



CITY OF KEY WEST, FLORIDA • PLANNING DEPARTMENT

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LAWFUL UNIT DETERMINATION

Date: January 28, 2016

To: Adele V. Stones, P.A.

Cc: Ron Wampler, Building Official
Larry Erskine, Chief Assistant City Attorney
Carolyn Walker, Licensing Official
Michael Turner, Utilities Collection Manager
Diane Nicklaus, Engineering Services
Scott Russell, C.F.A., Monroe County Property Appraiser

From: Thaddeus Cohen, Planning Director

Request: A determination that six (6) existing transient units are exempt from the City's Building Permit Allocation System (BPAS).

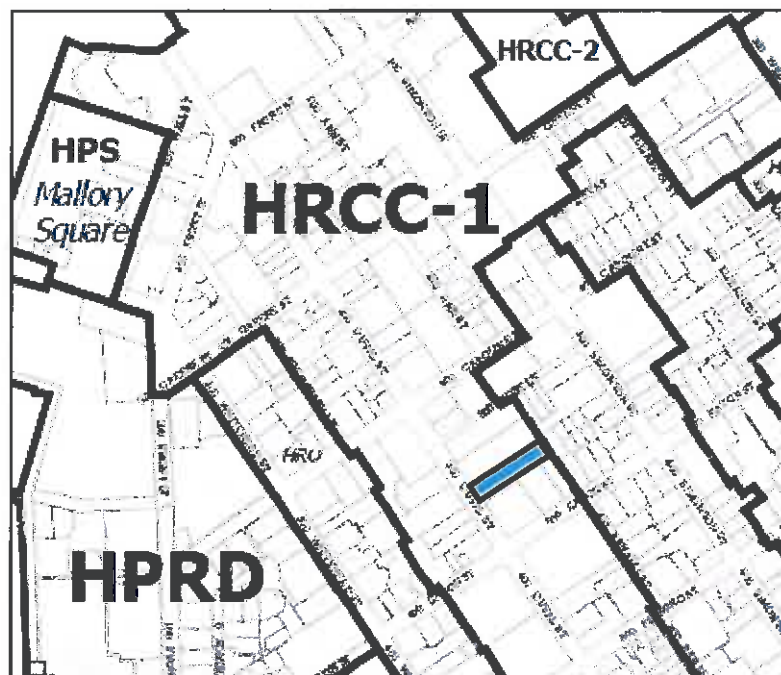
Applicant: Adele V. Stones, P.A.

Property Owner: Georgeann M. Favelli, Trustee

Location: 325 Duval Street, Old Customs House d/b/a Casa 325
(RE # 00004320-000000; AK # 1004499)

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

Zoning Map:



LUD Request:

As summarized in the table below, the applicant states there are currently 12 transient units and 1 commercial unit on the property. For BPAS purposes, all existing units would be considered transient units. The applicant requests recognition of 6 transient units as exempt from BPAS. The City's licensing and utility records indicate that there are currently 6 transient units recognized.

NUMBER OF RESIDENTIAL DWELLING UNITS		
UNIT TYPE	EXISTING	LICENSED / ACKNOWLEDGED
Non-Transient Market-Rate (1.0 ESFU, includes single-family and multifamily structure types)	0	0
Non-Transient Affordable (1.0 ESFU, includes single-family and multifamily structure types)	0	0
Transient (0.86 ESFU)	12	6
Accessory Unit / Single-Room Occupancy (SRO) (0.78 ESFU)	0	0
Nursing home, rest home, assisted living facility and convalescent home (0.10 ESFU)	0	0
Total Units:	12	6

Background:

The subject property is located directly behind a retail store which directly fronts Duval Street. The property consists of two detached structures. Building A is a two and one-half story wood frame structure. Building B is a two story wood-frame structure at the rear of the property. Historically, the subject property has been operated as a twelve unit guest house; however, it has only been licensed for six transient units.

City Licensing Departments reports that six apartments were in place as of August 24, 1976. They were converted into six transient units in 1991. It is unclear when the six additional transient units were created. However, prior to 1997 the property was zoned HP-2 (Commercial Historic Preservation District). In 1986, HP-2 was modified to allow transient units not to exceed 30 habitable units per acre for hotels, motels, guest houses and cottages via Ordinance 86-15. It was then reduced to 22 habitable units per acre in 1989 via Ordinance 89-6. Therefore when the units were created, the allowed density on the site allowed six units, which is what was legally established. The property then became nonconforming to density with the addition of the transient units.

In 1999, the City Commission approved a major development plan (CC Res 99-148) for the construction of a courtyard, swimming pool, new landscaping and a two story building with a footprint of 2,640 square feet. The new building at the rear of the property would contain a laundry/storage room, private office, spa/exercise room for guests and two transient units relocated from the existing transient building in the front part of the property. The existing building was remodeled to reduce the number of units. One condition of approval was that the site be limited at the time of that approval to six transient units.

Purpose and Intent / BPAS Applicability / Development Not Affected by BPAS:

The intent of the Building Permit Allocation System (BPAS), pursuant to City Code Section 108-987, is to implement the City's Comprehensive Plan by limiting annual permanent (non-transient) and transient residential development. All new permanent and transient residential units within the City are subject to the BPAS, except as expressly exempted in City Code Section 108-991. However, nothing in City Code

Chapter 108, Article X (BPAS), shall relieve the property owner from complying with other applicable sections of the City LDRs for development on the property.

Analysis / Findings:

Development consistent with the criteria in City Code Section 108-991 shall not be affected by the terms of City Code Chapter 108, Article X (BPAS), but such development shall comply with all applicable sections of the City's Land Development Regulations (LDRs).

Pursuant to City Code Section 108-991(3), units determined to have been in existence at the time the April 1, 2010, U.S. Census was prepared are presumed not to be affected by BPAS. The City Planner shall review available documents to determine if a body of evidence exists to support the existence of units on or about April 1, 2010. Units existing in 2010 will be documented through a mandatory site visit by City staff and at least two of the following records:

a. Aerial photographs and original dated photographs showing that the structure existed on or about April 1, 2010;

N/A. Aerial photos would indicate the existence of the land-based structures currently used as a guesthouse; however, the photos cannot confirm the number of units inside.

DOES NOT SUPPORT THE NUMBER OF TRANSIENT UNITS INSIDE.

b. Building permits issued prior to April 1, 2010;

A review of permit records yields the following information:

- 1/8/1992 - permit # E-92-000063, 6 ranges, 6 water heaters, 6 a/c, 6 fridges, 4 lgts
- 1/8/1992 - permit application for sewer connection, total of 6 residential units
- 1/9/1992 - permit # P-92-000071, 6 bathrooms, 6 lavatories, 6 sinks, 6 water closets, 6 heaters
- 3/26/1992 - permit # B-92-000069, 6 unit renovation
- 3/27/1992 - permit # M-92-000595, final inspection 6 apartments
- 4/2/1992 – solid waste receipt adding 2 units
- 4/3/1992 – Certificate of Occupancy, Certificate No C-649, associated permits B-91003219 and B-91-000069, commercial renovations (six apartments only)
- 8/27/1997 - permit # 97-2974, 6 existing units
- 7/31/1998 - permit # 98-00002353, flooring permit 6 units before, 6 units after
- 11/16/1998 - permit # 98-3624, new 2 story structure, 2 transient units (relocated from main structure), laundry/storage room, private office, spa/exercise room and brick pavers
- 8/11/1999 - permit # 99-00002817, renovation (remove kitchen, join units, reduce building by 2 units)

SUPPORTS RECOGNITION OF 6 LAWFULLY ESTABLISHED UNITS PRIOR TO 2010.

c. Copies of city directory entries on or about April 1, 2010;

- 2002 – 1 entry – 325 Casa motel
- 2003 – 2 entries – 325 Casa guest houses / Key West Information Center booth
- 2004 – 1 entry – Casa 325 guest houses
- 2005 – 3 entries – 325 Casa guest houses / Favell George & Ann / Van Staden Claude
- 2006 - 2008 - 2 entries – 325 Casa guest houses / Favell George & Ann
- 2009 – 2011 – 1 entry - Casa 325 guest houses

SUPPORTS EXISTENCE OF TRANSIENT AND NON-TRANSIENT USE PRIOR TO 2010.

d. Site visits which indicate that the age of the structure and associated improvements likely pre-date 2010;

The mandatory site visit by staff on September 1, 2015 confirmed that there are currently 12 transient units on the subject property.

SUPPORTS RECOGNITION OF 6 LAWFULLY ESTABLISHED TRANSIENT UNITS AND SUPPORTS EXISTENCE OF 6 ADDITIONAL TRANSIENT UNITS.

e. Rental, occupancy or lease records from before and including April 1, 2010, indicating the number, type and term of the rental or occupancy;

- Reservation log from "Rezovation Software", January 2010 - July 2012 Reservations, 12 units listed: Twin Studio, Lily, One Bedroom Suite, Room 3, Room 4, Room 5, Loft Suite, Two Bedroom, Room 8, Two Person Studio, Room 10, Four Person Studio
- Daily Credit Card Report, December 30, 2009 - January 5, 2010, 12 units listed.
- Daily Cash Report, December 30, 2009 - December 31, 2010, 12 units listed.

SUPPORTS RECOGNITION OF 6 LAWFULLY ESTABLISHED TRANSIENT UNITS AND SUPPORTS EXISTENCE OF 6 ADDITIONAL TRANSIENT UNITS.

f. Copies of state, county, and city licenses on and about April 1, 2010, indicating the number and types of rental units;

- **City** – 6 transient rental units
- **County** – 6 rooms from 2010 to 2013
- **State** – 6 transient units from 2010 to 2013

SUPPORTS RECOGNITION OF 6 LAWFULLY ESTABLISHED TRANSIENT UNITS.

g. Documentation for Keys Energy Service, Florida Keys Aqueduct Authority and other available utilities indicating the type of service (residential or commercial) provided and the number of meters on or about April 1, 2010;

- **City utilities** – 6 transient units
- **FCAA** – 8 units plus office/pool and spa
 - Apt 1, 12/11/1995
 - Apt 1 rear, 4/13/2000
 - Apt 2, 4/29/1994
 - Apt 2 rear, 4/13/2000
 - Apt 3, 4/29/1994
 - Apt 4, 12/11/1995
 - Apt 5, 4/29/1994
 - Apt 6, 5/21/1994
 - Office/pool, 4/13/2000
 - Spa, 4/13/2000
- **Keys Energy** – 10 apartments, 2 house/residential, 1 retail
 - Apt 1, 12/11/1995
 - Apt 1 R, 9/19/2000
 - Apt 2, 4/29/1994
 - Apt 2 R, 9/19/2000

- Apt 3, 4/29/1994
- Apt 3 R, 9/19/2000
- Apt 4 R, 9/19/2000
- Apt 5, 4/29/1994
- Apt 5 R, 9/19/2000
- Apt 6, 4/29/1994
- 325 Duval Retail, 3/12/1997
- 325 Duval Residential, 3/5/1998
- 325 Duval House, 9/19/2000

SUPPORTS RECOGNITION OF 6 LAWFULLY ESTABLISHED UNITS AND SUPPORTS EXISTENCE OF UP TO 6 ADDITIONAL UNITS.

- h. **Documentation for the Monroe County Property Appraiser's Office for the time on or about April 1, 2010, (Green Card); and**
- AK # 1004499, lists PC Code 39-Hotels, Motels. Notes mention 6 transient rooms (12/26/2002).
 - 1974 Green Card states one residential building with 12 rooms and 4 baths and one store.

SUPPORTS RECOGNITION OF 6 LAWFULLY ESTABLISHED TRANSIENT UNITS.

i. **Similar documentation as listed above:**

1. Prior Certificates of Occupancy:

- April 3, 1992, Certificate Number C-649, commercial renovations (six apartments only). Permit Numbers: B-91003219 and B-91000069.
- September 4, 2000, Certificate Number 2735, new two family. Permit Number: 99-00003624.

2. Prior approvals:

- City Commission Resolution 95-249 and 95-290 granted variances to dimensional requirements and subdivision of land.
- City Commission Resolution 97-369 granted variances to rear yard setback and construction of two story office and transient establishment at the rear of the property.
- City Commission Resolution 99-148 conditionally granted a major development plan approval to improve the existing guesthouse at 325 Duval Street. The approval allowed an increase in the size of the units, landscaping improvements, and amenities (including spa, pool, courtyard and laundry/storage facility). Three conditions were associated with the approval; one of which specified that the site was limited at the time of the approval to having six transient units.
- Department of Community Affairs – letter dated 6/22/1999, DCA will not appeal major development plan and site plan approval: construction of new two unit transient structure with four transient units remaining in the existing main building on site. Two transient units for new building transferred from main building for a total of six transient units on site.

3. Zoning Verification Analysis:

August 27, 2010 – Applicant submitted a request inquiring whether the Equivalent Single Family Value (ESFU) of units that were previously converted into transient residential units, can remain on the property and be permitted to be applied as additional units on the site. Planning determination stated that when calculating density and intensity on a site, the department cannot fractionalize density in the same manner as units are fractionalized in the BPAS. Therefore the density requirements would only permit six units to be allowed on the site regardless of their ESFU.

4. Property appraisal:

September 4, 2009 Appraisal Co. of Key West Property Appraisal, "Historically, the subject property has been operated as a twelve unit guest house; however, according to the City of Key West Licensing Department, the subject property is licensed as six transient units."

5. Zoning Analysis:

City Licensing Departments reports that six apartments were in place as of August 24, 1976. They were converted into six transient units in 1991. It is unclear when the six additional transient units were created. However, prior to 1997 the property was zoned HP-2 (Commercial Historic Preservation District). In 1986, HP-2 was modified to allow transient units not to exceed 30 habitable units per acre for hotels, motels, guest houses and cottages via Ordinance 86-15. It was then reduced to 22 habitable units per acre in 1989 via Ordinance 89-6. Therefore when the units were created, the allowed density on the site allowed six units, which is what was legally established. The property then became nonconforming to density with the addition of the transient units.

6. Innkeeper's Association 2006 Survey:

Number of licensed units: 6; Number of unlicensed units: 6; Total units: 12

7. Additional Utility Information:

- 1/10/92, FKAA project review documentation states 6 units
- 4/17/1995, Sewer Solid Waste Bill lists units 1-6, #333, and Arazi Mordechai at 325 Duval and Georgia Favelli at 325 Duval.

SUPPORTS RECOGNITION OF 6 LAWFULLY ESTABLISHED TRANSIENT UNITS AND SUPPORTS EXISTENCE OF 6 ADDITIONAL TRANSIENT UNITS.

- j. **Provision of affidavits to support the existence of a unit is allowed, but cannot be the sole record upon which a decision is based. Provision of documents is the responsibility of the applicant. The City Planner's decision shall be rendered to the Florida Department of Economic Opportunity for a determination of consistency with the Principals for Guiding Development.**

No affidavits submitted by applicant. The requested LUD, if approved, will be rendered to DEO as required.

DETERMINATION:

Pursuant to City Code Section 108-991(3), units determined to have been in existence at the time the April 1, 2010 U.S. Census was prepared are presumed not to be affected by BPAS. Therefore, based on the analysis above, a body of evidence exists to support the recognition of six (6) established transient units. However, due to a condition limiting the number of transient units in City Commission Resolution 99-148, the City is unable to recognize the six (6) additional illegal transient units as being exempt from the City's Building Permit Allocation System (BPAS).

This determination does not grant new unit allocations, but rather recognizes that a total of 6 transient units exist at 325 Duval Street.

CONDITION/REQUIREMENT:

- a. The property owner shall cease renting the 6 additional transient units at 325 Duval Street within 45 days after it has been rendered to the Department of Economic Opportunity. Failure to do so shall result in code compliance action.

Appeal and Rendering Information:

Pursuant to City Code Section 90-431(1)a., appeals of final decisions of the Planning Director must be filed with the City Clerk within 10 days after the date of the decision. After the 10-day administrative appeal period, this determination will be rendered to the Florida Department of Economic Opportunity (DEO), who has up to 45 days to review and appeal, pursuant to Chapter 73C-44, F.A.C. Any appeal would stay the effectiveness of this determination.

A handwritten signature in black ink that reads "THADDEUS L. COHEN". The signature is written in a cursive, slightly slanted style.

Thaddeus Cohen, Planning Director