

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



**To:** Chairman and Planning Board Members

**Through:** Roy Bishop, Planning Director

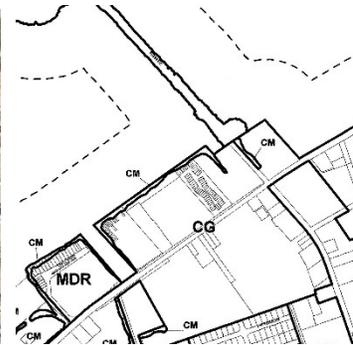
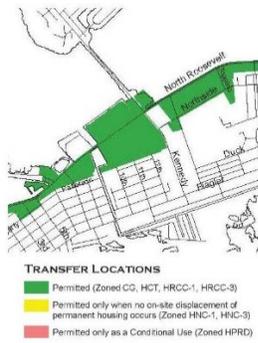
**From:** Vanessa Sellers, Planner II

**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 assigned to 307 Elizabeth Street Unit 3 (RE# 00003690-000000) and one (1) transient motel unit license in unassigned status (lic. no. 31652) to 4 Key Cove Drive # 4 (RE# 00002410-000504)** - A request to transfer one transient unit & license from property located within the Historic Medium Density Residential (HMDR) zoning district and one transient motel unit license in unassigned status to property located within the Commercial General (CG) zoning district pursuant to the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

<b>SITE DATA:</b>			
	<b>Sender Sites (2)</b>		<b>Receiver Site</b>
<b>License Owner:</b>	Susan Murphy	Old Town Trolley Tours of WA, Inc.	Key Cove Landings, LLC
<b>Property Owner:</b>	Susan J. Murphy	N/A – Unassigned	Key Cove Landings, LLC
<b>Agent:</b>	Richard McChesney of Spottswood, Spottswood, Spottswood, & Sterling	Richard McChesney of Spottswood, Spottswood, Spottswood, & Sterling	Richard McChesney of Spottswood, Spottswood, Spottswood, & Sterling
<b>Location:</b>	307 Elizabeth Street Unit 3	N/A – Unassigned	4 Key Cove Drive #4
<b>Real Estate Number:</b>	00003690-000000	N/A – Unassigned	00002410-000504
<b>Zoning District:</b>	HMDR	N/A – Unassigned	CG
<b>Existing Use:</b>	A transient residential studio (approx. 218 sf) – Lic. # 33858.	N/A – Unassigned	A 4-bedroom/4-bathroom non-transient residential unit (approx. 2,352 sf) – Lic. # 32115 and # 34313.
<b>Proposed Use:</b>	The kitchen will be removed. The structure will serve as an accessory use to the primary structure.	N/A – Unassigned	A 4-bedroom/4-bathroom transient residential unit.

**Proposed Receiver Site:**



**Background:**

Currently, the property at 307 Elizabeth Street consists of four (4) units, each with a transient license. However, historically, the City of Key West recognized three (3) non-transient residential dwelling units at 307 Elizabeth Street. The increase of the number of units from three (3) units to four (4) units and the change of use from non-transient residential to transient residential was the result of a lawful unit determination (LUD) dated June 9, 2017, executed pursuant to section 108-991, “Development not affected by article.”

The applicant is proposing to eliminate **307 Elizabeth Street - Unit 3** (approximately 218-square-foot) by removing the kitchen (see illustration below). The detached structure will then serve as an accessory use to the primary structure. The applicant is also proposing to eliminate Unit 2 and Unit 4 under separate application for transient license and unit transfer. The applicant is proposing to transfer the remaining transient license that is attached to 307 Elizabeth Street – Unit 1 to a receiver site at 6 Key Cove Drive #6, also under separate application. The entire property at 307 Elizabeth Street will then be recognized as one (1) non-transient single-family residential unit.

<p>Sketch of Sender Site 307 Elizabeth Street</p>	<p>Existing Floor Plan of Unit 3 A unit with separate entrance and complete, independent living quarters, with provisions for living, sleeping, bathing, and cooking.</p>	<p>Proposed Floor Plan of Unit 3 An accessory / subordinate structure, the use of which is incidental to that of the principal structure.</p>
	<p>Sender Site Floor Plan 307 Elizabeth Street – Unit 3 Studio Unit</p>	<p>Sender Site Proposed New Floor Plan 307 Elizabeth Street – Unit 3 Studio Unit</p>

In addition to the unit and license assigned to 307 Elizabeth Street Unit 3, the applicant proposes to assign **transient license number 31652**, currently in unassigned status, to the receiver site at

4 Key Cove Drive #4. The subject license originated from the Santa Maria Motel, located within the Historic Commercial Tourist (HCT) zoning district, where transient lodging is a permitted use. According to city records, the motel received a major development approval (Planning Board Resolution no. 2004-17 dated June 17, 2004; and City Commission Resolution no. 04-298 dated September 8, 2004) to demolish the 51-unit motel, each one or two rooms, and replace them with 35-units, each with three or four rooms.

The applicant is seeking approval to transfer the unit and transient license from 307 Elizabeth Street - Unit 3 and license number 31652 in unassigned status to a receiver site at 4 Key Cove Drive #4. The proposed receiver site currently consists of one (1) non-transient, 2,352-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 a Closet
Second Floor:	3 Bedrooms, Each with a Closet, and 3 Full Baths

**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 two (2) licenses: one (1) transient unit and license assigned to 307 Elizabeth Street - Unit 3 and license number 31652 in unassigned status. The proposed receiver site located at 4 Key Cove Drive #4 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**.

<b>Criteria:</b>	<b>Proposal:</b>		<b>Complies? (Yes or No)</b>
<b>Sender Sites</b>	<b>307 Elizabeth Street Unit 3</b>	<b>Unassigned License #31652</b>	
Has transient license from the City	Transient rental unit regulatory permit/license #33858 / medallion #778.	N/A – The proposed transfer does not include the transfer of a unit.	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.	N/A – The proposed transfer does not include the transfer of a unit.	Yes.
Remaining number of rooms to same / does not increase BPAS count	The applicant is proposing to eliminate Unit 3 (approximately 218-square-foot) by removing the kitchen. The detached structure will then serve as an accessory use to the primary structure.	N/A – The proposed transfer does not include the transfer of a unit.	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.	N/A – The proposed transfer does not include the transfer of a unit.	Yes.
Development review process required for proposed construction / redevelopment	There is no proposed construction or redevelopment at this time.	N/A – The proposed transfer does not include the transfer of a unit.	Yes.
<b>Receiver Site</b>	<b>4 Key Cove Drive #4</b>		

<b>Criteria:</b>	<b>Proposal:</b>	<b>Complies? (Yes or No)</b>
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 revert back to the city any excess units as a result of the transfer.
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.

	<b>Analysis</b>		<b>Complies? (Yes or No)</b>
	<b>Transient rental unit regulatory permit/license #33858 / medallion #778.</b>	<b>Property rental business tax receipt #31652 – restriction: no transfer of location available.</b>	
Transient license transfer from an area where transient uses are prohibited	N/A – The proposed transfer includes the transfer of a unit.	The subject license originated from a location within the HCT zoning district where transient uses are permitted.	No.
Transient license transfer from HNC-1 and HNC-3 zoning districts	N/A – The proposed transfer includes the transfer of a unit.	The subject license originated from a location within the HCT zoning district where transient uses are permitted.	No.
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.	The receiver site is not deed-restricted affordable housing.	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.	The receiver site is located within the CG zoning district where transient use is permitted.	Yes.
Relative size of the unit from which the licenses are transferred	N/A – The proposed transfer includes the transfer of a unit.	Although staff does not know the exact square footage of the sender site, the subject license originated from a motel with one and two room accommodations.	No.
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.	Staff does not know if the sender site was one room or two rooms. However, the receiver site consists of 4-bedrooms.	No.

**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.

Pursuant to 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.

Pursuant to section 122-1339 (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.

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 307 Elizabeth Street Unit 3 and license number 31652, currently in unassigned status, to 4 Key Cove Drive #4 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 4 Key Cove Drive #4 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 4 Key Cove Drive #4. 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.