issues raised in your emails to Carolyn and me. As I believe you are aware, Carolyn and I met with Amy to discuss these issues.

The sale of alcoholic beverages was a permitted accessory use to the cabaret/theatre use your client established back in the 1990's. However, in that he has not conducted that use on the property for some time, I believe it is clear that he has abandoned that use. The issue concerns whether your client's renewal of his business license entitles him to insist that his alcoholic beverage license be governed by the regulations in place at the time of issuance rather than the current regulations.

As you point out in your email, in 2005, your client obtained development approval to convert the cabaret/theatre into transient residential condos and offices. He did not implement that use, and, in 2007, obtained approval for a restaurant/theatre. Although that approval has not expired, your client has not established that use.

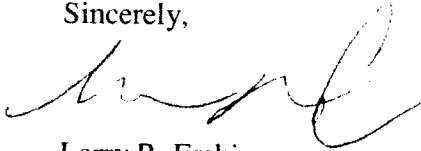
In her March 5, 2009, letter to your client, Carolyn referred to section 122-30 of the Code, pertaining to abandonment of nonconforming uses, and requested that he provide evidence that the business has not been closed for 24 months. I respectfully disagree with your position that a provision contained in the LDR's should not be applied to a business license regulated by Chapter 18 of the Code. In order to qualify for an alcoholic

beverage license, a site must conform to the zoning classifications contained in Chapter 122 of the Code. As Carolyn pointed out, section 122-30 of the Code provides that "if a dispute occurs with the City about whether a use has been abandoned, the owner shall be entitled to a hearing before the planning board." Accordingly, your client does have a remedy to pursue as to this issue.

You have indicated that the position stated by Carolyn has placed your client in a position wherein he can not comply with section 18-28(a) of the Code, which prohibits the operation of a business involving the sale of alcoholic beverages within 300 feet of a church. Again, your client has a remedy. Section 18-28(b) of the Code provides that "any owner aggrieved by subsection (a) of this section may apply to the city commission for a variance."

For the reasons stated herein, I do not believe staff is in a position to advise ABT that the property is actively licensed and approved for a use which permits the sale of alcoholic beverages. Please feel free to contact me with questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry R. Erskine". The signature is fluid and cursive, with a large, sweeping initial "L".

Larry R. Erskine
Chief Assistant City Attorney

cc: Amy Kimball-Murley
Carolyn Walker
Shawn D. Smith