

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



**To:** Chair and Planning Board Members

**From:** Kevin Bond, AICP, LEED Green Associate, Senior Planner

**Through:** Donald Leland Craig, AICP, Planning Director

**Meeting Date:** November 20, 2014

**Agenda Item:** **Alcohol Sales Special Exception – 519 Fleming Street (RE # 00006560-000000, AK # 1006793)** – A request for special exception to the prohibition of alcoholic beverage sales within 300 feet of a church, school, cemetery or funeral home for property located within the Historic Residential Commercial Core - Duval Street Gulfside (HRCC-1) Zoning District pursuant to Section 18-28(b) of the Code of Ordinances of the City of Key West, Florida

**Request:** To Amend Planning Board Resolution No. 2013-19 to allow on-site alcohol consumption in addition to existing package sales at the Uva Gourmet Shoppe within 300 feet of a church and a funeral home.

**Applicant:** Mark Gambuzza, Uva Wine LLC

**Property Owner:** Gary R. and Diane M. Onderdonk

**Location:** 519 Fleming Street (RE # 00006560-000000, AK # 1006793)

**Zoning:** Historic Residential Commercial Core – Duval Street Gulfside (HRCC-1)



**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.

The property is located at the western corner of Fleming and Bahama Streets and is comprised of one two-story, multi-tenant commercial building and a rear surface parking lot. The property addresses include 513, 515, 517, 519 and 521 Fleming Street. The proposed use of on-premises alcohol consumption would be located within one of the first floor commercial units of the building located at 519 Fleming Street and currently occupied by Uva Gourmet Shoppe, which primarily sells high-end wine and cheese. The building is a non-contributing structure within the Key West Historic District, and was built in 1954 according to the Monroe County Property Appraiser

The property is within 300 feet of the following:

Churches: Schools: None.  
▪ St. Paul’s Episcopal Church, 401 Duval Street

Funeral homes: Cemeteries: None.  
▪ Dean-Lopez Funeral Home, 418 Simonton Street

In March 2013, the Planning Board approved Resolution No. 2013-19 granting a special exception allowing the sale of alcohol within 300 feet of a church and funeral home, but the approval was limited to the sale of beer and wine package retail only and prohibited on-premises consumption. The main reason for this limitation is because Conditional Use approval is required within the HRCC-1 Zoning District for on-site alcohol consumption.

The Applicant subsequently applied for Conditional Use. Last month, the Planning Board approved Resolution No. 2014-68 granting Conditional Use approval to allow on-site alcohol consumption at the wine shop, of which one condition required the Applicant to obtain a new alcohol sales special exception in order to amend the conditions of Planning Board Resolution No. 2013-19.

The proposed use is to allow on-premises alcohol consumption for the purposes of offering wine tastings, selling wine by the glass and holding occasional special events. The current licensed use is for food service activities with a maximum of five (5) seats.

**Process:**

Development Review Committee: July 24, 2014 (Conditional Use)  
Planning Board: November 20, 2014  
Local Appeal Period: 10 days  
DEO Review: 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 HRCC-1 Zoning District, which is described in City Code Section 122-868 as being “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.” This section also describes this area as being “the most intense activity center in the historic commercial core.” Though the store is located within 300 feet of a church and a funeral home, the scope of proposed use primarily retail and associated with the sale of specialty foods and wine and 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;**

According to the website for St. Paul’s Episcopal Church, general service times are as follows: Sunday 7:30 a.m., 9:00 a.m., and 11:00 a.m.; Tuesday 5:30 p.m.; and Wednesday 9:00 a.m. Section 18-27 regulates hours of operation for alcohol sales within City limits, prohibiting sales occurring from 4:00 a.m. to 7:00 a.m. each day.

Based on the established service times of the church, and the City’s restriction on hours of alcohol sales, the Planning Department anticipates that very little, if any, conflict would occur on Sundays should the Applicant be approved to serve alcohol. However, there would be overlap between when alcohol sales could occur on Tuesdays when the church holds services. The funeral home operates from 9 a.m. to 4 p.m. and by appointment as needed. There would likely be occasional overlap in operation times.

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

The Applicant previously met with the church to discuss the potential concerns regarding alcohol sales. The Applicant submitted several letters of no objections, including a letter from the Reverend Larry D. Hooper of St. Paul's Episcopal Church.

**D. Public input;**

To date, the Planning Department has not received any public input regarding the request for on-site alcohol consumption.

**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 mentioned previously, the Planning Department has not received any public input to date indicating that there are neighborhood impact concerns.

**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 applicant 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.**

Based on the information provided to the Planning Department, the standards for special exceptions established by City Code Section 18-28(b) have been met by the applicant.

**RECOMMENDATION:**

Based on the criteria established by the Comprehensive Plan and the City Code, the Planning Department recommends the request for alcohol sales special exception be **APPROVED** with the following conditions:

1. The special exception is granted exclusively to Mark Gambuzza, Uva Wine LLC, and shall not be transferable.
2. Adhere to all conditions of Planning Board Resolution No. 2014-68.

**PLANNING BOARD  
RESOLUTION NO. 2014-**

**A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD AMENDING PLANNING BOARD RESOLUTION NO. 2013-19 AND GRANTING WITH CONDITIONS A SPECIAL EXCEPTION TO MARK GAMBUZZA OF UVA WINE LLC ALLOWING FOR THE ON-PREMISES SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES TO OCCUR WITHIN 300 FEET OF A CHURCH AND A FUNERAL HOME FOR PROPERTY LOCATED WITHIN THE HISTORIC RESIDENTIAL COMMERCIAL CORE – DUVAL STREET GULFSIDE (HRCC-1) ZONING DISTRICT AT 519 FLEMING STREET (RE # 00006560-000000, AK # 1006793) PURSUANT TO SECTION 18-28(B) OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Section 18-28(a) of the Code of Ordinances of the City of Key West, Florida provides that no person shall conduct in the City any business involving the sale of alcoholic beverages where such place of business is within 300 feet of any established church, school, cemetery, or funeral home; and

**WHEREAS**, City Code Section 18-28(b)(2) provides that the prohibition in subsection (a) above shall not apply if a property owner is granted a special exception to specifically sell alcoholic beverages 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;
- B. The extent of conflict between the proposed use and the hours of operation of the facilities described above;
- C. Mitigation measures agreed to be implemented by the applicant;

\_\_\_\_\_ Chairman

\_\_\_\_\_ Planning Director

D. Public input;

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;

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

**WHEREAS**, the applicant requested a Special Exception for a 2COP license to sell and allow on-site consumption of alcoholic beverages within 300 feet of an established church and a funeral home, pursuant to City Code Section 18-28(b)(2); and

**WHEREAS**, this matter came before the Planning Board at a duly noticed public hearing on November 20, 2014; and

**WHEREAS**, the Planning Board finds that the applicant’s proposal to sell alcohol is compatible with surrounding existing uses; and

**WHEREAS**, the Planning Board finds that the extent of conflict between the proposed use and established churches will be minimal; and

**WHEREAS**, the Planning Board considered the mitigation measures agreed to be implemented by the applicant; and

**WHEREAS**, the Planning Board considered public input; and

**WHEREAS**, the Planning Board has found 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; and

**WHEREAS**, the Planning Board considered other factors determined relevant to the public’s

\_\_\_\_\_ Chairman

\_\_\_\_\_ Planning Director

health, safety, and welfare; and

**NOW, THEREFORE BE IT RESOLVED** by the Planning Board of the City of Key West, Florida:

**Section 1.** That the above recitals are incorporated by reference as if fully set forth herein.

**Section 2.** That a Special Exception, under Section 18-28(b)(2) of the Code of Ordinances of the City of Key West, Florida, is hereby granted as follows: exclusive to Mark Gambuzza of Uva Wine LLC, located at 519 Fleming Street (RE # 00006560-000000, AK # 1006793), Key West, Florida with the following conditions:

1. The special exception is granted exclusively to Mark Gambuzza, Uva Wine LLC, and shall not be transferable.
2. Adhere to all conditions of Planning Board Resolution No. 2014-68.

**Section 3.** Full, complete, and final application for all permits required for which this resolution is wholly or partly necessary, shall be submitted in its entirety within 12 months after the date hereof.

**Section 4.** This Special Exception does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of applicant's assertion of legal authority respecting the property.

**Section 5.** This resolution shall go into effect immediately upon its passage, adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

**Section 6.** This resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations).

Read and passed at a dually noticed meeting held this \_\_\_\_ day of \_\_\_\_\_, 2014.

Authenticated by the Chairman of the Planning Board and the Planning Director;

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Richard Klitenick, Chairman Date  
Key West Planning Board

**Attest:**

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Donald Leland Craig, AICP Date  
Planning Director

**Filed with the Clerk:**

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Cheryl Smith, City Clerk Date

\_\_\_\_\_ Chairman

\_\_\_\_\_ Planning Director