

# THE CITY OF KEY WEST PLANNING BOARD Staff Report



**To:** Chairman and Planning Board Members

**Through:** Patrick Wright, Planning Director

**From:** Vanessa Sellers, Planner II

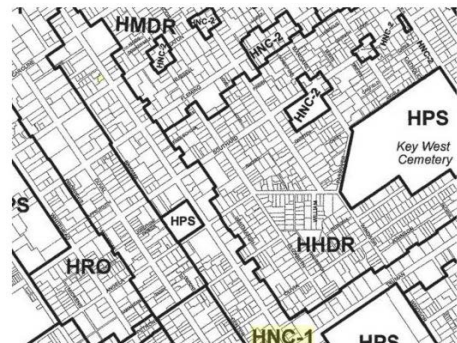
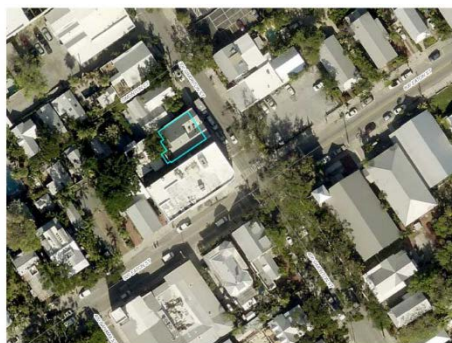
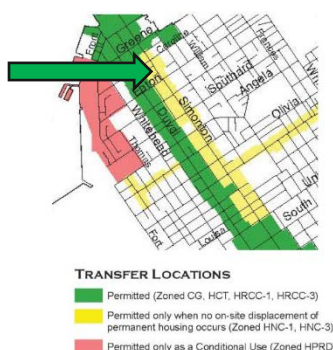
**Meeting Date:** May 16, 2019 (postponed)  
June 20, 2019

**Agenda Item:**

**Transient Unit/License Transfer – One (1) Unit & License assigned to 1213 Georgia Street Unit 2 (RE# 00035240-000000) to 328 Simonton Street (RE# 00004170-000100) - A request to transfer one transient unit & license from property located within the Historic Medium Density Residential (HMDR) zoning district to property located within the Historic Neighborhood Commercial - 1 (HNC-1) zoning district pursuant to the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.**

SITE DATA:		
	Sender Site	Receiver Site
<b>License Owner:</b>	Susan Murphy	328 Simonton Street LLC
<b>Property Owner:</b>	Susan J. Murphy	328 Simonton Street LLC
<b>Agent:</b>	Trepanier & Associates	Trepanier & Associates
<b>Location:</b>	1213 Georgia Street Unit 2	328 Simonton Street
<b>Real Estate (RE) Number:</b>	00035240-000000	00004170-000100
<b>Zoning District:</b>	HMDR	HNC-1
<b>Existing Use:</b>	Transient Residential	3-bedroom/2-bathroom non-transient residential
<b>Proposed Use:</b>	(Extinguished)	3-bedroom/2-bathroom transient residential

**Proposed Receiver Site:**



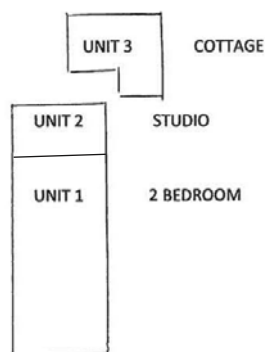
## **Background:**

Currently, the property at 1213 Georgia Street consists of three (3) units, each with a transient license. However, historically, the City of Key West recognized two (2) non-transient residential dwelling units at 1213 Georgia Street. The increase of the number of units from two (2) units to three (3) units and the change of use from non-transient residential to transient residential was the result of a lawful unit determination (LUD) dated June 16, 2017, executed pursuant to section 108-991, "Development not affected by article."

The applicant is proposing to eliminate Unit 2 (approximately 238-square-feet) by removing the kitchen and opening a wall. According to the applicant, the floor area will be incorporated into Unit 1 as a third bedroom. However, pursuant to section 122-1338 (6) any remaining transient units (Unit 1) that are remodeled or combined may not increase the number of rooms, excluding bathrooms. To remedy this, the applicant proposes to place the license currently assigned to Unit 1 into unassigned status. Unit 1 will then be a non-transient unit.

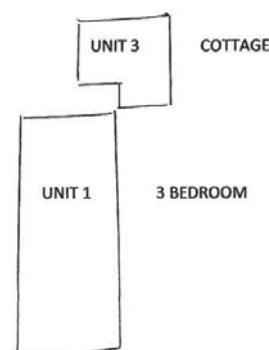
### **Sender Site**

#### **Existing unit plan provided by applicant:**



### **Sender Site**

#### **Proposed unit plan provided by applicant:**



The applicant is seeking approval to transfer the unit and license from Unit 2 to a receiver site at 328 Simonton Street.

The proposed receiver site at 328 Simonton Street currently consists of one (1) non-transient 3-bedroom/2-bathroom residential unit with a kitchen and living area (occupying the second and third floors), two (2) commercial retail units on the first floor, and one (1) commercial kitchen on the first floor (rear). However, prior to the current configuration and ownership, it is believed that two (2) residential units existed on the second floor of the structure. In 2018, the applicant provided historical records to the planning department and received a "build-back" letter that granted build-back rights for one (1) non-transient residential unit at 328 Simonton Street.

The proposed receiver site is located in the Historic Neighborhood Commercial (HNC-1) zoning district where transient use is permitted only when no on-site displacement of permanent housing occurs. Section 86-9 of the LDRs defines market-rate or permanent housing as housing occupied on a full-time basis or seasonally and is not intended for rent for less than 28 days.

The applicant is proposing to relocate the existing non-transient residential unit at 328 Simonton Street (on the 2<sup>nd</sup> and 3<sup>rd</sup> floors) to an area on the first floor of the receiver site, currently occupied by the commercial kitchen and a portion of one of the commercial retail units. The applicant

proposes to then transfer the subject transient unit and license from 1213 Georgia Street Unit 2 to the second/third floor of the receiver site.

**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 transient unit. The receiver site at 328 Simonton Street has one existing non-transient dwelling unit and rights to build-back a second non-transient dwelling unit.

The existing use of the receiver site at 328 Simonton Street is mixed-use. The proposed transfer would not result in a loss of affordable housing because there is no existing deed-restricted affordable housing at the receiver site.

Pursuant to section 108-571, parking shall be provided in all districts at the time any building or structure is erected or enlarged or increased in capacity by a change of use or the addition of dwelling units, transient units, floor area, seats, beds, employees or other factors impacting parking demand as stated in this article. However, the overall off-street parking requirement will be reduced with the proposed uses and, therefore, no additional parking is required.

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

<b>Criteria:</b>	<b>Proposal:</b>	<b>Complies? (Yes or No)</b>
<b>Sender Site</b>		
Has transient license from the City	Transient rental license number 33847 / medallion #933 license number 33851.	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	Unit 2 will be absorbed into Unit 1. The applicant has proposed that the new floor area will serve as a 3 <sup>rd</sup> bedroom for Unit 1 and that the transient license for Unit 1 will be lifted and placed into unassigned status.	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 HNC-1 zoning district.	Yes.
Development review process required for proposed construction / redevelopment	There is no proposed construction or redevelopment at this time.	Yes.
<b>Receiver Site</b>		
Transient use is allowed or the use is residential	Transient lodging is a permitted use of the HNC-1 zoning district.	Yes.
Complies with density	Maximum allowable density for this property is .69.	No. The nonconforming property has one unit and rights to rebuild a second non-transient unit. The applicant is proposing to transfer an additional transient unit and license.
The transient units retain BPAS equivalency	The license and unit will be transferred as 0.86 ESFU.	Yes.

<b>Criteria:</b>	<b>Proposal:</b>	<b>Complies? (Yes or No)</b>
New construction is not located with the “V” zone	The property is located in the X-flood zone.	Yes.
Homeowners or Condo Association has approved	N/A. No association exists.	Yes.
Transient units may not exceed two rooms in size, excluding bathrooms	The receiver site has three bedrooms.	No. However, the structure at 328 Simonton Street is a contributing structure to the Key West Historic District. Pursuant to section 122-1342, if the receiver site is an historic structure, the planning board may consider retaining the room layout.

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.

	<b>Analysis</b>	<b>Complies? (Yes or No)</b>
Transient license transfer from an area where transient uses are prohibited	Sender site is in the HMDR district where transient use is prohibited	Yes
Transient license transfer from HNC-1 and HNC-3 zoning districts	Sender site is in the HMDR district where transient use is prohibited	Yes
Transfer would not result in a loss of affordable housing at the receiver site	The receiver site is not deed-restricted affordable	Yes

(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 122-807, within the historic neighborhood commercial (HNC) districts, redevelopment or conversion of permanent housing structures to transient residential, office, or other allowable commercial uses shall be permitted only if no on-site reduction in housing units for permanent residents occurs.

Pursuant to section 122-1338 (4), the transferred units shall not operate to increase density of the receiver site above the maximum allowed density (0.69).

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 transfer one transient unit and associated business tax receipt from 1213 Georgia Street Unit 2 to 328 Simonton Street be **denied**.

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

1. All requirements of City Code Section 122-1371 shall be met for the transient use of the residential dwelling unit at 328 Simonton Street.
2. The owner or manager of the transient unit must instruct all tenants of the historic district's residential parking program and if the vehicle is not eligible to park on the street, then the owner or manager shall ensure that the tenant is directed to a lawful and appropriate parking space.
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 City Code Compliance shall inspect the property on an annual basis upon reasonable notice to determine compliance with the conditions of the Planning Board resolution.
5. The transient license assigned to 1213 Georgia Street Unit 1 shall be placed in an unassigned status and the remaining unit shall be re-classified as non-transient.