


THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report



**To:** Chair and Planning Board Members  
**From:** Kevin Bond, AICP, LEED Green Associate, Planner II  
**Through:**  Donald Leland Craig, AICP, Planning Director

**Meeting Date:** August 21, 2014

**Agenda Item:** **Status of Nonconforming Use – 208 Telegraph Lane (RE # 00001491-000500, AK # 9100238)** – A request for hearing regarding whether a use has been abandoned on property located within the Historic Residential / Office (HRO) Zoning District pursuant to Section 122-30 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida

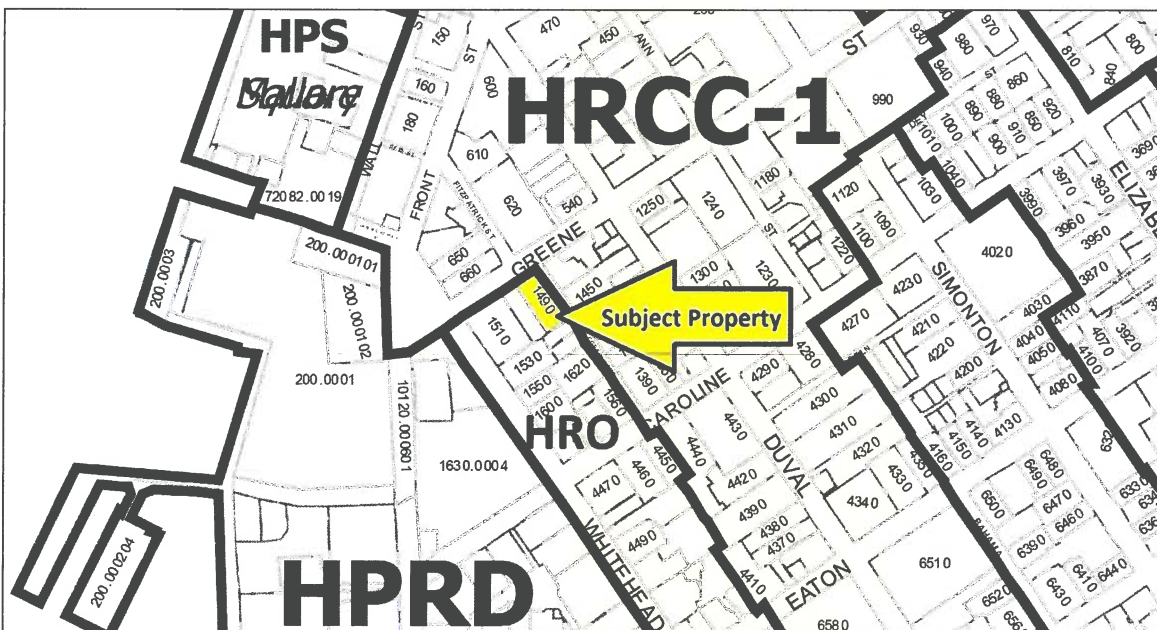
**Request:** A determination that the prior nonconforming use did not cease for a period of 24 months.

**Applicant:** Fred Tillman

**Property Owner:** Greene Street Condos LLC

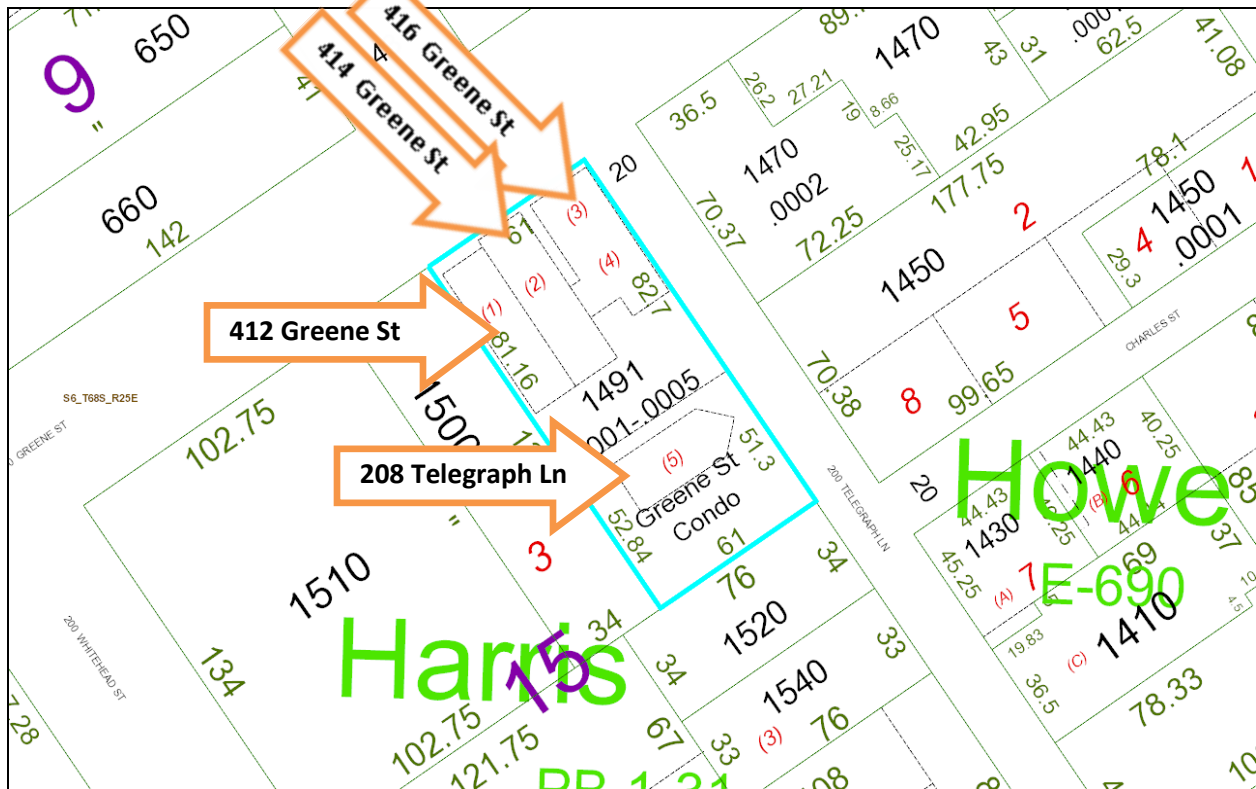
**Location:** 208 Telegraph Lane (RE # 00001491-000500, AK # 9100238)

**Zoning:** Historic Residential / Office (HRO)



**Background:**

The property, which is located near the southern corner of Greene Street and Telegraph Lane, is comprised of a one-floor nonresidential building. The property is part of the Greene Street Condominium Association, Inc., formed in 2011, which includes buildings located at 412, 414 and 416 Greene Street, as well as common elements. Before 2011, all these buildings were within a single tax parcel. The property is located within the Key West Historic District, but the building at 208 Telegraph Lane is not listed as a contributing structure. Only the building at 416 Greene Street is a contributing structure within the historic district.



On February 28, 2014, the property owner of the subject property at 208 Telegraph Lane submitted an Application for Change of a Nonconforming Use. On March 26, 2014, Planning Director Don Craig sent the property owner a letter (see attached) stating that the Planning Department was unable to find any evidence of a continuing legal nonconforming commercial use of the property at 208 Telegraph Lane in the last 24 months. Therefore, the prior nonconforming uses had ceased and staff would be unable to recommend approval of a request for a change of nonconforming use due to the abandonment. The letter also informed the property owner of a provision in Section 122-30 of the Land Development Regulations (the “LDRs”) of the Code of Ordinances (the “Code”) of the City of Key West, Florida (the “City”) that states:

“A nonconforming use shall be considered abandoned when such use has ceased for a period of 24 months. If a dispute occurs with the city about whether a use has been abandoned, the owner shall be entitled to a hearing before the planning board.”

The property owner subsequently requested the Planning Board hearing pursuant to City Code Section 122-30.

A Status of Nonconforming Use hearing was held on July 17, 2014, but was tabled in order for staff and the applicant to consider new information presented at the hearing.

**Relevant Land Development Regulations:**

City Code Section 122-26 “Definitions” states “*nonconforming use* means a use of a building or structure or a tract of land which does not, on the effective date of the ordinance from which this section derives or amendment thereto, conform to any one of the current permitted uses of the zoning district in which it is located, but which was legally established in accordance with the zoning in effect at the time of its inception or which use predates all zoning codes and which use has not changed or been abandoned. This definition shall not operate to make legal an unlicensed transient rental accommodation located in a residential structure.”

City Code Section 122-27 “Intent” states: “The intent of this article is to permit a nonconforming use and a noncomplying structure or building to be continued, to be reconstructed or replaced, or to be repaired or maintained under certain conditions, but not to encourage their expansion. Nonconforming densities may also be continued, reconstructed, replaced, repaired or maintained, although a distinction is made for reconstruction or replacement purposes between transient and permanent residential densities.”

City Code Section 122-30 “Abandonment of Nonconforming Use” states: “If a nonconforming use ceases, except when government action impedes access to the premises, any and every future use of the building or structure and/or premises shall be in conformity with the use sections of the land development regulations. All material and equipment associated with the abandoned nonconforming use shall be completely removed from the premises by its owner. No new structure or addition that does not conform to the requirements of this article shall be erected in connection with such nonconforming use. A nonconforming use shall be considered abandoned when such use has ceased for a period of 24 months. If a dispute occurs with the city about whether a use has been abandoned, the owner shall be entitled to a hearing before the planning board.”

City Code Section 122-32 “Additional Regulations” states:

- (a) A nonconforming use, nonconforming density or a noncomplying building or structure may be continued, subject to this article.
- (b) A casual, intermittent, temporary or illegal use of land, building or structure shall not be sufficient to establish the existence of a nonconforming use, nonconforming density or noncomplying building or structure.
- (c) Should any noncomplying building or structure be moved for any reason from its location, it shall thereafter conform to the regulations or the zoning district of its new location.
- (d) A nonconforming use shall not be extended, expanded, enlarged, or increased in intensity. This prohibition shall include but not be limited to the extension of a nonconforming use within a building or structure or to any other building or structure.
- (e) A nonconforming use of a building or structure may be changed to another nonconforming use if the planning board finds that:

- (1) The new use is equally or more appropriate to the zoning district; and
- (2) The change of use would not intensify the use of the premises by increasing the need for parking facilities; increasing vehicular traffic to the neighborhood; increasing noise, dust, fumes or other environmental hazards; or by having an adverse impact on drainage.

City Code Section 86-9 “Definition of terms” states “*abandon* means to discontinue a land use for a period of 24 months without demonstrating an intent to continue the use as indicated by the following:

- (1) Allowing licenses to lapse;
- (2) Removing meters;
- (3) Not maintaining a structure in a habitable condition;
- (4) Not making a unit available for occupation (i.e., advertising or marketing through a Realtor or other agent); and/or
- (5) Failure to perform pursuant to the terms of an active building permit.

**Analysis – Evaluation for Compliance With The Land Development Regulations:**

At issue are three basic questions:

1. Did the prior legal nonconforming use cease for a period of 24 months and become abandoned, as defined and described in the LDRs? If so, then future use of the property must comply with the allowed uses within the HRO Zoning District.
2. If not, then what was the prior legal nonconforming use of the property?
3. Based the prior use, would the proposed use sought by the owner require an application for change of nonconforming use?

The property owner proposes the use the property for “retail, rental equipment and food preparation with take out,” all of which are prohibited within the HRO Zoning District. Permitted and conditional uses allowed within the HRO Zoning District are listed in City Code Sections 122-927 and 122-928. If the non-abandonment and legality of the prior nonconforming uses can be documented, then the property owner may resume those uses or apply to change to another nonconforming use, pursuant to City Code Section 122-32(e). However, the Planning Board must first decide whether the prior nonconforming uses have been abandoned in the last 24 months, pursuant to City Code Section 122-30.

In researching the non-abandonment and legality of the property’s uses, Staff conducted a thorough review of City permitting, licensing and code compliance records, as well as Monroe County licensing records and all materials submitted thus far by the applicant, for all the property comprising the Greene Street Condominium. Staff prepared a timeline outlining relevant activity involving 208 Telegraph Lane. Backup documentation is attached to the timeline. The applicant also prepared a timeline and submitted additional documents (see attached).

In summary, although Staff has no doubt of the historic commercial use of 208 Telegraph Lane or of the property owner’s intent to continue commercial uses of the property, Staff found no records of actual legal commercial use of the property since 1998. Staff has found the discontinuation of legal use of the property for multiple periods exceeding 24 months. Staff also found evidence of improper, unlicensed or unapproved use of 208 Telegraph Lane.

Specifically, and as outlined in staff's timeline, the last City-licensed business at 208 Telegraph Lane was a retail use called "Paint-A-Pot," which closed by 1998. The property sold at the end of 1997 from Feaker to Diversified Investments of Central Florida. From that point on through now, it appears that the City never specifically licensed any other business at 208 Telegraph Lane.

In 2004, the City approved a change of nonconforming use for the Priscilla's Garden tenant at 412-414 Greene Street, but the request and the approval did not involve the use of 208 Telegraph Lane. The approval was specifically conditioned "no use of the rear yard property" and applied only to the current tenant. Future tenants would need a new approval to continue the nonconforming use. Although the tenants of 412-414 Greene Street have changed since, no new approval have been requested or granted.

In 2006, after Priscilla's Garden left and the owner leased 412 Greene Street to Blond Giraffe to sell key lime pies, coffee and key lime products. The City issued a food service license. The owner also leased 208 Telegraph Lane to Blond Giraffe, stating "the Tenant shall use the premises rented herein that would meet the current zoning." No City license was issued at 208 Telegraph Lane. Yet, the City Engineer sent a letter to the Postal Service assigning the address 208 Telegraph Lane to "the commercial unit (Blonde Giraffe)."

In April 2007, the property sold from Diversified Investments of Central Florida to Greene Street Condos LLC, a corporation created by Fred Tillman and the current property owner. In May 2008, the lease with Blond Giraffe at 208 Telegraph Lane was terminated. In early 2008, undated business license tax application lists "retail bakery 643 [square feet] at 208 Telegraph Lane. No license was ever issued. Yet, the owner has provided documentation that he allowed Kelly's Caribbean and A Key West Affair Catering to use 208 Telegraph Lane for cooking, prepping and meeting with clients for a wedding cake baking and catering business between 2008 and 2011. A separate City license for such a use would have been required, but was never obtained by the owner or tenant.

Between 2008 and 2011, there is little City activity until the owner applied for a building permit for an addition to the building at 208 Telegraph Lane. The permit was not approved because it would have expanded the nonconforming use, which the City Code does not allow. From 2011 to now, there is fairly steady correspondence between the owner and the City regarding the use of the property. Nonetheless, various City Planning staff members have concluded that they cannot find a legal commercial use at 208 Telegraph Lane, or that the use had ceased.

Staff finds the following as evidence of continuing or discontinuing the prior use, pursuant to the definition of "abandon" in City Code Sections 86-9 and 122-30:

**(1) Allowing licenses to lapse;**

The last City-licensed business at 208 Telegraph Lane was the Paint-A-Pot retail use in 1998. Prior owners and the current owner have apparently allowed commercial use of the property without the proper City licenses. Between 1998 and 2006, the property was either vacant or used as storage or ancillary space to licensed businesses on Greene Street. Between 2006 and 2008, the property was leased to Blond Giraffe, but the City license did not specifically

include 208 Telegraph Lane. Between 2008 and 2011, the owner allowed the property to be used for food preparation, baking and a catering office. A City license was apparently requested for this use, but never issued. Beginning in 2011, the owner began to seek a new use, but the City has been unable to allow it. Therefore, licenses were allowed to lapse.

**(2) Removing meters;**

There is no evidence of meters being removed. On the contrary, the City issued permits in 2006 and 2009 for electrical work and there is documentation of maintaining electric service. Therefore, no meters were removed.

**(3) Not maintaining a structure in a habitable condition;**

There is no evidence that the structure is in a non-habitable condition. The City has issued permits for fences and electrical work. The owner has allowed use of the structure as recently as 2011. Therefore, the structure has been maintained in a habitable condition.

**(4) Not making a unit available for occupation (i.e., advertising or marketing through a Realtor or other agent); and/or**

There is no evidence that the unit was advertised or marketed through a realtor or other agent. However, the owner has provided various insurance documents. The owner has maintained a County business license for the commercial rental of the property. The owner converted the property to a condominium form of ownership in 2011 with the intent to use 208 Telegraph Lane for commercial purposes. The building was also occupied by the unlicensed catering business between 2008 and 2011. Therefore, it appears the unit was made available for occupation.

**(5) Failure to perform pursuant to the terms of an active building permit.**

The City issued permits in 2006 and 2012, all of which were completed in December 2013. Therefore, there is no failure to perform under an active building permit.

Any one or more of the above five criteria can be considered demonstrating an intent to abandon a use. Therefore, Staff finds that due to both the discontinuation of licensed commercial use for multiple periods exceeding 24 months and due to the unlicensed businesses that improperly used the property, Staff cannot recognize a legal, continuing nonconforming use of the property at 208 Telegraph Lane.

**Recommendation:**

Based on the above analysis of the standards for considering the request established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the Planning Board find that the prior nonconforming uses have **CEASED**.