

**THE CITY OF KEY WEST
PLANNING BOARD
Staff Report**



To: Chairman and Planning Board Members

Through: Katie Halloran, Planning Director

From: Nicholas Perez-Alvarez, AICP, Stantec

Meeting Date: March 12, 2024

Agenda Item: **Official Future Land Use Map Amendment of the Comprehensive Plan – 715 Seminole Avenue (RE # 00037230-000100; AK# 8735669) and 811 Seminole Avenue (RE # 00037160-000100; AK# 8735677) –** Consideration of an ordinance of the City of Key West, Florida, proposing an amendment to the boundaries of the Official Future Land Use Map of the City of Key West Comprehensive Plan for properties located at 715 Seminole Avenue and 811 Seminole Avenue; amending the Future Land Use Map Legend from Historic Residential to Historic Commercial for the parcels stated above pursuant to Chapter 90, Article VI, Division 3 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida; providing for severability; providing for the repeal of inconsistent provisions; providing for transmittal to the State Land Planning Agency; providing for the filing with the Secretary of State and for an effective date; and providing for the inclusion into the City of Key West Comprehensive Plan.

Request: A site-specific amendment to the Comprehensive Plan Future Land Use Map (FLUM) from Historic Residential (HR) to Historic Commercial (HC).

Applicant: Oropeza, Stones, & Cardenas, PLLC

Property Owner: Casa Marina Equity Holdings LLC through Casa Marina Owner, LLC (811 Seminole) and BRE/FL Development Parcels L.L.C. (715 Seminole)

Location: 715 & 811 Seminole Ave, Key West, Florida
(RE # 00037230-000100, 00037160-000100; AK # 8735669, 8735677)



Aerial Map of the Subject Properties

Geographic Setting:

The subject properties are located on the south side of Waddell Avenue and the north side of Seminole Street, east of Alberta Street and west of Reynolds Street. The properties are bounded by Historic Medium Density Residential (HMDR) development to the north and east and Historic Commercial Tourist (HCT) development to the south and west. Directly south of the subject property, on the south side of Seminole Street is the Casa Mar Hotel, also owned by the applicant.

The effective FEMA Flood Insurance Rate Map Number 12087C1516K shows that the properties are within designated Special Flood Hazard Areas with the majority of the properties in the AE flood zone and a small portion in the VE coastal flood zone.

Summary:

The subject application involves a request to amend the future land use designation of approximately 3.36 acres of property from Historic Residential (HR) District to Historic Commercial (HC) to allow for the development of 23 market rate units and 25 workforce housing units. The market rate units and workforce housing units are both permitted under the existing HMDR zoning classification. Densities for both housing types are also under the maximum permitted densities per code. An amended Declaration of Affordable Housing Restrictions was recorded in 2009 for the 811 Seminole Avenue property, whereby a portion of the Block (Block 7, Lots 13, 14, and 15) is required contain exclusively workforce housing.

The basis for the proposed amendment of the Future Land Use Map (FLUM) category is to allow the property owner to develop Transient Rental Units on 715 Seminole Avenue in order to offset their costs to construct deed restricted workforce or employee housing at 811 Seminole Avenue.

Planning staff is respectfully recommending denial of the subject application pursuant to the following:

1. The existing FLUM category (HR) allows for the development of the employee housing units and market rate units, which could be operated as vacation rentals. The densities proposed for both the market rate units and the workforce housing units are also under the maximum permitted density within the HR category .

The purpose of the proposed rezoning and FLUM category amendment is to allow for the creation of new transient rental units which is inconsistent with both the Comprehensive Plan and Land Development Regulations, as discussed below. Speculatively rezoning the subject property to

allow for the development of transient rental units before the Land Development Regulations and Comprehensive Plan have been amended to permit same is premature and inconsistent with sound planning practice.

2. Inconsistency with City Code Section 90-555 (3) Changed conditions. The ability to meet local housing needs has become significantly more difficult since the adoption of the current Land Development Regulations (1997) and Comprehensive Plan (2013). Approval of the subject application and the proposed amendment to allow for the creation of new transient rental units will create a misaligned incentive to reduce the available supply of market rate housing units, exacerbating current housing shortages.

3. Inconsistency with City Code Section 90-555 (4) Land use compatibility. The proposed rezoning and FLUM amendment from HR to HC allows for significant increases in both development density and the range of permitted/conditional uses. The increases in both development density and permitted/conditional uses within the HCT District and HC FLUM category will result in potential adverse impacts to surrounding lower intensity uses within adjacent and surrounding HMDR properties to both the north and east. Staff appreciates that the applicant has recently stated they would be willing to restrict some uses and density, to attempt to minimize risk of nuisance and incompatible land uses, however City Legal staff have opined that there is not an available legal avenue to restrict uses/density of the HCT zoning district.

4. Inconsistency with City Code Section 90-555 (9) Public interest; enabling act. The preservation of existing housing stock for local residents, including emergency responders, local police, and municipal employees is one of the most significant challenges facing the City of Key West. The potential conversion of existing market rate housing stock to transient rental units will undermine the City's efforts to meet critical housing needs.

Background:

This application was adjourned from the November 16, 2023 Planning Board calendar to allow the applicant time to make revisions to the application addressing some of the Planning Board's comments. The application was resubmitted on December 14, 2023. Planning staff was invited to meet with the applicant, the Legal Department, and Commissioner Hoover to discuss the new submittals. Staff requested that this application follow the applicant's proposed text amendment to create a special incentive to create employee housing in exchange for the creation of transient rental licenses; however, the applicant desires to bring this rezoning in advance of the text amendment. This item last went before the Planning Board on January 18, 2024, where the applicant requested postponement to the March Planning Board hearing. No revisions or changes have been made to this application since it went before the Planning Board in January.

The subject properties, with a combined area of 3.36 acres (which includes some City owned property internal to the subject property that the applicant has requested to be vacated), are designated as Historic Residential in the City of Key West's Future Land Use Map and are located in the Historic Medium Density Residential (HMDR) zoning district. The parcels and improvements are owned by Casa Marina Equity Holdings LLC and currently contain a variety of uses, all of which are ancillary uses to the Casa Marina Key West.

The subject properties are two separately recognized parcels by the Monroe County Property Appraiser's Office (MCPAO). The property addressed 811 Seminole Avenue is currently configured as one parcel with 1500 Reynolds Street (RE #00037160-000100), which contains the

Casa Marina hotel. In an effort to avoid the creation of a nonconforming density on 715 Seminole Avenue, the applicant has proposed to separate the 800 Block of Seminole Avenue from 1500 Reynolds Street, then will combine the 800 Block with the 700 Block through a Unity of Title, creating one parcel for the two properties.

The 715 Seminole Avenue property is currently occupied by seven buildings containing a mix of hotel-related office space and 25 vacant dwelling units, of which 18 dwelling units are recognized by the City of Key West via the zoning verification process.

The 811 Seminole Avenue property is currently occupied by a surface parking lot for the hotel, and one building that houses the resort’s spa and fitness center on the first level and 16 deed restricted workforce housing units on the second and third floors. The site is part of a Major Development Plan approved by the City Commission through Resolution 06-295.

The applicant has received five (5) Building Permit Allocation System (BPAS) permits for market rate units and nine (9) affordable BPAS permits during the Year 10 cycle. The applicant plans to submit a major development plan for redevelopment of both properties to include a total of 23 market rate units and 25 workforce housing units. The applicant indicates that the total 25 workforce housing units will create approximately 88 total beds of affordable housing given that existing deed restricted efficiency units have been proposed to be reconstructed as roommate-style units with up to four bedrooms per unit.

The applicant has also suggested that they would be relocating and adaptively reusing some of the contributing on-site historic structures; staff appreciates and applauds this possibility.

Surrounding FLUM and Uses:

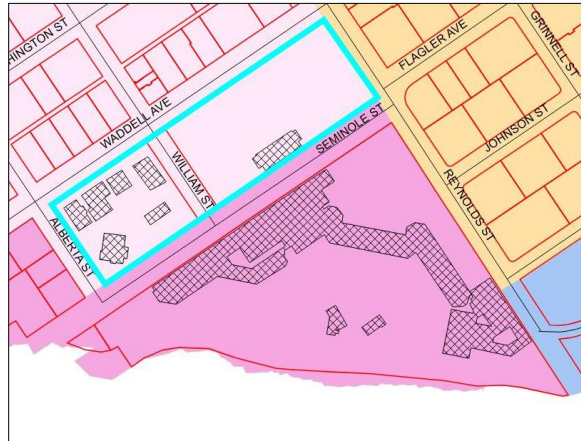
As indicated in the table below, the subject properties are surrounded by both residential and commercial uses, with a mix of residential uses located to the north and east, and hotel and transient lodging located to the south and west.

Direction	Official Future Land Use Map Designation	Property Uses
North	Historic Residential	Single-family and multi-family housing units
South	Historic Commercial	Hotel
East	Low Density Residential	Single-family housing units
West	Historic Commercial & Historic Residential	Transient lodging

Request / Proposed Map Amendment:

Amend the City’s Future Land Use Map (FLU-1, pg. 1-3): Remove Historic Residential (HR) land use designation applied to the properties and substitute Historic Commercial (HC) future land use designation.

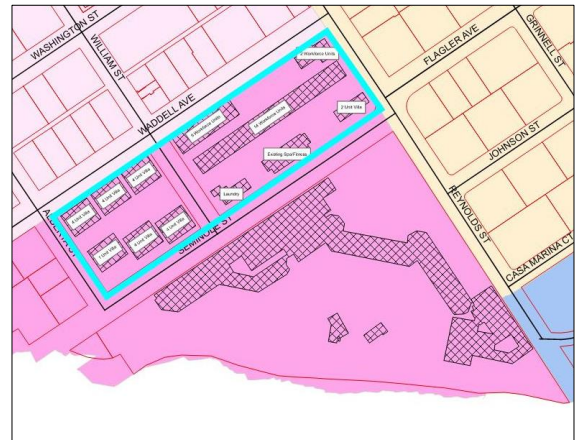
Current FLUM: Historic Residential (HR) (HC)



Legend

Existing Casa Marina Building Footprint	FLUM Designation:
Street	Historic Commercial
Parcel Boundary	Historic Residential
	Public Service
	Low Density Residential

Proposed FLUM: Historic Commercial



Legend

Proposed Building Footprint	Parcel Boundary
Street	Proposed Future Land Use:
	Historic Commercial
	Historic Residential
	Public Service
	Low Density Residential

While the proposed development’s density is already permitted under the existing Historic Residential (HR) future land use and Historic Medium Density Residential (HMDR) zoning designations (contingent on the proposed Unity of Title between the two subject parcels), the applicant would also like the ability to include transient accommodations associated with the neighboring hotel, which is not permitted under the current future land use and zoning. While no market study or other empirical evidence has been provided, the applicant indicates that development of the transient accommodations will provide financial viability for the newly developed deed restricted affordable housing units and is requesting an amendment to the Official Zoning Map for the subject properties from Historic Medium Density Residential (HMDR) to Historic Commercial Tourist (HCT).

It is worth noting that in 2018, the City Commission passed and adopted Ordinance No. 18-11, amending Section 108-995 of the Land Development Regulations, which required that the City of Key West building permit allocation system permits issued for new units be residential and that no transient allocations would be made subsequent to the closure of the 2017-2018 allocation period. Since closure of that allocation period, no transient allocations have been provided in the City of Key West. However, existing transient licenses can still be transferred from other properties. The applicant is aware that a separate application to amend the requirements of Section 108-995 would need to be approved and adopted prior to the issuance of any new transient licenses. If approved, the property owner stands to benefit financially, represented by the high value of each

transient license as it fluctuates with the Key West real estate market, plus the revenue represented by nightly transient rentals, which can far surpass vacation rentals with a 30 day minimum limitation.

Anticipating Planning staff's concerns over allowable new commercial uses and increases in density beyond what is permitted under the current HMDR zoning, the applicant has proposed as a condition of approval that the applicant record a deed restriction in a form satisfactory to the city attorney providing that the incompatible uses beyond transient are not permitted on the properties, and that maximum density be maintained at 16 dwelling units per acre. However, no provisions in the LDRs allow for conditions of approval to be placed on map amendments, as this would result in spot zoning.

Concurrent with the FLUM amendment, the applicant is also requesting a zoning map amendment for the subject properties, from Historic Medium Density Residential (HMDR) to Historic Commercial Tourist (HCT)

Future Land Use Map (FLUM) Amendment Process:

Planning Board Meeting:	March 12, 2024
City Commission (1 st Reading / Transmittal):	TBD
Local Appeal Period:	30 days
DOC Review (1 st Reading):	Up to 60 days
City Commission (2 nd Reading / Adoption):	TBD
Local Appeal Period:	30 days
DOC Review (2 nd Reading):	Up to 45 days
DOC Notice of Intent (NOI):	Effective when NOI posted to DOC site

Analysis:

Section 90-551 of the City Code states that the purpose of the Comprehensive Plan Amendment process is to “...provide a means for changing the boundaries of the future land use map of the comprehensive plan future land use map (i.e., specific comprehensive plan amendment) consistent with F.S. ch. 163. It is not intended to relieve particular hardships nor to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the city commission shall consider, in addition to the factors set forth in this division, the consistency of the proposed amendment with the intent of the comprehensive plan.”

Pursuant to Code Section 90-556(a), the Planning Board, regardless of the source of the proposed change in the Comprehensive Plan, shall hold a public hearing thereon with due public notice as described in Code Chapter 90, Article VI, Division 3. The Planning Board shall consider recommendations of the City Planner, City Attorney, Building Official and other information submitted at the scheduled public hearing. The Planning Board shall transmit a written report and recommendation concerning the proposed change in the Comprehensive Plan to the City Commission for official action. In its deliberations the Planning Board shall consider the criteria in Code Section 90-555.

Criteria for Approving Amendments to Comprehensive Plan Future Land Use Map pursuant to Code Section 90-554(6) and 90-555. In evaluating proposed changes to the Comprehensive Plan FLUM, the City shall consider the following criteria:

90-554 (6) Justification. The need and justification for the proposed change. The evaluation shall address but shall not be limited to the following issues:

- a. **Comprehensive Plan consistency.** Identifying impacts of the proposed change in the Comprehensive Plan future land use map on the overall purpose of the Comprehensive Plan and consistency with applicable policies within the Comprehensive Plan.

Policy 3-1.7.5(8): Manage Current Developmental Impacts. Evaluate and manage impacts of proposed development pursuant to existing ordinances, including, but not limited to, impacts on residential neighborhoods, local housing supply and demand, public facility impacts, and natural environmental factors.

Objective 3-1.1: Provide Quality Affordable Housing and Adequate Sites for Low and Moderate Income Housing. The City shall implement policies in order to assist in accommodating existing and projected housing need. Monitoring Measure: Number of affordable housing units provided (public housing and deed restricted affordable housing) compared to current and projected demand.

Policy 3-1.7.1: - Promote Maintenance of Housing Stock and Neighborhood Conservation. The City shall enforce all Building Code provisions and Land Development Regulations to promote maintenance of housing stock. Necessary corrective action shall be taken where non-compliance exists or when it comes into existence in the future.

The current Future Land Use Map designation of Historic Residential and corresponding HMDR zoning designation presently allow for medium density residential development, including single-family, duplex, and multiple-family residential structures with a maximum density of 16 dwelling units per acre. Based on the subject properties' combined area of 3.36 acres (which includes some City owned property internal to the subject property that the applicant has requested to be vacated) the site's current future land use designation and zoning allows approximately 54 units, accommodating the total density of 48 units proposed by the property owner through their Year 10 BPAS application. Barring the requested transient accommodations, the proposed number of units is permitted by right under the existing FLUM and zoning designations for the properties contingent on the proposed Unity of Title between the two subject parcels. Based on the corresponding BPAS applications submitted for the subject properties, the applicant is proposing a net increase of 9 workforce housing units in addition to the redevelopment of the existing 16 workforce housing units. The proposed redeveloped and new workforce housing units would house a total of 88 individuals with the conversion to higher occupancy roommate-style 4-bedroom units. However, Planning staff remains concerned that the potential conversion of existing market rate housing stock to transient rental units will undermine the City's efforts to meet critical housing needs.

- b. **Impact on surrounding properties and infrastructure.** The effect of the change, if any,

on the particular property and all surrounding properties. Identify potential land use incompatibility and impacts on infrastructure.

The current zoning of the subject parcels is HMDR, which allows for a mix of residential development types ranging from single family to multi-family. The proposed HCT zoning district allows for additional potentially incompatible conditional and permitted uses that include retail, bars and lounges accessory to hotels, recreational rental vehicle businesses, and additional transient rentals. While staff supports a balance between preserving the quality of life of existing residents in the area and neighborhood-appropriate business activity that supports the local economy, the proposed amendments would enable development of a higher intensity than what is currently permitted under the existing zoning and future land use, potentially impacting the existing single-family and multi-family residential uses in the immediate vicinity of the subject properties as well as the site's infrastructure needs.

c. *Avoidance of special treatment.* The proposed change shall not:

- 1. Single out a small piece of land and confer special and privileged treatment not provided to abutting properties with similar characteristics and land use relationships.*

The applicant proposes for the subject properties to align with the Historic Commercial (HC) designated land immediately adjacent to the south and west. Therefore, this request does not single out a small piece of land nor confer special and privileged treatment.

- 2. Provide for land use activities which are not in the overall public interest but only for the benefit of the landowner.*

The proposed change would allow for the development of transient units at the subject properties. The financial benefit provided solely to the property owner is represented by the high value of each transient license as it fluctuates with the Key West real estate market, plus the revenue represented by nightly transient rentals, which can far surpass vacation rentals with a 30 day minimum limitation.

The applicant provides that allowing the transient units on the subject properties will provide the financial viability ability to develop workforce housing units. No market study or other empirical evidence has been provided in support of this statement.

d. *Undeveloped land with similar comprehensive plan future land use map designation.*

The amount of undeveloped land in the general area and in the city having the same zoning classification as that requested shall be stated.

There is little to no undeveloped land in the general area and in the city having the same zoning classification as HCT.

City Code Section 90-555 establishes ten (10) criteria to be used in evaluating proposed changes to the future land use map. The applicant's proposal raises concerns with several of the criteria as more fully discussed below:

(1) Consistency with plan. Whether the proposal is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program. Comprehensive Plan Objective 3-1.1: identifies the need to “*Provide Quality Affordable Housing and Adequate Sites for Low and Moderate Income Housing. The City shall implement policies in order to assist in accommodating existing and projected housing need. Monitoring Measure: Number of affordable housing units provided (public housing and deed restricted affordable housing) compared to current and projected demand.*”

Although not the specific focus of this application, the applicant has provided that this rezoning is required to permit transient uses on the subject properties to subsidize proposed deed restricted workforce housing for employees. In essence the proposed zoning amendments are only needed and are intended to facilitate the construction of transient units in return for the development of deed restricted employee housing units. However well-intentioned, this approach will result in a reduction of existing market rate housing stock, exacerbating ongoing housing shortfalls. The applicant contends that through the construction of on-site employee housing, many other rental units will be vacated by Casa employees and become available to others in need of housing throughout Key West. Staff has requested evidence to substantiate this statement, such as a list of apartment units with names redacted to ensure privacy; however no such data has been provided at this time. Staff has concluded that the applicant's approach is inconsistent with both the Comprehensive Plan and Land Development Regulations.

(3) Changed conditions. Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed rezoning.

The ability to meet local housing needs has become significantly more difficult since the adoption of the current Land Development Regulations (1997) and Comprehensive Plan (2013). Approval of the subject application and the proposed amendment to allow for the conversion of market rate units to transient rental units will create a misaligned incentive to reduce the available supply of market rate housing units, exacerbating current housing shortages.

(4) Land use compatibility. Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.

The subject properties contain a mixture of market rate housing units, which are currently vacant, and deed restricted workforce housing units, as well as a variety of uses that are ancillary to the Casa Marina Hotel.

The current zoning of the subject parcels is HMDR, which allows for a mix of residential development types ranging from single family to multi-family. The proposed HCT zoning district allows for additional potentially incompatible conditional and permitted uses that include retail, bars and lounges accessory to hotels, recreational rental vehicle businesses, and additional transient rentals. While staff supports a balance between preserving the quality of life of existing residents in the area and neighborhood-appropriate business activity that supports the local economy and workforce, the proposed amendments would enable development of a higher

intensity, potentially impacting the existing single-family and multi-family residential uses in the immediate vicinity of the subject properties as well as the site's infrastructure needs.

(9) Public interest; enabling act. Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.

The preservation of existing housing stock for local residents, including emergency responders, local police, and municipal employees is one of the most significant challenges facing the City of Key West. The potential conversion of existing market rate housing stock to transient rental units will not support the City's efforts to meet critical housing needs.

(10) Other matters. Other matters which the planning board and the city commission may deem appropriate.

The existing zoning classification (HMDR) allows for the development of the employee housing units and market rate BPAS units allocated to the properties; thus a rezoning is not necessary. The densities proposed for both the market rate units and the workforce housing units are also within the maximum permitted density allowable pursuant to the HMDR District provisions.

The purpose of the proposed rezoning is to allow for the construction of new transient rental units which is inconsistent with both the Comprehensive Plan and Land Development Regulations. Speculatively rezoning the subject property in anticipation of a text amendment and change to the comprehensive plan is premature and inconsistent with sound planning practice. It would be more appropriate to combine the various components of the development proposal and ensure a comprehensive analysis of the potential impacts associated with the request.

RECOMMENDATION:

Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends to the Planning Board that the request to amend the Future Land Use Map Legend from Historic Residential to Historic Commercial be **DENIED** pursuant to the following:

1. The existing FLUM category of HR allows for the development of the deed restricted employee housing units and market rate units allocated to the property. The densities proposed for both the market rate units and the employee housing units are also already permissible given the maximum permitted density within the HR FLUM category.

The purpose of the proposed amendment of the FLUM category and rezoning is to allow for the future construction of transient rental units inconsistent with both the Comprehensive Plan and Land Development Regulations. The amendment of the FLUM category and rezoning of the subject property to allow for the construction of new transient rental units should follow, not precede, any needed amendments of the Land Development Regulations and Comprehensive Plan.

2. Inconsistency with City Code Section 90-521 (3) Changed conditions. The ability to meet local housing needs has become significantly more difficult since the adoption of the current Land

Development Regulations (1997) and Comprehensive Plan (2013). Approval of the subject application and the forthcoming companion text amendment to allow for the conversion of market rate units to transient rental units will create a misaligned incentive to reduce the available supply of market rate housing units, exacerbating current housing shortages.

3. Inconsistency with City Code Section 90-521 (4) Land use compatibility. The proposed amendment of the FLUM category from HR to HC and rezoning from HMDR to HCT allows for significant increases in both development density and the range of permitted/conditional uses. The increases in both development density and permitted/conditional uses within the HC FLUM category and HCT District will result in potential adverse impacts to surrounding residential neighborhoods within adjacent and surrounding HMDR properties to both the north and east.

4. Inconsistency with City Code Section 90-521 (9) Public interest; enabling act. The preservation of existing housing stock for local residents, including emergency responders, local police, and municipal employees is one of the most significant challenges facing the City of Key West. The potential conversion of existing market rate housing stock to transient rental units appears in conflict with the City's efforts to meet critical housing needs.

Respectfully submitted to the Board for use in making its determination.