



THE CITY OF KEY WEST
PLANNING BOARD
Staff Report

To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Scarlet Hammons, AICP CTP, The Corradino Group

Meeting Date: August 18, 2022

Agenda Item: **Major Development Plan, Conditional Use & Landscape Waiver – 601 Truman Avenue (RE# 00017270-000000 and 00017270-000001)** – A request for approval of a major development plan, a conditional use for a restaurant and modification of a deemed conditional use for small recreation power-driven equipment rentals, and a landscape waiver for a mixed use development located at 601 Truman Avenue and 919 Simonton Street in the Historic Neighborhood Commercial – 1 (HNC-1) zoning district pursuant to Sections 108-91.A.2(b), 108-517, 122-62, 18-355 and 122-808 of the City of Key West Land Development Regulations.

Request: The applicant is requesting major development plan, conditional use and landscape waiver approvals for the proposed repurposing of the “Moped Hospital” to a restaurant, recreational vehicle rental and four affordable housing units.

Applicant/

Property Owners: Trepanier and Associates; Venter Enterprises, LLC

Location: 601 Truman Avenue (RE# 00017270-000000 and 00017270-000001)

Zoning: Historic Neighborhood Commercial – 1 (HNC-1)



Background

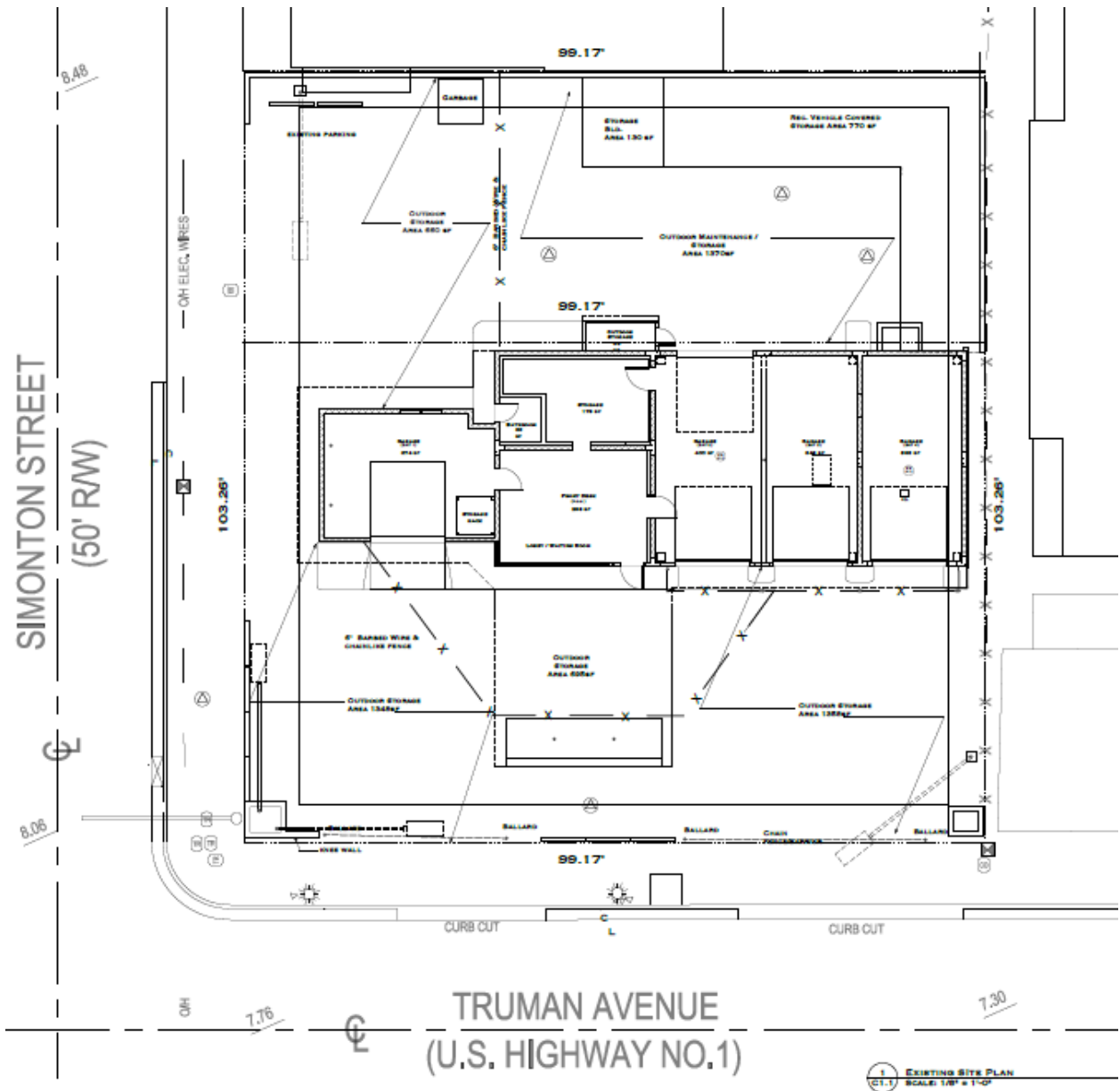
The property is located at 601 Truman Avenue, at the intersection of Truman Avenue and Simonton Street. The subject property is 10,239 square feet and is located in the Historic Neighborhood Commercial-1 (HNC-1) Zoning District and is two lots of record under common ownership. The site is known as the “Moped Hospital” and is currently used for a small recreational power-driven equipment rental business. The business consists of renting mopeds, low speed vehicles, bicycles, sales, service/repair, manufacturing, outdoor display, and indoor and outdoor storage. Minty’s Golf Cart and Scooter Rentals is authorized for 177 Mopeds and 50 “electric car” vehicles. Currently 49 Mopeds and 40 four-wheeled low speed gas powered vehicles (commonly known as carts) are actively in use and have been issued decals for 2023. All but one of the low speed vehicles have gas engines. The site conditions are currently non-conforming in many aspects, including 100% impervious surface, no landscaping or open space, and is noncompliant with respect to most of the setback requirements in this zoning district. The owner has already obtained building permit allocations through Building Permit Allocation System for the four proposed affordable housing units (Resolution No. 2021-20). This property is located within the Historic District and the applicant will seek HARC approvals as necessary.

The existing commercial structure predates 1945 and was originally used as a gas and auto service station. The Florida Department of Environmental Protection maintains four monitoring wells on site (FDEP Facility ID No. 44/8841232). There are mitigation measures proposed by the applicant to address the site contamination associated with any new development.

Today this property is considered a contaminated site due to fluids that leaked into the soil over the years from underground fuel storage tanks. The owner purchased the site in this condition and has sought creative ways to redevelop and mitigate, while also providing a benefit to the City by providing new housing and a neighborhood cafe. The planning challenge here is recognizing

- Conditional use review is required for restaurant uses within the HNC-1 Zoning District, pursuant to City Code Section 122-868(2).
- Modification of a deemed conditional use for small recreation power-driven equipment rentals, pursuant to City Code Section 18-355.
- The applicant is also requesting variances and landscape waiver, pursuant to City Code Sections 90-395 and 108-517.

The Applicant is requesting eight variances including building coverage, impervious surface ratio, open space, setbacks, minimum parking and minimum unit size.



Proposed Development

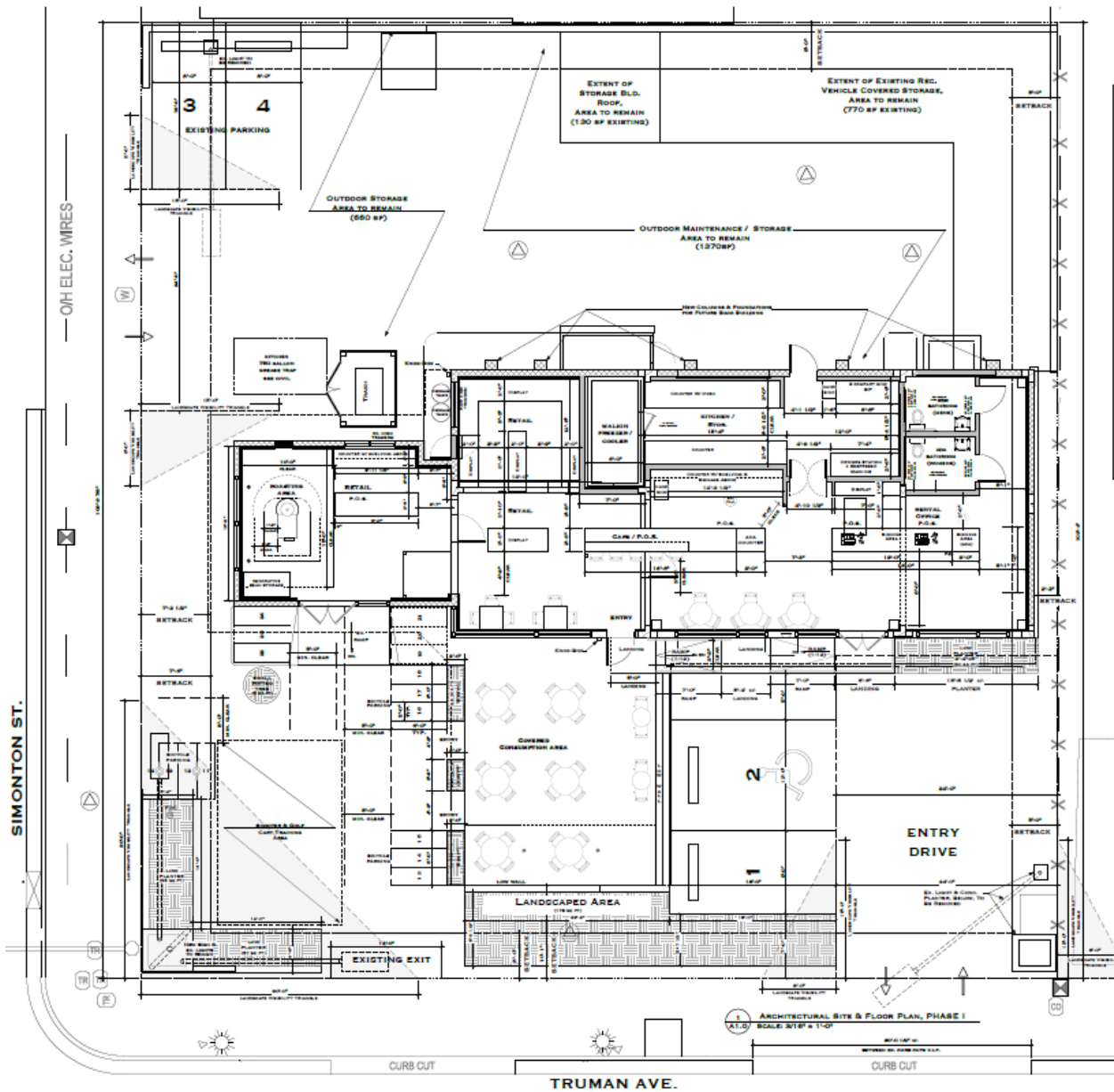
The applicant seeks to redevelop this site as a mixed-use development, to ultimately consist of a restaurant, the Cuban Coffee Queen with a small gift shop, four affordable housing units and a recreational rental vehicle business. The site is proposed to be developed in two distinct phases. Phase I would include repurposing the existing building, formerly called the “Moped Hospital”, remodeling the interior space to a restaurant with a small gift shop. The exterior would be improved to allow for an outdoor dining area of 573 square feet, parking, landscape within raised planter boxes, open space and a trash enclosure, as well as other site improvements. The

application also includes a request to modify their existing deemed conditional use to revise the vehicle mix of the existing small recreational rental vehicles at Minty's Golf Cart and Scooter Rentals. The business is currently licensed for 177 Moped rentals and 50 "electric car" vehicles. Currently 49 mopeds and 39 gas powered low speed vehicles and one electric low speed vehicle are actively in use and have been issued decals for 2023. The applicant is requesting to reduce the number of moped rentals by 50, and increase the number of gas powered low speed vehicles rentals by 50, and reduce the overall number of bike rentals from 150 to 56. It should be noted that only 39 gas powered and one electric low speed vehicles (of the current 50 allowed) have active decals and are on the City's roadways today. *All of the applicant's low speed vehicles (golf carts) should be electric per the grandfathered conditional use permit; the applicant is currently non-compliant with the existing grandfathered conditional use.* The addition of 50 more licenses could have an impact of 60 additional low speed vehicles on the roadways over today's condition. Additionally, low speed vehicles are larger than mopeds and occupy significantly more space on the roads and parking areas than what would be occupied by each moped that have an average footprint of 6 sq. ft.



Photos of the gas powered low speed vehicles copied from the Minty's Golf Cart and Scooter Rentals website

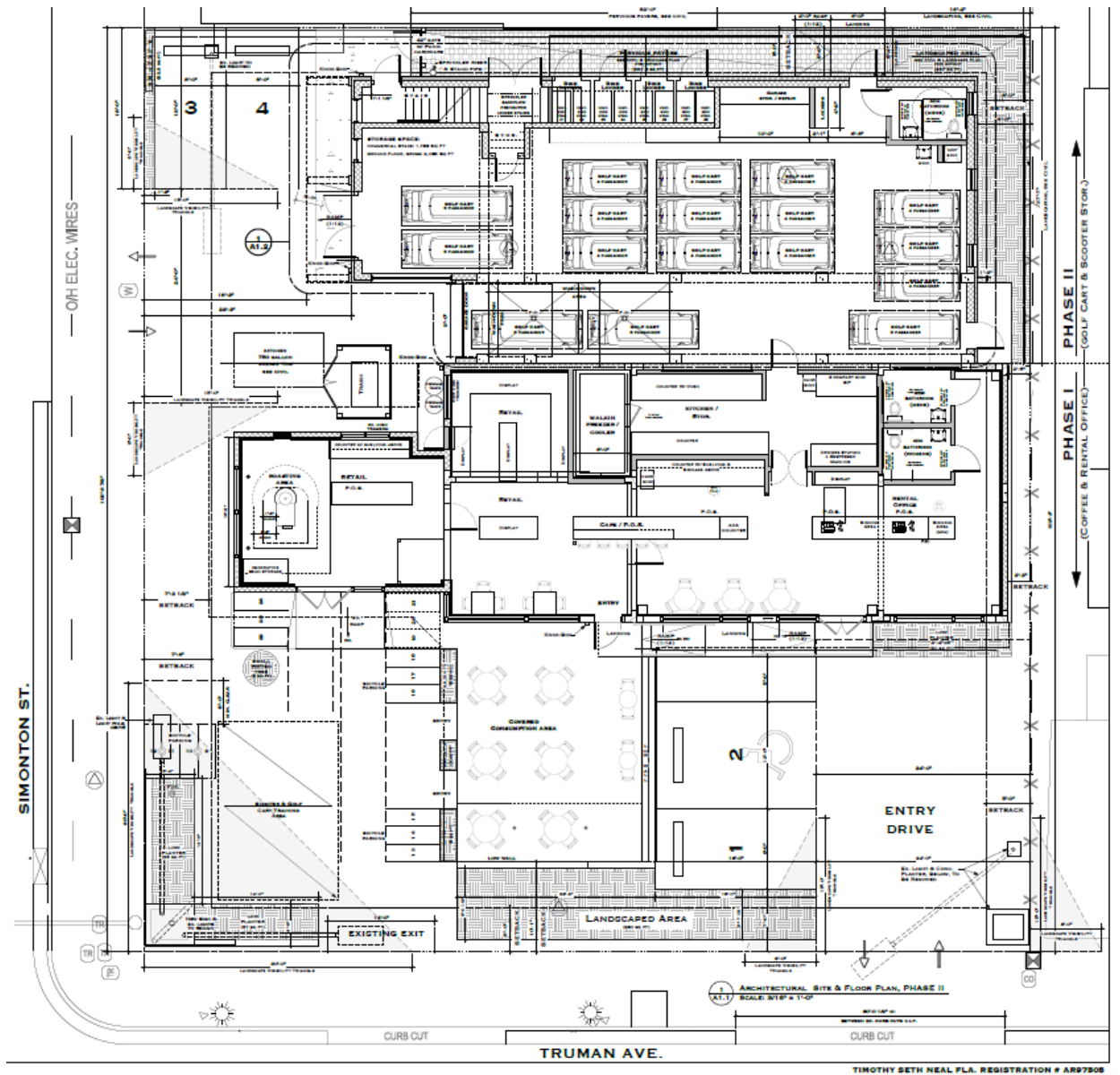
It is recommended that the non-compliance is not expanded, and this request is denied by the Planning Board. However, if the Planning Board chooses to move this forward, the City's current guidance on rental license substitution requests is to allow mopeds to be removed, and low speed vehicles to be added, but not on a one-for-one ratio. Additionally, electric vehicles are preferred over gas powered, given their lack of noise and use of a more environmentally friendly fuel, in that they are avoiding carbon emissions, although they require the use of a disposable battery. **It is recommended that when there is an increase of one (1) low speed vehicles that two (2) gas powered mopeds are removed. Based on this ratio, the applicant would need to remove 50 gas moped rental licenses to increase the low speed vehicles licenses by 25, and the additional low speed vehicles would be required to have electric powered engines.**



The second phase would consist of new construction of a two-story building with commercial use on the first floor and four affordable units on the second level. To make this possible, the existing nonconforming 1,052 s.f. commercial structure is proposed to be removed. Site improvements in Phase II will also include landscaping, storm water retention and open space improvements. There is a time limit on the Building Permit Allocations for the four units associated with this development. The property owner must obtain building permits for the residential units before August 24, 2024. A construction management plan and schedule was provided with this application and staff has provided the applicant with Code requirements to assist the applicant with revisions.

The proposed affordable housing units will be deed restricted affordable studio apartments, ranging in size between 325 s.f. to 366 s.f. The minimum size for affordable units is 400 s.f., the applicant is requesting a variance for not meeting the minimum unit size. The four units are all to be located on the second level above the commercial space, accessed by a single stairway leading to the second story. No dedicated parking spaces are provided for the residential units, however the units will have bike parking, and the applicant is requesting a variance for not meeting the minimum parking required.

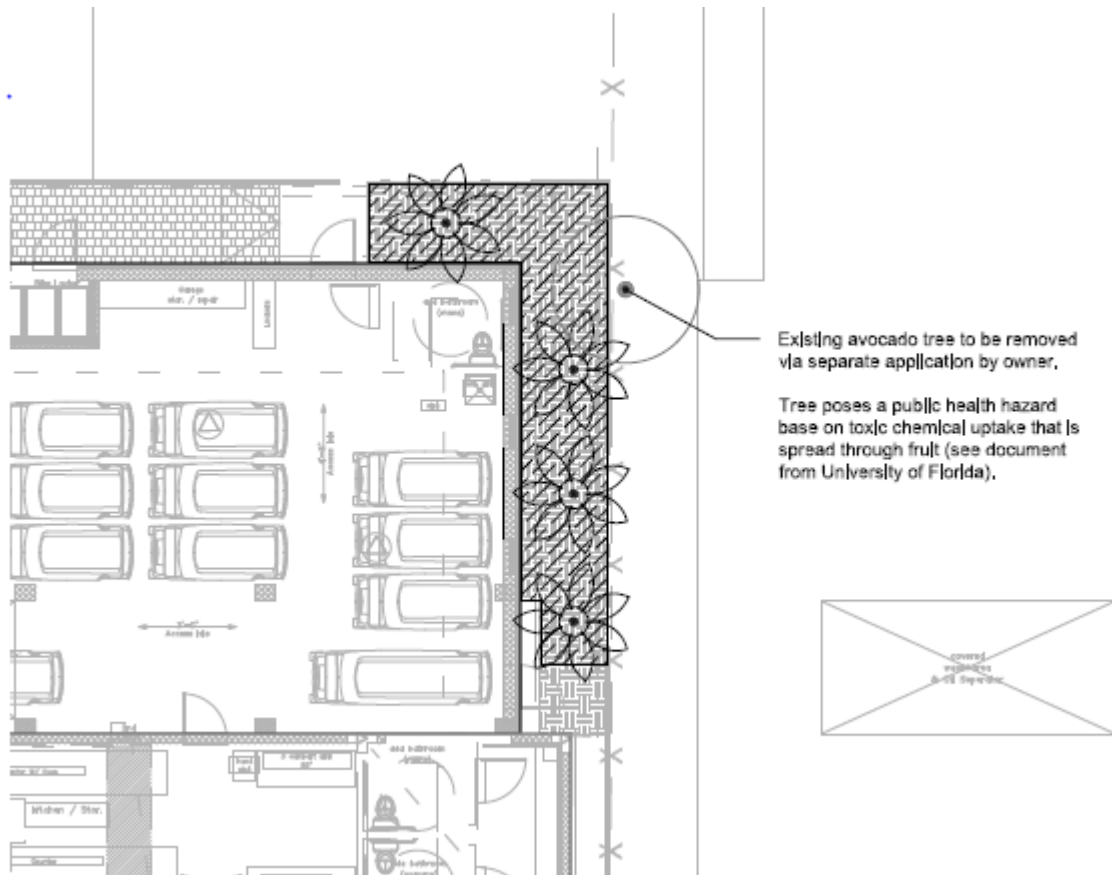
The first level commercial space will consist of a total of 2,086 s.f., and will be used for the continuation of the existing recreational rental vehicle business that exists on the site today. The vehicles will be stored indoors, which will be designed to accommodate eighteen E-cars. The remaining vehicles for rent will be stored off-site. There will be eight bike lockers accessed from the exterior. The site layout includes a dedicated area in front of the building near Truman Avenue for scooter and E-car customer training, per City requirements. The customer rental desk will be located within the restaurant, the building is designed with an interior door to provide access between the two businesses.



A tree removal permit for an avocado tree located on a neighboring property, 611 Truman Avenue, accompanies this development and received approval by the Tree Commission. The applicant will mitigate by planting a tree in the Truman Avenue planter and by contributing to the City tree fund. It should be noted that the Tree Commission and the City Engineer have identified a concern about a line-of-sight issue with a planter that has not been addressed by the applicant.

The tree removal permit related to an existing avocado tree, which bears fruit poses a health risk to humans and wildlife, if it were to remain. It is contaminated with naphthalene and other hazardous chemical in the ground, assumed to be associated with the properties past use as a gas station. Underground fuel tanks were stored at the site until 1988. Naphthalene is a group C human carcinogen, exposure of humans to this chemical by inhalation, ingestion or contact is very

serious. There are monitoring wells at the site that have confirmed the levels far exceed what would be considered safe by the EPA. The owners of the avocado tree are in agreement of its removal for public health and safety reasons.



Site access and circulation consists of driveways located on both Truman Avenue and Simonton Street. The required minimum parking is 154 spaces, while two spaces currently exist. Whereas the applicant is proposing a total of four (4) spaces; one (1) ADA, one (1) standard and two (2) that are compact (8'x18'). Due to the minimum size requirements for a standard parking space, the two (2) compact spaces do not meet the code and are not counted as meeting on-site parking. The site includes a total of 24 bike parking spaces to encourage multi-modal options within a neighborhood which already embraces active transportation modes. The applicant is requesting a variance for not complying with the minimum parking requirements.

Environmental

An environmental site assessment report with recommendations was prepared by Premium Environmental Consulting, LLC documenting the underground plume of soil contaminants that has historically existed at this site. The site was formerly a gas and auto service station with underground fuel storage tanks that created the contamination issue that remains today. The site

is periodically monitored, and as recently as 2020, the levels of contamination were found to exceed both the Natural Attenuation Source Concentration and Groundwater Concentration Target Levels of safety. The Florida Department of Environmental Protection (FDEP) has determined that this site is not yet eligible for cleanup funding (due to a Statewide scoring system).

The applicant proposes to not remove the contamination as part of this development and to utilize an impermeable vapor layer beneath the footprint of the proposed new building, rather than remove the contaminated soil. The consultant has further recommended to not install landscaping or a stormwater management system until after the groundwater meets Chapter 62-777 Contaminant Cleanup Target Levels, or as otherwise directed by the City. Considering the fact that the applicant is not providing in-ground landscaping based on the environmental consultant’s recommendation, the applicant has met with and will continue to provide correspondence from the FDEP site manager as to the soils and groundwater contamination and the protocols regarding any disturbance of the substrate for this property. The applicant has agreed to continue to work with the Department of Environmental Protection regarding monitoring site groundwater contamination with the goal of obtaining a no further action order through the State’s Petroleum Restoration Program. No further action orders are issued when sites show contamination levels are shrinking and stable and not a threat to humans or the environment. The site will be monitored for a minimum of one year.

SITE DATA Zoning HNC-1				
Dimensional Requirements	Required/Allowed	Existing	Proposed	Variance Needed
Height	35 feet	16 feet	23.5 feet	None
Unit Size	400 S.F.	0 S.F.	325-366 S.F.	Variance needed
Minimum Front Setback	5 feet	5 feet	5 feet	None
Minimum Side Setback	5 feet	0 feet	2.2 feet	Variance needed 2.8 feet
Minimum Street Side Setback	7.5 feet	7.2 feet	7.2 feet	Variance needed 0.3 feet
Minimum Rear Setback	15 feet	0 feet	5.2 feet	Variance needed 9.8 feet
Density	16 du/ac (4 units)	0 units	4 units	None
Maximum Building Coverage	50% 5,120 square feet	42% 4,308 square feet	53% 5,468 square feet	Variance needed 3%, 348 square feet
Impervious Surface	60% 6,143 square feet	100% 10,239 square feet	93% 9,618 square feet	Variance needed 33% 3,475square feet
Open Space	20% 2,048 square feet	0% 0 square feet	6% 621 square feet	Variance needed 14% 1,427 square feet
Parking	Mixed use – vehicle rental, restaurant, residential, retail –	2 spaces	1 ADA space 1 standard space	Variance needed 154 spaces

	total of 156 spaces			
Bicycle Parking	24	0	24 spaces	None
Landscaping				Landscape Waiver needed

Process:

Development Review Committee: June 24, 2021
 Planning Board Meeting: August 18, 2022
 Tree Commission Meeting: May 10, 2022
 HARC Commission Meeting: TBD
 City Commission: TBD
 Local Appeal Period: 30 days
 DEO Review Period: up to 45 days

Evaluation for Compliance with the Land Development Regulations (LDRs) and Comprehensive Plan

City Code Section 108-91. A.2.(b) requires the reconstruction of nonresidential floor area equal to or greater than 2,500 square feet to be reviewed as a Major Development Plan. City Code Section 108-196(a) states after reviewing a Major Development Plan or a Minor Development Plan for a property and staff recommendations therefor, the Planning Board shall act by resolution to approve, approve with conditions, or disapprove it based on specific development review criteria contained in the LDRs and the intent of the LDRs and comprehensive plan. The Planning Board resolution shall provide written comments documenting any conditions of approval that the Planning Board finds necessary to effectuate the purpose of Development Plan review and carry out the spirit and purpose of the Comprehensive Plan and the LDRs. If the Development Plan is recommended for disapproval, the Planning Board resolution shall specify in writing the reasons for recommending such denial.

The Planning Board’s decision on a Major Development Plan in the historic district shall be advisory to the City Commission.

Concurrency Facilities and Other Utilities or Services (City Code Section 108-233)

- Comprehensive Plan Objective 9-1.5 directs the City to ensure that public facilities and services needed to support development are available concurrent with the impacts of new development. The analysis considers potable water, sanitary sewer, solid waste,

drainage, vehicle trip generation and recreation. City Code Section 94-36 requires a concurrency review determination to be made concerning the proposed development. The Applicant provided a concurrency analysis as part of the Major Development Plan application. Staff reviewed the provided concurrency analysis following the criteria in City Code Section 94-36 and determines that public facilities are expected to accommodate the proposed development at the adopted level of service (LOS) standards.

1. Potable water supply

Based on the City of Key West adopted level of service the potable water demand is anticipated to increase at the end of this single-phase development plan, residential and nonresidential LOS is 100 gallons per capita, per day.

Anticipated potable water flow = 2,259 gallons per day

The adopted potable water LOS standard is anticipated to be adequate to serve the proposed development. The property is serviced with potable water by the Florida Keys Aqueduct Authority (FKAA), which has been notified of the upcoming development and has available capacity to service the proposed development.

2. Wastewater management

The sanitary sewer LOS standard for nonresidential uses is 660 gallons per acre per day and the LOS for residential is 100 gallons per capita per day, pursuant to City Code Section 94-67. Utilizing this LOS standard, sanitary sewer capacity demand is estimated as follows:

Anticipated sanitary sewer flow = 974 gallons per day

Therefore, the adopted sanitary sewer capacity LOS standard is anticipated to be adequate to serve the proposed development.

3. Water quality

The property is not adjacent to any bodies of water. No adverse impacts to water quality are anticipated.

4. Stormwater management / drainage

The stormwater management or drainage LOS standard pursuant to City Code Section 94-69 is: i) post-development runoff shall not exceed predevelopment runoff for a 25-year storm event, up to and including an event with a 24-hour duration; ii) onsite treatment of the first one inch of rainfall must be provided to meet water quality standards; and iii) storm water facilities must be designed so as to not degrade any receiving water body.

A drainage plan was submitted indicating that a stormwater swale system will be installed. Environmental recommendation from Premium Environmental Consulting, LLC advises against

installation of an underground stormwater management system due to the underground plume of dissolved hydrocarbon concentrations.

Stormwater would be retained on-site utilizing stormtech and swales. Stormwater from the roof will drain into the proposed exfiltration trench. The area of the new proposed building will require concrete removal and must comply with stormwater retention utilizing swales.

In summary, no adverse impacts to stormwater management or drainage facilities are anticipated.

5. Solid waste

The solid waste LOS standard for nonresidential uses is 6.37 pounds per capita per day and 2.66 for residential, pursuant to City Code Section 94-71. The proposed development is anticipated to accommodate approximately 138 persons per day. Utilizing this LOS standard, the demand for solid waste collection and disposal capacity is estimated as follows:

Anticipated solid waste trash = 113 lbs/day

The property is currently serviced by Waste Management. The dumpster trash and recycling areas are provided on the site plan. The adopted solid waste LOS standard is anticipated to be adequate to serve the proposed development. The City of Key West has a new recycling master plan with the goal of increasing the recycling rate, maximizing waste diversion, and creating a pathway towards a zero waste community.

6. Roadways

The roadway LOS standard is set forth in City Code Section 94-72. Based on 2021 FDOT traffic counts, Simonton Street and Truman Avenue are currently operating below total capacity for vehicles. Code Section 18-358 specifies that an application for relocation of a vehicle permit shall submit a traffic impact analysis, which was provided with this application (see traffic statement prepared by KBP Consulting, Inc. dated May 5, 2021) In staff's opinion, the traffic statement incorrectly states the following: "The net effect on roadway capacity of a reduction of 50 mopeds and an increase of 50 cars is essentially zero."

The applicant has 10 additional low speed vehicle licenses that are not currently issued decals. By transferring the 50 non-used moped licenses, you have a net effect of adding 60 larger vehicles to the street, which is not a zero impact. This was not considered in the traffic statement, nor was it analyzed as an impact to the roadways. Further the statement is using outdated traffic counts from 2019, when at the time it was prepared, counts for 2020 should have been used.

The analysis provided is incorrectly measuring the 3% threshold based on the capacity of the roadway, not the impact to average daily or peak hour traffic counts. For example, Simonton Street has an average count of 5,300 (per the statement, but these are old numbers), but the roadway capacity is 10,360 trips. In the traffic statement the engineer defines de minimis impacts are 3% of capacity on the local transportation network. However, the code is very clear that the

analysis should be measuring the impact to the daily traffic volume, not the impact to the roadway's capacity to carry vehicles.

7. Recreation

The plans do not show onsite recreation as defined in Section 86-9 of the LDRs. However, it is not anticipated that the City's adopted level of service for public recreation will be adversely impacted.

8. Fire Protection

A detailed life safety plan will be submitted prior to a building permit, and the proposed building will be in compliance.

9. Reclaimed water system

There is no reclaimed water system proposed.

10. Other public facilities

The project does not anticipate having adverse impacts on other public facilities within the City.

Appearance, design and compatibility (City Code Section 108-234)

The development plan shall be reviewed for approval in accordance with City of Key West Historic District guidelines, as noted below.

City Code Chapter 102 (historic preservation)

The property is located within the historic district and the building is a non-contributing structure. Therefore, the proposed development would need to obtain a Certificate of Appropriateness from the Historic Architectural Review Commission (HARC) for the proposed design prior to issuance of building permits.

Articles III (site plan), IV (traffic impacts) and V (open space, screening and buffers) of City Code Chapter 108 (planning and development)

As demonstrated by the site plan, trip generation analysis and the site data calculation, the project complies with the requirements of the Articles.

City Code Section 108-956 (potable water and wastewater)

Potable water and wastewater were found to comply in the concurrency determination above.

Article II (archaeological resources) of City Code Chapter 110 (resource protection)

There are no known archaeological resources on the property. If any archeological resources are discovered during construction, the Applicant would be required to comply with this article of the LDRs.

Site location and character of use (City Code Section 108-235)

(a) *Compliance*. The submitted development plan has been reviewed for compliance with all applicable performance criteria set forth in Code Chapter 94 (concurrency management), Code Chapter 102 (historic preservation), Code Chapter 106 (performance standards), Articles I and III

through IX of Code Chapter 108 (planning and development), Code Chapter 110 (resource protection) and Code Chapter 114 (signs).

(b) *Vicinity map*. The property is located at the intersection of Truman Avenue and Simonton Street.

(c) *Land use compatibility*. Uses within 300 feet include surrounding uses include residential, mixed use residential/retail/office, it is within the historic district. No unincorporated parts of the county are located nearby, nor would any be impacted by the proposed development.

(d) *Historic and archeological resource protection*. The project's impact on archaeological and historic resources is being coordinated through the DRC and would be reviewed by HARC through a Certificate of Appropriateness.

(e) *Subdivision of land*. No subdivision of land is proposed.

Appearance of site and structures (City Code Section 108-236)

The Applicant submitted a development plan that generally exhibits harmonious overall design characteristics in compliance with the performance standards stipulated in Code Sections 108-278 through 108-288, as analyzed below.

Site plan (City Code Section 108-237)

The Applicant submitted a site plan pursuant to City Code Section 108-237, which is analyzed in greater detail below.

Architectural drawings (City Code Section 108-238)

The Applicant submitted architectural drawings prepared by a professional architect registered in Florida pursuant to City Code Section 108-238.

Site amenities (City Code Section 108-239)

Proposed site amenities include existing and proposed which are required to comply with appearance, design and compatibility regulations outlined in chapter 102; articles III, IV and V of this chapter; section 108-956; and article II of chapter 110.

The applicant proposes not to remove the contaminated soil from the site and to utilize an impermeable vapor layer beneath the footprint of the proposed new building, which could be a violation of Chapter 110 Resource Protection, Article III, Div. 4 Freshwater Lens Protection: *(a) The City shall regulate development for the purpose of protecting the freshwater lens. (b) In addition to subsection (a) of this section, development plans shall contain improvements designed to preserve the quality and quantity of water resources within the freshwater lens. **This shall be accomplished by ensuring against pollutants entering the freshwater lens.** (bold added)*

The applicant has agreed to continue to work with the Department of Environmental Protection (DEP) regarding monitoring site groundwater contamination with the goal of obtaining a no further action order through the State's Petroleum Restoration Program. No further action orders are issued when sites show contamination levels are shrinking and stable and not a threat to humans or the environment. The site will be monitored through DEP for a minimum of one year.

Site survey (City Code Section 108-240)

The Applicant submitted a site survey pursuant to City Code Section 108-240.

Soil survey (City Code Section 108-241)

An environmental site assessment report with recommendations was prepared by Premium Environmental Consulting, LLC documenting the underground plume of soil contaminants that has historically existed at this site. The site was formerly a gas and auto service station with underground fuel storage tanks that created the contamination issue that remains today. The site is periodically monitored, and as recently as 2020, the levels of contamination were found to exceed both the Natural Attenuation Source Concentration and Groundwater Concentration Target Levels of safety. The Florida Department of Environmental Protection (FDEP) has determined that this site is not yet eligible for cleanup funding (due to a Statewide scoring system).

The applicant proposes to not remove the contamination as part of this development and to utilize an impermeable vapor layer beneath the footprint of the proposed new building, rather than remove the contaminated soil. The consultant has further recommended to not install landscaping or a stormwater management system until after the groundwater meets Chapter 62-777 Contaminant Cleanup Target Levels, or as otherwise directed by the City.

Environmentally sensitive areas (City Code Section 108-242)

No environmentally sensitive areas are located on or near the property, which is located within the X flood zone.

Land clearing, excavation and fill, tree protection, landscaping and irrigation plan (City Code Section 108-243)

(a) *Land clearing, excavation and fill.* The proposed development would involve these activities. Phase II will require removal of concrete surface, excavation for footers, removal of soil, and dewatering to construct the building. Any dewatering for the project will require FDEP and SFWMD coordination and permitting, due to the groundwater contaminants. An environmental health and safety plan will be required and must include measures to protect workers and to contain properly treat or dispose of dewatered groundwater, using a method such as an on-site water treatment unit. No discharge of contaminated groundwater will be allowed to the storm drains. Staff coordination and groundwater reporting will be mandatory. Groundwater monitoring reports will be provided to the Urban Forestry Manager-Planning Department and the method for handling dewatering discharge will be provided to Utilities. Soils removed during site excavation must be stockpiled for testing and proper disposal.

(b) *Tree protection.* The proposed development would involve these activities. (there is an existing tree area at the Truman Ave lower right corner property line with the neighboring property that is to remain.)

(c) *Landscaping plan.* The proposed development would involve these activities, although no in-ground landscaping is proposed. A landscape waiver is requested.

(d) *Irrigation plan.* No irrigation plans were provided.

On-site and off-site parking and vehicular, bicycle, and pedestrian circulation (City Code Section 108-244)

The required minimum parking is 156 spaces, two (2) spaces are currently existing. Whereas the applicant is proposing a total of four (4) spaces. One (1) ADA, one (1) standard and two (2) that are compact (8'x18'). Due to the minimum size requirements for a standard parking space, the two (2) compact spaces do not meet the code and are not counted as meeting on-site parking. The site includes a total of 24 bike parking spaces. The parking and vehicular circulation were reviewed by the City's engineer and found to be satisfactory.

Housing (City Code Section 108-245)

The proposed project includes four affordable studio housing units as accessory units. Each unit will be under 400 square feet in size, which is the minimum required for affordable housing units. The applicant is applying for a variance for not meeting the minimum unit size.

Economic resources (City Code Section 108-246)

The project is estimated to increase the ad valorem tax by 79%, from \$11,000 currently to an estimated \$19,800.

Special considerations (City Code Section 108-247)

- (a) The relationship of the proposed development to the City's land use plans, objectives and policies is being evaluated as part of this analysis. The relationship of the proposed development to public facilities was evaluated above and a conflict may exist in regard to the impacts of pollutants in the freshwater lens.
- (b) The project is located within the historic district and the X flood zone.
- (c) No unincorporated portions of the county would be impacted by the proposed development.
- (d) The project does not front a shoreline, so shoreline access would not be impeded.
- (e) No special facilities are proposed to accommodate bus ridership.
- (f) Passive recreation space is not proposed.
- (g) Coordination with FDEP should occur as part of this development review.
- (h) No wetlands or submerged land would be impacted.

Construction management plan and inspection schedule (City Code Section 108-248)

The proposed construction is to be complete in two phases. The first phase will consist of the interior remodel of the existing building to a new restaurant space with a small gift shop. Phase II will be the demolition of the northern structure and to construct a new two-story mixed-use commercial and residential building that will share the wall with the existing building. A construction management plan and schedule was provided with this application and staff has provided the applicant with Code requirements to assist the applicant with revisions. There is a time limit on the Building Permit Allocations for the four units associated with this development. The applicant has agreed to a construction management plan and inspection schedule that includes the following:

- a. The timing and phasing of construction activities, including specific benchmarks for the completion of structures accommodating the principal use.
- b. A schedule of inspections which complies with the city's adopted building codes, including a program of improvements anticipated to be completed prior to each scheduled inspection.
- c. The building permit shall not be valid for a period exceeding two years, and no single phase of development shall extend for a period longer than two years.
- d. The schedule shall acknowledge in writing that a new building permit must be obtained whenever:
 - 1. Construction is not commenced within 90 days from the time the permit was released;
 - 2. Construction activity is dormant for a period of six months or more;
 - 3. The developer fails to call for and achieve approved inspections within planned 120-day intervals as shall be evidenced in the construction schedule; and
 - 4. A new phase of a phased development is commenced.
- e. The applicant shall acknowledge in writing that the applicant shall bear the burden of demonstrating that the construction activity is consistent with the development plan and has occurred in a timely manner consistent with the approved construction management plan and inspection schedule. The applicant shall further acknowledge that, upon failure to meet the inspection schedule, the building permit shall expire. A new building permit shall be required in order to undertake construction activity on a site where a building permit has expired

Truman Waterfront Port facilities (City Code Section 108-249)

Not applicable.

Site plan (City Code Chapter 108, Article III)

The City shall not approve a site plan unless a finding is made that such site plan conforms to all applicable sections of the LDRs, pursuant to City Code Section 108-276, as analyzed below.

Site location and character of use (City Code Section 108-277)

The proposed uses are permitted and conditional uses within the HNC-1 Zoning District.

Appearance of site and structures (City Code Section 108-278)

The project involves new construction of a two-story structure facing Simonton Street and repurposing of the existing structure facing Truman Avenue. All work would follow the City's historic architectural guidelines.

Location and screening of mechanical equipment, utility hardware and waste storage areas (City Code Section 108-279)

All mechanical equipment and utility hardware would be screened. Dumpsters for garbage and

recycling would be screened.

Front-end loaded refuse container location requirements (City Code Section 108-280)

The City coordinated the location and design of the refuse containers with Waste Management to allow adequate access for refuse vehicles. The dumpster enclosure would screen the refuse containers from streets and adjacent properties.

Roll-off compactor container location requirements (City Code Section 108-281)

None proposed.

Utility lines (City Code Section 108-282)

No changes to utility lines are proposed.

Commercial and manufacturing activities conducted in enclosed buildings (City Code Section 108-283)

All commercial activities are proposed to be conducted in enclosed buildings, except for outdoor dining.

Exterior lighting (City Code Section 108-284)

All new exterior lighting is proposed for the property. All lights would be shielded to prevent glare onto adjacent properties. Lighting would be provided within the parking area for security purposes. The property is also served by existing streetlights.

Signs (City Code Section 108-285)

The plans do not currently indicate any signs. A building permit and a certificate of appropriateness would be required for the installation of any signs, which must comply with City Code Chapter 114 and the Historic Architectural Guidelines.

Pedestrian sidewalks (City Code Section 108-286)

The existing City sidewalks would remain.

Loading docks (City Code Section 108-287)

None proposed.

Storage areas (City Code Section 108-288)

The recreational vehicles will continue to be stored outside until the second phase of the development is complete.

Land clearing, excavation or fill (City Code Section 108-289)

No work would impact a floodplain or a conservation area. A proposed stormwater management system would address drainage and runoff from the site.

Landscaping (Code Chapter 108, Article VI)

This review is to verify compliance to Sec 108 of the City Code regarding landscaping and buffer requirements to help the Planning Board with their review. This review is based on the site and landscape plan submitted to the Tree Commission and approved on May 10, 2022 and updated landscape plans submitted to the urban forestry manager on July 6, 2022.

Review of Section 108:

1. Sec 108-243: A landscape plan has been submitted. The landscape plan does not appear to be signed and sealed. A tree protection and irrigation plan has not been submitted.
2. Sec 108-289: The project will require the removal of (1) Avocado tree located on the adjacent property (611 Truman) whose canopy overhangs onto 601 Truman Avenue. Two additional trees close to the property line, a Spanish lime and a mahogany tree, will remain on site. The request to remove the avocado tree was approved by the Tree Commission on May 10, 2022 and requires the planting of a total of 18.1 caliper inches of approved trees, from the approved list, to be planted on site and incorporated into the landscape plan. Approval was given to plant (1) Satinleaf tree on the Truman Avenue sidewalk/right of way and the payment of \$2,820 to the City Tree Fund along with approval to plant trees and shrubs on the property in raised planters due to contaminated soils on the property.
3. Sec 108-346: At this time the open space percentage is not known. The entire property is currently impervious. Ideally, proposed landscape areas will be planted in the ground which will allow for a slight improvement of impervious and open space areas but due to questions regarding the contaminated soils and lack of definitive documentation from the State of Florida regarding those soils and whether they can be disturbed, it is not known whether the landscape areas will consist of raised planters or soil plantings.

WAIVER REQUIRED (Open Space)

4. Sec 108-347 (bufferyards): The proposed use of the property is considered high impact (restaurant, mixed use commercial rental vehicle area and affordable housing). According to the property appraiser site, the properties on the northeast and northwest side are hotel and store combo, both medium impacts, therefore, the landscape area would be a C buffer area.

The proposed landscape plan includes a small landscape area in the northwest corner of the property where (1) non-native palm and coontie plants are to be planted. There are no counts as to how many shrubs will be planted in this area therefore, it is not known the exact count but an assumption is that approximately 13 plant units will be planted in this buffer area. City code requires approximately 80 plants for this buffer area.

The proposed landscape plan for the northeast buffer area includes the planting of (3) non native palms and coontie plants and two existing native canopy trees exist in this buffer

area therefore, the plant count is approximately 73 plant units. City code requires approximately 83 plant units for this area.

WAIVER REQUIRED

5. Sec 108-348 allows for credit of existing plant material. Two protected, canopy trees, a Spanish Lime and a Mahogany tree, currently exist along the eastern property line with 611 Truman Avenue. These two trees are to remain.
6. Sec 108- 412: The proposed site plan does not incorporate a minimum of 20% landscape area. The plan does incorporate over 70% native vegetation (trees, palms, shrubs, and groundcover).

WAIVER REQUIRED

7. 108-413, landscape requirement along street frontages. The property is approximately 0.23 acres therefore, this section of the code requires 40 plant units per 100 linear ft in a 10 ft wide landscape area.

There are two street frontage areas, Truman Avenue and Simonton Street. Along Truman Avenue, two planter areas will be created along a 99.17 ft long area. City code requires approximately 40 plants planted along this street frontage. The exact count of shrubs to be planted is not given for each planter. Approximately 29 plant units are being planted that include (1) Jamaican Caper, (2) Thatch Palms, and Spartina and Cocoplum shrubs.

Along Simonton Street, there is one proposed planter area being created along a 103.25 ft area that will have Cocoplum shrubs planted. Approximately 12 plant units will be planted in this planter. City code requires at least 40 plant units along this street frontage.

WAIVER REQUIRED

8. Sec 108-414 Interior parking areas: City code requires 20% landscape area in the parking use areas. According to the applicant, the proposed landscape plans consist of approximately 5% landscape areas using small planters primarily around the bike/scooter parking area. Two of the planters will have a non native palm and all will have native shrub species.

WAIVER REQUIRED

9. Sec 108-415 perimeter parking areas: There are no perimeter parking areas on the property.
10. Sec 108-416, interior area landscaping. This section of code specifically looks at the planting of trees and requires that all areas not covered by buildings or hardscape will have

grass, groundcover, shrubs or other landscaping materials. The property is currently covered by concrete. Current plans indicate one new planter area not included in the buffer or parking area plantings. This small planter will consist of shrubs. No additional trees are being planted in the interior area.

WAIVER REQUIRED.

11. Sec 108-447: The landscape plan does not include a tree protection plan. Two protected trees along the eastern property line with 611 Truman need protection.
12. Sec108-448: All proposed landscape planters are covered with living material.
13. Sec 108-450: It is not known if landscape screening has been provided for the required areas. There is a concrete wall, approximately 4 ft tall, in front of parking areas 4 and 5 that are proposed as head in parking. This wall is on the property line with the existing health food store and would provide screening of the vehicle headlights.
14. Sec 108-481: No canopy trees are being proposed to be planted but two existing canopy trees are to remain. Two subcanopy trees and 8 palm species are proposed to be planted therefore, the plan incorporates 66% palms. This section of code states that palms shall account for no more than 25% of total tree requirements on the site.

WAIVER REQUIRED

15. Section 515: Irrigation Plan Required. No irrigation plan has been submitted with the landscape plan. The application narrative does state that plants will be hand watered. Additional information is required on the actual landscape plan regarding irrigation, maintenance, and survivability of the plants.

WAIVER REQUIRED

Pursuant to City Code Section 108-517(b), the Planning Board may approve or grant the waiver or modification only if it determines that the waivers or modifications are not contrary to the intent of the City Code Chapter 108, Article VI, Division 4, Subdivision II and that a literal enforcement of the standards of this subdivision would be impracticable and would not violate the following criteria:

(1) *Public interest; adjacent property.* The waiver or modification would not have a significant adverse impact on the public interest, or on adjacent property.

(2) *Not discriminatory.* The waiver or modification is not discriminatory, considering similar situations in the general area.

(3) *Superior alternatives.* The development will provide an alternative landscape solution which

will achieve the purposes of the requirement through superior design.

(4) *Protection of significant features.* The waiver or modification is necessary to preserve or enhance significant existing environmental or cultural features., such as trees, scenic areas, historic-sites, or public facilities, related to the development site.

(5) *Deprivation of reasonable use.* Strict application of the requirement would effectively deprive the owner of reasonable use of the land due to its unusual size, shape, topography, natural conditions, or location, provided that:

a. Such effect upon the owner is not outweighed by a valid public purpose in imposing the requirement in this case; and of actions of the developer or property owner which occurred after the effective date of the ordinance from which this section derives.

b. The unusual conditions involved are not the result

(6) *Technical impracticality.* Strict application of the requirement would be technically impractical.

Given the challenges and trade-offs of fully complying with all the various landscaping requirements of the LDRs, City staff recommends approval of the requested landscape modifications and waivers and submits that all aforementioned criteria have been satisfied.

Off-street parking and loading (Code Chapter 108, Article VII)

The proposed development includes one (1) ADA space, one (1) standard space, two (2) compact spaces and twenty four bicycle parking spaces.

Stormwater and surface water management (Code Chapter 108, Article VIII)

A drainage plan was submitted indicating that surface water management is designed for the 25-year/72-hour storm event, as required. Stormwater would be retained on-site through an exfiltration trench. Roof drains will collect building runoff and lead to the exfiltration trench.

Utilities (Code Chapter 108, Article IX)

Access to potable water, access to wastewater disposal systems and conservation of potable water supply were analyzed in the above concurrency management determination and were found in compliance.

Art in Public Places (City Code Section 2-487)

The proposed development, being a Major Development Plan, qualifies for the City's Art in Public Places (AIPP) program, pursuant to City Code Section 2-487. The AIPP program requires 1% of construction costs to be set-aside for the acquisition, commission, and installation of artwork on the subject property. The program applies to new construction projects exceeding \$500,000 and renovation projects exceeding \$100,000. Eligible construction costs have not been determined based on hard and soft costs.

CRITERIA FOR CONDITIONAL USE REVIEW AND APPROVAL:

The applicant is applying for a Conditional Use to allow a restaurant in the HNC-1 zoning district.

The total consumption area for the restaurant's conditional use is 573 square feet. The applicant is applying for a Modification of a deemed conditional use for small recreation power-driven equipment rentals. Pursuant to City Code Section 122-62(c), applications for a conditional use shall clearly demonstrate the following:

(1) *Land use compatibility.* The Applicant has demonstrated that the proposed conditional use within the HNC-1 Zoning District, including its proposed scale and intensity, and off-site impacts are compatible and harmonious with adjacent land uses and would not adversely impact land use activities in the immediate vicinity. The property is located at the corner of Truman and Simonton, two major routes through the old town historic area. The proposed mixed-use development is a commercial use that is expected to further promote pedestrian oriented activities along these corridors. Overall compatibility within the neighborhood would be much more enhanced with additional open space and landscaping. The applicant's proposed modification to reduce the number of mopeds, while increasing the number of four-wheeled low speed vehicles on a one-for-one ratio would not be compatible with the neighborhood and may impact roadway traffic and parking within the area. The use is limited to two- or three-wheeled vehicle rentals, and the existing rental of four-wheeled vehicles is not in compliance with the conditional use. It is recommended that the expansion of a non-conformity is not approved.

(2) *Sufficient site size, adequate site specifications, and infrastructure to accommodate the proposed use.* The site is lacking in sufficient size and adequate specification, due to the fact that there are eight variances requested, however the site has sufficient infrastructure to accommodate the proposed use.

(3) *Proper use of mitigative techniques.* No adverse impacts to land uses are anticipated, the community character is a mix of commercial, transient and single-family homes of various sizes, age and architectural style. Community infrastructure will not be burdened by this project. Public health and safety will be improved by the removal of the tainted avocado tree. However there remains the potential for the existing contamination to pollute the freshwater lens, which could be a threat to the public health.

(4) *Hazardous waste.* No hazardous waste would be generated, and no hazardous materials would be used.

(5) *Compliance with applicable laws and ordinances.* All necessary permits from other governmental agencies would be obtained.

(6) *Additional criteria applicable to specific land uses.* Applicants for conditional use approval shall demonstrate that the proposed conditional use satisfies the following specific criteria designed to ensure against potential adverse impacts which may be associated with the proposed land use:

a. *Land uses within a conservation area.* Not applicable.

b. *Residential development.* This project satisfies criteria established in Chapter 102; Articles II, IV and V of Chapter 108; Section 108-956; and Article II of Chapter 110 of the Key West Code.

c. *Commercial or mixed-use development.* This project satisfies criteria established in Chapter 102; Articles II, IV and V of Chapter 108; Section 108-956; and Article II of Chapter 110 of the Key West Code.

d. *Development within or adjacent to historic district.* The proposed development is located within the historic district and will be subject to HARC approvals and process.

e. *Public facilities or institutional development.* Not applicable.

f. *Commercial structures use and related activities within tidal waters.* Not applicable.

g. *Adult entertainment establishments.* Not applicable.

RECOMMENDATION:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends to the Planning Board that the request for a modification of a deemed conditional use for small recreation power-driven equipment rentals be **Denied**. The Planning Department recommends the request for Major Development Plan, Conditional Use for the restaurant, and Landscape Waiver be **Approved** with the following conditions for consideration. The Planning Department has provided conditions for the Board to consider if approval of the recreational rental vehicle request is desired.

General conditions:

1. The variances to the following dimensional requirements must first be approved: The required maximum building coverage is 50%, or 5,120 square feet, existing building coverage on site is 42%, or 4,308 square feet. Whereas, the Applicant is proposing a total of 53% building coverage, or 5,468 square feet. The required maximum impervious surface is 60%, or 6,143 square feet, existing impervious surface is 100%, or 10,239 square feet. Whereas, the Applicant is proposing 93%, or 9,618 square feet. The required minimum open space is 20%, or 2,048 square feet, existing open space is 0%, or 0 square feet. Whereas, the Applicant is proposing 6%, or 621 square feet. The required minimum side setback is 5 feet, existing east side setback is 0 feet. Whereas, the applicant is proposing 2.2 feet. The required minimum rear setback is 15 feet, existing north rear setback is 0 feet. Whereas, the applicant is proposing 5.2 feet. The required minimum street side setback is 7.5 feet, existing west street side setback is 7.2 feet. Whereas, the applicant is proposing no change. The required minimum parking is 156 spaces, 2 spaces are currently existing. Whereas the applicant is proposing a total of 2 spaces, 1 ADA and one standard space and 2 that are 8'x18'. Due to the minimum size requirements for a standard parking space, the 2 compact spaces do not meet the code and are not counted as meeting on-site parking. The required unit size for affordable units is 400 square feet, whereas the applicant is proposing units that vary in size between 325 and 366 square feet.
2. The proposed construction shall be in substantial compliance with the site plans

dated November 5, 2021 by T.S. Neal Architects Inc., and with Final Landscape Plans when approved by the Tree Commission. Construction drawings for permitting shall be dated as approved herein, with any proposed revisions (modifications) clearly noted and dated. Development plan modifications that do not rise to the status of minor or major plan modifications may be approved by the city planner as per Section 108-91(c)(1). All modifications shall be submitted for review and approval to the Planning Department prior to building permit application. Minor and major development plan modifications are addressed as per Section 108(C.).

3. During all phases of construction, temporary fencing and erosion barriers shall be installed and maintained. All adjacent City streets and sidewalks shall be kept clean and clear of construction debris.
4. Any dewatering for the project will require FDEP and SFWMD coordination and permitting, due to the groundwater contaminants.
5. An environmental health and safety plan will be required and must include measures to protect workers and to contain properly treat or dispose of dewatered groundwater, using a method such as an on-site water treatment unit.
6. No discharge of contaminated groundwater will be allowed to the storm drains.
7. City of Key West staff coordination and groundwater reporting will be mandatory. Groundwater monitoring reports will be provided to the Urban Forestry Manager and the method for handling dewatering discharge will be provided to Utilities.
8. Soils removed during site excavation must be stockpiled for testing and proper disposal.
9. At no future date are the lots to be split or in any way subdivided.
10. Commercial recycling is highly encouraged by the City of Key West

Conditions related to small recreation power-driven equipment rentals

11. The applicant shall bring their low speed rental vehicle fleet into partial compliance within twelve months of the effective date of this resolution: at least 20 of their

fleet of low speed vehicles must be electric. Within three years of the effective date of this resolution all low speed vehicles associated with the business and property must be electric or the conditional use is void.

12. This approval reestablishes that the applicant has a grandfathered conditional use to rent 177 mopeds, 50 "electric car" vehicles and 150 bicycles and has proposed to reduce the total amount of rentable moped scooters to 127.
13. This approval allows for the rental of 127 mopeds, 75 low speed vehicles (golf carts) and 56 bikes at 601 Truman Avenue/919 Simonton Street. Those same vehicles are not to be rotated with other vehicles. License and VIN must be submitted to Licensing and Code Compliance Departments. All new low speed vehicle licenses will be restricted to allow only electric, not gas engine vehicles.
14. Servicing, washing, fueling and repair of the vehicles will take place in a location licensed for such services offsite.
15. Vehicles exiting the site are prohibited from reversing off the site.
16. The license holder shall maintain a separate, permanent storage site for vehicles that are not stored within the proposed building (phase 2).
17. City of Key West Code Enforcement officials shall inspect the property for compliance on a yearly basis pursuant to Chapter 18.

Conditions prior to the City Commission hearing:

18. A construction management plan and schedule shall be provided and approved at least three weeks prior to being placed on a City Commission agenda. The schedule shall include a plan to install an inground stormwater management system and inground landscaping at a future date when the site has reached a level determined by the State that no further action is required.
19. The applicant must obtain a Certificate of Appropriateness from the Historic Architectural Review Commission (HARC).
20. Final Landscape approval required from Urban Forestry Manager on behalf of Tree Commission. Landscape Plans must be signed and sealed. A tree protection plan and an irrigation plan must be added to the landscape plans. If raised planters are confirmed for use, plans must be modified to adjust height of planters in line of sight areas.

21. Groundwater monitoring reports will be provided to the Urban Forestry Manager-Planning Department and the method for handling dewatering discharge will be provided to Utilities.
22. The applicant is to submit for a recorded unity of title to aggregate the two lots at least three weeks prior to being placed on a City Commission agenda.

Conditions prior to issuance of a building permit:

23. Approval of a Public Art Plan shall be obtained from the AIPP Board, pursuant to City Code Section 2-487, and may include payment of an in-lieu fee.
24. New building addresses will be required prior to building permits for new buildings.
25. Property owner agrees to the payment of \$2,820 to the City Tree Fund for the removal of (1) Avocado tree at 611 Truman Avenue along with the planting of (1) Satinleaf tree in the Truman Avenue sidewalk/right of way.

Conditions prior to issuance of a Certificate of Occupancy:

26. On-site artwork shall be installed and inspected by the City pursuant to Code Section 2-487.
27. Prior to issuance of a Certificate of Occupancy a recorded affordable housing deed restriction shall be submitted to the City of Key West for the four residential units.
28. Per City Code, Section 108-997 (e), building permits for the four affordable housing units shall be obtained within two (2) years of the BPAS final determination award date (or within three years if an extension is granted). If a building permit is not issued within that timeframe, the allocated units will revert back to the City as recovered units for allocation during the following sequential award year.
29. Approved landscaping must be installed in the area being requested for the CO as per City Code Sec 108-516.
30. Property owner must get approval from FDOT for the planting of the Satinleaf tree in the Truman Avenue sidewalk/right of way.

31. The applicant is to provide to the City of Key West all correspondence to and from the FDEP Petroleum Restoration Program – Team 6 as to the groundwater contamination monitoring and the protocols regarding any disturbance of the substrate for this property.