

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: November 20, 2024

Agenda Items: **Major Development Plan – 621 Duval Street (RE: 00012380-000000) - A** request for a major development plan approval for the development of a new two story commercial and residential structure including six residential market rate units, along with landscape waivers on a property located within the Historic Residential Commercial Core -1 (HRCC-1) Zoning District, pursuant to Chapter 122, Article IV, Division 7, Subdivision II, entitled “HRCC-1 Duval Street Gulfside District”; and Chapter 108, Article II, Division 3, entitled "Scope; major and minor developments” of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Variance – 621 Duval Street (RE#00058910-000000) – Applicant seeks a variance to allow for an increase in the maximum permitted building coverage from 50% to 78%, maximum impervious surface coverage from 70% to 86%, and a reduction in the minimum open space percentage from 20% to 14% to permit the construction of six (6) residential market rate units associated with an existing commercial (retail) use located in the Historic Residential Commercial Core Zoning District (HRCC-1) pursuant to Sections 122-690 and 90-395 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: A request for a new two-story commercial and residential structure including six residential units along with landscape waivers and variances for building coverage, impervious surface, open space, and parking.

Applicant: Trepanier & Associates Inc

Property Owner: 619 Duval Company

Location: 621 Duval Street (RE: 00012380-000000)

Zoning: Historic Residential Commercial Core -1 (HRCC-1)



Background and Housing Analysis

The property currently consists of an active retail space. The property was previously improved with seven residential units that existed prior to a fire in 1995 that destroyed the entire site. While the retail component of the structure was rebuilt shortly after the fire, the residential units have not been reconstructed. The following is a brief timeline of the property:

- *Pre 1995 - 2 retail stores and 7 residential units existed according to a 2019 staff build back letter.*
- *August 1995 – A fire burns down the entire property*
- *Nov 1995 – Retail and Restaurant reconstruction is approved through Res 95-439 (No res units)*
- *2005 – PB Res 05-169 Grants property to build 6 affordable res units.*
- *2006 - CC Res -06-047 Grants Major Development Plan Approval for 6 affordable units*
- *2007 - Res 07-043 Grants a one year extension for Dev Plan*
- *2008- Building Permits were granted for 6 affordable units, however, it doesn't appear these units were ever constructed once permits were pulled.*
- *2019 – Trepanier requests a build back letter from City, Roy Bishop writes to Trepanier stating in final sentence “In summary, this letter establishes mixed-use of commercial and residential units existed on the properties”*

- 2023 – Trepanier meets with Planning Director and is told that the units destroyed in 1995 are not allowed to be built back without BPAS allocations
- 2023 - Trepanier sends letter to Charles Ittah disagreeing with this opinion from Planning Director
- Jan 2024 – Trepanier meets with Raj Ramsingh to discuss Major Development, Build back rights, and Variances.
- March 2024 – Trepanier submits MDP for 6 market rate units at 621 Duval Street.

The prior market rate residential units were destroyed by fire in 1995. As noted above, the property owner subsequently reconstructed the commercial (retail) use via Resolution No. 95-439. The reconstruction permit was limited to the commercial component of the former development. No residential units were approved in connection with Resolution No. 95-439.

The property owner then applied for a permit to reconstruct six (6) residential units in 2005. City Commission Resolution No. 06-047 approved the request to reconstruct the six units. In 2007, through Resolution No. 07-043, the City Commission approved a one-year extension of the time to reconstruct the six (6) residential units. According to current records, while building permits were pulled for the six (6) residential units, construction never commenced. Finally, in 2019, the Planning Department issued a “Build-back Determination. This determination, issued by the former Planning Director, concluded that *“mixed-use of commercial and residential units existed on the properties.”* The determination was silent on the question of whether or not those units would require allocations in order to be reconstructed.

According to current code, residential units may be constructed under three specific scenarios. The first and most common scenario involves a property owner making application for an allocation through the Building Permit Allocation System (BPAS).

The second scenario involves a property owner making application for a *“Beneficial Use Determination.”* A Beneficial Use Determination is issued when the property is vacant and the denial of a permit to construct a market or affordable rate unit on the property would result in the denial of all reasonable use of the property.

The BPAS and Beneficial Use Determination processes have been established under the City Code and in accordance with the State-designated Area of Critical State Concern (ACSC). Under the ACSC, the state of Florida limits the total number of housing units that may be built each year *“in order to conserve and protect the natural, environmental, historical and economic resources, the scenic beauty, and the public facilities within the Area of Critical State Concern.”*

The third and last alternative to secure a building permit to construct a market rate or affordable housing unit is a *“Lawful Unit Determination (LUD).”* When the State of Florida established growth management restrictions for the Keys, it was based, in part, on an inventory of existing housing units identified through the 2010 Census and an estimate of the number of new housing units that could be constructed while still allowing for 24-hour evacuation of all full-time residents. Vacant properties are addressed through the Beneficial Use process. A LUD is used to address those limited situations where the housing unit was not captured under the 2010 census and where denial of the permit would deprive the property owner of all reasonable use of the property.

In this instance, the property owner currently maintains a reasonable use of the property as a commercial (retail) business. In addition, the prior housing units did not exist at the time of the 2010 and are, as a result, not entitled to a Beneficial Use or Lawful Unit Determination. As a result, approval of the requested Major Development Plan first requires application for the six (6) market rate allocations through the BPAS.

Variance Analysis –

The application involves the following variances:

- Building Coverage – 78% requested instead of the maximum permitted 50% (56% Relaxation)
- Impervious Surface Ratio – Impervious Surface Ratio 86% requested instead of the maximum permitted 70% (23% Relaxation)
- Minimum Open Space – 14% requested instead of the minimum required 20% (30% Relaxation)
- Buffer Yard Plantings – 55 Plant Units proposed instead of the minimum required 90 Plant Units (39% Relaxation)
- Native Landscaping standards – 28% Native Plantings proposed instead of the minimum required 70% Native Plantings (60% Relaxation)
- Landscape Units – 30 Plant Units per 100 linear feet proposed instead of the minimum required 40 Plant Units (25% Relaxation)
- Maximum Percentage of Palm Trees – 33% proposed instead of the maximum permitted 25% (32% Relaxation)
- Parking – 4 spaces proposed instead of the minimum required 18 spaces. Note: All spaces to be provided in the form of bicycle/scooter spaces. (78% Relaxation)

Variances are governed by City Code Chapter 90 (Administration), Article V, Division 3 (Variances). Pursuant to Section 90-395 (Standards, findings), before any variance may be granted, the Planning Board must find all of the following:

- (1) Existence of special conditions or circumstances. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other land, structures or buildings in the same zoning district.
- (2) Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.
- (3) Special privileges not conferred. That granting the variance requested will not confer upon the applicant any special privileges denied by the land development regulations to other lands, buildings or structures in the same zoning district.
- (4) Hardship conditions exist. That literal interpretation of the provisions of the land development regulations would deprive the applicant of rights commonly enjoyed by other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.
- (5) Only minimum variance granted. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

(6) Not injurious to the public welfare. That the grant of the variance will be in harmony with the general intent and purpose of the land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public interest or welfare.

(7) Existing nonconforming uses of other property not the basis for approval. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

Pursuant to Section 90-392 (b), “In granting such application the planning board must make specific affirmative findings respecting each of the matters specified in section 90-394 and may prescribe appropriate conditions and safeguards, including requirements in excess of those otherwise required by these land development regulations, which shall become a part of the terms under which a development order may be issued.”

In addition, pursuant to Section 90-395, the Planning Board shall make factual findings regarding the following:

- (1) That the standards established in subsection (a) have been met by the applicant for a variance.
- (2) That the applicant has demonstrated a "good neighbor policy" by contacting or attempting to contact all noticed property owners who have objected to the variance application, and by addressing the objections expressed by these neighbors.

As of November 14, 2024, Staff has received no letters in support of or denial of the project.

The applicant is requesting variances to building coverage, impervious surface, landscaping, and open space. Specifically the applicant is seeking a 30% relaxation of the code on open space, a 22% relaxation on impervious surface, and a 56% relaxation on building coverage.

A review of the application also reveals that a parking variance is required. The site currently provides no on-site parking. The addition of six (6) market rate housing units triggers the application of the City Parking Code which establishes a need for eighteen (18) parking spaces for both the retail and housing uses. The applicant is providing bicycle and scooter parking in lieu of four (4) parking spaces. A parking relaxation of fourteen (14) spaces is required as a result.

Staff has found that the application is not in compliance with the variance criteria contained within Section 90-395. Specifically, the property is already 10% over the maximum permitted building coverage. In addition, the variance requested is not the minimum necessary to maintain a reasonable use of the property and the hardship, if any, is self-created. Staff also has concerns about parking being an issue with no automobile spaces provided and residential on street parking not available on Duval Street.

Process:

Development Review Committee:	April 25, 2024
Tree Commission Meeting (Conceptual landscape plan & tree removal approval):	October 1, 2024
Planning Board Meeting:	November 20, 2024
HARC Commission Meeting:	TBD
Tree Commission Meeting	

(Final landscape plan approval):	TBD
City Commission Meeting	TBD
Local Appeal Period:	10 Days
Planning renders to DOC for review:	Up to 45 days

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

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 and the Variance request be **DENIED**. Should the board approve, staff recommends the following conditions.

General conditions:

1. The proposed development shall be consistent with the plans dated October 21, 2024 by William Horn, the landscape plans dated October 9, 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. 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. Final landscape plan approval required from Tree Commission prior to issuance of a building permit. If no significant changes occur to the approved landscape plan, then the Urban Forestry Manager can review for approval.
3. 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.
4. 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.
5. Per the Fire Marshall's request, the multi-family two story structure must have a sprinkler system installed in each unit.

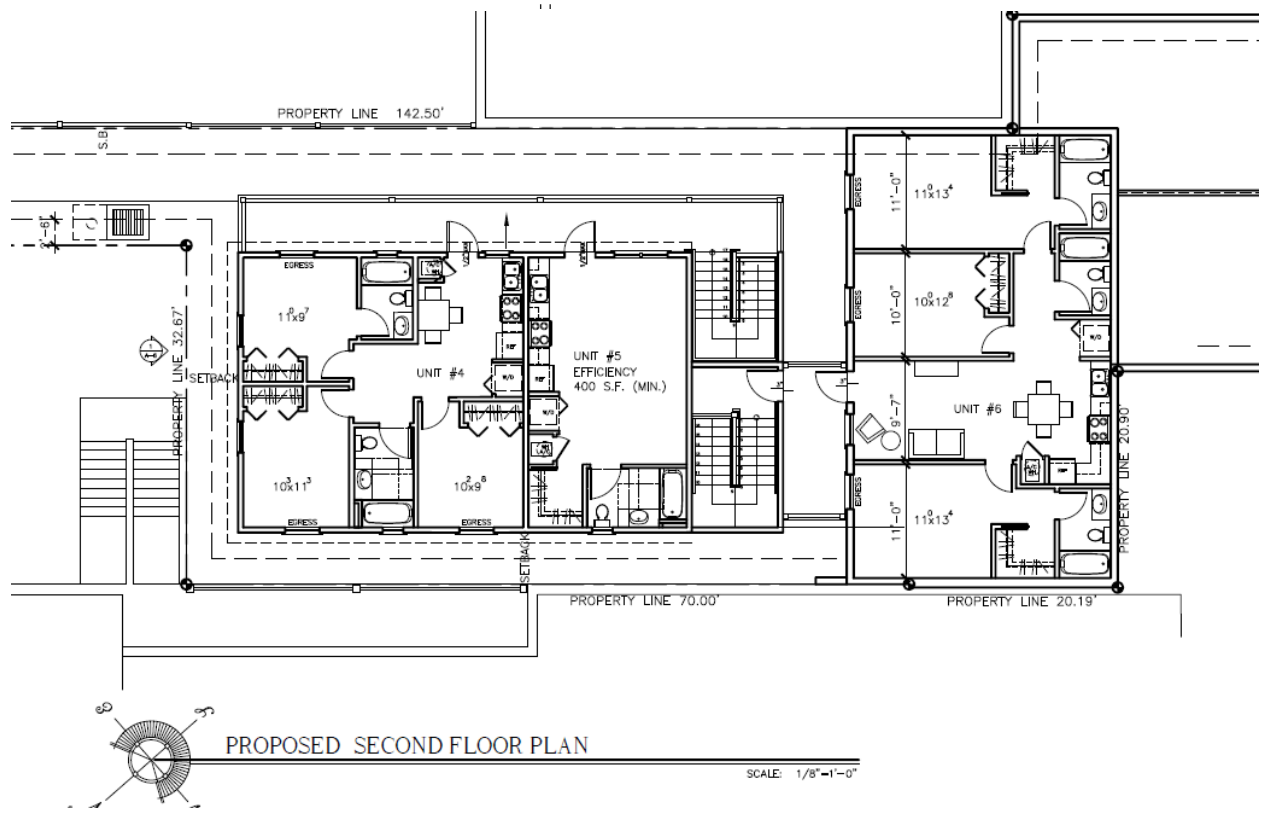
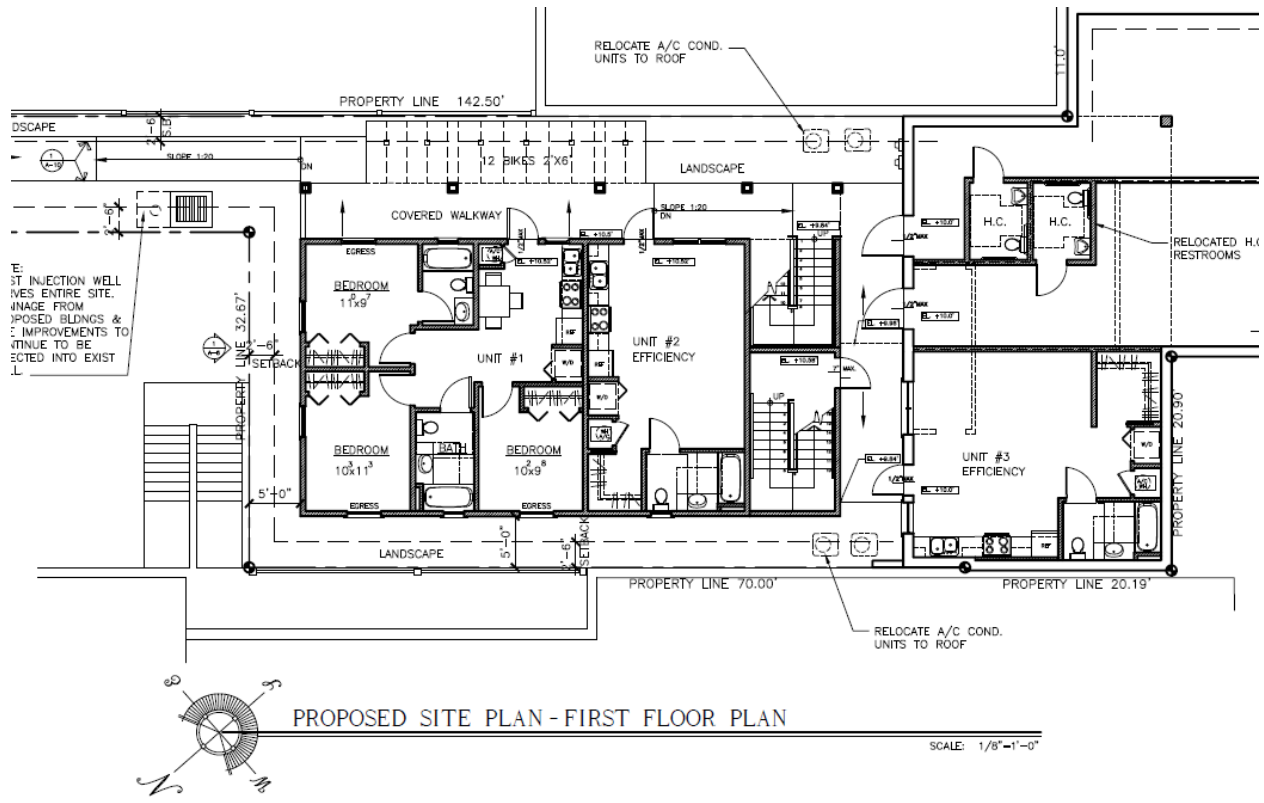
6. The property shall comply with all necessary tree requirements as outlined in Article VI entitled “Tree Protection” of the City code including the removal and monitoring of any invasive plant species.
7. All market rate residential units are subject to the Building Permit Allocation (BPAS) process. No permits to be issued unless and until any needed market rate residential allocations have been secured through the annual BPAS cycle.

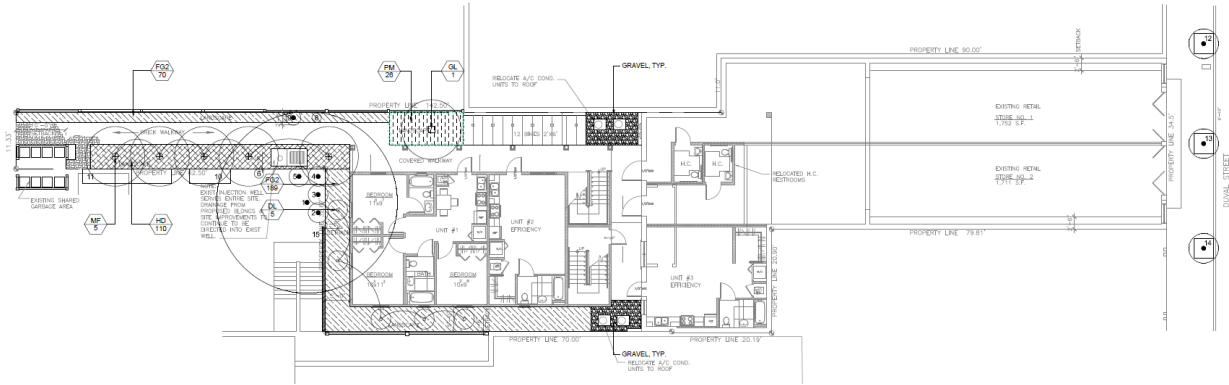
Site Data Table				
Site Data	Permitted	Existing/Pre 1995 Fire	Proposed 2024	Compliance
Zoning	HRCC-1			
Min Lot Size	4,000	7,557	-	Yes
F.A.R	1.0	0.39	0.46	Yes
Density	22 D/U per Acre (3.81 Units)	0	6	No*
Max Height	35'	35'	35'	Yes
Open Space	30% Min	30% (2,274 sf)	14% (1,060 sf)	No
Building Coverage	50% Max	60% (4,527 sf)	78% (5,925 sf)	No
Impervious	70% Max	69% (5,234 sf)	86% (6,497 sf)	No
Front Setback	0'	0' 0"	0' 0"	Yes
Side	2' 6"	0' 0"	New Rear Bldg – 4'	Yes
Street Side	2' 6"	0' 0"	New Rear Bldg – 6' 6"	Yes
Rear	10'	0' 0"	New Rear Bldg – 4'	Yes
Parking	18 Auto Spaces	0	0 (12 Bike/Scooter)	No*

*Applicant is using nonconforming preexisting density rights of 6 units.

*Applicant is using nonconforming parking from 1995 build.

Proposed Floor Plans, submitted by applicant.





Proposed Landscape Plan

- Sec 108-346 – Open Space Required: 20%. Proposed: 14%
- Sec 108-347 – Buffer Yard Plantings Required: 80 plant units. Proposed: 55 units
- Sec 108-412 – Native Landscaping Requirements: 70% Native. Proposed: 28% with 13 Palms
- Sec 108-413 – Required Plant Counts: 40 units per 100 linear feet. Proposed 30 units
- Sec 108-481 – Maximum Percentage of Palm Trees Permitted: 25%. Proposed: 33%