



Executive Summary



EXECUTIVE SUMMARY

To: Jim Scholl, City Manager
Through: Amy Kimball-Murley, AICP, Planning Director
From: Brendon Cunningham
Meeting Date: June 1, 2010
RE: Variance Request, 1908 Flagler Avenue

ACTION STATEMENT:

Request: A variance request for alcohol sales to be conducted within 300 feet of a school and a church per Section 18-28 of the Code of Ordinances of the City of Key West, Florida.

Location: 1908 Flagler Avenue (RE# 00063450-000000)

Owner: 1908 Flagler Corp.

Zoning: Limited Commercial (CL) zoning district

BACKGROUND:

This request is for a variance to Section 18-28 (a) of the Code of Ordinances which prohibits the sale of alcoholic beverages within 300 feet of certain specified uses, including churches and schools. Section 18-28 (b) allows aggrieved property owners to apply to the city commission for a variance.

The property at 1908 Flagler Avenue is currently occupied by Essy's Café. The owner would like to have the ability to serve beer and wine in conjunction with the existing food and non-alcoholic beverage service. The property is located within 300 feet of a Salvation Army meeting hall (church) and the Key West High School.

Because the subject property is located within 300 feet of a church and a school, the provisions of Section 18-28 (a) of the City Code apply. These provisions include a statement 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."

Certain individuals and properties may be exempt from Code Section 18-28 (a) because different Code provisions were in place when the original licensure was granted. However, there is no record of alcoholic beverage sales on the subject property. As a result, the applicant is seeking variance approval from the City Commission to the proximity requirement between establishments regulated in Section 18-28 (a) of the City Code.

CITY ACTIONS:

No City actions have been taken in regards to this specific application.

PLANNING STAFF ANALYSIS:

The City Attorney has determined that land development regulation variance criteria established in the code is not applicable to this provision. Therefore, staff is treating this request as a quasi-judicial determination. Therefore, the City Commission must have substantial competent evidence to support the decision it reaches. Although land development regulation criteria are not applicable to this variance, land use compatibility is relevant and forms the basis for the Department's analysis.

The property is located in the Limited Commercial (CL) zoning district which allows for restaurant uses as of right. Alcohol sales would be considered as an accessory use to a restaurant. The need for this variance application is generated by the location of the proposed accessory use to a school and a church. The inclusion of Section 18-28 in the Code of Ordinances demonstrates a general concern regarding the sale and consumption of alcohol within a certain proximity of other land uses, particularly schools and churches. Considering land use compatibility, it would seem that religious and educational facilities would be incongruous with the sale and consumption of alcohol. However, there are other businesses that sell alcohol in the immediate area and have done so historically. While the Department has concerns about increasing allowed alcohol sales proximate to sensitive uses, especially high schools, limitations on the hours of sale consistent with the code and the current hours of operation, restriction of the type of alcohol sales to beer and wine, and association of the variance with the existing restaurant business, Essy's Café, would help mitigate concerns.

CONSISTENCY WITH THE CITY'S VISION AND MISSION STATEMENT

This request is consistent with the provision of quality, professional services to all City customers and with serving customers in the most cost effective way.

Options / Advantages / Disadvantages:

Option 1. To approve the variance request, allowing alcoholic beverages to be sold as an accessory use to the restaurant use on the property, which is within 300 feet of a school and a church, with recommended conditions.

1. **Consistency with the City's Strategic Plan, Vision and Mission:**
Approval of the Variance appears to be consistent with the City's

2. **Financial Impact:** The approval of the requested Variance would not generate direct financial impact to the City.

Option 2. To deny the variance request, which would prohibit alcoholic beverage sales to be sold within 300 feet of a school and a church.

1. **Consistency with the City's Strategic Plan, Vision and Mission:** Denial of the Variance would not be inconsistent with the City's Strategic Plan, Vision, or Mission, if public health, safety, or welfare would be compromised as a result of the sale of alcohol on the site.
2. **Financial Impact:** The denial of the requested Variance would not generate direct financial impact to the City.

RECOMMENDATION:

The Planning Department recommends approval of the request with the following conditions:

1. That the sale of alcohol will consist of beer and wine only and will be accessory to the restaurant use, and contingent upon a revenue generation ratio of 51% food and 49% alcohol sales.
2. That the sale of alcohol is limited to the following hours: 11:00 a.m. to 8:00 p.m. Monday through Saturday and 12:00 pm to 8 p.m. on Sunday.
3. The variance is associated with the operation of Essy's Café only.