



**CITY OF KEY WEST, FLORIDA • PLANNING DEPARTMENT**  
3140 Flagler Avenue • Key West, Florida 33040-4602 • 305-809-3720  
www.cityofkeywest-fl.gov/planning • planning@cityofkeywest-fl.gov

## LAWFUL UNIT DETERMINATION

**Date:** January 27, 2016

**To:** Adele V. Stones, P.A.

**Cc:** Ron Wampler, Building Official  
Larry Erskine, Chief Assistant City Attorney  
Carolyn Walker, Licensing Official  
Michael Turner, Utilities Collection Manager  
Diane Nicklaus, Engineering Services  
Scott Russell, C.F.A., Monroe County Property Appraiser

**From:** Thaddeus Cohen, Planning Director

**Request:** A determination that three (3) existing transient units and two (2) existing transient uses of two non-transient units are exempt from the City's Building Permit Allocation System (BPAS).

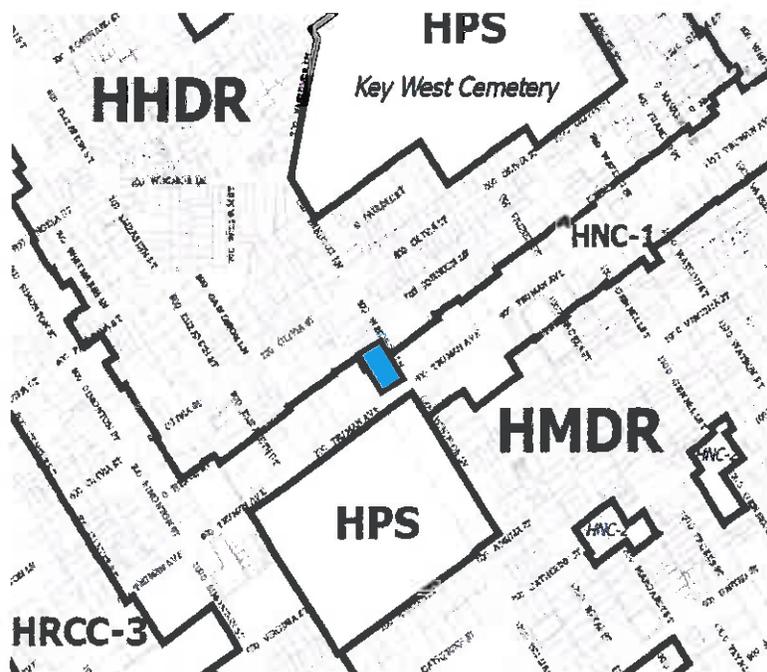
**Applicant:** Adele V. Stones, P.A.

**Property Owner:** Paul Hayes & Michael L. Laughlin

**Location:** The Mermaid and The Alligator  
729 Truman Avenue (RE# 00020420-000000, AK# 1021172) &  
916 Windsor Lane (RE# 00020470-000000, AK# 1021229)

**Zoning:** Historic Neighborhood Commercial District (HNC-1) Zoning District and Historic High Density Residential District (HHDR) Zoning District

### Zoning Map:



**LUD Request:**

As summarized in the table below, the applicant states there are currently 9 transient units on the property. For BPAS purposes, all existing units would be considered transient units. The applicant requests recognition of 3 transient units and 2 transient uses of 2 non-transient units as exempt from BPAS. The City’s licensing records indicate that there are currently 4 transient units and 1 manager’s unit recognized at 729 Truman Avenue and 1 non-transient unit recognized at 916 Windsor Lane.

NUMBER OF RESIDENTIAL DWELLING UNITS		
UNIT TYPE	EXISTING	LICENSED / ACKNOWLEDGED
<b>Non-Transient Market-Rate</b> (1.0 ESFU, includes single-family and multifamily structure types)	<b>729 Truman</b>	0
	<b>916 Windsor</b>	1
<b>Non-Transient Affordable</b> (1.0 ESFU, includes single-family and multifamily structure types)	0	0
<b>Transient</b> (0.86 ESFU)	<b>729 Truman</b>	6
	<b>916 Windsor</b>	3
<b>Accessory Unit / Single-Room Occupancy (SRO)</b> (0.78 ESFU)	0	0
<b>Nursing home, rest home, assisted living facility and convalescent home</b> (0.10 ESFU)	0	0
<b>Total Units:</b>	<b>9</b>	<b>6</b>

**Background:**

The Mermaid and The Alligator guest house is located at 729 Truman Avenue and 916 Windsor Lane. Historically, the subject properties have operated as a nine unit guest house; however, it has only been licensed with the City of Key West for four transient units and one manager’s unit at 729 Truman Avenue and one non-transient unit at 916 Windsor Lane.

Although the properties are adjacent, 729 Truman Avenue is located in the HNC-1 zoning district and 916 Windsor Lane is located in the HHDR zoning district.

**729 Truman Avenue (HNC-1):**

729 Truman Avenue is located at the corner of Truman Avenue and Windsor Lane and serves as the principal structure for The Mermaid and The Alligator. It consists of a 2 ½ story structure built in 1943 and contains 6 transient units (Audubon, Caribbean Queen Suite, Garden Room, Royal Poinciana, Sun Room and Treetop Suite).

Four transient units and one manager’s unit were legally established as of September 15, 1986. It is unclear when the manager’s unit was converted into a transient unit and when the additional transient unit was created. However, from 1974-1985 the property was zoned C-1 (Neighborhood Commercial District), which allowed transient living accommodations (hotels, motels, guest houses and cottages) not to exceed sixteen (16) habitable units per acre. The zoning then changed to HP-2 (Commercial Historic Preservation District) in 1985, which allowed transient units not to exceed 30 habitable units per acre for hotels, motels, guest houses and cottages via Ordinance 86-15 and reduced back to 22 habitable units per acre in 1989 via Ordinance 89-6. That being said, in 1986 the property was conforming to density with the existing 5 dwelling units. When the zoning changed to HNC-1, the property became legally non-conforming to density with the recognized units. Since it is unclear when the additional unit was created, staff is unable to determine when the property increased the nonconforming density. Additionally, pursuant to Section 122-807 of the Land Development Regulations, conversion of permanent housing structures to transient residential, office, or other allowable commercial uses shall be permitted only if no

on-site reduction in housing units for permanent residents occurs. Therefore, the reduction of the permanent housing unit created a nonconforming use of the manager's unit.

**916 Windsor Lane (HHDR):**

916 Windsor Lane is located adjacent to the guest house and was leased to the guest house for "overflow" rentals during the 1980-1990s. The guest house was officially expanded when the property was purchased in 2003. It consists of a one story structure built in 1938 and contains 3 transient units (Bamboo, Papaya Room and Key Lime Room).

One non-transient unit was legally established as a non-transient rental as of May 11, 1992. It is unclear when the manager's unit was converted into a transient unit and when the addition of the two transient units were created. However, prior to 1997 the property was zoned HP-1 (Residential Historic Preservation District). From 1969-1985, HP-1 allowed two-family dwellings and multi-family structures not to exceed 4 dwelling units. However, in 1985 the City Commission passed Ordinance 85-33 allowing two-family and multi-family dwellings not to exceed 22 habitable units per acre. That being said, in 1992 the property was conforming to density; however, the property became nonconforming with the addition of the two transient units. Since it is unclear when the additional unit was created, staff is unable to determine when the property increased the nonconforming density. Additionally, the transient use is a nonconforming use and any additional transient unit would expand an existing nonconforming use.

**Purpose and Intent / BPAS Applicability / Development Not Affected by BPAS:**

The intent of the Building Permit Allocation System (BPAS), pursuant to City Code Section 108-987, is to implement the City's Comprehensive Plan by limiting annual permanent (non-transient) and transient residential development. All new permanent and transient residential units within the City are subject to the BPAS, except as expressly exempted in City Code Section 108-991. However, nothing in City Code Chapter 108, Article X (BPAS), shall relieve the property owner from complying with other applicable sections of the City LDRs for development on the property.

**Analysis / Findings:**

Development consistent with the criteria in City Code Section 108-991 shall not be affected by the terms of City Code Chapter 108, Article X (BPAS), but such development shall comply with all applicable sections of the City's Land Development Regulations (LDRs).

Pursuant to City Code Section 108-991(3), units determined to have been in existence at the time the April 1, 2010, U.S. 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;**

N/A. Aerial photos would indicate the existence of the land-based structures currently used as a guesthouse; however, the photos cannot confirm the number of units inside.

**DOES NOT SUPPORT THE NUMBER OF TRANSIENT UNITS INSIDE.**

**b. Building permits issued prior to April 1, 2010;**

A review of permit records yields the following information:

729 Truman

1. June 29, 1988 - Certificate of Occupancy B-014130 - verifies 3 floors.

2. Permit application B-16258 for repair work lists 4 units.
3. March 13, 1990 - Permit # 90-1193 – Removal of kitchen ceiling panels & replacing some rotten boards, 3 total units.
4. September 11, 1998 - Permit # 98-2850 for new bathroom addition and deck above, the applicant wrote number of units as 1.
5. April 10, 1999 - Permit # 99-1215 lists 2 units and 6 bedrooms.
6. April 30, 1999 - Permit # 99-1501 lists 1 unit and 6 bedrooms.

916 Windsor

- January 4, 2001 - Permit # 01-0043 for plumbing, does not include rooms or unit information.

**SUPPORTS RECOGNITION OF UP TO 3 LAWFULLY ESTABLISHED UNITS PRIOR TO 2010 AT 729 TRUMAN AVENUE.**

**c. Copies of city directory entries on or about April 1, 2010;**

729 Truman

- 1994, 1998, 2002, 2004, Polk lists 729 Truman Avenue, The Mermaid & The Alligator under motel, boarding house, guest house, 1 phone number
- 2003 Hill-Donnelly lists 729 Truman Avenue, The Mermaid & The Alligator, 1 person, 1 phone number.
- 2005 Polk lists 729 Truman Avenue, The Mermaid & The Alligator, 1 person, 1 phone number.
- 2006, 2009 Polk lists 729 Truman Avenue, The Mermaid & The Alligator, guest houses, 1 person, 2 phone numbers.
- 2007 Polk lists 729 Truman Avenue, The Mermaid & The Alligator guest houses, 2 persons, 1 phone number.
- 2010 Polk lists 729 Truman Avenue, The Mermaid & The Alligator guest houses, 1 person, 1 phone number.

916 Windsor

- 1994 Hill-Donnelly lists 916 Windsor Lane, guest house.
- 2005, 2006 Polk lists 916 Windsor Lane, 1 person.
- 2007 Polk lists 916 Windsor Lane, 914-916 No Current Listing (2 Houses), 1 phone number.
- 2010 Polk lists 916 Windsor Lane, 1 person

**SUPPORTS EXISTENCE OF TRANSIENT USE AT 729 TRUMAN AVENUE AND 916 WINDSOR LANE PRIOR TO 2010 BUT NOT THE NUMBER OF TRANSIENT UNITS ON SITE.**

**d. Site visits which indicate that the age of the structure and associated improvements likely pre-date 2010;**

The mandatory site visit by staff on March 16, 2015 confirmed that there are currently six transient units at 729 Truman Avenue and three transient units at 916 Windsor Lane.

**SUPPORTS RECOGNITION OF 4 LAWFULLY ESTABLISHED TRANSIENT UNITS AND 1 NON-TRANSIENT UNIT AND SUPPORTS EXISTENCE OF 1 ADDITIONAL TRANSIENT UNIT AND THE TRANSIENT USE OF A NON-TRANSIENT UNIT AT 729 TRUMAN AVENUE.**

**SUPPORTS RECOGNITION OF 1 LAWFULLY ESTABLISHED NON-TRANSIENT UNIT AND SUPPORTS EXISTENCE OF 2 ADDITIONAL TRANSIENT UNITS AND A TRANSIENT USE OF A NON-TRANSIENT UNIT AT 916 WINDSOR LANE.**

**e. Rental, occupancy or lease records from before and including April 1, 2010, indicating the number, type and term of the rental or occupancy;**

- 1997 Lease - 729 Truman Avenue, Michael L. Laughlin, referred to as landlord and tenant
- 1998 Lease - 916 Windsor Lane, Hyman Abady, referred to as tenant
- Rezovation Log - 1999-2013
- Rezovation Revenue Report - November 2009 and February 2010: Revenue for 9 Rooms: Audubon, Bamboo, Caribbean Queen Suite, Garden Room, Key Lime Room, Papaya Room, Royal Poinciana, Sun Room and Treetop Suite.

**SUPPORTS RECOGNITION OF 4 LAWFULLY ESTABLISHED TRANSIENT UNITS AND 1 NON-TRANSIENT UNIT AND SUPPORTS EXISTENCE OF 1 ADDITIONAL TRANSIENT UNIT AND THE TRANSIENT USE OF A NON-TRANSIENT UNIT AT 729 TRUMAN AVENUE.**

**SUPPORTS RECOGNITION OF 1 LAWFULLY ESTABLISHED NON-TRANSIENT UNIT AND SUPPORTS EXISTENCE OF 2 ADDITIONAL TRANSIENT UNITS AND A TRANSIENT USE OF A NON-TRANSIENT UNIT AT 916 WINDSOR LANE.**

**f. Copies of state, county, and city licenses on and about April 1, 2010, indicating the number and types of rental units;**

- City: 729 Truman Avenue - 4 transient and 1 manager's unit  
916 Windsor Lane - 1 non-transient unit
- County: 729 Truman Avenue - 10 units from 1999-2008  
916 Windsor Lane - 1 room from 2008-2009
- State: 729 Truman Avenue - 4 units in 1999 ; 6 units from 2000-2010  
916 Windsor Lane - 3 units from 1999-2010

**SUPPORTS RECOGNITION OF 4 LAWFULLY ESTABLISHED TRANSIENT UNITS AND 1 NON-TRANSIENT UNIT AND SUPPORTS EXISTENCE OF 1 ADDITIONAL TRANSIENT UNIT AND THE TRANSIENT USE OF A NON-TRANSIENT UNIT AT 729 TRUMAN AVENUE.**

**SUPPORTS RECOGNITION OF 1 LAWFULLY ESTABLISHED NON-TRANSIENT UNIT AND SUPPORTS EXISTENCE OF 2 ADDITIONAL TRANSIENT UNITS AND A TRANSIENT USE OF A NON-TRANSIENT UNIT AT 916 WINDSOR LANE.**

**g. 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;**

- City utilities: 729 Truman Avenue - 3 residential units ; 916 Windsor Lane – 1 residential unit
- FCAA: 729 Truman Avenue - 5 units ; 916 Windsor Lane – 1 unit
- Keys Energy: 729 Truman Avenue - 1 unit ; 916 Windsor Lane - 1 unit

**SUPPORTS RECOGNITION OF UP TO 5 LAWFULLY ESTABLISHED UNITS.**

**h. Documentation for the Monroe County Property Appraiser's Office for the time on or about April 1, 2010, (Green Card); and**

729 Truman Avenue

- AK # 1021172, lists PC Code 39-hotes, motels. Notes mention 4 transient units and 1 non-transient owner's apartment (1/30/2003).
- 1974 Green Card states 1 residential structure in building 1, garage in building 2.

916 Windsor Lane

- AK # 1021229, lists PC Code 39-hotes, motels. Notes mention this house has been purchased by The Mermaid and The Alligator guesthouse. This unit does not have a transient unit.
- 1974 Green Card states 1 residential structure in building 1, plumbing closet in building 2.

**SUPPORTS RECOGNITION OF 4 LAWFULLY ESTABLISHED TRANSIENT UNITS AND 1 NON-TRANSIENT UNIT 729 TRUMAN AVENUE.**

**SUPPORTS RECOGNITION OF 1 LAWFULLY ESTABLISHED NON-TRANSIENT UNIT AT 916 WINDSOR LANE.**

**i. Similar documentation as listed above:**

1. Prior Certificates of Occupancy: 729 Truman, Certificate No. B-014130.
2. Prior Lawful Unit Determinations: None found.
3. Property appraisals:
  - February 22, 1999, Residential Appraisal by Vicki Gordon, confirms one unit at 916 Windsor Lane.
  - January 22, 2007 Appraisal Co. of Key West Property Appraisal for 916 Windsor Lane states “the subject property does not contain a full kitchen as it is being utilized as three separate rooms, each containing one three-fixture bathroom.”
  - January 22, 2007 Appraisal Co. of Key West Property Appraisal for 729 Truman Avenue: “currently licensed for four transient units and one owner’s unit; however, the State of Florida recognizes six transient licenses. According to the City of Key West Licensing Department, their designated licensing takes seniority over the State of Florida due to density restriction within the City of Key West.”
4. Zoning Analysis:

**729 Truman Avenue:** From 1974-1985 the property was zoned C-1 (Neighborhood Commercial District), which allowed transient living accommodations (hotels, motels, guest houses and cottages) not to exceed sixteen (16) habitable units per acre. The zoning then changed to HP-2 (Commercial Historic Preservation District) in 1985, which allowed transient units not to exceed 30 habitable units per acre for hotels, motels, guest houses and cottages via Ordinance 86-15 and reduced back to 22 habitable units per acre in 1989 via Ordinance 89-6. That being said, in 1986 the property was conforming to density with the existing 5 dwelling units. When the zoning changed to HNC-1, the property became legally non-conforming to density with the recognized units. Since it is unclear when the additional unit was created, staff is unable to determine when the property increased the nonconforming density. Additionally, pursuant to Section 122-807 of the Land Development Regulations, conversion of permanent housing structures to transient residential, office, or other allowable commercial uses shall be permitted only if no on-site reduction in housing units for permanent residents occurs. Therefore, the reduction of the permanent housing unit created a nonconforming use of the manager’s unit.

**916 Windsor Lane:** Prior to 1997 the property was zoned HP-1 (Residential Historic Preservation District). From 1969-1985, HP-1 allowed two-family dwellings and multi-family structures not to exceed 4 dwelling units. However, in 1985 the City Commission passed Ordinance 85-33 allowing two-family and multi-family dwellings not to exceed 22 habitable units per acre. That being said, in 1992 the property was conforming to density; however, the property became nonconforming with the addition of the two transient units. Additionally, HP1 and HHDR both prohibit transient use. Therefore, the transient use is a nonconforming use and any additional transient unit would expand an existing nonconforming use.

5. Code Violation: 1999 City of Key West Code Enforcement Division Building Department, 729 Truman Avenue, violation: Renting 8 or more rooms yet licensed for only 4 transient units.
6. Website Advertisement:
  - July 1998, waybackmachine.org, advertised 8 units not including manager's unit
  - June 2009, waybackmachine.org , advertised 9 units
  - January 2010, waybackmachine.org , advertised 9 units
7. Innkeeper's Association 2006 Survey:
  - 729 Truman Avenue
    - Number of licensed units: 4; Number of unlicensed units: 2; Total units: 6
  - 916 Windsor Lane
    - Number of licensed units: 0; Number of unlicensed units: 3; Total units: 3

**SUPPORTS RECOGNITION OF 4 LAWFULLY ESTABLISHED TRANSIENT UNITS AND 1 NON-TRANSIENT UNIT AND SUPPORTS EXISTENCE OF 1 ADDITIONAL TRANSIENT UNIT AND THE TRANSIENT USE OF A NON-TRANSIENT UNIT AT 729 TRUMAN AVENUE.**

**SUPPORTS RECOGNITION OF 1 LAWFULLY ESTABLISHED NON-TRANSIENT UNIT AND SUPPORTS EXISTENCE OF 2 ADDITIONAL TRANSIENT UNITS AND A TRANSIENT USE OF A NON-TRANSIENT UNIT AT 916 WINDSOR LANE.**

- j. **Provision of affidavits to support the existence of a unit is allowed, but cannot be the sole record upon which a decision is based. Provision of documents is the responsibility of the applicant. The City Planner's decision shall be rendered to the Florida Department of Economic Opportunity for a determination of consistency with the Principals for Guiding Development.**  
No affidavits submitted by applicant. The requested LUD, if approved, will be rendered to DEO as required.

**DETERMINATION:**

Pursuant to City Code Section 108-991(3), units determined to have been in existence at the time the April 1, 2010, U.S. Census was prepared are presumed not to be affected by BPAS. Therefore, based on the analysis above, a body of evidence exists to support the following:

**729 Truman Avenue:**

Recognition of one (1) established non-transient unit and four (4) established transient units and the existence of one (1) additional transient unit on or about April 1, 2010. Pursuant to Section 122-807 of the Land Development Regulations, conversion of permanent housing structures to transient residential, office, or other allowable commercial uses in the HNC-1 zoning district shall be permitted only if no on-site reduction in housing units for permanent residents occurs. Therefore, the City is unable to recognize the additional transient use of the non-transient unit as being exempt from the City's Building Permit Allocation System (BPAS).

**916 Windsor Lane**

Recognition of one (1) established non-transient unit and the existence of one (1) transient use of a non-transient unit and two (2) additional transient units on or about April 1, 2010.

**This determination does not grant new unit allocations, but rather recognizes that a total of five (5) transient units and one (1) non-transient unit exist at 729 Truman Avenue and a total of three (3) transient units exist at 916 Windsor Lane.**

**CONDITIONS/REQUIREMENTS**

The authorization for the lawful establishment of units contained in this determination letter shall not be acknowledged or considered valid nor granted until such time as the approval requirements listed in this letter are fulfilled as follows:

- a. Cease using the manager's unit at 729 Truman Avenue as a transient unit within the next 90 days.
- b. Building Department Submittals and Inspection: Per Section 108-991(3), units which have not been previously acknowledged by the Administrative Official, but are presumed to be lawfully established must meet the requirements in the Florida Building Code. Please coordinate with the Building Official for a site inspection 305-809-3958;
- c. Impact Fees and/or Back Fees: As these structures date prior to the 1970s, impact fees will not be assessed. However, please contact the Utilities Collection Manager (Michael Turner 305-809-3816) to coordinate payment for back fees on the following units:
  - 1. 729 Truman Avenue: There are a total of five (5) transient units and one (1) non-transient unit at 729 Truman Avenue. Currently billing for one non-transient unit and four transient units; change billing to reflect one additional transient unit back to November 2009 (per Rezovation Revenue Report).
  - 2. 916 Windsor Lane: There are a total of three (3) transient units at 916 Windsor Lane. Currently billing for one non-transient unit; change billing to reflect the transient use of the non-transient unit and add two transient units back to November 2009 (per Rezovation Revenue Report).
- d. The Mermaid and The Alligator will require the establishment of a new address for compliance with the 911 Addressing System. Please coordinate with Engineering Services (Diane Nicklaus 305-809-3951);
- e. Obtain one (1) transient rental license for 729 Truman Avenue and three (3) transient rental licenses for 916 Windsor Lane from the Licensing Department; and
- f. Correct licensing information with the County Tax Appraiser to reflect five (5) transient units and one (1) non-transient unit at 729 Truman Avenue and a total of three (3) transient units at 916 Windsor Lane.

**Appeal and Rendering Information:**

Pursuant to City Code Section 90-431(1)a., appeals of final decisions of the Planning Director must be filed with the City Clerk within 10 days after the date of the decision. After the 10-day administrative appeal period, this determination will be rendered to the Florida Department of Economic Opportunity (DEO), who has up to 45 days to review and appeal, pursuant to Chapter 73C-44, F.A.C. Any appeal would stay the effectiveness of this determination.



Thaddeus Cohen, Planning Director