



EXECUTIVE SUMMARY

To: Jim Scholl, City Manager
Through: Amy Kimball-Murley, AICP, Planning Director
From: Ashley Monnier, Planner II
Date: July 6, 2010
RE: Variance Request, 512 Eaton Street

ACTION STATEMENT:

Request: A Variance request for alcohol sales to be conducted within 300 feet of church and funeral home establishments in the HNC-1 zoning district per Section 18-28 of the Code of Ordinances of the City of Key West, Florida.

Location: 512 Eaton Street (RE# 00006500-000000)

Zoning: HNC-1 (Historic Neighborhood Commercial 1)

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 funeral homes. Section 18-28 (b) allows aggrieved property owners to apply to the City Commission for a variance.

In 2007 a conditional use approval was granted for property located at 512 Eaton Street. The approval allowed the conversion of a former church/theatre into a restaurant with stage and screen entertainment and an accessory bar area. The approval was granted via Planning Board Resolution 2007-042, and included 3,075 square feet of consumption area. In November of 2009 the Planning Board granted Resolution 2009-043, allowing a one-year extension of the conditional use approval. The extension was approved with conditions that required that the applicant receive alcohol sales variance approval; that the sale of food and non-alcoholic beverages constitute 51% or more of the business; and that the sale of food occurs during the time in which service is provided to the public.

In general, a restaurant is where the principal business is the sale of food and where sale of alcoholic beverages is accessory to, and within, the restaurant use. Therefore, the

approved conditional use, extended with conditions via Planning Board Resolution, allows only alcohol sales accessory to the restaurant and this report is predicated on the use as so framed.

Because the subject property is located within 300 feet of two churches and a funeral home, 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.”

While certain individuals may be exempt from Code Section 18-28 (a) because different Code provisions were in place when the original licensure was granted, the subject property is not exempt from this requirement because alcoholic beverage sales previously occurring on the site were not maintained on the property and therefore considered abandoned. 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 are 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 HNC-1 zoning district, which allows for restaurant uses on a conditional basis. Alcohol sales are considered an accessory use to the restaurant. The need for this variance application is generated by the location of the proposed accessory use to two churches and a funeral home. The inclusion of Section 18-28 in the Code of Ordinances demonstrates a general concern regarding the sale and consumption of alcohol within certain proximity of other land uses, particularly schools churches, cemeteries, and funeral homes. When looking at land use compatibility, it would appear that religious and mortuary establishments might be incompatible with the sale and consumption of alcohol. However, there are other businesses established within 300 feet of the affected land uses that sell alcohol. In addition, the facility is located one block away from the City’s most intense entertainment district. While the Department has concerns about increasing allowed alcohol sales proximate to sensitive uses, limitations on the hours of operation that the applicant committed to as part of the conditional use approval and correlation of the variance with other conditions associated with the underlying approval may help mitigate concerns.

The cumulative sets of conditions associated with the conditional use approval and associated extension are as follows:

Planning Board Resolution No. 2009-043

- The approval of the Conditional Use Extension is contingent upon the approval of the variance request for alcohol sales at 512 Eaton Street (RE# 00006500-000000).
- The sale of food, dessert, and non-alcoholic beverages must constitute 51% or more of business.
- The sale of food must occur during the time in which service is being provided to the public.

Planning Board Resolution No. 2007-042

- A grease trap shall be approved, installed, and inspected by the City.
- Placement of solid waste containers out-of-doors will be timed closely and quietly for regular commercial pickup.
- Applicant shall install sound attenuation to contain sound from entertainment activities within the building, particularly amplified sound from live performances.
- Applicant will limit exterior lighting to existing approved marquee fixtures.
- Hours of operation will be no later than 12:00 a.m., midnight Sunday through Thursday and regular hour of operation for the City of Key West on Friday and Saturday.

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 accessory to the approved restaurant use on the property within 300 feet of two churches and a funeral home, with the following condition:

- That the sale of alcohol is accessory to the restaurant use on the site, and is subject to the terms of the conditional use approval granted through Resolution 2007-042, as well as the conditional use extension granted by Planning Board Resolution 2009-043.

1. Consistency with the City's Strategic Plan, Vision and Mission: Approval of the variance appears to be consistent with the City's Strategic Plan, Vision, and Mission, as long as public health, safety, and welfare are not compromised as a result of the sale of alcohol on the site. At this time, the Planning Department is not aware of any life-safety concerns that may generate from the sale of alcohol accessory to the restaurant use on the site.

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; prohibiting alcoholic beverages to be sold within 300 feet of two churches and a funeral home.

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:

If the City Commission finds substantial competent evidence to support the request, then staff recommends the **approval of Option 1, with the following condition:**

1. That the sale of alcohol is accessory to the restaurant use on the site, and is subject to the terms of the conditional use approval granted through Resolution 2007-042, as well as the conditional use extension granted by Planning Board Resolution 2009-043.