THE CITY OF KEY WEST
Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

August 8th 2025

VIA EMAIL DELIVERY

Owen Trepanier
1421 First Street Unit 101
Key West, Florida 33040

RE: Lawful Unit Determination Application – 901 Fleming Street, Key West, FL 33040

Dear Mr. Trepanier,

The Planning Department received a Lawful Unit Determination application for an additional three (3) non-transient units for the real property located at 901 Fleming Street, Key West, FL 33040, identified by RE# 00005650-000000. 901 Fleming Street consists of a 4,108 square foot parcel, located in the Historic Neighborhood Commercial-2 (HNC-2) Zoning District. The property is improved with a 3-story structure consisting of commercial space on the first floor, two residential units on the second floor and a third residential unit on the third floor. The commercial space maintains a Business Tax Receipt (BTR) for a bar/lounge – commonly referred to as "*Kava Culture Key West*." The city currently recognizes zero (0) residential units on site.

This application was reviewed in accordance with the criteria found in Key West Code of Ordinances section 108-991. Specifically, 108-991 (3) provides in part that:

Units determined to have been in existence at the time the April 1, 2010, 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;*

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

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

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

e. *Copies of state, county, and city licenses on and about April 1, 2010, indicating the number*

f. *and types of rental units;*

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;*

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

i. *Similar documentation as listed above.*

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 department of economic opportunity for a determination of consistency with the principals for guiding development.

Units which are determined not to be affected by the building permit allocation system per this subsection but which have not been previously acknowledged by the city planner are presumed to be lawfully established per chapter 122, article II, nonconformities, if the additional following requirements are met:

a. *The applicant satisfies the building department that the unit meets the Florida Building Code, through as-built certifications or other means acceptable to the building official; and*

b. *Fees: All back-fee payments shall be paid current and in full, from the date determined to be the established date of the unit. All impact fees shall be paid in full for units determined to have been established after the implementation of the Impact Fee Ordinance (January 1, 1985).*

c. *Occupational license with the city is updated, and street addresses are assigned commensurate with the updated unit count.*

d. *As mentioned above, applications received after May 2, 2017, must demonstrate that the unit sought to be established hereunder is or has been legally permissible under the current or any former zoning requirements of the applicable district in which the unit is located.*

Criteria Analysis:

The 4,108 square foot parcel at 901 Fleming Street is commercial on the first floor with a BTR for a bar/lounge commonly known as Kava Culture Key West. There are two more floors above containing two units on the second floor and one unit on the third floor. These units are all currently occupied by tenants. These units are not recognized by the City.

a. Aerial photographs and original dated photographs showing that the structure existed on or about April 1, 2010;

- There are two ariel photographs dated 2009, and 2015, as well as a 1950's HARC photo, and a 1899 Sanborn map.

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

- 1997-00004096 – Renovation Conversion: Commercial, "Remodel existing storage loft into a one bedroom living unit"
- 1998-00000006 -Renovation Conversion: Commercial, "Remodel existing attic for additional bedroom, bath. Not to be used as an independent living unit.

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

- 5 directory entries from prior to 2010 were provided.

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

- None provided by applicant, however an affidavit signed by Gary Burchfield was provided stating that he confirms three units at the property on or about 2010.

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

- One Non Transient Rental unit license for 901 Fleming in 2021.

e. Documentation from 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;

- None provided by applicant.

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

- 2010 Property Record Card

g. Similar documentation as listed above.

- Tax Collector Business Tax Receipt
- Property Card
- Sunbiz Information
- Commercial information with interior photos.

Planning Analysis:

The applicant's only evidence supporting the existence of more than one unit is the 1899 Sanborn Map, which shows two dwelling units, and a signed affidavit. However, later Sanborn Maps—specifically the 1962 edition—depict the property as a furniture store with no dwelling units. The 1926 Sanborn Map

indicates the presence of an office at the site. It appears that the residential units were likely abandoned sometime between 1899 and 1926.

By 1974, John B. Lind was listed as living at 901 Fleming Street according to entries in the Polk County Directory. However, by 1994, there were no residents listed at the property—only businesses. The 2008 Directory lists Thomas Sawyer as residing at the property. None of the entries reviewed show more than one resident.

On June 6, 2024, staff contacted Keys Energy. Sabrina Hall informed staff that there are two active meters at the location, with service start dates of May 1983 and May 1984, respectively. Both meters are under commercial service accounts.

On June 7, 2024, staff contacted the Florida Keys Aqueduct Authority (FKAA). Nathalie Meza stated that there is only one water meter and one unit at the property, and it is listed as non-residential. The service has been continuous since June 8, 1944.

According to Section 108-991(3) of the City Code of Key West, the Planning Department is tasked with reviewing available documents to determine whether a body of evidence exists to support the existence of units on or about April 1, 2010. Staff has reviewed this application based on the criteria in that section and has considered the materials submitted by the applicant.

The Planning Department conducted a site visit on June 10, 2024. Staff observed three separate units on-site, each with distinct areas for cooking, sleeping, and restroom facilities.

Per the Code, applications received after May 2, 2017, must demonstrate that the unit being recognized is or has been legally permissible under the current or any previous zoning regulations applicable to the property.

The subject parcel lies within the Historic Neighborhood Commercial (HNC-2) zoning district, which permits multi-family residential dwellings. The 4,108-square-foot property allows for a residential density of 1.5 units. Recognizing three residential dwelling units would exceed the allowable density. Prior to being zoned HNC-2, the parcel was zoned HP-1, a Residential Historic Preservation District. Before 1985, this zoning district allowed for multi-family structures not exceeding four dwelling units. However, the 1962 Sanborn Map shows the property as a furniture store, suggesting no residential use at that time.

Ordinance 85-33 later permitted multi-family structures at a density of up to 22 dwelling units per acre, which would have allowed 2.07 units on-site. Ordinance 97-10 reduced the allowable density to 16 dwelling units per acre, limiting the site to 1.5 units. In 1997, a third-floor loft was converted into a residential unit, although it appears the permit was never finalized. At that time, three units on the site would have exceeded the allowable density.

Planning staff supports the recognition of one unit, based specifically on Building Permit No. 1997-0004096 for remodeling an existing storage loft into a one-bedroom residential unit. No substantial evidence has been provided by the applicant, nor found by staff, to support the existence of three residential units on or about 2010.

City directories have never shown more than one resident at the property. A 2017 MLS listing describes the property as containing four businesses and one one-bedroom apartment on the third floor, consistent with the 1997 building permit. A 2021 Code Compliance case documents a second-floor unit, listed as "Unit 2A, historic building with renovated upgrades… Modern kitchen… gloss new cabinets." A 2018 permit exists for one ADA-compliant toilet and one lavatory, suggesting this second-floor unit was constructed in 2018. Photos from the 2024 site visit match the description, including the gloss cabinets.

There is no documentation confirming that any accessory unit was occupied on or around 2010. Therefore, staff does not find sufficient evidence to support the existence of a second or third unit at that time. The strongest piece of supporting evidence—a signed affidavit—is not permitted as the sole basis for granting unit recognition.

The applicant submitted a 2010 Business Tax Receipt (BTR) from the Monroe County Tax Collector for 901 Fleming Street. The BTR lists the business type as "Apartments, Condos, Houses & Commercial Units (Commercial Rentals)," with the next line reading, "Rooms: 3." Staff contacted the Tax Collector's Office for clarification. They responded that "3 Units total on site" may include residential, commercial, or office use and that "rooms" are only counted for hotels/motels.

The 2010 Polk County Directory lists the following businesses at the property: 901 Signs & Design, Solares Hill Design Group, and Tom Sawyer's Keyboard AD. It lists one residence: Thomas M. Sawyer & Kelly H, noted as residents for 8 years. Based on this, the BTR's reference to three "rooms" likely reflects two businesses and one residential unit.

Staff believes that once the attic was converted into a residence in 1998, it has consistently housed a tenant. However, there is no conclusive evidence supporting the existence of three legal residential units. At some point, an office may have been illegally converted into a residence without proper permitting or documentation.

Conclusion:

The two (2) building permits, Monroe County Property Appraiser Card, and single non-transient rental license support the existence of one (1) non-transient rental unit associated with the subject premises located at 901 Fleming Street.

The City Planner's decision shall be rendered to the Department of Commerce for a determination of consistency with the principals for guiding development pursuant to Section 108-991 (3)(h) of the City Code of Ordinances.

Sincerely,

Patrick T. Wright
Growth Management Director

Dated: 8-8-25

Attachments:

1. Planning Package with applicant submittals, additional Staff research, and 6/10/24 site visit photos