



Mixed Use

3 Permanent Residential Units
Commercial down

HNC-2 Zoning

“Within the HNC-2 and HNC-4 subdistricts, **transient accommodations shall be prohibited.**”



LAWFUL UNIT DETERMINATION APPLICATION
CITY OF KEY WEST, FLORIDA • PLANNING DEPARTMENT

Address: 1300 White Street • Key West, Florida 33040
Phone: 305-809-3764
Website: www.cityofkeywest-fl.gov



Application Fee Schedule

Lawful Unit Determination Application \$ 2,315.25

For each additional unit on the same parcel there is an additional fee of \$578.81

Ordinance 17-02, Effective May 3, 2017
Ordinance 19-10, Effective May 7, 2019

Please complete this application and attach all required documents. This will help staff process your request quickly and obtain necessary information without delay. If you have any questions, please call 305-809-3764.

PROPERTY DESCRIPTION:

Site Address: 901 Fleming Street
Real Estate (RE) #: 00005650-000000
Zoning District: HNC-2 Total Land Area (sq ft): 4,108 sq ft
Property located within the Historic District? Yes No

APPLICANT:

Owner Authorized Representative
Name: Trepanier & Associates, Inc. (Thomas Francis-Siburg)
Mailing Address: 1421 First Street, Unit 101
City: Key West State: FL Zip: 33040
Home/Mobile Phone: _____ Office: (305) 293-8983 Fax: (305) 293-8748
Email: thomas@owentrepanier.com

PROPERTY OWNER: (if different than above)

Name: 901 Fleming Street LLC
Mailing Address: 45 NW 21st Street
City: Miami State: FL Zip: 33127
Home/Mobile Phone: _____ Office: c/o (305) 293-8983 Fax: c/o (305) 293-8748
Email: c/o thomas@owentrepanier.com

FLORIDA STATUTE 837.06. WHOEVER KNOWINGLY MAKES A FALSE STATEMENT IN WRITING AND WITH THE INTENT TO

Owen Trepanier & Associates Inc
1421 1st Street, Ste 101
Key West, FL 33040-3648
305-293-8983



001263

PAY TO THE ORDER OF City of Key West

DATE 4/9/24

\$ 2,894.06

Two Thousand Eight Hundred Ninety four and 00/100 DOLLARS

Truist
1010 Kennedy Dr Ste 100
Key West, FL 33040-4133

MEMO Cohen - 901 Fleming - LUD Application fee



Revised 08/12/25

THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

August 8th 2025

VIA EMAIL DELIVERY

Owen Trepanier
1421 First Street Unit 101
Key West, Florida 33040

RE: Lawful Unit Determination Application – 901 Fleming Street, Key West, FL 33040

Dear Mr. Trepanier,

The Planning Department received a Lawful Unit Determination application for an additional three (3) non-transient units for the real property located at 901 Fleming Street, Key West, FL 33040, identified by RE# 00005650-000000. 901 Fleming Street consists of a 4,108 square foot parcel, located in the Historic Neighborhood Commercial-2 (HNC-2) Zoning District. The property is improved with a 3-story structure consisting of commercial space on the first floor, two residential units on the second floor and a third residential unit on the third floor. The commercial space maintains a Business Tax Receipt (BTR) for a bar/lounge – commonly referred to as “Kava Culture Key West.” The city currently recognizes zero (0) residential units on site.

This application was reviewed in accordance with the criteria found in Key West Code of Ordinances section 108-991. Specifically, 108-991 (3) provides in part that:

Units determined to have been in existence at the time the April 1, 2010, 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;
- b. Building permits issued prior to April 1, 2010;

Sec. 108-991. Development not affected by article.

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.

[A]t least two of the following records:

- a. Aerial photographs and original dated photographs showing that the structure existed on or about April 1, 2010;
- b. Building permits issued prior to April 1, 2010;
- c. Copies of city directory entries on or about April 1, 2010;
- d. Rental, occupancy or lease records from before and including April 1, 2010, indicating the number, type and term of the rental or occupancy;
- e. Copies of state, county, and city licenses on and about April 1, 2010, indicating the number and types of rental units;
- f. 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;
- g. Documentation for the Monroe County Property Appraiser's Office for the time on or about April 1, 2010, (Green Card); and
- h. Similar documentation as listed above.

Provision of affidavits to support the existence of a unit is allowed, but cannot be the sole record upon which a decision is based.

Monroe County Property Record Card (185)

OPF 7 0 1

Interior Finish

Sec Nbr	Int Nbr	Description	Area %	Sprink
1	1476	OFF BLDG MULT STY-A	100.00	N
2	1477		100.00	N
3	1478	OFF BLDG MULT STY-A	100.00	N
4	1479		100.00	N
5	1480		100.00	N
6	1481	APTS-A	100.00	N

2010 / 2011 MONROE COUNTY BUSINESS TAX RECEIPT EXPIRES SEPTEMBER 30, 2011

Business Name: 901 FLEMING INC RECEIPT# 25230-104857

Owner Name: TOM SAWYER, DEAN MULLANEY Business Location: 901 FLEMING ST
Mailing Address: 901 FLEMING ST KEY WEST, FL 33040

Business Phone: 305-294-0411 Business Type: APARTMENTS CONDOS HOUSES & COMMERCIAL
KEY WEST, FL 33040 UNITS (COMMERCIAL RENTALS)

Rooms 3

AFFIDAVIT

I, Gary Burchfield swear/affirm the following to be true and correct to the best of my knowledge:

1. I am personally familiar with the property of 901 Fleming Street.
2. I am personally familiar with the number and location of dwelling units on the property prior to, during, and after April 1, 2010.
3. The property has had three residential dwellings units prior, during, and after April 1, 2010.

[Signature] 4.9.24
Date

and sworn to (or affirmed) before me on April 9, 2024 (date) by Burchfield (name of affiant), he/she is personally known to me or

Units which are determined not to be affected by the building permit allocation system per this subsection but which have not been previously acknowledged by the city planner are presumed to be lawfully established per [chapter 122](#), article II, nonconformities, if the additional following requirements are met:

- a. The applicant satisfies the building department that the unit meets the Florida Building Code, through as-built certifications or other means acceptable to the building official; and
- b. Fees: All back fee payments shall be paid current and in full, from the date determined to be the established date of the unit. All impact fees shall be paid in full for units determined to have been established after the implementation of the Impact Fee Ordinance (January 1, 1985).
- c. Occupational license with the city is updated, and street addresses are assigned commensurate with the updated unit count.
- d. Applications received after May 2, 2017, must demonstrate that the unit sought to be established hereunder is or has been a legally permissible under the current or any former zoning requirements of the applicable district in which the unit is located.

“City desires to retain in perpetuity the existing character, density, and intensity of all historic sites”

Policy 1-1.10.3: Retention of Historic Character and All Permanent Single Family Housing Units.

The City desires to retain in perpetuity the existing character, density, and intensity of all historic sites and contributing sites within the historic district; and shall protect the entire City's permanent single family housing stock citywide which was legally established prior to the adoption of the plan on a legal lot of record. Therefore, the City shall protect and preserve these resources against natural disaster, including fire, hurricane, or other natural or man-made disaster, by allowing any permanent units within the City, or other structures located on historic sites or contributing sites, which are so damaged to be rebuilt as they previously existed. This policy is adopted to prevent the erosion of the permanent housing stock; to ensure the continuance of a viable local economy; and to preserve the historic density, intensity, scale, design, and ambiance of the Key West historic area of state and national significance.

Sec. 90-431(4)

“The city commission and board of adjustment, may, upon appeal, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination made by the planning board, the tree commission, the chief building official, or other administrative official and may make any necessary further order, requirements, decisions or determinations respecting the subject of the appeal and, to that end, shall have all the powers of the planning board, the tree commission, the chief building official, and/or other administrative official respecting such matter.”

Case Law

"Zoning regulations are in derogation of private rights of ownership, words used in a zoning ordinance should be given the broadest meaning when there is no definition or clear intent to the contrary and the ordinance should be interpreted in favor of the property owner."

- Rinker Materials Corp. v. City of North Miami, 286 So. 2d 552, 553-54 (Fla. 1973);
- Persaud Properties FL Investments LLC, v. Town of Ft. Myers Beach, 310 So.3d 493 (Fla. 2d DCA 2020).

Case Law

Abandonment of a use requires intent of the owner for it to be permanent. The fact that a use is discontinued for a period of time does not result in abandonment. This is true even if a code has a specific time limit for abandonment.

- Persaud Properties FL Investments LLC, v. Town of Ft. Myers Beach, 310 So.3d 493 (Fla. 2dDCA 2020);
- Lewis v. City of Atlantic Beach, 467 So.2d 751 (Fla. 1st DCA 1985).

“This policy is adopted to prevent the erosion of the permanent housing stock...”

- Key West Comprehensive Plan

Permanent Housing Deed Restriction

"A deed restriction, approved by the city attorney, shall be recorded in the public records **restricting tenant eligibility to only those persons that derive at least 70 percent of his/her total income from gainful employment in the county.** This section shall not disqualify an individual previously and continuously qualified who reaches the age of retirement, and/or becomes disabled. Compliance with this requirement shall be demonstrated by the property owner upon written request from the Key West City Manager or designee."



Mixed Use

3 Permanent Residential Units

HNC-2 Zoning

“Within the HNC-2 and HNC-4 subdistricts, **transient accommodations shall be prohibited.**”

Timeline

- 1890-1891 Building Built
- **1892 No Dwellings**
- 1894 September Hurricane – Nearly all homes damaged and 300 destroyed
- **1899 2 Dwelling Units**
- 1906 June Hurricane (104 ppl killed)
- 1906 October Hurricane (205 ppl killed)
- 1909 Hurricane (400 buildings damaged)
- 1910 Great Hurricane (city flooded - 15 ft storm surge)
- **1912 No Dwelling Units**

