




## MEMORANDUM

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Date: October 12, 2023

To: Honorable Mayor and Commissioners

Via: Albert P. Childress  
City Manager 

From: Katie P. Halloran  
Director, Planning Department

Subject: **Board of Adjustment Appeal to Lawful Unit Determination application for 329 Peacon Lane (RE# 00003400-000100)**

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### Introduction

On June 26, 2023, the City Clerk received a Notice of Appeal to the City Planning Department's Lawful Unit Determination (LUD) application denial for 329 Peacon Lane. The City subsequently received an Appellant's Legal Brief submitted by Van D. Fischer, Esq., on behalf of his client Peacon Lane Realty, LLC, a Florida limited liability Company. The Planning Department respectfully recommends that the Board of Adjustment deny this appeal of the Lawful Unit Determination denial letter for 329 Peacon Lane (RE# 00003400-000100) dated and signed June 21, 2023.

### Background

As with previous LUD appeals, the Planning Department will prepare a powerpoint presentation which provides staff's analysis of applicable City of Key West Land Development Regulations and staff conclusions contained within the aforementioned LUD letter. The Planning Department will continue to coordinate with the City's Legal Department. Staff committed significant time to review submitted evidence, collected additional data, interviewed a past property owner, and concluded a site visit together with the City Attorney on April 12, 2023. The Planning Department is confident that the appropriate finding for this application is denial.

In summary: The Planning Department is tasked in Section 108-991 (3) to "...review available documents to determine if a body of evidence exists to support the existence of units on or about April 1, 2010." Staff has reviewed this application according to the criteria in Section 108-991 of the City Code of Key West, considered materials submitted by the applicant, and reviewed the application with City Legal staff. It is

the determination of the Planning Department that there is not a body of evidence to support the existence of one (1) additional dwelling unit on the property in April of 2010.

Additionally, Section 108-991(3) which governs Lawful Unit Determinations requires that “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.” The application has not demonstrated that the unit sought to be established is or has been legally permissible under the current or any former zoning requirements of the applicable district.

*On Thursday, September 14, 2023, this item was heard at a regularly scheduled Board of Adjustment hearing. A motion was made by Commissioner Wardlow, and seconded by Commissioner Carey, that the applicant’s appeal should be granted due to provided substantial body of evidence and that the applicant’s petition is consistent with the adopted comprehensive plan and land development regulations. The motion did not pass. Although there were three votes to approve and two votes to deny, the City of Key West Land Development Regulations Section 990-431 states that a minimum of four votes are needed in order to grant an appeal.*

### **Procurement**

If the LUD denial is reversed, the application would need to remit past due fees to the City of Key West.

### **Recommendation**

The City Manager’s Office recommends the Board of Adjustment deny the Appeal of the Planning Director’s June 21, 2023, denial of the Lawful Unit Determination application for 329 Peacon Lane (RE#00003400-000100). The Planning Department also recommends denial of the aforementioned appeal.