



CITY OF VENICE
Vested Rights Determination
Bluedog Capital Partners LLC.
127 East Tampa Avenue, Venice FL

Staff Report

Alleged Vested Right:

Jackson Boone from the Boone, Boone, Boone, and Koda law firm representing the property owners, Bluedog Capital Partners LLC., has submitted for a vested rights determination for their clients property located at 127 E. Tampa Avenue, Venice FL. For this determination, the owner desires to confirm the legal status of the existing residential units located on the second floor of the existing building at the subject property. A vested rights determination is subject to the City Code of Ordinances Chapter 86 Section 86-48 as indicated below:

Sec. 86-48. - Vested rights.

(a) Nothing contained in this chapter shall be construed as affecting existing vested rights. It shall be the duty and responsibility of any person alleging vested rights to affirmatively demonstrate to city council the following:

- (1) A reliance in good faith upon some act or omission of the government; and*
- (2) A substantial change in position or the incurrence of such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights that have been acquired.*

In response to this “duty and responsibility” to demonstrate to City Council, Mr. Boone, has alleged that the property owner has “grandfathered” vested rights status for existing dwelling units located at the subject property. Mr. Boone further contends that the current owner of the property has made substantial investments of over \$670,119.11 in improvements to the property indicating “...incurrence of such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights that have been acquired.”

Existing Zoning:

The use of the property is the subject of this vested rights determination. This is important due to the current zoning of the property, which is Commercial, Intensive (CI) and residential uses in this zoning district require approval of a special exception. An excerpt from this pertinent section of the City’s Land Development Code is shown below:

Sec. 86-93. - C1 commercial, intensive district.

Typical Special Exception Uses

11) **Multi-Family Dwellings as defined in [Section 86-570](#).**

Nature and Extent of Alleged Vested Rights:

The nature of the vested rights has been indicated alleging that the subject property has existing residential dwelling units/uses. For the purpose of the vested rights determination it is important to clarify the exact location of the alleged vested rights. Specifically, which portion/units of the existing development within the subject property contain the existing residential uses. Based on staff information provided as part of a prior zoning determination, it would appear that those units include A, B, C, and D located at 127 East Tampa, Avenue, Venice FL. In their review and any action regarding this vested rights determination, City Council needs to further define the location of the alleged vested rights for the purpose of any/all final action regarding this matter. The defined locations should be specific to include the address/units for which action by City Council may occur regarding this request.

Staff Review and Findings:

It is important to note the applicant did pursue a zoning determination prior to pursuit of a vested rights determination. The City's zoning determination regarding this matter is attached for review. This determination is important for background information and is attached as Exhibit A to this report. In summary, this determination resulted in the inability of the zoning administrator to determine the legal status of the existing residential units (A-D) due to "lack of information / documentation".

In review of the submitted petition for vested rights, the subject property located at 127 East Tampa Ave., Venice FL, some of the important findings of fact include:

- Applicant did pursue a zoning determination by the zoning administrator prior to pursuit of the vested rights determination.
- There are no documents/records (that can be located) showing or indicating an issued certificate of occupancy for residential uses at the subject property.
- The City did process and issue building permits for drywall and HVAC improvements for a portion of the alleged residential units (A-D).
- There have been no code enforcement cases related to the "residential use" of the subject property.
- Applicant attest expenditures/investment in excess of \$670,119.11 which include improvements to the areas having existing residential uses.


The applicants petition for vested rights and ownership information have also been included for consideration.


Exhibit A: Zoning Determination

CITY OF VENICE Planning & Zoning Division

Memorandum

TO: Jackson Boone, Esq., Boone Law Firm

FROM:  Jim Koenig, AICP, Planner

THRU:  Jeff Shrum, AICP, Development Services Director

SUBJECT: Zoning Determination Legal Status of Residential Dwelling Units at
127 East Tampa Avenue

DATE: March 27, 2017

The Planning and Zoning Division is in receipt of your request for zoning determination for the address located at 127 East Tampa Avenue (the "Property"). Your letter indicates that the property includes two residential dwelling units and that your client intends to procure a sale of the property to another party who desires to retain the residential status of the two dwelling units. The request is twofold: (1) to determine whether the residential dwelling units are legal, nonconforming uses and (2) to determine whether a transfer of ownership will impact the legal status of these units.

The property is located in a Commercial, Intensive (CI) zoning district and the Venetian Theme (VT) architectural control district. Being located in the VT architectural control district has no bearing on this zoning determination. Per Section 86-93(b) and (c) of the Land Development Code, the CI zoning district does not permit single-family and two-family dwelling units as either principal uses or structures or accessory uses or structures. However, per Section 86-93(d), multi-family dwelling units as defined in Section 86-570 can be permitted as Special Exceptions. No new residential construction, except for multi-family dwellings, is allowed in the CI zoning district.

This determination evaluated information provided in your letter as well as information from other sources to ascertain if the residential dwelling units can be classified as legal, nonconforming uses. Section 86-570 defines nonconforming uses, structures or lots as "uses, structures or lots which were lawful prior to the adoption of this chapter or amendment hereto, but which would be prohibited, regulated or restricted under the terms of this chapter or amendments hereto." To be classified as a legal, nonconforming uses the residential dwelling units need to have been issued a City of Venice building permit and certificate of occupancy prior to adoption of the current Land Development Code.

Findings of Fact

The following information was taken into consideration in rendering the requested zoning determination:

- Sarasota County Property Appraiser records show that the property contains two buildings: a two-story building built in 1958 and a one-story building built in 1982. The two-story building is identified as having a "main area commercial" on the first floor and an "upper area commercial" on the second floor. The one-story building is identified as having only a "main area commercial." The Property Appraiser does not show any records of residential uses within either building.

- Planning and Zoning staff performed a site visit and identified the two-story building as having three commercial suites (#1-3) on the first floor, and at least two residential dwelling units on the second floor. Staff identified the one-story building as having seven commercial suites (#5-11) only. No commercial suite #4 was seen on the property. A property mailbox lists the individual commercial suites as well as apartments "A-D", although all four apartments could not be confirmed on site.
- Information received from the property manager SVN Commercial Advisory Group confirmed the two-story building as having three commercial suites on the first floor and four residential dwelling units on the second floor. This is contrary to the number of residential units (2) that was stated in your letter. The four residential units are made up of studio apartments "A" and "B" and one-bedroom apartments "C" and "D."
- The City of Venice Building Department does not contain any records that allowed the construction of the four residential dwelling units, nor is there record of certificates of occupancy being issued for the units. However, records show building permits were issued for improvements at 127 East Tampa Avenue which reference "units" or "apartments." These permits were issued in 2002, 2003, and 2011 for HVAC and drywall work.
- City of Venice Utility Department records show that the property contains only one water utility meter designated for "commercial" use. The city initiated water services to the property in 1985.
- Florida Power and Light records show that the property contains several individual electric utility meters for each commercial suite and apartments "C" and "D" only. The records do not list individual electric utility meters for apartments "A" and "B."

Determination

After taking into account all of the above information, staff concludes that not enough information exists to prove when (date) the residential uses were established. Staff cannot determine if the residential dwelling units were legal, permitted uses allowed by the zoning regulations at the time the uses were established. If you feel there is pertinent information or documentation that we have not considered, please provide such information so staff can further revise this determination. Nonetheless, based on this determination Code Enforcement staff will be initiating an enforcement case to follow up on these residential uses.

If you feel your client has the right to continue using the property in the manner stated, they may file for a Vested Rights Determination with City Council. Additionally, if you believe this determination represents an error in interpretation of the Land Development Code or abuse in discretion by the Zoning Administrator, an appeal may be filed subsequent to Sections 86-23(i) and (j) within 15 days of the date of this determination letter. For information regarding the appeals process, please contact the Planning & Zoning Department located in City Hall at 401 W. Venice Avenue, Venice, Florida, 34285.