



**THE CITY OF KEY WEST
PLANNING BOARD
Staff Report**

To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Jordan Mannix-Lachner, Planner II

Meeting Date: November 20, 2024

Agenda Item: **Transfer of Transient Unit & License – 1004 Eaton Street (RE# 00005290-000000) to 423 Front Street (RE# 00000160-000000)** – A request for a transfer of two transient units and licenses from a property located at 1004 Eaton Street in the Historic Medium Density Residential (HMDR) zoning district to property located at 423 Front Street in the Historic Residential Commercial Core – 1 (HRCC-1) zoning district, pursuant to Section 122-1338 of the Land Development Regulations of the City of Key West, Florida.

Request: A request to transfer two transient units and two transient licenses from 1004 Eaton Street in the HMDR zoning district to a property at 423 Front Street in the HRCC-1 zoning district.

Property Owners: Sender Site: Key Endeavors, LLC
Receiver Site: Old Harbor House, Inc. C/O Duval Group, Inc.

Applicant: Trepanier & Associates

Sender Site Location: 1004 Eaton Street, HMDR

Receiver Site Location: 423 Front Street, HRCC - 1

SENDER SITE – 1004 EATON STREET:

- The sender site is located at 1004 Eaton Street in the HMDR zoning district, where transient use is not permitted. The sender site is immediately adjacent to a restaurant to the west, and a non-transient residential dwelling to the east.
- The sender site has historically held 8 transient units and licenses operating until recently as an 8-unit guesthouse.
- In June of 2023, the City received a building permit application to remodel the sender site from a guesthouse into a single-family home with a guest cottage, both proposed to be rented transiently.
- The Planning Department provided a memorandum recommending that the property owner not sell or transfer licenses from 1004 Eaton Street as the resulting rental activity would be non-compliant with respect to the Code’s definition of “family” per Section 86-9, which is defined as a not-for-profit housekeeping unit for a group of related persons, or up to four unrelated persons.
- As part of this application, the sender site applicant proposes one five-bedroom unit and one two-bedroom unit, to be operated under two of the existing transient licenses. The remaining licenses and units are either proposed to be transferred under other applications, or are pending final transfer under previous applications.



RECEIVER SITE – 423 FRONT STREET

Background:

The proposed receiver site is located at 423 Front Street in the HRCC – 1 zoning district. The 4,700 square-foot parcel contains a two-story historic structure which encompasses the entirety of the property's square footage. The first floor of the structure consists of commercial retail use. The second floor was converted for residential use after the property was awarded two permanent Building Permit Allocation System ("BPAS") units in 2019. Building permits were issued to build out the two units in 2021.

2023 Transient Unit/License Transfer:

In 2023, one transient unit and license was transferred to the site pursuant to Planning Board Resolution 2023-012. Certificates of Occupancy (CO) for the BPAS units have not yet been issued. The transient unit and license was assigned to one of the units that was being constructed using the BPAS award.

The maximum density for the HRCC-1 zoning district is 22 units per acre, which amounts to two (2) units for this parcel. The previous transient transfer would have resulted in three dwelling unit allocations at the site, provided the two BPAS awards were maintained. The property owner declined to return one of the BPAS units to the City for re-allocation. As a result, the property owner was required to sign an agreement as a condition of the transient unit transfer which recognized that a third unit could not be developed on site.

Current Request:

The applicant proposes to create a second transient unit on the property. The applicant proposes to transfer two transient units and licenses because the proposed transient unit has five rooms (including four bedrooms), and the Code provides that transient receiver units shall not have more than two rooms, unless the Planning Board finds that special conditions exist. The transient unit/license is proposed to be placed within the second and only remaining unit on the site that was built out using the BPAS award. The BPAS unit would not be permitted to be physically developed/utilized due the density requirements on site. The applicant seeks to maintain development rights for the two BPAS units awarded in 2019, in the case that the zoning district's density is ever increased to permit additional units (i.e. 37 units per acre or higher.)

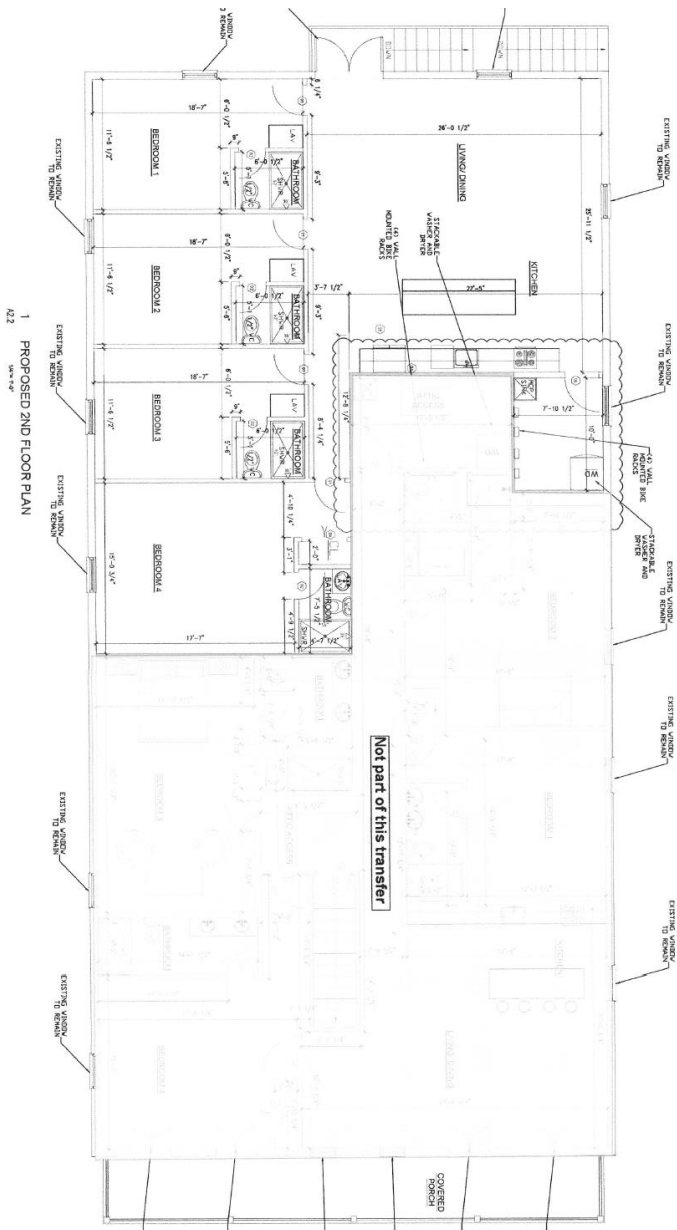
Receiver Site BPAS Units

BPAS is not intended to allow property owners to maintain BPAS awards without physically creating the units; applicants who obtain BPAS units are required to obtain building permits to construct the units within two years of the award date (Code Section 108-997, Comprehensive Plan Policy 1-1.16.1). Additionally, the Code requires that an applicant achieve the required prerequisites prior to receiving a CO.

As part of the ranked BPAS review and award system, the subject property scored 40 points for proposing a Platinum Certification from the Florida Green Building Council. The applicant has not yet established that the Platinum Certification has been achieved, and had not been achieved at the time of the previous transfer. This requirement was noted by the Planning Department at the time of the previous transfer. Despite this requirement, final COs were issued for both units in February of 2024; one CO was for the transient unit, and one was for the BPAS unit.

The Land Development Regulations do not contemplate a situation in which an applicant obtains building permits for a BPAS unit but does not subsequently develop the unit for the proposed use, or transfer transient units/licenses into the units prior to meeting the required prerequisites. At this time, the Planning Department is not able to establish the status of the two BPAS awards. The Planning Department recommends that the two BPAS units be returned to the City for reallocation should this transfer be approved, which is consistent with the intent of the BPAS ordinance and the transient transfer ordinance.

Receiver site floor plan:



Process:

DRC Meeting: September 26, 2024
Planning Board Meeting: November 20, 2024
Local Appeal Period: 10 days
DEO Review Period: Up to 45 days

Staff Analysis – Evaluation:

Sec. 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.

The subject unit is currently counted as a unit for the purposes of calculating evacuation time under the hurricane model set forth in the comprehensive plan, and was obtained in accordance with all applicable regulations.

IN CONFORMANCE

- (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.

Transient use is allowed on the receiver site. The applicant has a valid business tax receipt.

IN CONFORMANCE

- (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.

The request would not convert the transient unit into a residential unit.

IN CONFORMANCE

- (4) The transferred units shall not operate to increase density of the receiver site above the maximum allowed density.

The request would operate to increase the density of the receiver site above the maximum-allowed density.

NOT IN CONFORMANCE

- (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.

The applicant is transferring two units and licenses to account for the fact that the receiver site unit has 4 bedrooms and one living room. However, the Code does not distinguish between living rooms and bedrooms in counting rooms. Thus, the receiver site has five rooms for two units, rather than two rooms each.

NOT IN CONFORMANCE

- (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.

The number of rooms per transient unit/license at the sender site will increase, as the entire property is still proposed for transient use, although transient units/licenses are being transferred off-site.

NOT IN CONFORMANCE

- (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.

The receiver site is approximately 175 feet outside of the "V" flood zone as depicted on the most current flood insurance rate map.

IN CONFORMANCE

- (8) Existing nonconforming buildings may receive units providing their nonconforming aspects are not increased.

In accordance with Sec. 108-572, one (1) off-street parking space is required for every multi-family unit within the Historic District. Two (2) off-street parking spaces are required for every transient unit. The conversion of a permanent residential unit to a transient residential unit would increase nonconformities with regard to parking.

NOT IN CONFORMANCE

- (9) Development plans for both sites shall be processed as provided in the LDRs, according to the magnitude and type of development.

A development plan is not required.

IN CONFORMANCE

- (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.

The City shall verify that transient use at the sender site has been extinguished.

IN CONFORMANCE

RECOMMENDATION:

The proposed transfer of one transient license to the receiver site of 423 Front Street is subject to Section 122-1338. Based on the criteria of Section 122-1338 outlined above, the Planning Department recommends the request for a transfer of one transient license be denied. If the request is approved, the Planning Department recommends the following conditions:

Conditions:

1. The two BPAS units awarded by Planning Board Resolution 2019-025 shall be relinquished by the applicant to the City of Key West for re-allocation.

2. The applicant shall schedule an inspection to demonstrate that the transient use at the sender site has been extinguished. The inspection shall occur prior to the issuance of a Certificate of Occupancy and transient medallion issuance for 423 Front Street.