

**IN THE CITY OF KEY WEST, BEFORE THE CITY COMMISSION SITTING AS
THE BOARD OF ADJUSTMENT FOR THE CITY OF KEY WEST, FLORIDA**

GEORGIA/CAROLINA I AND D
LLC, a Georgia limited liability
company

Appellants,

v.

CITY OF KEY WEST,

Appellee.

RECEIVED
CITY CLERK'S OFFICE
2016 DEC 15 PM 2:27
CITY OF KEY WEST
KEY WEST, FLORIDA

**NOTICE OF APPEAL OF
DENIAL OF LAWFUL UNIT DETERMINATION**

NOTICE IS HEREBY GIVEN that GEORGIA/CAROLINA I AND D LLC, a Georgia limited liability company ("Appellant" or "GC"), hereby appeals to the Board of Adjustment of the City of Key West, Florida, the administrative decision of the Planning Director Thaddeus Cohen ("Planning Director") of the City of Key West, Florida denying the lawful unit determination application with respect to the property located at 810-812 Duval Street and 809-813 Shavers Lane Rear, Key West, Florida 33040 d/b/a Tropical Inn¹ which was rendered on December 6, 2016. Attached to this Notice of Appeal is a copy of the denial notice.

Appellant GC has standing to bring this appeal pursuant to section 90-430, Key West, Florida, Municipal Code (2016), because GC is affected by the decision rendered by a City of Key West Chief Official.

BACKGROUND

1. Appellant GC is the owner of the real property located at 810-812 Duval Street and 809-

¹ The specific parcels subject to this appeal include RE # 00016940-000000 (AK # 1017353); RE # 00016950-000000 (AK # 1017361); RE # 00016990-000000, (AK # 1017400); and RE # 00016980-000000 (AK # 1017396).

813 Shavers Lane Rear, Key West, Florida 33040 (“Subject Property”) and operates the bed and breakfast known as Tropical Inn (“Tropical Inn”) at the same location. App. 239-245

2. Jane M. Lowe and Allen R. Lewis are the managing members of Appellant GC.

3. Tropical Inn consists of four parcels: 810 and 812 Duval Street and 809 Shavers Lane and 813 Shavers Lane Rear.² Tropical Inn is located along the southwesterly side of Duval Street between Petronia Street and Olivia Street and runs at the rear to Shavers Lane. The Subject Property has 10,703 square feet of site area and has four wood frame structures with a total of 4,261 square feet of gross building area. According to the July 20, 2007 Appraisal Report, the subject property has historically been operated as an eleven (11) unit guest house with a commercial unit at the front of 810 Duval Street. App. 153. Tropical Inn is licensed for eleven (11) transient units with the State of Florida. App. 246. However, Tropical Inn is only licensed for eight transient units and one non-transient unit by the City of Key West.

4. In December 2003, the City Planner sent a letter to the Applicant regarding the issue now before the Board of Adjustment. App. 011. In the letter, the City Planner acknowledged the discrepancy in the number of physical transient units on the Subject Property and the number of units recognized by the City. Id. The City Planner went on to state that the record “seems to reflect an intention of the owner to not limit the operation to five units requested by the owner and approved by the City” and that although there was no mechanism (at the time) to resolve the discrepancy, “the Planning Department is proposing an ordinance that may provide a solution for you.” Id. The City Planner was referring to the current code section that the Applicant is utilizing to obtain its Lawful Unit Determination.

5. On May 29, 2014, Applicant filed with the City its Lawful Unit Determination which

² Tropical Inn’s pool is located on 813 Shavers Lane Rear and does not have any habitable structures.

sought a determination that two (2) existing transient units and one (1) existing transient use of a non-transient unit are exempt from the City's Building Permit Allocation System (BPAS) pursuant to section 108-991, Key West, Fla., Municipal Code (2016). App. 229.

6. On December 6, 2016, the Planning Director, after careful analysis of the requirements set forth in section 108-991(3), Key West, Fla., Municipal Code (2016), found that five of the categories of pertinent historic records support a granting of the LUD application. 108-991, Key West, Fla., Municipal Code (2016) only requires that two of the delineated categories are required under the ordinance in order to grant LUD recognition. Nonetheless, the Planning Director made a determination that the Applicant was not entitled to the requested LUD recognition. App. 001. The Planning Director based his determination on a variance granted in 1987, stating that:

812 Duval Street

due to the condition limiting the number of units to five (5) as stated in variance 87-314, the City is unable to recognize the additional one (1) transient unit as being exempt from the City's Building Permit Allocation System (BPAS). And also unable to recognize the transient use of the non-transient unit (the manager's unit) as being exempt from the City's Building Permit Allocation System (BPAS).

810 Duval Street

due to the condition limiting the number of units to five (5) as stated in variance 87-314 the City is unable to recognize the additional one (1) transient unit as being exempt from the City's Building Permit Allocation System (BPAS).

App. 007-008.

7. Following the Planning Director's denial, this appeal ensued.

ARGUMENT

I. THE CITY IS REQUIRED FOLLOW ITS OWN LAW, WHICH IN THIS MATTER REQUIRES THAT IT LIMIT ITS DETERMINATION SOLELY TO THE FACTORS LISTED IN SECTION 108-993(3).

According to its records the City of Key West recognizes eight (8) transient units and one (1) non-transient unit at the Tropical Inn. App. 002. The Appellant seeks LUD recognition of two (2) additional transient units and the transient use of one (1) unit because the existence of these three (3) units on April 1, 2010 is abundantly documented. App. 229. Section 108-991, Key West, Fla., Municipal Code (2016) provides that units determined to have been in existence on or about April 1, 2010 are presumed not to be affected by BPAS if two of the delineated categories of records support a finding that the units existed on or about April 1, 2010. The Planning Director found that existence of the subject units, and their transient use, as of April 1, 2010, is supported by five of the delineated categories of records. App. 004-007. Thus, the requirements of the LUD ordinance are more than satisfied to grant LUD recognition. Nonetheless, the Planning Director denied recognition, relying on a 1987 variance which had, at that time, granted recognition of an additional transient unit, interpreting that almost thirty year old variance for one of the four subject parcels as somehow placing a limitation on the later adopted LUD ordinance, section 108-991, Key West, Fla., Municipal Code (2016) ("LUD Ordinance"). App. 007-008; App. 247. There is nothing in the LUD Ordinance that even remotely suggests that LUD recognition is to be based on anything other than the records that support a finding that the units physically existed and were used transiently on or about April 1, 2010. See § 108-991, Key West, Fla., Mun. Code. The LUD Ordinance, quite simply, mandates the granting of this LUD application because the Appellant has more than amply demonstrated that the units existed and were used transiently on or about April 1, 2010. App. 004-007. The

LUD Ordinance does not authorize the Planning Director to arbitrarily deny recognition based on a variance from thirty years ago that granted recognition for one unit that is not the subject of this LUD application.

II. THE CITY PASSED THE LUD ORDINANCE FOR THE PURPOSE OF RESOLVING THE CURRENT ISSUE AT HAND, AND THE CITY DENIES DUE PROCESS IF IT DOES NOT FOLLOW ITS OWN RULES AND REGULATIONS.

The City is bound to follow its own rules and regulations, and denies due process if it does not do so. Fruman v. City of Detroit, 1 F.Supp 2d 665, 672 (E.D. Mich. 1998); Superior Savings Association v. Cleveland, 501 F. Supp. 1244, 1249 (N.D. Ohio 1980), quoting Service v. Dulles, 354 U.S. 363 (1957). The City's own Municipal Code ("City Code") simply requires that a lawful unit determination be granted based on the specific criteria listed in the LUD Ordinance. Applying the LUD Ordinance criteria unequivocally results in a determination that the Subject Property be allocated two (2) additional transient units and recognition of one (1) existing unit as transient.

Section 108-991(3) states:

Development consistent with the following shall not be affected by the terms of this article, but such development shall comply with all applicable sections of the city's land development regulations:

(3) 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. Site visits which indicate that the age of the structure and associated improvements likely pre-date 2010;
- e. Rental, occupancy or lease records from before and including April 1, 2010, indicating the number, type and term of the rental or occupancy;
- f. Copies of state, county, and city licenses on and about April 1, 2010, indicating the number 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.

Section 108-991(3) states that if at least two of the nine criteria listed in subsection (3) are met and a site visit is performed then it will be determined that the unit was in existence on or about April 1, 2010 and is, therefore, not affected by the BPAS.³ As shown in the Lawful Unit Determination Report, the Planning Director found that Applicant met five (5) of the nine (9) criteria. App. 004-007. Specifically, the Planning Director found that the Applicant met subsections (d) – site visit indicating the age pre-dates April 1, 2010, (e) – rental or occupancy records establishing use prior to April 1, 2010, (f) state transient licenses for the year 2010, (g) – documentation of utility usage, and (i) – similar documentation establishing eleven (11) transient units. Id. A plain reading of Section 108-991(3) requires the City to make a determination of a

³ BPAS is the City's Building Permit Allocation System which restricts the amount of new units available in Key West. A lawful unit determination under Section 108-991(3) does not take away any units that the City will be able to allocate in the future, specifically, units towards affordable housing.

lawful unit if two of the criteria are met. Here, there is documented support and the Planning Director's own determination that five of the criteria have been established. App. 004-007. Therefore, under Section 108-991(3), Applicants are entitled to a determination that the Subject Property has eleven (11) lawfully established transient units.

Further support for the position that Section 108-991(3), the LUD Ordinance, requires a determination that an additional three transient units be recognized is found in the Florida Supreme Court's seminal case on statutory construction. Rinker Materials Corp. v. City of North Miami, 286 So. 2d 552 (Fla. 1973). In Rinker, the Supreme Court sought to resolve a conflict among the courts that resulted in a "failure to follow established decisional rules of statutory construction." Id. at 553. The Rinker Court reaffirmed the principles to be:

- (a) In statutory construction, statutes must be given their plain and obvious meaning and it must be assumed that the legislative body knew the plain language and ordinary meanings of the words.
- (b) Statutes or ordinances should be given that interpretation which renders the ordinance valid and constitutional.
- (c) Since zoning regulations are in derogation of private rights of ownership, words used in a zoning ordinance should be given their broadest meaning when there is no definition or clear intent to the contrary and the ordinance should be interpreted in favor of the property owner.

Id. at 553. Additionally, the Rinker Court held that "Municipal ordinances are subject to the same rules of construction as state statutes." Id. (citing Rose v. Town of Hillsboro Beach, 216 So.2d 258 (Fla. 4th DCA 1968)). Pursuant to Rinker, the City must apply these rules of statutory construction.

Applying Rinker, Section 108-991(3), the LUD Ordinance, unequivocally controls in this matter, and requires that the transient units be recognized. The previous variance, granted almost thirty years ago to recognize one additional transient unit at the time, is irrelevant to a

determination of whether additional units are established to have existed as of April 1, 2010. Section 108-991(3) must be given its plain and obvious meaning. *See Rinker Materials Corp.*, 286 So. 2d at 553. The plain and obvious meaning of the LUD Ordinance is that, once the applicant has demonstrated that the units existed on or about April 1, 2010, then LUD recognition is mandated. The LUD Ordinance does not allow the Planning Director to interpret a thirty year old variance to override the mandate of the LUD Ordinance. Indeed, the fundamental purpose of the LUD Ordinance is to address the existence of “phantom units,” that is units that existed on or about April 1, 2010 but which are not reflected as existing in the City’s records. It defies both logic and common sense to suggest that a thirty year old variance somehow operates to exclude this application from the operation of the LUD Ordinance.

CONCLUSION

The efforts have been made to bring the number of transient units physically located on the Subject Property with the number of units recognized by the City for decades. The record reflects that there was no intention by previous owners to limit the number of units on the Subject Property. App. 011. However, until the passage of the LUD Ordinance, there was no vehicle to resolve the current discrepancy. The purpose of the LUD Ordinance was to resolve the current issue at hand, and when applying the LUD Ordinance the Subject Property meets more than twice the number of criteria required to obtain the requested lawful unit determinations.

Accordingly, Applicant respectfully requests the Board of Adjustment to enter a decision as follows:

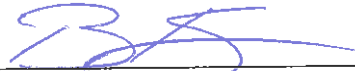
- a. Grant the Appeal by GEORGIA/CAROLINA I AND D LLC, a Georgia limited liability company;
- b. Deny the decision of the Planning Director of the City of Key West, Florida denying the

lawful unit determination application filed by GEORGIA/CAROLINA I AND D which was rendered on December 6, 2016; and

c. For such other relief as the Board of Adjustment deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 16, 2016, a true and correct copy of the foregoing was personally served on Cheri Smith, Clerk of the City of Key West, Florida 33040.



WAYNE LaRUE SMITH
Florida Bar No. 0031410
BRETT TYLER SMITH
Florida Bar No. 0085412
THE SMITH LAW FIRM,
a professional association
Counsel for Appellants
509 Whitehead Street
Key West, Florida 33040
T: (305) 296-0029
F: (305) 296-9172
E: Court-Filings@thesmithlawfirm.com

Z:\1867\02\2016-12-13 Notice of Appeal of Denial of Legal Unit Determination.docx

**IN THE CITY OF KEY WEST, BEFORE THE CITY COMMISSION SITTING AS
THE BOARD OF ADJUSTMENT FOR THE CITY OF KEY WEST, FLORIDA**

GEORGIA/CAROLINA I AND D
LLC, a Georgia limited liability
company

Appellants,

v.

CITY OF KEY WEST,

Appellee.

INDEX OF APPENDIX IN SUPPORT OF SUPPLEMENT TO NOTICE OF APPEAL

<u>DOCUMENT</u>	<u>PAGE NO.</u>
Lawful Unit Determination Report dated December 6, 2016.....	001
Memorandum from the City Planner dated August 12, 2003	009
Letter from City Planner to Applicant dated December 1, 2005	011
City directory entries on or about April 1, 2010.....	016
Photographs of site dated February 25, 2016.....	041
Rental, occupancy, and lease records from before and including April 1, 2010	074
Copies of state, county, and city licenses from before and including April 1, 2010	087
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	099
Documentation for the Monroe County Property Appraiser's Office for the time on or about April 1, 2010 (Green Card)	120
Planning Board Resolution No. 2004-013	150
Appraisal Report for Tropical Inn dated July 20, 2007	153
City of Key West Municipal Ordinance No. 69-29	180

City of Key West Municipal Ordinance No. 85-26	182
City of Key West Municipal Ordinance No. 85-44	184
City of Key West Municipal Ordinance No. 86-15	201
City of Key West Municipal Ordinance No. 89-6	219
City of Key West Zoning Map.....	223
City of Key West Municipal Ordinance Section 122-746 through 122-750	224
Application for Lawful Unit Determination dated May 29, 2014	229
Sketch of Subject Property.....	234
Survey of Subject Property	237
Warranty deed for 812 Duval Street dated October 21, 1999.....	239
Warranty deed for 810 Duval Street dated January 14, 2004	241
Warranty deed for 809 Shavers Lane dated January 14, 2004	243
Warranty deed for 813 Rear Shavers Lane dated February 16, 2001	245
Copy of Florida Dept. of Business and Professional Regulation Transient Licenses for Tropical Inn.....	246
City of Key West Municipal Resolution No. 87-314	247

3140 Flagler Avenue • Key West, Florida 33040-4602 • 305-809-3720
www.cityofkeywest-fl.gov/planning • planning@cityofkeywest-fl.gov

Date: December 6, 2016

Cc: Ron Wampler, Building Official
George Wallace, Chief Assistant City Attorney
Carolyn Walker, Licensing Official
Michael Turner, Utilities Collection Manager
Matt Willman, GIS Administrator
Scott Russell, C.F.A., Monroe County Property Appraiser

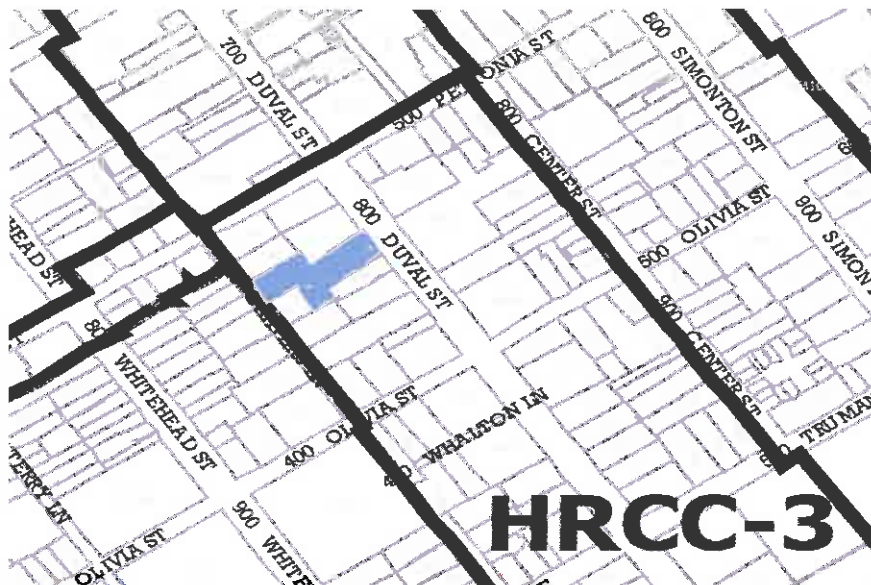
Request: A determination that two (2) existing transient units and one (1) existing transient use of a non-transient unit are exempt from the City's Building Permit Allocation System (BPAS).

Property Owner: Georgia/Carolina I and D LLC

Location: 810-812 Duval Street and 809-813 Shavers Lane Rear, d/b/a Tropical Inn
(RE # 00016940-000000, AK # 1017353; RE # 00016950-000000, AK # 1017361; RE #
00016990-000000, AK # 1017400; RE # 00016980-000000, AK # 1017396)

Zoning: Historic Residential Commercial Core Duval Street Oceanside (HRCC-3) Zoning District

Zoning Map:



December 6, 2016

Lawful Unit Determination at 810- 812 Duval Street

LUD Request:

As summarized in the table below, the applicant states there are currently 11 transient units on the property. For BPAS purposes, all existing units would be considered transient units. The applicant requests recognition of 2 transient units and 1 transient use of a non-transient unit as exempt from BPAS. The City's licensing and utility records indicate that there are currently 8 transient units recognized.

NUMBER OF RESIDENTIAL DWELLING UNITS		
UNIT TYPE	EXISTING	LICENSED / ACKNOWLEDGED
Non-Transient Market-Rate (1.0 ESFU, includes single-family and multifamily structure types)	0	1
Non-Transient Affordable (1.0 ESFU, includes single-family and multifamily structure types)	0	0
Transient (0.86 ESFU)	11	8
Accessory Unit / Single-Room Occupancy (SRO) (0.78 ESFU)	0	0
Nursing home, rest home, assisted living facility and convalescent home (0.10 ESFU)	0	0
Total Units:	11	9

Background:

The property is known as the Tropical Inn and consists of three parcels: 810 and 812 Duval Street and 809 Shavers Lane. The Inn is located along the southwesterly side of Duval Street between Petronia Street and Olivia Street and runs at the rear to Shavers Lane. The property has 10,703 square feet of site area and has four wood frame structures with a total of 4,261 square feet of gross building area. According to the July 20, 2007 Appraisal Report, the subject property has historically been operated as an 11 unit guest house with a commercial unit at the front of 810 Duval Street, however, it is only licensed for eight transient units and one non-transient unit by the City of Key West.

810 Duval Street is a one-story wood frame building which consists of a retail commercial unit that fronts on Duval Street and **one existing transient room** located on the west side of the building. The building is 885 square feet of gross building area and according to the Monroe County Property Appraiser's office was constructed in 1928. Also there is a separate one-story building at the rear that is 451 square feet of gross building area. This rear building has **two existing transient rooms** with a private porch. The Monroe County Property Appraiser's website states the building was constructed in 1938. The property received a Transient License Transfer in 2004 (Res. No. 2004-013) for two transient licenses. This property is licensed by the City for two transient units. The applicant requests recognition of one additional transient unit.

812 Duval Street is a two-story wood frame building with 2,307 square feet of gross building area. The building has **six existing transient rooms** including the main office, kitchen and laundry area. According to the Monroe County Property Appraiser's website, the building was constructed in 1928. The property is currently licensed by the City for four transient rooms and one non-transient rental unit. The applicant requests recognition of one additional transient unit and recognition of the non-transient unit as a transient unit.

809 Shavers Lane is a one-story building with 618 square feet of gross building area. The building has **two existing transient rooms**. According to the Monroe County Property

December 6, 2016

Lawful Unit Determination at 810- 812 Duval Street

Appraiser's website, the building was constructed in 1933. In a Transient License Transfer in 2004, the property received two transient licenses. The City currently recognizes the two existing transient units (Res. 2004-026 for the transfer of two transient units to the property.) The lot at 813 Shavers Lane is an interior parcel with 1,562 square feet that is the swimming pool lot.

It is unclear when the three parcels were combined into the Tropical Inn. The 1985 Polk City Directory listed only 812a Duval Street as the Tropical Inn and the 1974 green card states it had 6 rooms. Between 1969 and 1985 the property was zoned HP-2 (Commercial Historic Preservation District) which allowed hotel, motels and guest houses not to exceed 30 habitable units per acre through Ordinance 86-1, therefore it was nonconforming in density. In 1989 (Ordinance 89-6) the density of the HP-2 zone was reduced to 22 habitable units per acre and increased the nonconformity. The property is currently zoned HRCC-3 in which hotels, motels and transient lodging are permitted by right with the maximum density at 22 units per acre, however, even with the added parcels, the property remains nonconforming as to density. Since 1995, 812 Duval Street has been licensed by the City for four transient units and one non-transient unit.

In a letter dated December 1, 2005 from the city planner to Jane M. Lowe owner of the Tropical Inn, the city planner stated he could not "grandfather" seven units on the property the property at 812 Duval Street as requested, the facts of his conclusion as quoted from the letter were:

- In 1987 a variance (87-314), was granted for the property to allow an "increase in density from four units (existing) to 5 (no off-street parking).
- The city occupation licenses for the property are for 4 rooms and one non-transient rental.
- In 1993 and 1994, the owner was informed that only 5 units were allowed.
- In 2001, the Code Enforcement Department queried why there were five transient room types when only four transient units were allowed.
- In 2003, the Code Enforcement Department queried why there were now six transient room types when only four transient units were allowed.

According to the 2010 through 2016 Polk City Directories (attached) the non-transient unit has been a manager's unit, it is unclear when it was established as a transient unit and when the two additional transient units were established. Recognizing the additional units would further expand the nonconforming density.

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).

December 6, 2016

Lawful Unit Determination at 810- 812 Duval Street

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 AND NONTRANSIENT UNITS INSIDE.

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

A review of permit records yields the following information:

810 Duval Street

- 06/01/95 – paint commercial sign.
- 12/31/98 – sign.
- 06/29/98 – hanging sign
- 12/31/98 – repair flower box.
- 12/01/98 – remove/replace sign.
- 03/12/04 – install 2 awnings over storefront.
- 11/08/04 – replace door with French door/remove steps, fence with porch.
- 03/19/04 – replace 5 fixtures.
- 10/24/06 – renovation & conversion of #1 and #2 units.

812 Duval Street

- 07/13/01 – pool/repairs/fence/pavers.
- 11/24/03 – replace front doors.
- 10/26/04 – spa

809 Shavers Lane

- 03/02/00 – renovations/fence/repairs/add porch.
- 06/11/04 – demo lean-to addition.
- 07/16/04 – 5 X 6 spa.
- 12/10/04 – 150sf concrete deck/2005 change use from SFR to 2 transient units.
- 02/10/05 – brick pavers 1100sf.
- 05/12/04 – make into R2 (two residential units).
- 05/12/05 – metal roof.
- 05/12/05 – set 100gal cylinder run.

SUPPORTS RECOGNITION OF UP TO 2 LAWFULLY ESTABLISHED UNITS AT 810 DUVAL STREET AND 2 LAWFULLY ESTABLISHED UNITS AT 809 SHAVERS LANE.

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

- 1986 – Tropical Inn.
- 1994 – Tropical Inn.
- 1999-2002 – Tropical Inn Guest House, hotels & motels.

December 6, 2016

Lawful Unit Determination at 810- 812 Duval Street

- 2003-2010 – Tropical Inn Guest house & motels. The 2010 Polk City Directory shows Jane M. Lowe, the owner, as a resident of 812 Duval for eleven (11) years and Brandi J. Lewis as a resident for eight (8) years.

SUPPORTS EXISTENCE OF TRANSIENT AND NON-TRANSIENT USE AT 812 DUVAL STREET ON OR ABOUT APRIL 1, 2010.

- 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 February 25, 2016 confirmed that there are currently 11 transient units on the subject property.

SUPPORTS RECOGNITION OF 8 LAWFULLY ESTABLISHED TRANSIENT UNITS AND SUPPORTS THE EXISTENCE OF TWO ADDITIONAL TRANSIENT UNITS AND THE TRANSIENT USE OF A NON-TRANSIENT UNIT AT 812 DUVAL STREET.

- e. **Rental, occupancy or lease records from before and including April 1, 2010, indicating the number, type and term of the rental or occupancy;**
- Records of 11 transient rental units rented during March, 2010 attached.

SUPPORTS RECOGNITION OF 8 LAWFULLY ESTABLISHED TRANSIENT UNITS AND SUPPORTS THE EXISTENCE OF TWO ADDITIONAL TRANSIENT UNITS AND THE TRANSIENT USE OF A NON-TRANSIENT UNIT AT 812 DUVAL STREET.

- f. **Copies of state, county, and city licenses on and about April 1, 2010, indicating the number and types of rental units;**
- **City** – 812 Duval – 4 transient & 1 non-transient; 810 Duval – 2 transient; 809 Shavers - 2 transient
 - **County** – 10 rooms from 2005 to 2016
 - **State** – Licenses for 11 transient units dated: 10/1/2010; 10/1/2011; 9/30/2013; & 8/17/2014.

SUPPORTS RECOGNITION OF 8 LAWFULLY ESTABLISHED TRANSIENT UNITS AND EXISTENCE OF 3 ADDITIONAL TRANSIENT 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;**
- **City utilities** – 812 Duval – 3 residential units; 810 Duval – 2 residential units; 809 Shavers – 2 residential units.
 - **FCAA** – 812 Duval – 4 transient units upstairs and 3 transient units downstairs; 810 Rear Duval – 2 transient units; 809 Shavers – 1 transient unit; and 813 Shavers (swimming pool) – 1 transient unit for a total of 11 transient units.
 - **Keys Energy** – 812 Duval – upstairs and downstairs accounts (no count on number of units) ; 810 Rear Duval; and 809 Shavers – one account (no count on number of units).

SUPPORTS RECOGNITION OF 8 LAWFULLY ESTABLISHED TRANSIENT UNITS AND SUPPORTS THE EXISTENCE OF TWO ADDITIONAL TRANSIENT UNITS AND THE TRANSIENT USE OF A NON-TRANSIENT UNIT AT 812 DUVAL STREET.

December 6, 2016

Lawful Unit Determination at 810- 812 Duval Street

- h. Documentation for the Monroe County Property Appraiser's Office for the time on or about April 1, 2010, (Green Card); and**
- 812 Duval Street: AK # 0001695-000000, lists PC Code: Hotels and Motels. Notes: 12/26/2002 – 8 transient rooms & 1 non-transient unit.
 - 1974 Green Card states 3 apartments upstairs and 3 apartments downstairs.

SUPPORTS EXISTENCE OF 8 TRANSIENT UNITS AND 1 NON-TRANSIENT UNIT.

i. Similar documentation as listed above:

- 1. A letter dated December 1, 2005 from the City Planner, Ty Symroski to Jane M. Lowe of the Tropical Inn, the city planner stated he could not “grandfather” seven units on the property the property at 812 Duval Street as requested. The facts of his conclusion as quoted from the letter were:**
 - In 1987 a variance (87-314), was granted for the property to allow an “increase in density from four units (existing) to 5 (no off-street parking).
 - The city occupation licenses for the property are for 4 rooms and one non-transient rental.
 - In 1993 and 1994, the owner was informed that only 5 units were allowed.
 - In 2001, the Code Enforcement Department queried why there were five transient room types when only four transient units were allowed.
 - In 2001, the Code Enforcement Department queried why there were now six transient room types when only four transient units were allowed.

Mr. Symroski states that the record seems to reflect an intention of the owner to not limit the operation to five units requested by the owner and approved by the City.
- 2. Innkeeper’s Association 2006 Survey:**
Number of licensed units at 812 Duval: 11; number of licensed units at 810 Duval: 2; and number of licensed units at 809 Shavers Lane: 2. Total units: 15.
- 3. Prior approvals:**
 - Resolution 87-314, to allow for an increase in density from four units (existing) to five with no off-street parking.
 - Planning Board Resolution 2004-13, transfer of two transient units from 905-907 White Street to 810 Duval Street.
 - Planning Board Resolution 2004-026, transfer of two transient units from 1414 Newton Street to 809 Shavers Lane.
- 4. Property appraisal:**
 - According to the July 20, 2007 Appraisal Report, the subject property is currently configured and used as an 11 unit guest house with a retail unit. That said, according to the City of Key West licensing department the property is licensed for 8 transient units and one non-transient, and the commercial retail unit located at the front of 810 Duval Street. From 2005 the property has been licensed for 10 rooms by Monroe County and by the State of Florida for 11 transient units.
- 5. Zoning Analysis:**
 - Density: A variance for 812 Duval Street in 1987 (No. 87-314) was granted for the property to allow an “increase in density from four units (existing) to five (no off-street parking). It is unclear when the three parcels were combined into the Tropical Inn. The 1985 Polk City Directory listed only 812a Duval Street as the Tropical Inn, and the 1974 green card states it had 6 rooms. Between 1969 and 1985 the property was zoned HP-2 (Commercial Historic Preservation District) which allowed hotel, motels and guest houses not to exceed 30 habitable units per acre through Ordinance 86-1, therefore it was nonconforming in density.

December 6, 2016

Lawful Unit Determination at 810- 812 Duval Street

In 1989 (Ordinance 89-6) the density was reduced to 22 habitable units per acre and increased the nonconformity. The property is currently zoned HRCC-3 in which hotels, motels and transient lodging are permitted by right with the maximum density at 22 units per acre, however, even with the added parcels, the property remains nonconforming as to density. Since 1995, 812 Duval Street has been licensed by the City for four transient units and one non-transient unit. Recognizing additional units would further expand the nonconforming density. The property is currently zoned HRCC-3 in which hotels, motels and transient lodging are permitted by right.

- Use: Prior to 1997 the property was zoned HP-2 which allowed transient use. When Ordinance 97-10 took effect and the property was zoned HRCC-3, hotels, motels and transient lodging was a permitted use.

SUPPORTS RECOGNITION OF 8 LAWFULLY ESTABLISHED TRANSIENT UNITS AND SUPPORTS THE EXISTENCE OF TWO ADDITIONAL TRANSIENT UNITS AND THE TRANSIENT USE OF A NON-TRANSIENT UNIT AT 812 DUVAL STREET.

- 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:

812 Duval Street:

Recognition of one (1) established non-transient unit (the manager's unit) and four (4) established transient units on or about April 1, 2010. Pursuant to the 1987 Variance (87-314) which allowed an increase from four (4) existing units to five (5); and the letter from the City Planner in 2005 which states the city occupation licenses for the property are for four (4) rooms and one (1) non-transient rental, that the owner was informed in 1993 and 1994 that only five (5) units were allowed, that in 2001 Code Enforcement there were five (5) transient units where four (4) were allowed, and that in 2001 Code Enforcement there were now six (6) transient units where four (4) were allowed. **Therefore, due to the condition limiting the number of units to five (5) as stated in variance 87-314, the City is unable to recognize the additional one (1) transient unit as being exempt from the City's Building Permit Allocation System (BPAS). And also unable to recognize the transient use of the non-transient unit (the manager's unit) as being exempt from the City's Building Permit Allocation System (BPAS).**

810 Duval Street:

Recognition of two (2) established transient units on or about April 1, 2010. The property received two transient licenses via a Transient License Transfer in 2004 (Res. 2004-013). As stated above, pursuant to the 1987 Variance (87-314) which allowed an increase from four (4) existing units to five (5); and the letter from the City Planner in 2005 which states the city occupation licenses for the property are for four (4) rooms and one (1) non-transient rental, that

December 6, 2016

Lawful Unit Determination at 810-812 Duval Street

the owner was informed in 1993 and 1994 that only five (5) units were allowed, that in 2001 Code Enforcement there were five (5) transient units where four (4) were allowed, and that in 2001 Code Enforcement there were now six (6) transient units where four (4) were allowed. **Therefore, due to the condition limiting the number of units to five (5) as stated in variance 87-314 the City is unable to recognize the additional one (1) transient unit as being exempt from the City's Building Permit Allocation System (BPAS).**

809 Shavers Lane: Recognition of two (2) established transient units on or about April 1, 2010.

This determination does not grant new unit allocations, but rather recognizes that a total of four (4) transient units and one (1) non-transient unit exist at 812 Duval Street, two (2) transient units exist at 810 Duval Street, and two (2) transient units exist at 809 Shavers Lane.

- a. **The property owner shall cease using the manager's unit at 812 Duval Street as a transient unit (One non-transient unit is reflected by the current City Business Tax Receipts.) within the next 45 days after it has been rendered to the Department of Economic Opportunity. Failure to do so shall result in code compliance action.**
- b. **The property owner shall cease renting the one (1) additional transient unit at 812 Duval Street (Four transient units are reflected by the current City Business Tax Receipts.) within the next 45 days after it has been rendered to the Department of Economic Opportunity. Failure to do so shall result in code compliance action.**
- c. **The property owner shall cease renting the one (1) additional transient unit at 810 Duval Street (Two transient units are reflected by the current City Business Tax Receipts.) within 45 days after it has been rendered to the Department of Economic Opportunity. Failure to do so shall result in code compliance action.**

CONDITIONS/REQUIREMENTS

- **Contact Utilities Collection Manager (Michael Turner 305-809-3816) to coordinate any payment for back fees. Currently billing for 7 residential units (3 at 812 Duval; 2 at 810 Duval; and 2 at 809 Shavers); change billing to 9 residential units to reflect current Business Tax Receipts.**
- **Contact the Monroe County licensing to change the number of units licensed from 10 to 9 units.**
- **Contact the State of Florida licensing to change the number of units licensed from 11 transient units to 8 transient and 1 non-transient.**

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

MEMORANDUM

To: Code Enforcement

From: Ty Symroski, City Planner

Date: August 12, 2003

RE: 812 Duval Street, Tropical Inn

Attached is an advertising brochure for the above property. I obtained from a brochure rack at the front door on August 6, 2003. As indicated, there are 6 transient rental units. Also attached is a copy of the occupational license report dated 8/06/03 provided by Carolyn Walker. As indicated the property only has 4 rooms and one non-transient rental unit.

Please consider this memorandum a complaint.

CC: Charles Stephenson
Bob Tischenkel, City Attorney

Additional Information



THE CITY OF KEY WEST
POST OFFICE BOX 1409
KEY WEST, FLORIDA 33041-1409
www.keywestcity.com

PLANNING DEPARTMENT
(305) 292-8229

December 1, 2005

Jane M. Lowe
The Tropical Inn
812 Duval Street
Key West, FL 33040

RE: Tropical Inn, 812 Duval Street

Dear Ms. Lowe,

Please accept my apology for not having responded earlier to your letter of October 12, 2005. Hurricane Wilma blew apart my schedule and I am only now beginning to get caught up.

I am sorry to report that I cannot "grandfather" the full seven units on your property as requested. However, the Planning Department is proposing an ordinance that may solve your problem and I encourage you to follow the ordinance as the Planning Board and the City Commission review it.

The primary facts for my conclusion to not grandfather the units are:

- In 1987 a variance (87-314), was granted for the property to allow an "increase in density from four units (existing) to 5 (no off-street parking).
- The City occupation licenses for the property are for 4 rooms and one non-transient rental.
- In 1993 and 1994, the owner was informed that only 5 units were allowed.
- In 2001, the Code Enforcement Department queried why there were five transient room types when only four transient units were allowed.
- In 2003, the Code Enforcement Department queried why there were now six transient room types when only four transient units were allowed.

Consequently, the record does not reflect 7 units and a clear error by the City Staff. In fact, the record seems to reflect an intention of the owner to not limit the operation to five units requested by the owner and approved by the City.

In conclusion I fully appreciate the problem you are facing and this is why the Planning Department is proposing an ordinance that may provide a solution for you.

Sincerely,

Ty Symroski
City Planner