

**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 1 and one (1) unit & license assigned to 307 Elizabeth Street Unit 4 (RE# 00003690-000000) to 6 Key Cove Drive #6 (RE# 00002410-000506) - A request to transfer ~~two~~ one transient units & licenses and one transient license from two separate properties each located within the Historic Medium Density Residential (HMDR) zoning district to a 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	Susan Murphy	Key Cove Landings, LLC
<b>Property Owner:</b>	Susan J. Murphy	Susan J. Murphy	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 1	307 Elizabeth Street Unit 4	6 Key Cove Drive #6
<b>Real Estate Number:</b>	00003690-000000	00003690-000000	00002410-000506
<b>Zoning District:</b>	HMDR	HMDR	CG
<b>Existing Use:</b>	A 1-bedroom transient residential unit (approx. 750 sf) – Lic. #33856 (medallion #769).	A 1-bedroom transient residential unit (approx. 592 sf) – Lic. # 33859 (medallion #798).	A 4-bedroom/4-bathroom non-transient residential unit (approx. 2,400 sf) – Lic. # 32378 and # 34315.
<b>Proposed Use:</b>	The existing floor area will be incorporated into the second-floor unit and will be accessible via an interior staircase.	The kitchen will be removed. The existing floor area will be incorporated into the first-floor unit and will be accessible via an interior staircase.	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 proposes to transfer the business tax receipt for transient use attached to **307 Elizabeth Street Unit 1** to a receiver site at 6 Key Cove Drive #6. The unit will remain at 307 Elizabeth Street and the use of the property will revert to non-transient residential.

In addition, the applicant proposes to eliminate **307 Elizabeth Street - Unit 4** (approximately 592-square-feet) by removing the kitchen (see illustration below). The existing floor area will be incorporated into the first-floor unit (Unit 1) and will be accessible via an interior staircase.

The applicant is proposing to eliminate Unit 2 and Unit 3 under separate application for transient license and unit transfer. Those proposals also include removing a kitchen from each unit. The property at 307 Elizabeth Street will ultimately be transformed from a 4-unit multiple-family transient property to a 1-unit single-family non-transient property.

Sketch of Sender Site 307 Elizabeth Street	Existing Floor Plan of Unit 4 A unit with separate entrance and complete, independent living quarters, with provisions for living, sleeping, bathing, and cooking.	Proposed Floor Plan of Unit 4 Kitchen will be removed. Floor area will be incorporated into the first-floor unit and will be accessible via an interior staircase.
<p>A site sketch of 307 Elizabeth Street showing the layout of units. Unit 1 is highlighted in blue and Unit 4 is highlighted in red. The sketch includes street names and various zoning codes.</p>	<p>A floor plan of Unit 4 showing a Living Area, Loft, Kitchen, Bath, and Bedroom. The kitchen is a separate room with a sink and stove.</p>	<p>A floor plan of Unit 4 showing the kitchen removed. The area previously occupied by the kitchen is now part of the living area. The plan includes Living Area, Loft, Bath, and Bedroom.</p>

The applicant is seeking approval to transfer the unit and transient license from 307 Elizabeth Street - Unit 4 and the transient license component of 307 Elizabeth Street – Unit 1 to a receiver

site at 6 Key Cove Drive #6. The proposed receiver site currently consists of one (1) non-transient, 2,400-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 4 and the transient license component of the transient unit and license assigned to 307 Elizabeth Street – Unit 1. The proposed receiver site located at 6 Key Cove Drive #6 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 4</b>	<b>307 Elizabeth Street Unit 1</b>	
Has transient license from the City	Transient rental license #33859 / medallion #798.	Transient rental license #33856 / medallion #769.	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.	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	The applicant is proposing to eliminate Unit 4 (approximately 592-square-foot) by removing the kitchen. The floor area will be incorporated into the first-floor unit and will be accessible via an interior staircase.	The applicant is proposing to convert Unit 1 from a transient residential unit to a non-transient residential unit by lifting the license alone and transferring it to the property located at 6 Key Cove Dr. #6. The remaining transient units and licenses assigned to Units 2 and 3 are under separate application for a transient unit and license transfer.	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.	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.	Yes.
Development review process required for proposed construction / redevelopment	There is no proposed construction or redevelopment at this time.	There is no proposed construction or redevelopment at this time.	Yes.
<b>Receiver Site</b>	<b>6 Key Cove Drive #6</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 lift the non-transient unit and replace it with the transient unit. The lifted unit will revert to the city for beneficial use.
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>307 Elizabeth St. – Unit 4 Transient rental license and unit #33859 / medallion #798.</b>	<b>307 Elizabeth St. – Unit 1 Transient rental license #33856 / medallion #769.</b>	
Transient license transfer from an area where transient uses are prohibited	N/A – The proposed transfer includes the transfer of a unit.	Transient use is prohibited in the HMDR zoning district.	Yes.
Transient license transfer from HNC-1 and HNC-3 zoning districts	N/A – The proposed transfer includes the transfer of a unit.	The transfer is from the HMDR zoning district where transient use is prohibited.	Yes.
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 a deed-restricted affordable property.	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 within the CG zoning district where transient use is permitted by right.	Yes.
Relative size of the unit from which the licenses are transferred	N/A – The proposed transfer includes the transfer of a unit.	The sender site is approx. 750 sf and the receiver site is approx. 2400 sf.	No. However, the applicant is including a second unit and license with the proposal that may be considered.
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.	The sender site contains 1-bedroom and the receiver site contains 4-bedrooms.	No. However, the applicant is including a second unit and license with the proposal that may be considered.

### **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 (b), where a license alone is transferred, the planning board 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 (1) transient license assigned to 307 Elizabeth Street Unit 1 and one transient unit and associated business tax receipt from 307 Elizabeth Street Unit 4 to 6 Key Cove Drive #6 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 6 Key Cove Drive #6 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 6 Key Cove Drive #6. 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.