

**The City of Key West
Planning Board
Staff Report**



To: Chair and Planning Board Members

From: Melissa Paul-Leto, Planner I

Through: Roy Bishop, Planning Director

Meeting Date: September 19, 2019

Agenda Item: **An Amendment to an Alcohol Sales Exception – 1103-1105-1107 Simonton Street (Re# 00027490-000000; 00027510-000000)** – A request to amend a previous approval for a special exception to the prohibition of alcoholic beverage sales within 300 feet of a church, school, cemetery or funeral home property in order to grant exclusively 1105 Simonton LLC, joined with Fernandy's Café LLC to serve beer and wine to the public on property located within in the Historic Neighborhood Commercial-Truman/Simonton (HNC-1) zoning district pursuant to Section 18-28(b)(2) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: To grant a special exception to sell alcoholic beverages for a food truck restaurant located within 300 feet of a school.

Applicant: Oropeza, Stones & Cardenas

Property Owner: 1105 Simonton LLC

Location: 1103-1105-1107 Simonton Street - (Re# 00027490-000000; 00027510-000000)

Zoning: Historic Neighborhood Commercial (HNC-1) zoning district



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 applicant has requested an amendment to a previous Alcohol Sales Exception approval from June 21, 2018 per Resolution #2018-20. The previous approval allows for the sale and consumption of beer and wine as an accessory use to a new restaurant, with an alcohol sales exception granted exclusively to 1105 Simonton LLC. The amendment request is altering the existing special exception to be granted to 1105 Simonton LLC and joined with Fernandy's Café LLC. The parcel is located on the 1100 block of Simonton Street. There are no funeral homes, churches, or cemeteries within 300 feet of the property. The property is within 300 feet of one school:

- The Basilica School of Saint Mary Star of the Sea, 724 Truman Avenue

Process:

Planning Board Meeting: September 19, 2019

Local Appeal Period: 30 days

DEO Review Period: 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 the following criteria:

A. Compatibility with surrounding existing uses:

The property is located within the Historic Neighborhood Commercial (HNC-1) zoning district which is located along major segments of Simonton Street, from Caroline South to United Street; Truman Avenue, from Simonton Street northeast to White Street; and White Street, from Truman Avenue south to United Street; and generally, includes larger scale commercial uses oriented toward the motoring public.

City staff took measurements utilizing a GIS geospatial measurement. The results are the following: 167 feet starting from the property line from Amelia Street and ending at the property line of the, The Basilica School of Saint Mary Star of the Sea, 724 Truman Avenue.

The measurements confirm the subject site is located within 300 feet of, The Basilica School of Saint Mary Star of the Sea; however, due to the scope of requested accessory alcohol sales; staff submits that the request 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:

As of the date this report is written, the applicant states the proposed restaurant with beverage sales would operate on from Sunday to Thursday from 11:00 a.m. to 10:00 p.m. and 11:00 a.m. to 11:00 p.m. on Friday and Saturday, holidays, and special events.

The Basilica School of Saint Mary Star of the Sea, 724 Truman Avenue; School hours are Monday through Friday from 8 a.m. to 2:45 p.m.

C. Mitigation measures agreed to be implemented by the applicant:

Applicant agrees to limit alcohol sales to beer and wine (no liquor). Hours of operation Sunday to Thursday from 11:00 a.m. to 10:00 p.m., Friday and Saturday from 11:00 a.m. to 11:00 p.m. The property is substantially enclosed by a (6) six-foot chain-link fence. Applicant will follow Florida ABT regulation on alcohol sales occurring in conjunction with food sales and is receptive to any additional suggestions for mitigation made by planning staff, planning board or from neighborhood input.

D. Public input:

As of the date of this report, the Planning Department has not received any public comments regarding this application. The applicant has submitted a letter written by Father John C. Baker Pastor of The Basilica of Saint Mary Star of the Sea. The letter states that The Basilica of Saint Mary supports the application for a food truck with a special exception for beer and wine at 1105 Simonton Street.

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 of the date of this report, there have been no objections to the applicants request to sell beer and wine as an accessory use to the new restaurant.

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 property owner 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.

Per Section 18-28(e) which states “upon receipt of an application, the planning board shall hold a public hearing upon the application in accordance with the procedures cited in section 90-393 and shall render an order granting or denying such application. In granting such application the planning board must make specific findings respecting each of the matters specified in subsection (b) (2), above.”

As stated above, the Planning Board must make a specific finding on the criteria. Staff recommends to the Planning Board that the response to the criteria outlined in the staff report be taken into consideration in rendering an order to grant or deny the request.

RECOMMENDATION:

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

1. The special exception to serve beer and wine to the public is granted exclusively to 1105 Simonton LLC, joined with Fernandy's Café LLC.
2. The hours of operation for the restaurant shall not exceed 10:00 p.m. on Sunday through Thursday and 11:00 p.m. on Friday and Saturday.