

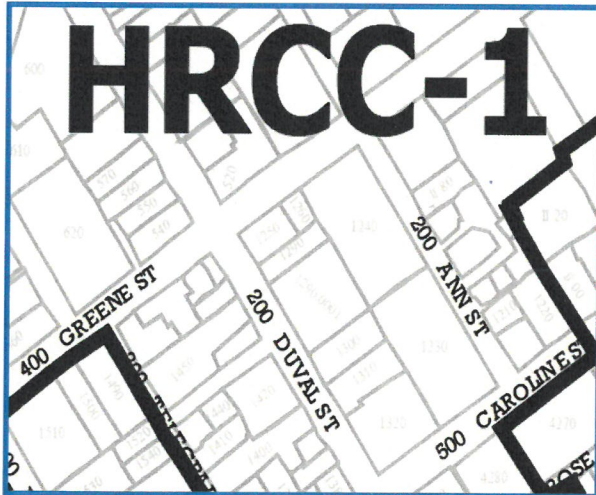
**THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report**



**To:** Chairman and Planning Board Members  
**Through:** Patrick Wright, Planning Director  
**From:** Angela Budde, Planner (AB)  
**Meeting Date:** June 20, 2019  
**Agenda Item:** **Exception for Outdoor Merchandise Display – 217 Duval Street (RE # 00001300-000000)**- A request for exception for outdoor merchandise display on property located within the Historic Residential Commercial Core Gulfside (HRCC-1) Zoning District pursuant to Section 106-52 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

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**Request:** To allow an Exception for Outdoor Display of merchandise underneath an awning leading onto the exterior entranceway of the business structure.  
**Applicant:** Elena Mashtakov, dba Funky Flamingo  
**Property Owner:** William Foster & Barbara Hann  
**Location:** 217 Duval Street (RE # 00001300-000100)  
**Zoning:** Historic Residential Commercial Core Gulfside (HRCC-1)



Zoning District map where parcel is located



Satellite Image showing parcel outlined in Blue

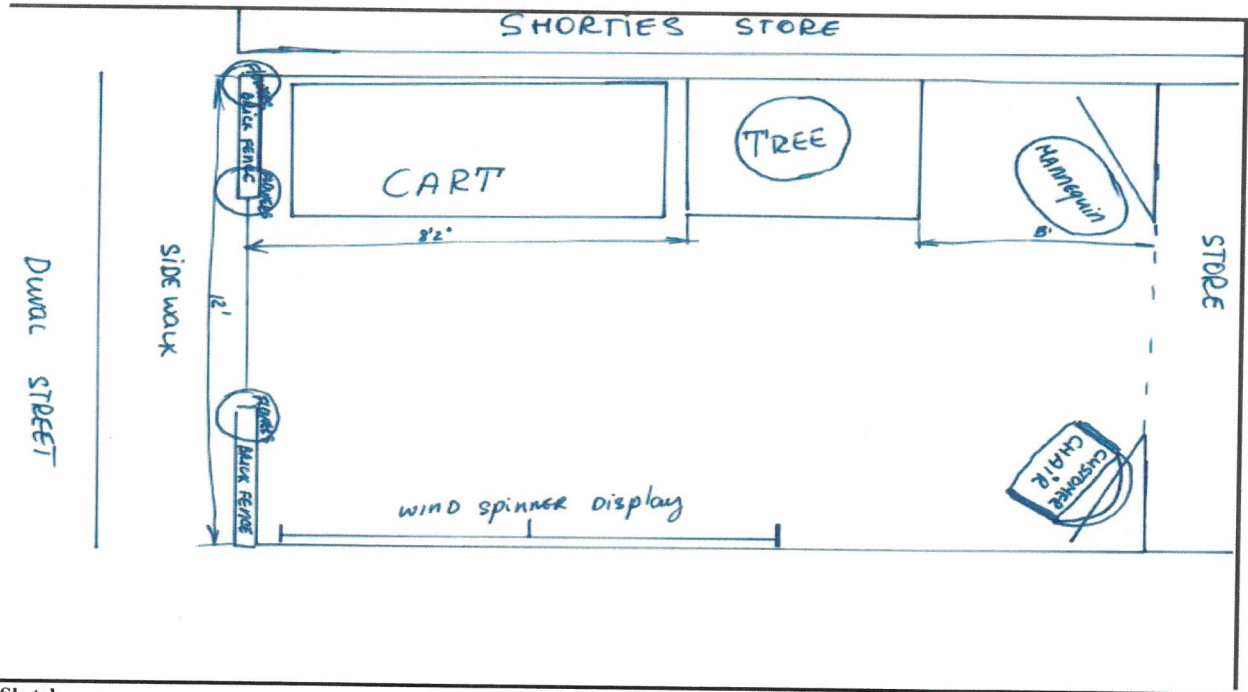
**Process:**

**Planning Board Meeting:**  
**Local Appeal Period:**  
**HARC Approval:**  
**DEO Review Period:**

June 20, 2019  
10 days  
To be determined  
up to 45 days



Image of front entrance to business showing merchandise displayed outside of business structure



**Sketch**

**Background:**

The Funky Flamingo is located at 217 Duval Street between Greene and Caroline Streets. The two-story frame vernacular house was built circa 1899. The house has been readapted in use and in 1970, a gift shop was located on the first floor. The building is a contributing structure in the Historic District.

**Request:**

The applicant is requesting the Planning Board grant approval for the outdoor display of merchandise, locally made art, retail clothing and accessories to be placed on a non-permanent, portable racks and mannequins within the exterior entranceway of the store, for the maximum allowed timeframe of sixty (60) consecutive months.

**Analysis – Evaluation for Compliance with the Land Development Regulations:**

According to Section 106-52 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. Pursuant to Section 106-52 of the City Code, 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, or window, or within a required setback area. Granting or denying on a case-by-case basis a proposed Exception gives the Planning Board the discretion to approve or deny proposed displays based on the following criteria:

**(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 proposed Exception is not located in an interior courtyard but is located within an existing front entranceway of an existing business structure in the 200 block of Duval Street. The applicant is requesting to display and sell merchandise, local art, retail clothing and accessories within the exterior of the business in the required setback area.

- 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 Funky Flamingo is located in the HRCC-1 zoning district, which is characterized by specialty shops, sidewalk-oriented retail sales, restaurants, lounges and bars. The commercial retail activity is a permitted use.

- 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 exception's visual incongruity with the historic character of the neighborhood is not reduced by a substantial setback for the public right-of-way as this business is located in the HRCC-1, which has no front setback dimensional requirements.

**(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.*

When reviewing this specific request, the Planning Department coordinated with the City's Historic Preservation Planner and determined that the proposed Exception will not obscure the surrounding architecture contributing to the historic fabric or visual character of the neighborhood. The 8.2-foot cart as shown on the sketch, has not received approval and is not compliant with HARC guidelines. Upon speaking with the HARC Preservation Planner, it was determined a Certificate of Appropriateness from HARC would be required that carries a restriction of a five (5) foot minimum setback from the property line as required per Section 102-282.

- 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.***

The minimum front yard setback in the HRCC-1 zoning district is zero feet. The patio location where the merchandise is proposed to be displayed is conforming to the front yard setback requirement. The visible display will be within the entranceway so that the applicant will conduct business on private property.

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

The applicant had provided a sketch that shows a clear path to the proposed located and approximately 1-foot clearance from the entrance of the property and non-permanent displays. As of the date of this report, the Department is not aware of any life safety violations.

- (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. Applications for exceptions shall be accompanied by a nonrefundable fee of \$100.00 to cover the costs to the City of processing the application and investigating the applicant.***

Sections 106-52 (3) provides that applications for Exceptions to Outdoor Merchandise Display be granted specifically to an individual applicant. Exceptions for Outdoor Merchandise Display do not run with the land, but instead, have very specific terms of expiration established upon approval by the Planning Board. The applicant has requested an Exception for the maximum amount of time allowed under the Code for Exceptions to Outdoor Merchandise Display, or for sixty (60) consecutive months. It is important to note that the Planning Board has the authority to choose to approve the proposed Exception for a lesser term than the maximum amount of time that has been requested.

- (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 this Exception.

If the Exception for an Outdoor Display is approved by the Planning Board, and if at any time during the display of merchandise 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.

- (5) *The City Manager or the Planning Board upon written petition by any City resident may cause issuance of a notice of hearing on revocation of an Exception, which notice shall be issued by the City Clerk.*

**RECOMMENDATION:**

Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for Exception to the Outdoor Merchandise Display at 217 Duval Street (RE #00001300-000100) be **approved** per the proposed plan with the following conditions:

**General Condition:**

1. The Exception is specific to the current tenant, Elena Mashtakov, dba Funky Flamingo and granted for sixty (60) consecutive months.
2. The Exception is limited to the existing front entrance of the property and will not be placed in the City right-of-way. All display materials shall be no closer than one (1) foot to the sidewalk.
3. The Exception will all be free-standing and not attached to any house, fence or tree.
4. Any signage on the premises shall require a Certificate of Appropriateness from HARC.
5. The Exception will only be present during hours of operation.
6. A Certificate of Appropriateness from HARC is required for the allowance of a 8.2-foot cart in the area as shown on the proposed sketch and will not be placed within 5 feet from property line or in the city right-of-way as required per Section 102-282.
7. The Exception is limited to retail merchandise, locally made art, retail clothing and accessories.
8. Seating and furniture are not outdoor displays and shall not be counted as such. Display items can be rotated but cannot be increased.
9. The Exception will provide clear access for ADA and fire accessibility, with a minimum pathway of thirty-six inches.