

THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report



**To:** Chairman and Planning Board Members  
**From:** Melissa Paul-Leto, Planner I  
**Through:** Katie P. Halloran, Planning Director  
**Meeting Date:** April 22, 2021

**Agenda Item: Alcohol Sales Exception – 907 Whitehead Street – (RE# 00017930-000000)** – A request for a 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 and wine for special events accessory to the museum on property located within the Historic Medium Density Residential (HMDR) 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 allow the on-site sale and consumption of beer and wine for special events at The Hemingway House Museum located within 300 feet of a church.  
**Applicant:** Richard McChesney, Esq.  
**Property Owner:** 907 Whitehead Street Corporation  
**Location:** 907 Whitehead Street – (RE# 00017930-000000)  
**Zoning:** Historic Medium Density Residential (HMDR) zoning district



*St. James Missionary Baptist Church is 261 feet from The Hemingway House Museum*



**Background and Request:**

The property is known as The Hemingway House Museum and is located within the Historic Medium Density Residential (HMDR) zoning district. The property is used as both a museum and an event venue. As such, when there have been special events, the property has hired catering companies that have an existing state liquor license to provide food and drinks for event guests. The HMDR zoning district does not allow for restaurant or bar uses as permitted or conditional uses.

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 Sales Exception is granted exclusively to the property owner and is not transferable.

The applicant is requesting a special exception to obtain an alcohol license, which would allow the sale and consumption of beer and wine on premises for special events at the museum. The applicant has stated that the intent is to have catering companies supply food for special event guests, while the museum would sell beer and wine during events.

There are no funeral homes, schools, or cemeteries within 300 feet of the property. The property is within 261 feet of one church:

- Saint James’s Missionary Baptist Church, 312 Olivia Street

**Process:**

- Planning Board Meeting:** April 22, 2021
  - The applicant postponed allowing staff time to review the additional information that was submitted.
- Planning Board Meeting:** March 18, 2021
- Planning Board Meeting:** February 18, 2021
  - The applicant emailed staff on February 18, 2021 in the afternoon requesting the item be postponed. The applicant requested time to provide a definition of “special events” and handle statements made surrounding mitigation measures.
- Planning Board Meeting:** (Postponed by applicant) - January 21, 2021
  - The applicant emailed staff on December 17, 2021 in the afternoon requesting the item be postponed until the February 18<sup>th</sup> meeting.
- Planning Board Meeting:** (Postponed by applicant) - December 17, 2020
- Planning Board Meeting:** (Postponed by applicant) - November 19, 2020
- 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 the following criteria:

**A. Compatibility with surrounding existing uses;**

The property is located within the Historic Medium Density Residential (HMDR) Zoning District. Surrounding properties consist of the Lighthouse Museum, single family residential homes, transient properties, and a restaurant.

The HMDR zoning district is primarily residential, with some conditional uses such as cultural and civic activities. The Hemingway House does not have a conditional use approval for a cultural and civic activity use. As such, it is considered a legal non-conforming use. A bar and lounge use is neither a permitted nor conditional use in the HMDR zoning district.

Alcohol sales may provide a revenue opportunity to help maintain historically and culturally important buildings and sites but this new use should be carefully considered as a code amendment to ensure potential nuisance conditions are addressed such as: noise, privacy, garbage and recycling management, and odors.

In addition, utilizing alcohol sales exceptions to determine land use policy is not a predictable or fair approach to land use planning. Case by case determinations should not replace comprehensive land use planning.

Staff recommends that the applicant instead work with surrounding neighbors and other stakeholders to develop and submit a code amendment application. The application would allow for a comprehensive review to consider alcohol sales as an accessory use for civic and cultural uses, including museums, in the City of Key West.

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

The request for the Alcohol Sales Exception is to allow direct alcohol sales by the property owners to guests during events such as private parties and weddings. The applicant has stated that the hours of operation of the museum are Monday through Sunday from 9:00 a.m. to 5:00 p.m.

Potential days and hours for weddings and other events have not been specified by the applicant. The applicant has submitted that all on-site events end at 10 p.m.

St. James Missionary Baptist Church, 312 Olivia Street; Church hours are Tuesday from 6:30 p.m. to 7:30 p.m., and Sunday from 11:00 a.m. to 1:00 p.m.

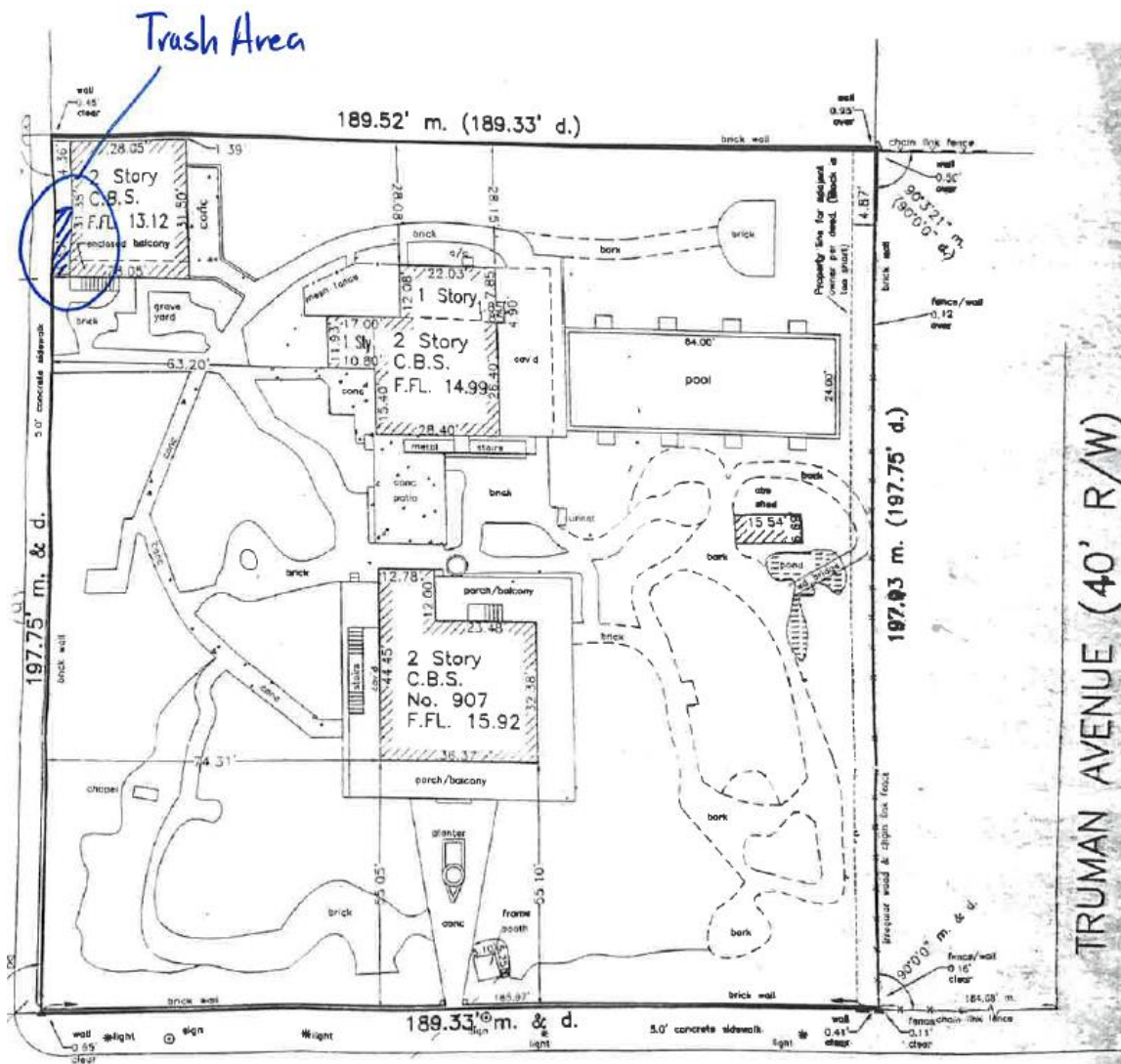
The Alcohol Sales Exception would allow the property owner to sell alcohol for events that are currently happening. These events all have some combination of food and alcohol, but currently, a caterer provides everything. If the applicant is granted this exception, the

property owner would be able to sell beer and wine while the caterer would provide food and liquor.

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

The applicant has stated that they would be is receptive to suggestions for mitigation made by planning staff, a planning board or from neighborhood input.

Per the site plan, the garbage and recycling storage and pick-up location is within the strip of land in front of the garage facing Olivia Street. (site plan attached) The dumpster, trash cans and recycling bin area is 4.3 feet deep and about 12 feet wide. The applicant states that the trash and recycling is picked up 5 days a week.



*Boundary Survey – 907 Whitehead Street- Indicating location of trash area*



To mitigate the potential nuisance from additional garbage, recycling, and odors, and to create a code compliant trash area, staff recommends the applicant fence the trash area with a HARC approved structure or relocate the recycling bins and dumpster inside the property.



*907 Whitehead Street- Photo dated April 16, 2021 – Exposed Trash Area*



*907 Whitehead Street- Photo dated April 16, 2021 – Exposed Trash Area*

To attempt to mitigate potential parking and traffic impacts, staff recommends limits on the number of events per week to three (3) events per week, and to encourage alternative mobility options including additional bike parking and other means.

To attempt to mitigate potential noise nuisance in this mixed-use residential neighborhood, staff recommends all outdoor music end at 9 p.m.

**D. Public input;**

As of the date of this report, the Planning Department has received one letter of support from 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 applicant’s request to sell beer and wine to the guests at the museum.

**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.

**Conflicting with zoning district:**

Uses permitted in the historic medium density residential district (HMDR) are as follows:

1. Single-family and two-family residential dwellings.
2. Multiple-family residential dwellings.
3. Group homes with less than or equal to six residents as provided in section 122-1246.

Conditional uses in the historic medium density residential district (HMDR) are as follows:

1. Group homes with seven to 14 residents as provided in section 122-1246.
2. Cultural and civic activities.
3. Educational institutions and day care.
4. Nursing homes/rest homes and convalescent homes.
5. Parks and recreation active and passive.
6. Places of worship.
7. Protective services.
8. Public and private utilities.
9. Parking lots and facilities.

**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.

**RECOMMENDATION:**

It is the professional opinion of Planning staff that the alcohol sales exception is appropriate for areas of the city in which alcohol sales is permitted or conditional by zone but restricted due to being within 300 feet walking distance from a church, school, cemetery, and/or funeral home.

In this instance, no restaurant or retail alcohol sales are permitted or conditional uses. If other Key West civic uses, such as museums, would like to benefit from alcohol sales revenue, but do not happen to be located within 300 feet of a church, school, cemetery or funeral home, they could not avail themselves of this ordinance. This use of the alcohol sales exception ordinance creates an unfair opportunity for one property owner versus another that has no basis in comprehensive land use planning.

Potential authorization of direct alcohol sales at this venue would be appropriate through review of a code amendment. A request for a code amendment would reflect sound land use planning and a more fair and consistent approach to policy making than a piecemeal approval available to select business owners that serendipitously are located within 300 feet from a church, school, cemetery or funeral home. Key West residents should have the opportunity to review the benefits and drawbacks of a code change to allow a potential new conditional use of accessory alcohol sales for civic use properties.

Based on the criteria established by the Comprehensive Plan and the City Code, the Planning Department recommends the request for special exception be **denied**.

If the Planning Board chooses to approve the alcohol sales exception, staff suggests the following conditions:

1. The trash and recycling area (including the dumpster and rolling bins) facing Olivia Street shall be screened from the ROW or relocated inside the existing fence. All new fencing or screening must receive HARC or historic preservation staff approval.
2. The business operator shall maintain Waste Management collection pickup for trash and recycling at a minimum of five (5) days a week.
3. The events with alcohol sales shall be limited to three (3) events total per week. Alcohol sales are limited to "events" and daily alcohol sales to museum visitors is not permitted.
4. All outdoor music shall terminate at 9 p.m.
5. The property shall provide and encourage alternative mobility options through installation of additional bicycle parking and other means.