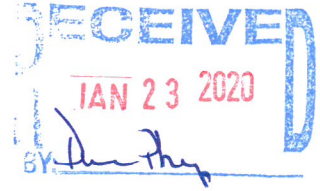


REPLY TO:

Miles D. Jolley
ATTORNEY AT LAW
DIRECT DIAL: 954.769.5334
mdjolley@smithcurrie.com

SMITHCURRIE

January 23, 2020



VIA Hand Delivery

Mr. Roy Bishop
Planning Director – City of Key West, Florida
1300 White Street
Key West, FL 33040

**RE: The Green Room, located at 501 Greene St., Key West, FL: Request to Amend
Conditional Use Approval Resolution No. 2016-32**

Dear Mr. Bishop:

We represent The Green Room in respect of the referenced matter. We were given your name and contact information from Ms. Melissa Paul-Leto and it was suggested that we direct this letter to your attention. The purpose of our letter is to respectfully request, on behalf of our client, The Green Room, that the referenced Resolution be amended to permit outdoor amplified music at The Green Room for the reasons set forth herein.

As it is presently written, The Green Room's conditional use approval Resolution (enclosed for your convenience) does not permit outdoor amplified music. Paragraph 4 under the General Conditions of the Resolution (page 2 of 4) states "no outdoor amplified music is to be permitted on the property." The Green Room respectfully requests a modification of the conditions in its conditional use permit, and this language specifically, to permit outdoor amplified music at The Green Room. The Green Room makes this request for several reasons.

As an initial matter, the lack of outdoor amplified music at The Green Room has been financially devastating to The Green Room, a small business trying to succeed in a very competitive market. There are countless other bars and restaurants near The Green Room in the historic district that are permitted to have amplified music outside. The Green Room is located in the heart of Key West's entertainment district (on the corner of Duval and Greene Streets) where outdoor music is the norm, yet The Green Room is prohibited from having outdoor amplified music. Allowing The Green Room to have outdoor amplified music will have little to no impact on the surrounding area where such music is commonplace.

Second, The Green Room simply wishes to have the same rights that all of its neighboring businesses have on Duval Street. Each of The Green Room's competitors are permitted to have

outdoor amplified music and, as a result, The Green Room simply requests to have the same rights as its neighbors. As noted above, by not being permitted to have outdoor amplified music, The Green Room has lost a tremendous amount of business (which can be demonstrated monetarily), is unable to compete with its competitors, and is at risk of having to close down.

Third, The Green Room is permitted by its entertainment license to have amplified music on its premises and The Green Room has been paying for this privilege for some time. Chapter 18 of the Code of Ordinances, City of Key West, Florida, permits a business with an entertainment license to sell alcoholic beverages and also provide live and recorded amplified music. Chapter 18 does not place any restrictions on whether this amplified music may be indoors or outdoors. Despite having this entertainment license, the City restricted The Green Room in its conditional use approval from having amplified music outdoors. Thus, there is a conflict between The Green Room's entitlements under its entertainment license and its conditional use permit that The Green Room wishes to rectify. Further, the only reason The Green Room obtained an entertainment license was because it planned to have amplified music outside. The Green Room has soundproofed the interior of its building, which exempts The Green Room from needing an entertainment license under Chapter 18. However, The Green Room can't soundproof its outdoor area so it obtained an entertainment license specifically in order to have amplified music outside.

Fourth, The Green Room has been cited by the City's Code Enforcement Division for playing outdoor music in violation of the conditional use permit. Until it was cited, The Green Room was not aware that it was doing anything wrong, especially because, as noted above, all of The Green Room's neighbors are permitted to play outdoor amplified music (and The Green Room's entertainment license permits amplified music, without limitation on where the music is played). The Green Room wishes to lawfully and in good faith modify the conditional use approval so that it is in compliance with the City's codes.

Finally, it is unclear why this language was placed in the conditional use approval in the first place. As noted in the original Staff Report concerning The Green Room's conditional use application (a copy of the Staff Report is enclosed for your convenience), The Green Room is "located in the HRCC-1 zoning district which is defined as the city's intensely vibrant tourist commercial entertainment center which is characterized by . . . **lounges and bars with inviting live entertainment.**" See Staff Report, pp. 3, 5 (emphasis added). The Staff Report recognizes that The Green Room is located near many other businesses with amplified music. In fact, City Code Section 122-686 cited in the Staff Report even recognizes that the district in which The Green Room is located is specifically intended for live entertainment. Additionally, with respect to "mitigative techniques for abating smoke, odor, **noise**, and other noxious impacts," the Staff Report notes "no noxious impacts expected." See Staff Report, p. 5 (emphasis added). Therefore, it is unclear why a prohibition against amplified outdoor music is in the resolution at all and we wonder if it was inadvertently included.

Enclosed with this letter are site plans for The Green Room and highlighted in yellow is where The Green Room respectfully requests that it be permitted to play outdoor amplified

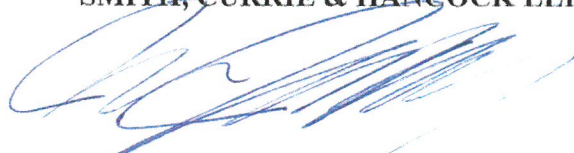
Mr. Roy Bishop
January 23, 2020
Page 3 of 3

music. As suggested by Ms. Paul-Leto, this letter is being hand delivered to you by The Green Room's principal, Blake Feldman, along with the required \$500 check. We ask for your help and cooperation in granting The Green Room's request to amend its conditional use and permit it to play outdoor amplified music like every one of its neighbors.

If there is anything that I can do as The Green Room's counsel to answer any questions or to help facilitate this amendment request, please do not hesitate to contact me. I welcome a phone call or in-person meeting. Your help and cooperation are greatly appreciated.

Respectfully,

SMITH, CURRIE & HANCOCK LLP

A handwritten signature in blue ink, appearing to read "Miles D. Jolley", is written over the firm name.

Miles D. Jolley, Esq.

Enclosures

Green Room

**PLANNING BOARD
RESOLUTION NO. 2016-32**

A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD GRANTING WITH CONDITIONS A CONDITIONAL USE APPROVAL FOR BAR LOUNGE USE ON PROPERTY LOCATED IN THE HISTORIC RESIDENTIAL COMMERCIAL CORE - DUVAL STREET GULFSIDE (HRCC-1) ZONING DISTRICT PURSUANT TO SECTIONS 122-62 AND 122-688 (9) OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the subject property is located within the Historic Residential Commercial Core - Duval Street Gulfside (HRCC-1); and

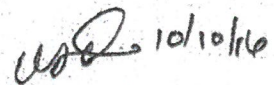
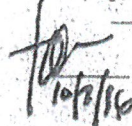
WHEREAS, pursuant to Sections 122-62 and 122-688(9) of the Land Development Regulations (the "LDRs") of the Code of Ordinances (the "Code") of the City of Key West, Florida (the "City"), the applicant filed a conditional use application for a bar/lounge use within on property located at 504 Angela Street 501-505 Greene Street; and

WHEREAS, City Code Section 122-62 outlines the criteria for reviewing a conditional use application by the Planning Board; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on June 16, 2016; and

WHEREAS, the Planning Board found that the proposed use complies with the criteria in City Code Sections 122-62 and 122-63; and

WHEREAS, the approval of the conditional use application will be in harmony with the


Chairman

Planning Director

general purpose and intent of the LDRs, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

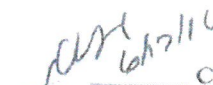

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

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

Section 2. That a conditional use request, pursuant to Sections 122-62 and 122-688(9) of the Code of Ordinances of the City of Key West, Florida is hereby approved as follows: allowing a bar/lounge use on property located at 501-505 Greene Street (RE # 00000520-000000; AK # 1000515), with the following conditions:

General conditions:

1. The kitchen facilities will be used for take-out food only. On site consumption of food will require additional seating impact fee charges. All impact fees and required business tax receipts shall be coordinated with the City Licensing Official.
2. The approved use shall be consistent with the attached plans by Richard J. Mielli date April 8, 2016.
3. All required Certificates of Appropriateness shall be obtained for the proposed development.
4. No outdoor amplified music is to be permitted on the property.


Chairman

Planning Director
6/17/16

Conditions prior to issuance of a Certificate of Occupancy and/or Business Tax

Receipt:

5. The owner shall obtain and maintain a Conditional Approval Permit, pursuant to City Code Chapter 18, Article XII, Division 1. The City Code Compliance shall inspect the property on an annual basis upon reasonable notice to determine compliance with the above general conditions.

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 and construction shall commence within 12 months after the date hereof.

Section 4. This resolution 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 and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

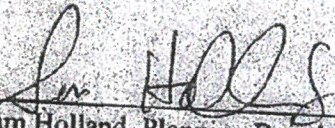
Section 6. This resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit or development order will be rendered to the Florida Department of Economic Opportunity. Pursuant to Chapter 73C-44, F.A.C., this permit or development order is not effective for 45 days after it has been properly rendered to the DEO with all exhibits and applications attached to or incorporated by reference in this approval; that within the 45-day review period the DEO can appeal the permit or development order to the Florida Land and Water Adjudicatory

CM
6/17/16
Chairman
TD
6/17/16
Planning Director

Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement or order.

Read and passed on first reading at a regularly scheduled meeting held this 16th day of June, 2016.

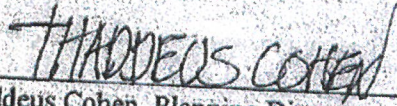
Authenticated by the Chair of the Planning Board and the Planning Director.



Sam Holland, Planning Board Chair

6/17/16
Date

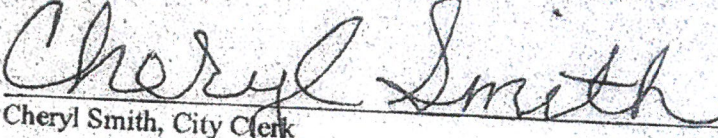
Attest:



Thaddeus Cohen, Planning Director

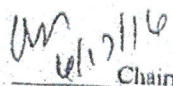
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
Filed with the Clerk:



Cheryl Smith, City Clerk

6/20/16
Date



Chairman


Planning Director
6/17/16

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



To: Chair and Planning Board Members

From: Patrick Wright, Planner II

Through: Thaddeus Cohen, Planning Director

Meeting Date: June 16, 2016

Agenda Item: **Conditional Use – 501-505 Greene Street (RE # 00000520-000000; AK # 1000515)** – A request for conditional use to allow bar lounge use on property located in the Historic Residential Commercial Core – Duval street Gulfside (HRCC-1) Zoning District pursuant to Sections 122-62 and 122-688 (9) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: To allow the expansion of an existing bar lounge to accommodate 87 seats with a total of 1,695 square feet of consumption area.

Applicant: Donald Leland Craig, AICP

Property Owner: 135 Duval Company

Location: 501-505 Greene Street (RE # 00000520-000000; AK # 1000515)

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



Background:

The subject property is located at the northwest corner of Duval and Greene Street. The property is immediately surrounded on all sides by the Historic Residential Commercial Core – Duval Street Gulfside zoning district. The property is approximately 8,138 square feet.

The Green room bar currently operates in a 642 square foot space on the first floor of the building. The second floor is currently commercial floor area and the third floor is a transient rental. This application proposes converting the third floor transient residential space to office and storage while expanding the bar/lounge to the second floor and adding additional floor area for an outdoor deck on the same floor. The total proposed floor area for the entire building is 7,424 square feet (5,471 square feet of the Green Room) with 1,695 square feet of consumption area for the bar/lounge.

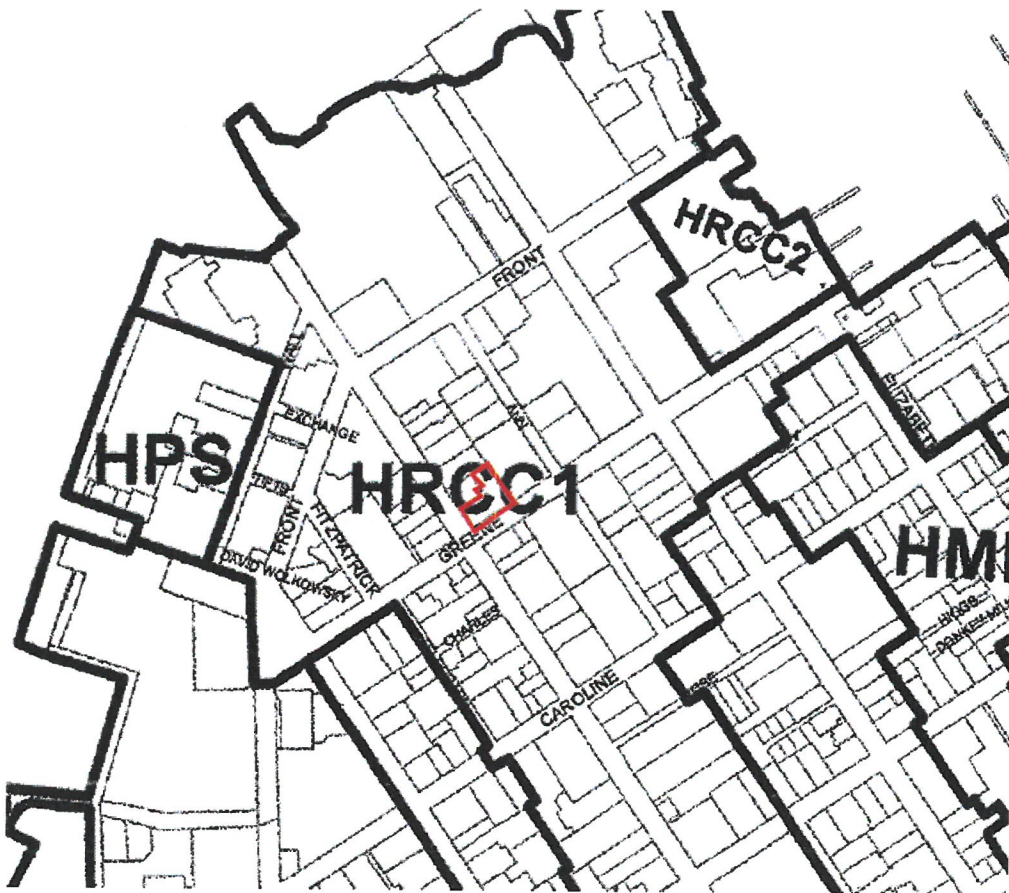
Surrounding Zoning and Uses:

North: HRCC-1, Commercial Uses, scooter rental and restaurant

South: HRCC-1, Commercial Uses, bar/lounge and retail uses

East: HRCC-1, Commercial Uses, bar/lounge and retail uses

West: HRCC-1, Commercial Use, retail use



Process:

Development Review Committee:	March 24, 2016
Planning Board:	May 19, 2016
Historic Architectural Review Commission:	Pending
Local Appeal Period:	10 days
DEO Review:	Up to 45 days

Conditional Use Review

The purpose of conditional use review, pursuant to City Code Section 122-61, is to ensure that a conditional use shall only be permitted on specific sites where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity. City Code Chapter 122, Article III sets forth provisions and criteria for consideration of conditional uses on specific sites. Conditional uses shall be permitted only upon a finding that the proposed use satisfies this article.

Conditional Use Specific Criteria pursuant to Code Section 122-62

(a) Findings

Code Section 122-62(a) provides, in part, that “a conditional use shall be permitted upon a finding by the Planning Board that the proposed use, application, and, if applicable, development plan comply with the criteria specified in this section, including specific conditions established by the Planning Board and/or the City Commission during review of the respective application in order to ensure compliance with the comprehensive plan and land development regulations.” This section also specifies that “a conditional use shall be denied if the city determines that the proposed use does not meet the criteria provided in this section and, further, that the proposed conditional use is adverse to the public’s interest.”

(b) Characteristics of use

The proposed use is the expansion of a bar/lounge to the second and third floor of the existing building located at the northwest corner of Duval and Greene Street. The property is located in close proximity to a number of bar/lounge, retail and restaurant uses. The property is also located in the HRCC-1 zoning district which is defined as 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.

(1) Scale and intensity of the proposed conditional use as measured by the following:

a. Floor area ratio (FAR):

The total parcel area is 8,138 square feet. The permitted FAR in the HRCC-1 Zoning District 1.0. The existing FAR is 0.85 (6,927 sq. ft.). The proposed FAR is .91 (7,424 square feet) and is conforming.

b. Traffic generation:

The property is located in the historic commercial pedestrian oriented area. The location is in the lower Duval Street area which is comprised of bar/lounge uses along

with some retail and restaurants. The applicant provided a survey of current patrons and found that 90% arrived by non-automobile means. This is consistent with most commercial uses in the HRCC-1 especially the lower Duval Street area that is the epicenter of the tourist and cruise ship thoroughfare along Duval Street.

c. Square feet of enclosed space for each specific use:

The entire building is 7,424 sq. ft. of floor area. 1,953 square feet of the enclosed building currently houses a restaurant and scooter rental shop. The third floor as proposed will be 998 square feet of office and storage for the bar/lounge. The remaining 4,473 square feet will be for the bar/lounge use with a small kitchen for take-out food only. This use is seen as accessory to the principal use.

d. Proposed employment:

6 full time employees

e. Proposed number and type of service vehicles:

Staff does not anticipate any adverse impacts from service vehicles.

f. Off-street parking needs:

The property is located in the historic commercial pedestrian oriented area, however new floor area is being proposed as well as the conversion of residential floor area to commercial floor area. Section 108-573 (b) (1) & (3) states that in this situation although located in the commercial pedestrian oriented area parking requirements shall be applied.

The property currently maintains 3 existing off street parking spaces. The additional floor area will trigger another 11 spaces required by code. The applicant was issued a waiver by the Planning Board to the parking variance moratorium (City Commission Ordinance 15-05) on December 17, 2015. Under the allowance of that waiver the applicant has submitted a parking variance request for the additional 8 spaces required. That application will be heard concurrent with the conditional use request.

(2) On- or off-site improvement needs generated by the proposed conditional use and not identified above including the following:

a. Utilities

Staff does not anticipate any improvement needs regarding utilities.

b. Public facilities, especially any improvements required to ensure compliance with concurrency management as provided in City Code Chapter 94

None expected. Compliance with building codes and life safety codes would be required prior to building permit issuance.

c. Roadway or signalization improvements, or other similar improvements

None expected.

d. Accessory structures or facilities

None proposed.

e. Other unique facilities/structures proposed as part of site improvements

None proposed.

(3) On-site amenities proposed to enhance site and planned improvements, including mitigative techniques such as:

a. Open space

The parcel is currently nonconforming to commercial open space requirements. No changes are proposed.

b. Setbacks from adjacent properties

No changes proposed.

c. Screening and buffers

No changes proposed.

d. Landscaping berms proposed to mitigate against adverse impacts to adjacent sites

No changes proposed.

e. Mitigative techniques for abating smoke, odor, noise and other noxious impacts

No noxious impacts expected.

(c) Criteria for conditional use review and approval

Pursuant to City Code Section 122-62(c), applications for a conditional use shall clearly demonstrate the following:

(1) Land use compatibility

The proposed use would be located in the HRCC-1 zoning district. Per Section 122-686 the intent of the HRCC-1 zoning district defined as 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.

(2) Sufficient site size, adequate site specifications and infrastructure to accommodate the proposed use

The size and shape of the site are adequate to accommodate the proposed scale and intensity of the conditional use requested.

(3) Proper use of mitigative techniques

No adverse impacts anticipated.

(4) Hazardous waste

None expected or proposed.

(5) Compliance with applicable laws and ordinances

Comply with all applicable laws and regulations would be required.

(6) Additional criteria applicable to specific land uses

Applicants for conditional use approval shall demonstrate that the proposed conditional use satisfies the following specific criteria designed to ensure against potential adverse impacts which may be associated with the proposed land use:

- a. **Land uses within a conservation area:** N/A
- b. **Residential development:** N/A
- c. **Commercial or mixed use development:** No negative impacts expected.
- d. **Development within or adjacent to historic district:** The proposed renovations will require HARC approval.
- e. **Public facilities or institutional development:** N/A
- f. **Commercial structures, uses and related activities within tidal waters:** N/A
- g. **Adult entertainment establishments:** N/A.

RECOMMENDATION:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends to the Planning Board that the request for Conditional Use be **APPROVED WITH CONDITIONS** as follows:

General conditions:

1. The kitchen facilities will be used for take-out food only. On site consumption of food will require additional seating impact fee charges. All impact fees and required business tax receipts shall be coordinated with the City Licensing Official.
2. The approved use shall be consistent with the attached plans by Richard J. Milelli date April 8, 2016.
3. All required Certificates of Appropriateness shall be obtained for the proposed development.
4. No outdoor amplified music is to be permitted on the property.

Conditions prior to issuance of a Certificate of Occupancy and/or Business Tax Receipt:

5. The owner shall obtain and maintain a Conditional Approval Permit, pursuant to City Code Chapter 18, Article XII, Division 1. The City Code Compliance shall inspect the property on an annual basis upon reasonable notice to determine compliance with the conditions of the Planning Board resolution.