

**THE CITY OF KEY WEST
PLANNING BOARD
Staff Report (revised)**



To: Chairman and Planning Board Members

Through: Roy Bishop, Planning Director

From: Vanessa Sellers, Planner II

Meeting Date: August 15, 2019 (postponed by applicant)
September 19, 2019 (postponed by the board)
October 17, 2019

Agenda Item: **Transient Unit/License Transfer - One (1) unit & license in unassigned status (previously 421 Simonton Street Unit 3; RE# 00006360-000000) to 10 Key Cove Drive #10 (RE# 00002410-000510) and forfeiture of one (1) transient “no use permitted” license assigned to 3 Key Cove Drive (RE# 00002410-000503) and one (1) transient “no use permitted” license assigned to 10 Key Cove Drive (RE# 00002410-000510) - A request to transfer one transient unit & license in unassigned status to property located within the Commercial General (CG) zoning district and forfeit and return to the City of Key West two transient “no use permitted” licenses assigned to two separate properties located within the CG district pursuant to the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.**

| SITE DATA: | | | | |
|----------------------------|---|---|---|---|
| | Sender Sites (3) | | | Receiver Site |
| License Owner: | Simonton Partners LLC | Key Cove Landings LLC | Key Cove Landings LLC | Key Cove Landings, LLC |
| Property Owner: | N/A – Unassigned. | Key Cove Landings LLC | Key Cove Landings LLC | Key Cove Landings, LLC |
| Agent: | Richard McChesney of Spottswood, Spottswood, Spottswood, & Sterling | Richard McChesney of Spottswood, Spottswood, & Sterling | Richard McChesney of Spottswood, Spottswood, & Sterling | Richard McChesney of Spottswood, Spottswood, & Sterling |
| Location: | N/A – Unassigned. | 3 Key Cove Dr. #3 | 10 Key Cove Dr. #10 | 10 Key Cove Drive #10 |
| Real Estate Number: | N/A – Unassigned. | 00002410-000503 | 00002410-000510 | 00002410-000510 |
| Zoning District: | N/A – Unassigned. | CG | CG | CG |
| Existing Use: | N/A – Unassigned. | A 4-bedroom/4-bathroom non-transient residential unit (approx. 2,352 sf). | A 4-bedroom/4-bathroom non-transient residential unit (approx. 2,691 sf). | A 4-bedroom/4-bathroom non-transient residential unit (approx. 2,691 sf) – Lic. # 30594 and # 31595 |
| Proposed Use: | N/A – Unassigned. | A 4-bedroom/4-bathroom transient residential unit. | A 4-bedroom/4-bathroom transient residential unit. | A 4-bedroom/4-bathroom transient residential unit. |

Proposed Receiver Site:



Background:

The subject transient unit and license #34124 is currently in an unassigned status. The unit/license originated from 421-423 Simonton Street in the HNC-1 zoning district. The property consisted of commercial space and five (5) transient units. The property went under a major renovation in 2017, resulting in the elimination of three (3) of the units. According to records retrieved from the City’s Licensing Department, the three (3) units and licenses were placed in unassigned status on December 7, 2017.

The applicant is seeking approval to transfer **unassigned transient unit and license #34124** to a receiver site at 10 Key Cove Drive #10. The proposed receiver site currently consists of one (1) non-transient, 2,691-square foot, 4-bedroom/4-bathroom residential unit with the following layout:

- Ground Floor: Parking and Storage
- First Floor: Living Area, Dining Area, Kitchen, 1 Full Bath, Utility Room, and 1 Bedroom with 2 Closets
- Second Floor: 3 Bedrooms, Each with a Closet, and 3 Full Baths

The applicant also proposes to forfeit **business tax receipt #30595** and **business tax receipt #30594** and return them to the City. The comment line of each business tax receipt states “one transient rental unit,” however, the restrictions line says, “no transient use permitted.” See images below for reference.



Image of BTR #30595



Image of BTR #30594

Relevant Code Sections:

The purpose of City Code Chapter 122, Article V, Division 6 “Transient Units” outlined in Section 122-1336 is to:

- Provide for the transfer of existing transient units and transient licenses in order to reduce noncomplying density, structures and uses;
- Remove legal nonconforming transient uses from zoning districts that now prohibit them;
- Encourage permanent residential housing by relocating transient licenses;
- Provide for the conversion of transient units to single-family dwellings by the transfer of units;
- Allow for redevelopment without increasing the population requiring evacuation during emergencies or increasing other public services;
- Protect environmentally sensitive lands; and
- Encourage redevelopment under the existing Building Permit Allocation System (BPAS) that limits the allowable number of residential and transient units.

City Code Section 122-1338. Transfer of transient units.

- (1) The unit being transferred must currently be counted as a unit for purposes of calculating evacuation time under the hurricane model set forth in the comprehensive plan and must have been obtained in accordance with all applicable regulations, including building permits, at the time of approval or have been otherwise validly obtained if unbuilt at the time of transfer. A transfer pursuant to this division shall not cause a net increase of units in the city.
- (2) Transient use must be an allowed zoning use on the receiver site, unless the units are to be converted into non-transient units as contemplated by subsection (3) of this section. Further, no transient unit shall be recognized for transfer purposes, regardless of whether it will be used transiently or non-transiently, unless accompanied by a business tax receipt duly issued pursuant to section 66-109(10). When units are transferred for non-transient use, the licenses will be extinguished.
- (3) Transient units may be converted to residential units at the appropriate exchange rate as determined by the comprehensive plan so as not to increase hurricane evacuation time. Where a residential unit is created by the transfer of a transient unit and the new residential unit is 600 square feet or less, the transient unit may be transferred at its .58 ROGO unit equivalency into a residential unit with transient use prohibited.
- (4) The transferred units shall not operate to increase density of the receiver site above the maximum allowed density.
- (5) Unless the planning board determines that special conditions exist at the receiver site that warrant otherwise, the transient unit may not include more than two rooms, excluding bathrooms, and excluding porches and decks that are clearly not enclosed or habitable.
- (6) At the sender site, any remaining transient units that are remodeled or combined may not increase the existing number of rooms, excluding bathrooms. All such units shall not have "lockout" capacity.
- (7) There shall be no transfer of units into a "V" zone as depicted on the most current flood insurance rate map, if the transfer would produce new construction.

- (8) Existing nonconforming buildings may receive units providing their nonconforming aspects are not increased.
- (9) Development plans for both sites shall be processed as provided in the LDRs, according to the magnitude and type of development.
- (10) No building permit shall be granted for the receiver site until the city has verified that the transient use at the sender site unit(s) has been extinguished. A person or entity who has lawfully terminated or extinguished legal transient units existing as of January 1, 1999, may preserve the right to transfer the units and then transfer such units pursuant to this section, provided the transient licenses have been maintained. Furthermore, the city shall conduct on-site inspections at both the sender site and receiver site to verify that the terms of this ordinance are being met in the proposed transfer application.

City Code Section 122-1339 (a) states that a business tax receipt (e.g., license) for transient use of a unit may itself be transferred from an area where transient uses are prohibited to a receiver site without the accompanying transfer of the unit. In addition, licenses may be transferred from the HNC-1 and HNC-3 zoning districts. A transfer of a license under this section does not allow a loss of affordable housing at the receiver site.

City Code Section 122-1339 (b) states that where a license alone is transferred, the Planning Board shall consider whether the receiver site is suitable for transient use in the zoning district, shall consider the relative size of the unit from which the license is transferred, and shall consider the room configuration of both sites to maintain approximately the same or less net number of occupants.

City Code Section 122-1340. Development review committee and planning board review.

The development review committee (DRC) shall review each application for transfer. The planning board will receive comments from the DRC and the recommendation of the planning department and may deny an application on the grounds of inconsistency with the purpose of the ordinance or a violation of the specific provisions of the ordinance. When approving an application, the planning board may impose conditions, including but not limited to: physical modifications and the filing of deed restrictions, in order to assure the continuation of permanent residential housing, the preservation of community character and that the transfer advances the purposes of this division. The decision of the planning board shall be final.

Analysis:

The proposed transient unit/license transfer involves the transfer of one (1) transient unit and license and the forfeiture of two (2) business tax receipts. The proposed receiver site located at 10 Key Cove Drive #10 has one existing non-transient dwelling unit.

The following table summarizes the applicable approval criteria for the transfer of a transient unit pursuant to City Code **Section 122-1338**.

| Criteria: | Proposal: | Complies? (Yes or No) |
|-------------|------------|-----------------------|
| Sender Site | Unassigned | |

| Criteria: | Proposal: | Complies? (Yes or No) |
|---|---|---|
| Has transient license from the City | Transient rental license #34124. | Yes. |
| The unit is lawful and has been counted in the BPAS | The unit was in existence on or before April 2010 and would have been counted. | Yes. |
| Remaining number of rooms to same / does not increase BPAS count | N/A – Unassigned. | Yes. |
| Final use conforms with the LDRs | The transfer would place the license in assigned status at a location that permits transient use. Transient lodging is a permitted use of the CG zoning district. | Yes. |
| Development review process required for proposed construction / redevelopment | There is no proposed construction or redevelopment at this time. | Yes. |
| Receiver Site | 10 Key Cove Drive #10 | |
| Transient use is allowed, or the use is residential | Transient lodging is a permitted use of the CG zoning district. | Yes. |
| Complies with density | Maximum allowable density for this property is 1.6 (rounded down it is 1). | No. Allowed density for this property is 1 unit, however, the applicant proposes to lift the non-transient unit and replace it with the transient unit. The lifted unit will revert to the city for beneficial use. |
| The transient units retain BPAS equivalency | The license and unit will be transferred as 0.86 ESFU. | Yes. |
| New construction is not located with the “V” zone | The property is located in the Zone AE – Elevation 9-foot zone. | Yes. |
| Homeowners or Condo Association has approved | The applicant submitted an Amendment to the Declaration of Condominium and a Consent and Joinder of First Mortgage. | Yes. |
| Transient units may not exceed two rooms in size, excluding bathrooms | The receiver site has four (4) bedrooms. | No, unless the planning board determines that special conditions exist at the receiver site that warrant otherwise. |

The following table summarizes the applicable approval criteria for a transient business tax receipt transfer pursuant to City Code **Section 122-1339**:

(a) A business tax receipt for transient use of a unit may itself be transferred from an area where transient uses are prohibited to a receiver site without the accompanying transfer of the unit. In addition, licenses may be transferred from the HNC-1 and HNC-3 zoning districts. A transfer of a license under this section shall not result in a loss of affordable housing at the receiver site.

| | Analysis | Complies? (Yes or No) |
|--|--|----------------------------------|
| Transient license transfer from an area where transient uses are prohibited | N/A – The proposed transfer includes the transfer of a unit. | N/A |
| Transient license transfer from HNC-1 and HNC-3 zoning districts | N/A – The proposed transfer includes the transfer of a unit. | N/A |
| Transfer would not result in a loss of affordable housing at the receiver site | N/A – The proposed transfer includes the transfer of a unit. | N/A |

(b) Where a license alone is transferred, the planning board shall consider whether the receiver site is suitable for transient use in the zoning district, shall consider the relative size of the unit from which the license is transferred, and shall consider the room configuration of both sites to maintain approximately the same or less net number of occupants.

| | | |
|---|--|-----|
| Receiver site suitable for transient use | N/A – The proposed transfer includes the transfer of a unit. | N/A |
| Relative size of the unit from which the licenses are transferred | N/A – The proposed transfer includes the transfer of a unit. | N/A |
| Room configuration of both sites to maintain approximately the same or less net number of occupants | N/A – The proposed transfer includes the transfer of a unit. | N/A |

Recommendation:

Pursuant to section 122-1338 (4), the transferred units shall not operate to increase density of the receiver site above the maximum allowed density.

Pursuant to section 122-1338 (5), unless the planning board determines that special conditions exist at the receiver site that warrant otherwise, the transient unit may not include more than two rooms, excluding bathrooms, and excluding porches and decks that are clearly not enclosed or habitable.

Based on the above analysis of the standards for considering transfers of transient units and transient business tax receipts in Section 122-1338 and 122-1339 of the Land Development Regulations, the Planning Department recommends the request to forfeit one (1) transient “no use permitted” license assigned to 3 Key Cove Drive (RE# 00002410-000503) and one (1) transient “no use permitted” license assigned to 10 Key Cove transfer and the request to transfer one transient unit and associated business tax receipt from unassigned status to 10 Key Cove Drive #10 be **denied**.

However, if the Planning Board approves the request, staff would like to require the following conditions:

1. The existing non-transient residential unit at 10 Key Cove Drive #10 will be recaptured by the City through a waiver and release of building permit allocations and shall be recorded and dedicated for beneficial uses only, pursuant to Section 122-999.

2. All requirements of City Code Section 122-1371 shall be met for the transient use of the residential dwelling unit at 10 Key Cove Drive #10. A contact person must be available 24-hours per day, seven days per week for the purpose of responding promptly to complaints regarding the conduct of the occupants of the residential dwelling transient lodging. The name and phone number of the contact person must be posted on the exterior of the dwelling in a place accessible to the public.
3. The unit proposed to be used on a transient basis shall comply with all applicable codes and requirements of the Building Department, Fire Department, and all other regulatory agencies. The unit may not undergo a renovation or remodel that would increase the number of bedrooms.
4. The owner shall obtain and maintain a Conditional Approval Permit, pursuant to City Code Chapter 18, Article XII, Division 1. The Code Compliance Department shall inspect the property on an annual basis upon reasonable notice to determine compliance with the conditions of the Planning Board resolution.
5. The owner shall obtain and maintain a Conditional Approval Permit for Planning Board Resolution no. 2003-042 (approving an application for a minor development plan to construct 10 new single-family dwellings), pursuant to City Code Chapter 18, Article XII, Division 1. The Code Compliance Department shall inspect the property on an annual basis upon reasonable notice to determine compliance with the 10 conditions of the Planning Board resolution.
6. Automobile parking shall be restricted to the garages and the driveways. On-street parking and sidewalk parking shall be prohibited.
7. Occupancy shall be limited to 2 persons per bedroom or up to 8 persons per residential unit.
8. The applicant shall forfeit and return to the city business tax receipt number 30595 and business tax receipt number 30594.