

THE CITY OF KEY WEST PLANNING  
BOARD  
Staff Report



**To:** Chairman and Planning Board Members

**Through:** Katie P. Halloran, Planning Director

**From:** Jordan Mannix-Lachner, Planner I

**Meeting Date:** June 15, 2023

**Agenda Item:** **Transfer of a Transient Unit License** – A request to transfer one (1) transient unit and license in unassigned status to a receiver site property located at 423 Front Street (RE# 00000160-000000) in the Historic Residential Commercial Core-1 zoning district pursuant to Sections 122-1338 and 122-687 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

**Request:** A request to transfer one transient unit and one unassigned transient license from 501 Greene Street to a property at 423 Front Street in the HRCC-1 zoning district.

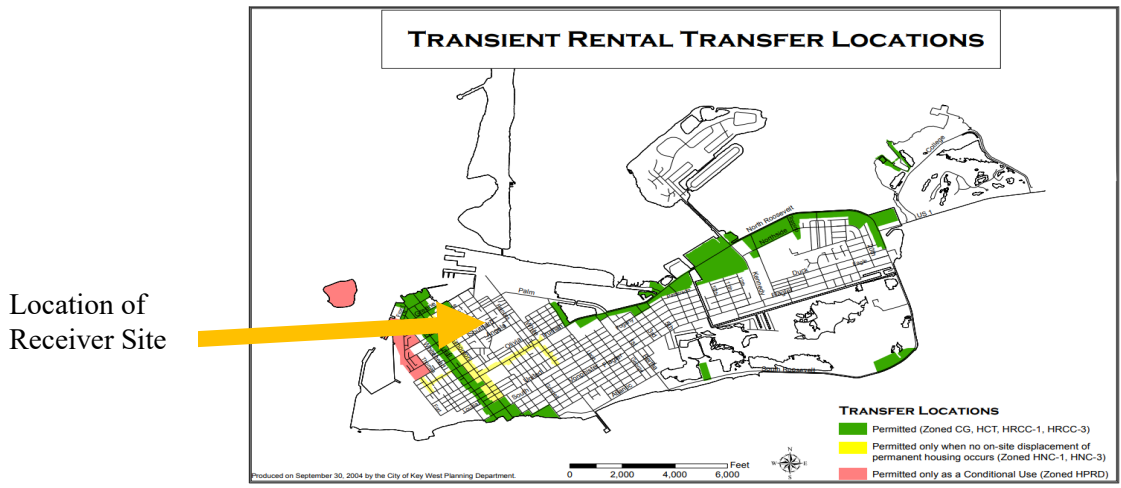
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**Property Owners:** Sender Site: 135 Duval Company, LLC . C/O Duval Group, Inc.  
Receiver Site: Old Harbor House, Inc. C/O Duval Group, Inc.

**Applicant:** Trepanier & Associates

**Sender Site Location:** Unassigned from 501 Greene Street – HRCC - 1

**Receiver Site Location:** 423 Front Street – HRCC - 1



**Background:**

The applicant is requesting to transfer a transient unit and license in unassigned status from 501 Greene Street to 423 Front Street. The initial application was a request for the transfer of a transient license, without the accompanying transfer of a unit. The transfer of a transient license within districts that permit transient use is prohibited. The applicant revised the application to request the transfer of both a transient license and unit, which is permitted when both sites are within zoning districts that permit transient use.

Sender Site: The license that is the subject of this request is an unassigned license that originates from 501 Greene Street. The license was placed in unassigned status in 2018 when the unit was converted into commercial space. The property located at 501 Greene Street is in the HRCC – 1 zoning district, which permits transient use.

The property located at 501 Greene Street is part of a 8,138 square-foot parcel which also includes 133 Duval St., 137 Duval St., 141 Duval St., 503 Greene St., and 505 Greene St. Existing licensed uses on the property include commercial retail, recreational vehicle rentals, and restaurant and bar uses.

Receiver Site: The proposed receiver site is located at 423 Front Street in the HRCC – 1 zoning district. The 4,700 square-foot parcel contains a two-story historic structure which encompasses the entirety of the property’s square footage. There are several existing encroachments onto City right-of-way. There are no current easement agreements.



*423 Front Street*

The first floor of the structure consists of commercial retail use. The property is associated with two active retail licenses and one custom apparel license. The second floor had previously been used for storage, but has been converted for residential use after the property was awarded two permanent Building Permit Allocation System (“BPAS”) units in 2019.

The maximum density for the HRCC-1 zoning district is 22 units per acre, which amounts to two (2) units for this parcel. The applicant proposes to locate the transient unit in the physical space that was converted to the BPAS unit. The applicant does not propose to return the displaced BPAS unit to the City; the applicant proposes to maintain the second BPAS allocation, but not to physically utilize it.



## Development Review Committee

This application first went before the Development Review Committee (DRC) at the February 23, 2023, meeting. The amended request was reviewed by the DRC on April 26, 2023. Comments from DRC staff are summarized below:

### Historic Preservation Planner:

- Expressed concern that solid waste receptacles and mechanical equipment for the subject property are currently situated on the public right-of-way:
  - o There is mechanical equipment underneath an exterior staircase on the West side of the structure that encroaches onto the Wall Street right-of-way.
  - o There is an unpermitted fence, trash and recycling receptacles adjacent to the south side of the structure, which also encroach onto City right-of-way.
- Stated that mechanical equipment, trash, and recycling receptacles should not encroach on the right-of-way. Requested information indicating the proposed location of the trash, recycling, and mechanical equipment.
- Expressed concern about the compatibility of the mechanical and trash/recycling equipment with the Mallory Square redevelopment project.

### Fire Department:

- Unit must meet all life safety requirements for transient rentals, including certified and tagged fire extinguishers, emergency egress, and emergency lighting. Site visit may be required.

### GIS Division:

- Noted that placing the transient unit in the space that is currently being constructed as a BPAS unit would result in the BPAS unit being placed in a type of 'unassigned' status, which the City does not have a mechanism for tracking or recognizing.
- Expressed concern that there's mechanical equipment in the public alleyway (Wolfson Street). Noted that an agreement between the City and the property owner for the BPAS renovation permit required storage of trash receptacles under the exterior staircase on the Wall Street sidewalk. Noted that City reserves the right to reclaim the use of the right-of-way that is currently occupied by encroachments from the subject property.
- Requested confirmation that a Certificate of Occupancy from the sender site indicates that the sender unit has been extinguished.

### Utilities Department:

- Stated that the subject property owner does not have an agreement with City to maintain a dumpster on the right-of-way.
- Stated that if no easement is granted, the property owner may request permission to use the City dumpster/compactor that is located at Mallory Square.

- Asked the applicant's representative if any of the tenants of the subject property are currently using the City dumpster/compactor at Mallory Square.

Applicant's Response to DRC Comments:

The applicant's response memorandums and emails are attached.

The applicant initially proposed to maintain solid waste receptacles on the right-of-way on the south side of the building. The applicant had previously agreed to place the solid waste receptacles under the exterior staircase on Wall Street as a condition of the BPAS building permits. On May 24, the applicant stated in an email that the new proposal is to use a dumpster compactor at Mallory Square for all solid waste.

Planning Analysis

Density:

The maximum density for the HRCC-1 zoning district is 22 units per acre, which amounts to two (2) units for the subject parcel at 4,700 square-feet. The applicant is proposing to maintain rights to three (3) total units: two (2) BPAS units and one (1) transient unit. Section 122-1338 specifically states that "transferred units shall not operate to increase density of the receiver site above the maximum allowed density."

The applicant's position is that that this transfer would not result in excess density because the current proposal is to only construct two units (Exhibit A). However, this does not preclude the applicant from requesting to construct a third unit in the future. It is unclear what sort of entitlements exist if the City approves the transfer of a third unit to a site that has already received building permits for two BPAS units.

After discussions with the Legal Department, the Planning Department has concluded that the transfer of a unit to a site that would bring the number of recognized units above the maximum permitted density, regardless of how the site is currently configured, would not be in compliance with the City's Land Development Regulations, specifically the density provisions of the HRCC-1 zoning district.

BPAS:

The applicant applied for two market-rate BPAS units in the Year 6 award cycle. The applicant proposes to utilize the transient unit in the physical space that was converted using the building permits authorized by the Year 6 BPAS award. The applicant has not agreed to return the unused BPAS unit to the City for reallocation. Instead, the applicant proposes to hold the unit in "the property's bundle of rights until such time it may be utilized as then permitted by code. (sic)." (Exhibit A).

The BPAS is not intended to allow property owners to maintain BPAS awards without physically creating the units; applicants who obtain BPAS units are required to obtain building permits to construct the units within two years of the award date (Code Section 108-997, Comprehensive Plan Policy 1-1.16.1).

The Land Development Regulations do not contemplate a situation in which an applicant obtains building permits for a BPAS unit but does not subsequently create that unit. It is the Planning Department's position that it is not the intent of the Code to permit property owners to obtain BPAS awards and not physically create the unit(s).<sup>1</sup>

The BPAS application was ranked with 40 points based on the applicant's proposal to obtain a Level 3 Certification from the Florida Green Building Coalition ("FGBC"). As a condition of the award, the applicant must provide documentation that the Level 3 certification has been obtained prior to issuance of a Certificate of Occupancy ("CO").

Building permits were obtained to construct the units in 2021. Final inspection was completed on 12/7/2022. When this application was initially submitted on January 6, 2022, the applicant had not yet requested a CO for the BPAS units. During the process of reviewing the subject transient transfer application, the Planning Department reminded the applicant of the certification requirements. The applicant responded and noted the requirement.

The applicant submitted a request for CO to the Building Department on May 11, 2023 (Exhibit B). Planning advised both the applicant and Building Department that the conditions of the BPAS award must be met prior to issuance of a CO. The applicant stated on June 5, 2023 that they were working on the FGBC certification (Exhibit C).

At the time of the writing of this report, the applicant has not provided documentation of the FGBC certification. However, that does not preclude the property from obtaining a CO after a transient unit transfer is approved. It is unclear whether permitting the transfer would vest in the property the entitlements to physically construct three units in such a way that violates multiple Comprehensive Plan and Land Development Regulations that prohibit excessive density.

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<sup>1</sup> Section 108-987, subsections (4) and (5) define the BPAS purpose and intent (italization added):

4. Allocate the limited number of permanent residential units available under this article, based upon the goals, objectives and policies set forth in the city comprehensive plan, and
5. Limit units allocated from the BPAS by using those units which are identified and derive from the following sources: City of Key West Comprehensive Plan Policy 1.1.1.1; *units recovered by the city which were previously allocated and unused and subsequently returned to the city*; units recaptured by the city which are derived from decreases in existing residential density and changes in residential uses and subsequently returned to the city through the waiver and release of building permit allocation process and any pre-existing reserve units.

Site Plan:

Section 122-1339 states that unless special conditions warrant otherwise, the transient unit may not include more than two rooms, excluding bathrooms and uninhabitable porches and decks. Section 122-1336 states that one of the purposes of the transient transfer provisions is to allow for redevelopment without increasing the population requiring evacuation during emergencies or increasing other public services. A limit on the size of transient units serves this purpose by ensuring that the guest capacity of a single transient unit does not exceed that which was calculated in the hurricane evacuation model used to regulate permanent and transient residential growth.

Solid Waste:

As a condition of the BPAS building permits, the applicant was required to place trash receptacles under the encroaching staircase on the Wall Street right-of-way. The permit stated that no residential storage of trash or recycling bins shall be allowed off-site. The applicant has not complied with those conditions. Currently, the trash receptacles are located on the public right-of-way in Wolfson Street on the south side of the building. Access to the street is currently blocked by an unpermitted fence without the benefit of an easement. The applicant stated on May 24, 2023 that they are working with Waste Management to shift all of the building's solid waste handling to a dumpster compactor at Mallory Square. However, Mallory Square is slated for redevelopment and future availability of that compactor is unclear.

Parking:

The subject property does not have any off-street parking. While the property is located within the historic commercial pedestrian-oriented area, the proposed transfer would trigger parking requirements. In accordance with 108-573, parking requirements shall be applied to properties within the historic commercial pedestrian-oriented area whenever:

- (1) New nonresidential floor area is constructed;
- (2) New residential or transient residential units are constructed;
- (3) The amount of nonresidential floor area is increased due to expansion of existing structure or conversion of residential floor area to nonresidential floor area; or
- (4) The number of residential or transient residential units available is increased due to conversion of nonresidential uses to residential or transient residential uses or internal or external construction of additional residential or transient residential floor area.

The applicant is proposing this transfer prior to meeting the conditions of the site's BPAS award, thus the receiver site is currently non-residential. In accordance with 108-573(b), parking requirements shall be applied because the proposal constitutes a conversion from nonresidential to transient residential use.



The applicant has been advised the proposed transfer triggers parking requirements, which would require the applicant to provide parking or obtain a parking variance. The applicant has declined to apply for a parking variance.

*Site photos.*



*View from Wall Street into Wolfson Street the South side of the subject property, including trash, storage, and electrical equipment behind an encroaching fence.*



*View of Wolfson Street on the south side of the subject property, obstructed by encroaching unpermitted fence.*



*View from Wall Street of encroaching staircase and mechanical equipment behind screen.*

**Process:**

**DRC Meeting:** February 23, 2023  
**Planning Board Meeting:** March 16, 2023  
**Local Appeal Period:** 10 days  
**DEO Review Period:** Up to 45 days

**Staff Analysis – Evaluation:**

**Sec. 122-1336. - Purpose.**

The purpose of this division 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 rate of growth ordinance ("ROGO") that limits the allowable number of residential and transient units. This division is only for the purpose of the transfer of transient units and shall not be construed to create new residential or transient units.

(Ord. No. 99-26, § 1, 12-7-1999; Ord. No. 02-05, § 1, 2-5-2002; Ord. No. 05-09, § 1, 4-19-2005)

*The subject request is inconsistent with several components of Sec. 122-1336. It is inconsistent with Sec. 122-1336's purpose to encourage permanent residential housing by relocating transient licenses; this request would reduce the permanent housing stock by physically replacing a permanent BPAS unit with a transient unit, resulting in the inability of the City to fully utilize all of the BPAS units that were awarded by the State of Florida. The request would not reduce noncomplying density, structures, or uses; it would create noncomplying density, and would add more intense uses to a noncomplying structures. If this transfer is approved by the planning Board, one BPAS unit allocation for 423 Front Street should revert to the City of Key West.*

**Sec. 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.

*The subject request is inconsistent with the purpose of the transient transfer ordinances to encourage permanent housing because no housing will be created at the sender site, and it will be displaced at the receiver site. Granting the request would violate the specific provision of the ordinance that prohibits transfers of units that increase the density of the receiver site over the maximum allowed density.*

**Sec. 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.

*The subject unit is currently counted as a unit for the purposes of calculating evacuation time under the hurricane model set forth in the comprehensive plan, and was obtained in accordance with all applicable regulations.*

**IN CONFORMANCE**

- (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.

*Transient use is allowed on the receiver site. The applicant has a valid business tax receipt for the transient unit.*

**IN CONFORMANCE**

- (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.

*As proposed, the request would not convert the transient unit into a residential unit.*

**IN CONFORMANCE**

- (4) The transferred units shall not operate to increase density of the receiver site above the maximum allowed density.

*The request would operate to increase the density of the receiver site above the maximum-allowed density.*

**NOT IN CONFORMANCE**

- (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.

*The transient unit includes four bedrooms with ensuite bathrooms, ranging between approximately 250 and 430 square feet, It also contains and a communal kitchen/living room for a total of five rooms. The space was converted from a storage space to its current configuration in 2022. The total square footage is 2,531square feet and staff has identified no special conditions at the receiver site.*

**NOT IN CONFORMANCE**

- (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.

*No transient units will remain at the sender site.*

**IN CONFORMANCE**

- (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.

*The receiver site is approximately 175 feet outside of the "V" flood zone as depicted on the most current flood insurance rate map.*

**IN CONFORMANCE**

- (8) Existing nonconforming buildings may receive units providing their nonconforming aspects are not increased.

*The request would make the building nonconforming with regard to density. The maximum density for the site is two (2) units. The proposed transfer would result in three (3) units recognized on the parcel.*

*The existing building is nonconforming with regard to setbacks. The property has several encroachments onto the public right-of-way. Trash and recycling for the proposed BPAS units are currently proposed to be stored on the public right-of-way. The request would not increase nonconforming setbacks if the applicant secures a permanent area to store solid waste that is not on the public right-of-way. Waste volume is expected to increase as the second-floor use of this structure converts from storage to a four-bedroom transient rental.*

*The property is nonconforming with regard to parking. There is no off-street parking for either the first-floor commercial space, the proposed permanent and transient residential units, and the total number of on-site units is proposed to increase to three. In accordance with Sec. 108-572, one (1) off-street parking space is required for every multi-family unit within the Historic District. Two (2) off-street parking spaces are required for every transient unit. The conversion of a permanent residential unit to a transient residential unit would increase nonconformities with regard to parking.*

#### **NOT IN CONFORMANCE**

- (9) Development plans for both sites shall be processed as provided in the LDRs, according to the magnitude and type of development.

*A development plan is not required, however previously established conditions of approval for residential construction of BPAS units have not yet been satisfied.*

#### **IN CONFORMANCE**

- (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.

*The City shall verify that transient use at the sender site has been extinguished through an inspection.*

#### **IN CONFORMANCE**

### Recommendation:

The proposed transient license and unit transfer would violate specific provisions of Section 122-1338 – *Transfer of transient units*.

In particular, the transfer would increase the density of the receiver site above the maximum allowed density, which also violates Code Sections 122-690, 122-1142, and Comprehensive Plan policy 1-1.1.2.

The proposal would also result in a net reduction in the number of permanent residential units available in the City of Key West by displacing a proposed permanent BPAS unit in a way that is counter to the intent of Section 108-987. Additionally, the parking and solid waste proposals do not meet criteria stipulated in the land development regulations.

The proposed transfer of one transient license to the receiver site of 423 Front Street is subject to Section 122-1338. Based on the criteria of the land development regulations and Section 122-1338 outlined in this report, the Planning Department recommends the request for a transfer of one transient license be **DENIED**. If the request is approved, the Planning Department recommends the following conditions:

#### **Conditions:**

4. The transferred units shall not operate to increase density of the receiver site above the maximum allowed density.
5. The property owner shall relinquish one BPAS unit to the City of Key West for re-allocation.
6. The applicant shall obtain an easement agreement for all existing encroachments.
7. The applicant shall manage all solid waste in accordance with the Land Development Regulations. All trash and recycling shall be stored within the property's boundaries, such as within an indoor trash and recycling area.
8. The applicant shall obtain a parking variance or provide the required Code-required parking. If the applicant does not provide off-street parking, the owner or manager must instruct all tenants of the historic district's residential parking program and if the vehicle is not eligible to park on the street, then the owner or manager shall ensure that the tenant is directed to a lawful and appropriate parking space, in accordance with Section 122-1371. The transient unit must be advertised as a unit that does not provide parking.
9. The applicant shall schedule an inspection to demonstrate that the transient use at the sender site has been extinguished. The inspection shall occur prior to the issuance of a Certificate of Occupancy and transient medallion issuance for 423 Front Street.