

**THE CITY OF KEY WEST
PLANNING BOARD**



Staff Report

To: Chairman and Planning Board Members
Through: Katie P. Halloran, Planning Director
From: Ben Gagnon, Planner I
Meeting Date: June 20th, 2024

Agenda Item: **Major Modification to a Minor Development Plan – 3228 Flagler Avenue (RE: 00069040-000000)** - A request for a major modification to a minor development plan approval for the development of three deed-restricted affordable residential units and five market rate residential units, in addition to affordable housing linkage provisions associated with proposed development at 638 United Street, on property located within the Limited Commercial (CL) Zoning District pursuant to Chapter 108, Section 108-91; Chapter 122, Article IV, Division 4, and Chapter 122, Article V, Division 10, entitled “Work Force Housing”, of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

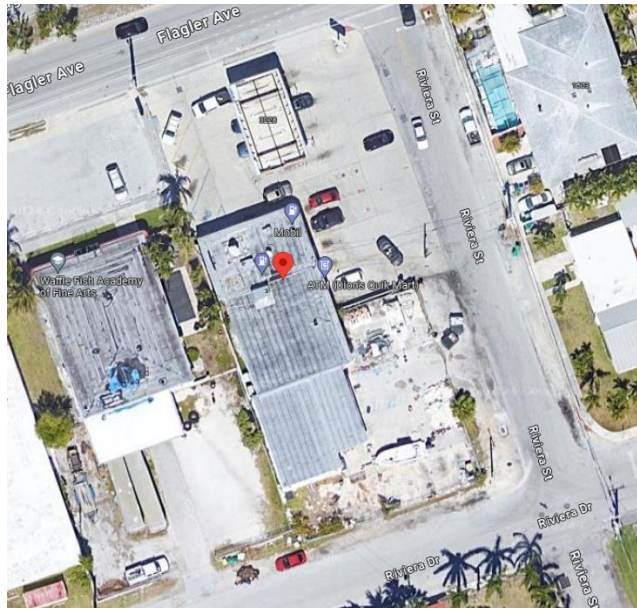
Request: This modification application proposes to reduce the number of affordable units by one (1) and increase the number of market rate units by one (1) for a total of five (5) market rate units, along with landscape waivers and other site plan modifications.

Applicant: Trepanier & Associates Inc

Property Owner: LAND 10031 LLC / LAND 2421 LLC / LAND 113 LLC / LAND 7009 LLC / LAND 1701 LLC / LAND 8351 LLC / LAND 2708 LLC / LAND 4027 LLC / LAND 8601 LLC

Location: 3228 Flagler Ave (RE: 00069040-000000)

Zoning: Limited Commercial (CL)



Background and Housing Analysis

The applicant requested postponement of this item at the February 15th and March 12th Planning Board hearings to allow time to address neighbors' concerns on traffic impacts and lack of landscape buffers along Riviera Drive. The applicant has since revised the site plan in response to neighbors' concerns by changing the development's vehicular ingress and egress from Riviera Drive to Riviera Street and has increased the landscape buffer along Riviera Drive. The proposed ratio of affordable to market rate units has also been changed. The original major modification application proposed three deed-restricted affordable and five market rate residential units, which was not sufficient to function as a linkage project to the now approved market-rate residential project at 638 United Street and satisfy the City's 30% affordable housing requirement. The applicant later submitted a revised site plan to the City, dated February 9, 2024, that proposed a new unit mix of three market rate and five affordable units, which exceeded the City's 30% affordable housing requirement by one unit. The applicant has since changed the proposed unit mix and is again proposing five market rate and three affordable units. The City's Planning and Legal Departments have maintained that a minimum of four affordable units must be provided to meet the City's 30% requirement for both developments, as further described in detail below.

The property currently consists of an active gas station and accessory retail store. The applicant was awarded an allocation for four (4) market-rate and four (4) affordable-rate BPAS units for the property at 3228 Flagler on April 26, 2018. The applicant, through emergency order extensions, has extended the original two year permit deadline to August of 2026. The applicant has a current year 11 BPAS application in for four (4) market rate and four (4) affordable rate units. The applicant has noted they prefer to replace their existing BPAS allocations with Year 11 BPAS units, in order to avoid the expense of the previously proposed green building investments; they have stated they would have no objection to return the 2018 BPAS units if awarded Year 11 BPAS units.

This applicant is however, currently requesting units they do not have the allocations for, neither their 2018 allocation nor their 2023 BPAS application includes five market rate units.

The applicant submitted the original Minor Development Plan in 2017 to redevelop a light industrial building on the rear of the property of 3228 Flagler into eight (8) units, half market rate, half affordable. The front property is and will continue to be occupied by Dion’s Fuel Station and Minimart. Parking will be provided on site. The applicant has requested City approval to link affordable units at this project to satisfy affordable housing requirements for the development plan at 638 United St, which was approved by the City Commission on March 14, 2024 through Resolution 24-062, subject to the following condition:

“The number of deed restricted affordable housing units for the linkage project at 3228 Flagler Avenue must be approved by the Planning Board in compliance with Section 122-1467.”

The original major modification application submitted in 2023 requested a reduction in the number of affordable units from 4 to 3, and an increase in the number of market units from 4 to 5, which would not provide enough affordable units for this development to comply with affordable housing linkage requirements for the project at 638 United Street.

Section 122-1476 of the City Code, as indicated below, requires that at least 30% of units be affordable and this request reduces the combined number of affordable units to 25% between the two developments.

- Section 122-1467(1)(a) *“Housing units. . . . Residential or mixed use projects of less than ten residential or mixed use units shall be required to develop or redevelop at least 30 percent of units of at least 400 square feet each as affordable (median income), but may contribute a fee in lieu for each unit to the affordable work force housing trust fund, if approved by the city commission.*
 Sec. 122-1467(1)(b) *“Linkage of projects. Two development or redevelopment projects may link to allow the affordable housing requirement of one development or redevelopment project to be built at the site of another project, so long as the affordable housing requirement of the latter development or redevelopment is fulfilled as well. . . .”*

On February 10, 2024, the applicant submitted new plans for 5 affordable units and 3 market rate units, temporarily resolving staff’s concerns over Sec 122-1467 and the 30% affordable unit requirement. However, the applicant has again modified their application and now proposes only three (3) affordable units. An updated breakdown of what was approved in 2018 and what is currently proposed is indicated below.

	Previously Approved			New Proposed (5/15/24)		
	Affordable	Market	Total	Affordable	Market	Total
Flagler	4	4	8	3	5	8
United	0	5	5	0	4	4
Total units	4	9	13	3	9	12
Total %	31%	69%	100%	25%	75%	100%
Compliant with Sec	Yes			No		

122-1467 (1)(b)						
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Upon approving the linkage project at 638 United Street, the City Commission has determined that the Planning Board will make final determination on unit make up for the project.

The applicant has updated their associated BPAS application to also have the site meet Florida Green Building Coalition (FGBC) Gold certification, and the owner will make a monetary donation of \$2,500 to the City of Key West Tree Commission or Art in Public Places in lieu of Art in Public Places installation. All of which were to help improve the projects BPAS score and standing in the rankings. The City has received a new request for BPAS allocations at this property, including new scoring, new unit size, and new landscaping. Should the applicant’s rankings result in eligibility for new BPAS allocations, the applicant has indicated they will return their current allocations back to the City. The applicant would not be eligible to construct five (5) market rate units as their BPAS request is for four (4) market rate units.

The new revised site plan set, dated May 2, 2024, was also meant to address comments from Urban Forestry and Planning staff to reduce the extent to which landscape waivers were being requested. This new landscape plan improved the proposed amount of open space and landscaping within the development area, particularly along the rear of the property and near the waste areas. However, Urban Forestry and Planning staff have requested some landscape improvements also to the north side of the property fronting Flagler Avenue, including the area surrounding the existing gas station which is a highly visible area.

This application was on the February 15, 2024, Planning Board agenda, but the applicant requested postponement to address comments and concerns raised by several neighbors regarding impacts to their properties. The applicant has since attempted coordinating with the neighbors, presenting potential site plan modifications to address their concerns. The applicant states the main neighbor concerns were: Unappealing architecture, too many affordable/too many units/too many bedrooms, not enough parking, more landscaping needed, no resident access to Riveria Drive. Most notable changes include reduction of an affordable unit, modified landscaping, adding 4 scooter and bike parking spaces, and moving ingress and egress to Riveria Street not Riveria Drive.

Demolition Scope:

The applicant has proposed to demolish a light industrial building that is currently not in use.

Proposed Development:

Previously approved, and proposed modifications:

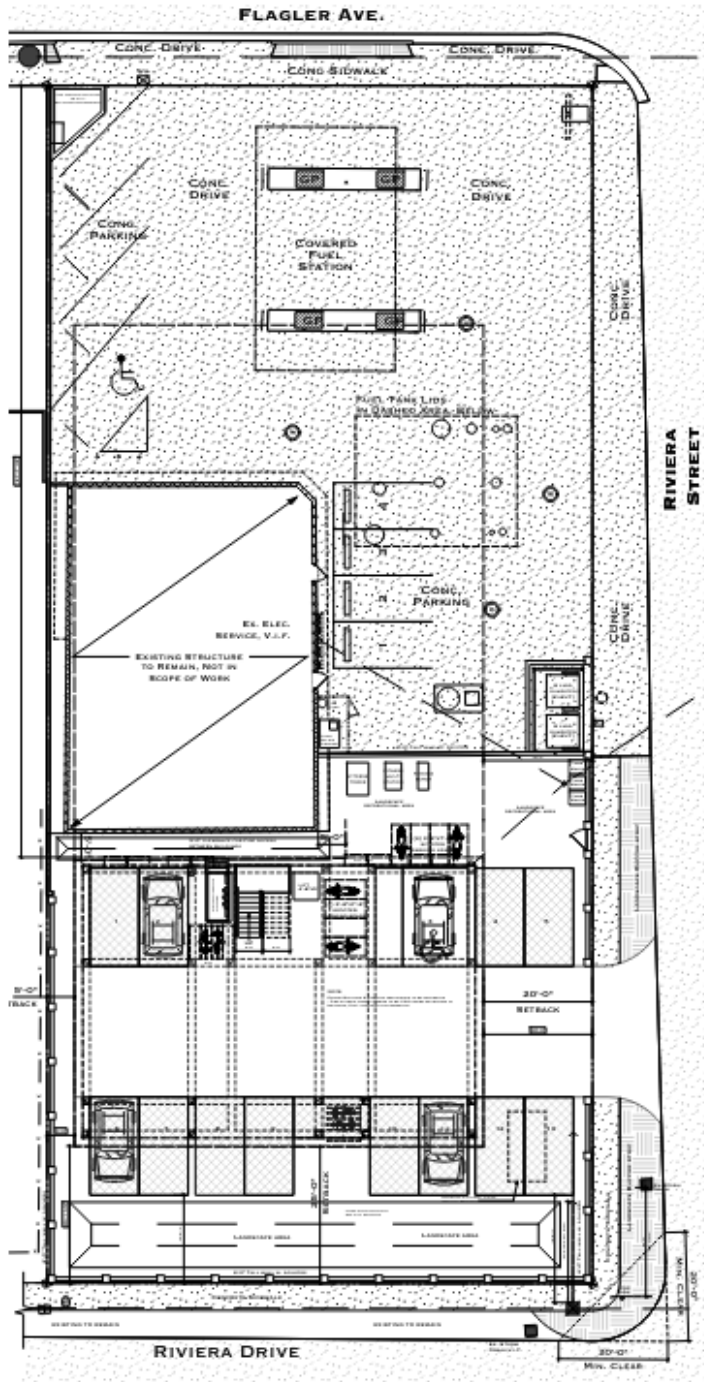
Site Data Table					
Site Data	Permitted	Existing	Approved 2018	Proposed 2024	Compliance
Zoning	CL	CL	CL	CL	
Min Lot Size	5,000	21,982	-	-	Yes
F.A.R	0.8	0.22	0.12	0.13	Yes
Density	16 D/U per Acre	0	8	8	Yes
Max Height	40'	20'	39'	35'-1"	Yes
Open Space	30% Min	<5%	16% (3,463 sf)	21% (4,646 sf)	Yes*
Building Coverage	40% Max	5%	38% (8,363 sf)	36.3 (7,996 sf)	Yes
Impervious	60% Max	97%	84% (18,477 sf)	74.9% (16,469 sf)	Yes*
Front Setback	25'	7'8"	73'-6"	70'-11"	Yes
Side	15'	0'-9"	3'-8"	5'	Yes*
Street Side	20'	36'	20'	20'	Yes
Rear	25'	24'-11"	25'	25'	Yes

*The new proposed impervious surface ratio, open space, and side setback are not fully compliant but do not require a variance as they are improvements from what was previously approved under Resolution 2018-52.

The current property is a paved lot and exceeds impervious surface requirements. The proposed development will result in reduced impervious surfaces on the property compared to the previous plan. The proposed development has been modified to reflect a larger commercial store, smaller residential units on the first and second floor, relocation of driveways and parking and elimination of the usable rooftop area as shown in the following table:

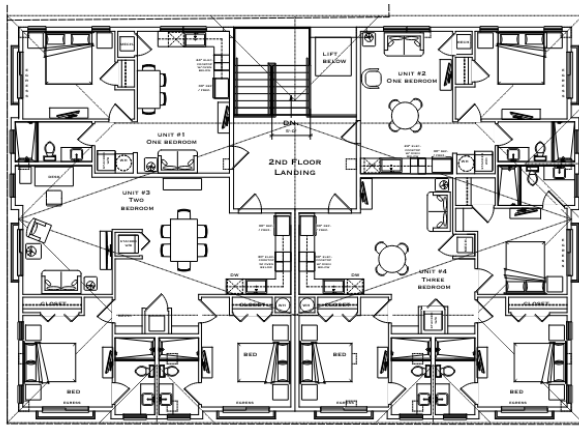
	1 st Floor Conditioned	2 nd Floor Conditioned
Unit #1	531 Sf	
Unit #2	531 Sf	
Unit #3	1,106 Sf	
Unit #4	1,106 Sf	
Unit #5		531 Sf
Unit #6		531 Sf
Unit #7		1,106 Sf
Unit #8		1,106 Sf

Proposed Site Plan, submitted by applicant.



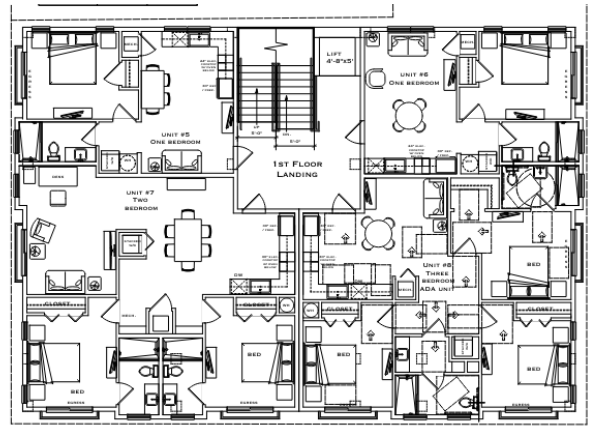
1 ARCHITECTURAL SITE PLAN
AT.1 SCALE: 1/16" = 1'-0"

Proposed Floor Plans, submitted by applicant.



2 SECOND FLOOR PLAN
SCALE: 3/16" = 1'-0"

NOTE:
BUILDING TO BE SPRINKLED



3 FIRST FLOOR PLAN
SCALE: 3/16" = 1'-0"

NOTE:
BUILDING TO BE SPRINKLED

Surrounding Zoning and Uses:

Surrounding properties are located within the Limited Commercial (CL) Zoning District and Single Family (SF) Zoning Districts. Surrounding uses include commercial properties and single family residential homes.

Process:

Development Review Committee:	November 30 th , 2023
Tree Commission Meeting (Conceptual landscape plan & tree removal approval):	January 2 nd , 2024
Planning Board Meeting:	February 15 th , 2024 (postponed)
Planning Board Meeting:	March 12 th , 2024 (postponed)
Planning Board Meeting:	June 20 th , 2024
Tree Commission Meeting (Final landscape plan approval):	TBD
Local Appeal Period:	10 Days
Planning renders to DOC for review:	Up to 45 days

Relevant Development Plan Code Analysis

‘Good Neighbor’ Policy:

On Tuesday February 13th Planning received the attached public comment from neighbors George Wallace, Bradbury King, Dale Lockwood, and Stephen and Kathleen Russ. The applicant has since indicated that the plans were revised after working closely with the neighbors to identify their concerns and develop alternatives, and that the applicant reviewed the revisions in person with the neighbors and then provided them with 24x36 paper copies. The applicant has provided the following table summarizing neighbor concerns and how they have been addressed:

Initial Neighbor Concern	Proposed Redesign	Subsequent Neighbor Concern	Proposed Redesign
Unappealing Architecture	Hired new architect and developed a new design	--	--
Too many affordable units/ too many units total.	Neighbors believed 3 affordable units were all that was required.	Too many bedrooms and too many units	The ratio of AFF:MR remains unresolved; Plans retain 8 units while reducing the number of bedrooms by 2
Not enough parking	Increased on-site parking to 13 spaces (for a housing ratio of 3AFF:5MR, 10 auto and 6 bike/scooter spaces are required)	Still not enough parking	Increased both bike and scooter parking by 4 additional spaces each

More buffer landscaping needed	Increased on-site and on-street landscaping	Too much on-street landscaping which interferes with on-street parking	Reduced on-street landscaping to preserve parking on Riviera Drive
No resident access to Riviera Drive	Eliminated all access to Riviera Drive	--	--

The applicant has also indicated that, in addition to the efforts to accommodate neighbors' concerns above, they have also taken the opportunity to make the following additional improvements:

- Reduced the proposed impervious surface from the 95.3% existing to 74.9% proposed
- Increased open space from the 4.8% existing to the 21.1% proposed
- Reduced height from 39ft to 35ft.

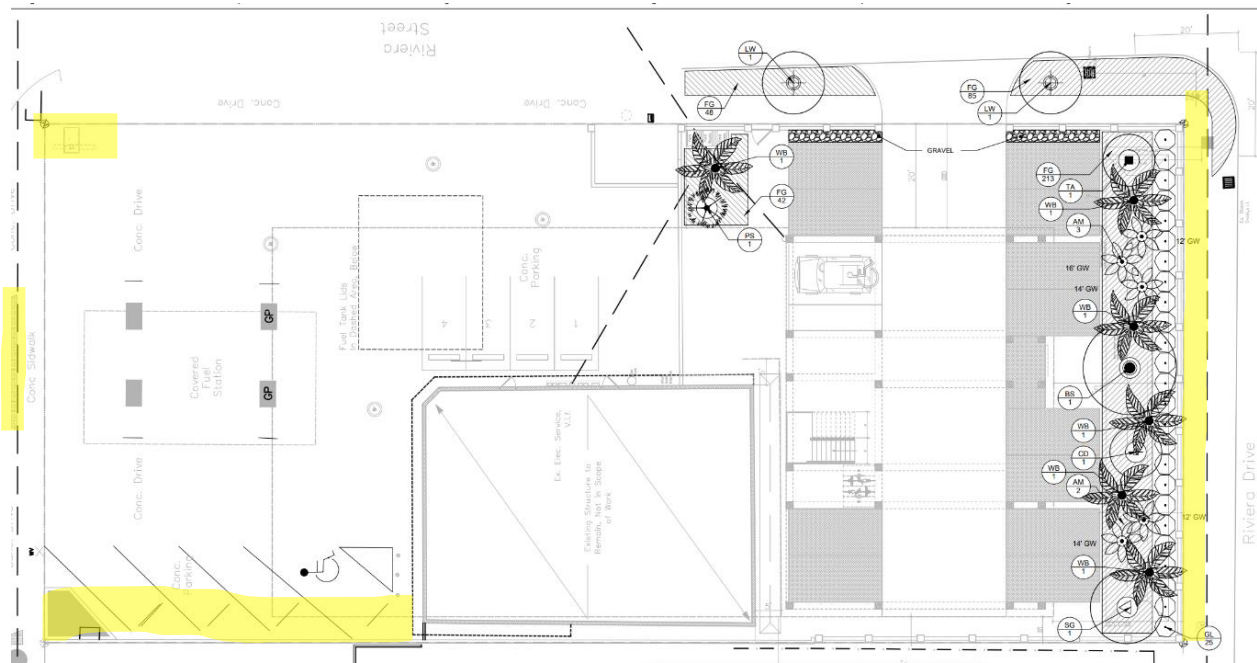
Lastly, the applicant has stated: “Although we were not able to satisfy every neighbor concern (i.e. reducing total unit count), we believe we have diligently pursued a significantly superior design that both addresses the vast majority of our neighbors' concerns while still furthering the housing goals of both the applicant and the community.”

Landscaping (Code Chapter 108, Article VI)

A landscape plan is required as part of development plan review, pursuant to City Code Section 108-411. As part of the section 108 review conducted by the Urban Forester, the applicant requires a landscape waiver for non-complying open space and landscape percentages, buffer yard area and landscape screening, interior area landscaping, and specifications for plant material.

Sec. 108-997 (b) (1) – All new buildings shall be constructed with a rainwater catchment system that will hold a minimum 300 gallons of water or an amount equivalent to 100% of the new roof area in gallons whichever is greater. If the cistern will be used for drinking water, appropriate precautions must be taken. The plans dated February 9th do depict a 2,500 gallon underground cistern for rainwater catchment.

Proposed Landscape Plan



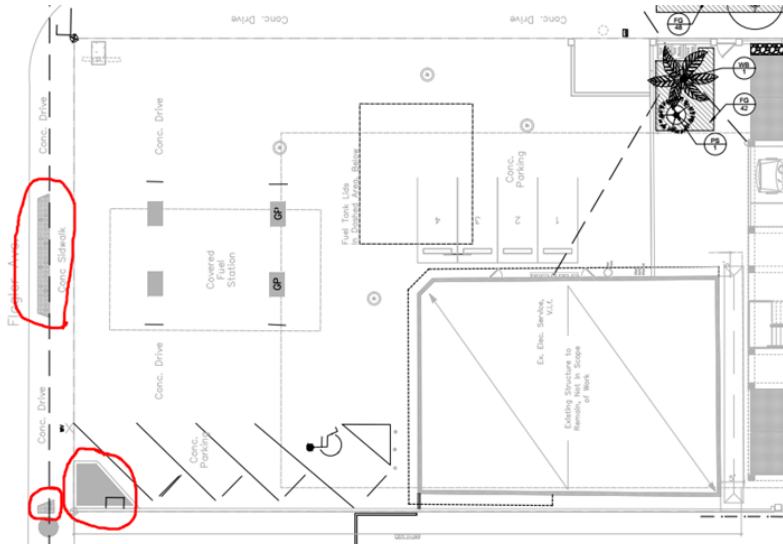
(Exhibit A)

Planning staff met with the applicant, the architect, and landscape architect on February 7th, 2024 to discuss the landscape waiver request and propose modifications that would improve landscaping on site. With input from the Urban Forestry Manager, staff has pointed out the highlighted areas on the site plan, Exhibit A above that would greatly improve the aesthetic, improve shade, and lessen the landscape waiver request. The applicant addressed staff's comments by incorporating some requested landscaping improvements within the new development portion of the lot. However, staff maintains that landscaping improvements should be applied to the overall property and, at a minimum, should be incorporated throughout the existing gas station area as highlighted below.

The highlighted portion above on the far right, fronting Riveria Drive is where staff would recommend denial of the waiver for Sec 108-413. The decorative wall should have landscaping on the street fronting portion of the wall, none is currently being provided.

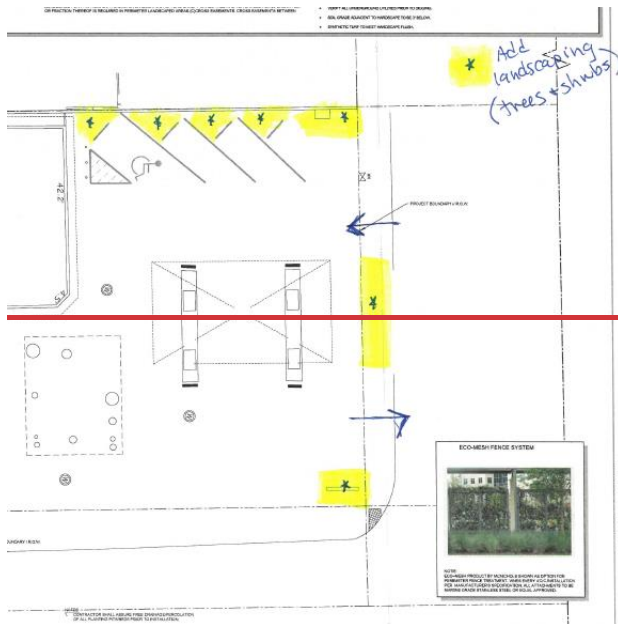
The applicant provided the following by E-mail on May 21st.

Two of the areas are proposed to have simple ground cover <18in in height due to their immediate proximity to the sidewalks and driveways. The 3rd larger area is set back slightly and may accommodate a street tree/palm that meets the line-of-sight requirements. Given its peculiar location, we anticipate the landscape architect and the urban forester will have to figure out what best to put there.



Owen Trepanier

(Exhibit B)



Existing Gas Station



The following landscape waivers are required:

- Sec 108-347 (Bufferyards): western property line buffer area due to lack of plant unit counts.
- Sec. 108-413: 40 plants units required along Flagler Ave. frontage where none are provided
- Sec. 108-413(c): “Where a decorative wall is provided, the required plant material shall be planted on the street side along a public right-of-way and shall be maintained in perpetuity by the applicant or successive owners. All nonliving barriers abutting public streets shall be at least 18 inches inside the property line or within the building setback line, whichever is greater.” Site plan shows 6’ masonry wall on property line along Riviera Dr, blocking view of landscape buffer from street
- Sec. 108-350 Bufferyard exceptions: bufferyard exceptions: No bufferyard proposed for existing gas station portion of the property along the western property line.
- 108-416 Interior area landscaping. Three trees of the required 4 trees are proposed to be planted.
- Sec 108-481 Specifications for plant material require all trees to be a minimum of 12 ft in height and the plan shall constitute no more than 25% palms. The proposed plan includes 66% palm species.

Planning Department staff together with the Urban Forestry Manager have recommended the following conditions as a part of their Landscape review. Should these conditions not be added to the approval Planning Staff would recommend denial of the landscape waivers:

1. The property maintenance plan must include continued maintenance of the property to remove any invasive exotic plant species (Brazilian Pepper, Australian Pine, Lead Tree).
2. Final landscape plan approval required from Tree Commission prior to issuance of a building permit.

3. With respect to the landscape waiver, and with consideration of neighbor input, the Planning Department recommend that at a minimum, additional improvements to the landscape plan should be required as reflected in the proposed condition of approval:
 - The applicant shall submit revised landscape plans approved by the Urban Forestry Manager and Planning Director prior to the issuance of building permits. Revised landscape plans shall at a minimum include trees and shrubs along the western lot line adjacent to the existing parking spaces extending from the building front to the front lot line, new landscaping within the existing pervious area between the sidewalk and Flagler Avenue, and new landscaping in the areas circled in red in Exhibit B as approved and recommended by the Urban Forester. As well as street trees to the amount determined by the Urban Forester on the outside of the wall on Riviera Drive.

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 Minor 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. Staff finds that the project meets Sec 108-233 to reasonable standards.

The previously approved project does not propose changes to specific conditions required by PB Res 2018-52.

Sec 108-572 – Off street parking

Outside of the historic district, multifamily developments require 2 spaces per dwelling unit. There are 8 dwelling units and 13 proposed vehicle spaces. The application proposes 8 new bicycle, and 12 scooter parking spaces along with 13 new vehicle parking spaces in addition to the existing 8 spaces serving the gas station, totaling 21 vehicular spaces for the property as a whole. The application notes 24 spaces, but the City Code does not allow for the 8 existing fuel pump stalls to be regarded as parking. Vehicular access to the development will be via Riviera Drive. The 20 new bicycle/scooter spaces being proposed satisfy the parking exemption under Sec. 122-1470 for the 3 affordable units in lieu of the vehicular parking requirement. As shown in the parking table below, the proposed development will improve the existing parking deficiency on this property from 11 spaces to 1 space.

Applicant’s Proposed Parking Table

	Area Intensity /	Parking Requirement	Total Required Parking	Total Provided Parking	Parking Deficiency
Existing					

Commercial Store	5,493 sq ft	1 space/300 sq. ft. gross floor area	18.3	8	
TOTAL			19	8	11
Proposed					
Commercial Store (reduced sq. ft.)	3,582 sq. ft.	1 space/300 sq. ft. gross floor area	11.9	8	
Affordable Units	3 Apartments	2 scooter spaces per unit can be provided in lieu*	0	13	
Market Rate Units	5 Apartments	2 spaces per unit	10		
TOTAL			22	21	1

*Sec. 122-1470(a): In all mixed use zoning districts of the city, the city shall encourage the addition of affordable work force housing on the same site as commercial properties and institutions to promote employee housing. Such development shall be known as accessory unit infill. Tenants shall be eligible persons under [section 122-1469](#). Applicants under this section may provide two bicycle or scooter parking spaces per unit as an alternative to applying to the planning board for parking variances. Provided that units of 600 square feet or less are treated as an 0.78 equivalent unit and all units provided must be made available through the city's building permit allocation system.

Code Required Parking Table for 4 AF 4 MR units. Staff finds that the applicant shall provide 4 affordable units and will not need a parking variance

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Existing					
Commercial Store	5,493 sq ft	1 space/300 sq. ft. gross floor area	18.3	8	
TOTAL			19	8	11
Proposed					
Commercial Store (reduced sq. ft.)	3,582 sq. ft.	1 space/300 sq. ft. gross floor area	11.9	8	
Affordable Units	4 Apartments	2 scooter spaces per unit can be provided in lieu*	0	13 Auto spaces	
Market Rate Units	4 Apartments	2 spaces per unit	8		
TOTAL			20	21	0

RECOMMENDATION

As per Sec. 108-94. - Review by staff. - "Each application for development plan approval shall be reviewed by the city planner and transmitted to the development review committee and other staff as may be designated by the city planner based upon the type of development proposed. The city planner shall review each application for compliance with land development regulations."

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations respectfully recommends to the Planning Board that the request for Major Modification to Minor Development Plan and Landscape Modifications / Waivers be **DENIED**. The basis for the recommendation is that the applicant would need to add an additional deed restricted unit to total four affordable workforce units to satisfy the City's workforce housing ordinance for the linked developments at 638 United Street and 3228 Flagler Avenue. In addition, the applicant has applied for 4 affordable and 4 market rate BPAS allocations this year, and therefore is not eligible for a fifth market rate unit at this property.

Should Planning Board approve this proposed development plan, staff recommends the following conditions listed below. Planning Department staff further recommend that given ongoing discussions between the neighbors and applicant at the time of publishing of this report, that the Board consider any further site plan modifications that may function to minimize nuisance, maximize pedestrian safety, and improve quality of life for future tenants and neighbors. Modified conditions from the original approval through Resolution 2018-52 are tracked below in a strike through underline format.

General conditions:

1. The proposed development shall be in substantial compliance with the site plans signed, sealed and dated ~~September 28, 2018 by Robert Allen Steele, P.A. No approval granted for any other work or improvements shown on the plans other than the proposed construction of the two story multi-family structure that includes five (5) deed restricted affordable units, three (3) market rate residential units, ground floor storage units, bocee courts, an underground catchment system, parking, electric charging systems, and scooter/ bike spaces~~ May, 2nd 2024 by T. S Neal Architects, INC, and the landscape plans dated May 21, 2024 by Keith Oropeza; notwithstanding any revisions requested and recommended by staff. Construction drawings for permitting shall be dated as approved herein, with any proposed revisions (modifications) clearly noted and date. 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).
2. The applicant shall include a minimum of four (4) deed restricted affordable housing units pursuant to Section 122-1467(1)(d) and execute and record a deed restriction in a

form provided by the city attorney, to meet the linkage requirements for the approved major development plan at 638 United Street

3. Prior or simultaneous to issuance of a Certificate of Occupancy for the development at 638 United Street, this project at 3228 Flagler Avenue must receive a Certificate of Occupancy.

~~5.4. The relocation of the garbage enclosure shall in no way alter the number or size of the fifteen required (15) off-street parking spaces.~~

3. BPAS reversion provision: Upon approval of this resolution the four market rate and four affordable BPAS units allocated in Year 5 will automatically revert back to the City of Key West and the City shall assign all 8 units back to the BPAS pool for year 12.
4. The applicant shall submit revised landscape plans approved by the Urban Forestry Manager and Planning Director prior to the issuance of building permits. Revised landscape plans shall at a minimum include trees and shrubs along the western lot line adjacent to the existing parking spaces extending from the building front to the front lot line, new landscaping within the existing pervious area between the sidewalk and Flagler Avenue, and new landscaping in the areas circled in red in Exhibit B as approved and recommended by the Urban Forester. As well as street trees to the amount determined by the Urban Forester on the outside of the wall on Riviera Drive.
5. The property maintenance plan must include continued maintenance of the property to remove any invasive exotic plant species (Brazilian Pepper, Australian Pine, Lead Tree).
6. ~~Tree Commission Final approval~~ Final landscape plan approval required from Tree Commission prior to issuance of a building permit.
7. The hours of construction shall follow City Code and be limited to 8 a.m. to 7 p.m. on Monday to Friday, and 9 a.m. to 5 p.m. on Saturday.
8. During all phases of construction, temporary fencing shall be installed and maintained. All adjacent City streets and sidewalks shall be kept clean and clear of construction debris.
9. Per the Fire Marshall's request, the multi-family two story structure must have a sprinkler system installed in each unit.