



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:** June 16, 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, conditional use, and 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, and 122-808 of the City of Key West Land Development Regulations.

***Note: Staff's recommendation is to postpone the three applications associated with 601 Truman Avenue due to the following:***

- *The Tree Commission as well as the City Engineer have raised concerns related to safety and line of site issues related to the landscape planters. The City Engineer's review and approval is needed, however, revised plans have not been submitted.*
- *The Major Development Plan and Conditional Use Application does not have the landscape waiver Section 108 review. The Tree Commission has approved the conceptual landscape plan as it related to a proposed tree removal and mitigation, not the landscape waiver. The Section 108 review is for the purpose of providing the Planning Board with additional information to approve the landscape waiver. This includes looking at required buffers, counting plant units, parking vegetation requirements, etc. At the present time the Urban*

Forestry Manager does not have a plan to review due to the engineering issue as stated above.

- *The applicant has stated the density is based on the two lots being aggregated into one, and staff has not been provided with adequate information as to the mechanism and the timeframe as to when this will occur. The applicant should submit a recorded Unity of Title or other instrument as soon as possible.*
- *There is an environmental report as part of this application which identifies subsurface contamination existing at the site. The environmental consultant has made recommendations to make minimal disturbances to the soil, including no in-ground stormwater system or landscaping until the contamination levels are at an acceptable and safe level (an unknown). There are procedures to do planting or disturb the substrate for construction where there are contaminated soils and, occasionally the State DEP or EPA will require no disturbance. There should be a document in the Planning file from the State DEP as to the soil issue and the protocols regarding any disturbance of the substrate for this property. This is especially important due to the fact that new construction will involve underground utilities such as sewer and water and structural foundations. Additionally, considering the fact that the applicant is stating that they cannot plant in the soil, based entirely on the environmental report, a statement from the State DEP is needed.*
- *The applicant's phasing plan is not permissible. The City cannot extend BPAS deadlines unless through a Development Agreement, and the applicant has not submitted an application for same. The applicant needs to amend the proposed phasing plan to incorporate the deadline for building permits for associated BPAS units.*

**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 low speed vehicles, bicycles, sales, service/repair, manufacturing, outdoor display, and indoor and outdoor storage. 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 (although at this time not confirmed through Florida Department of Environmental Protection) to address the site contamination associated with any new development.

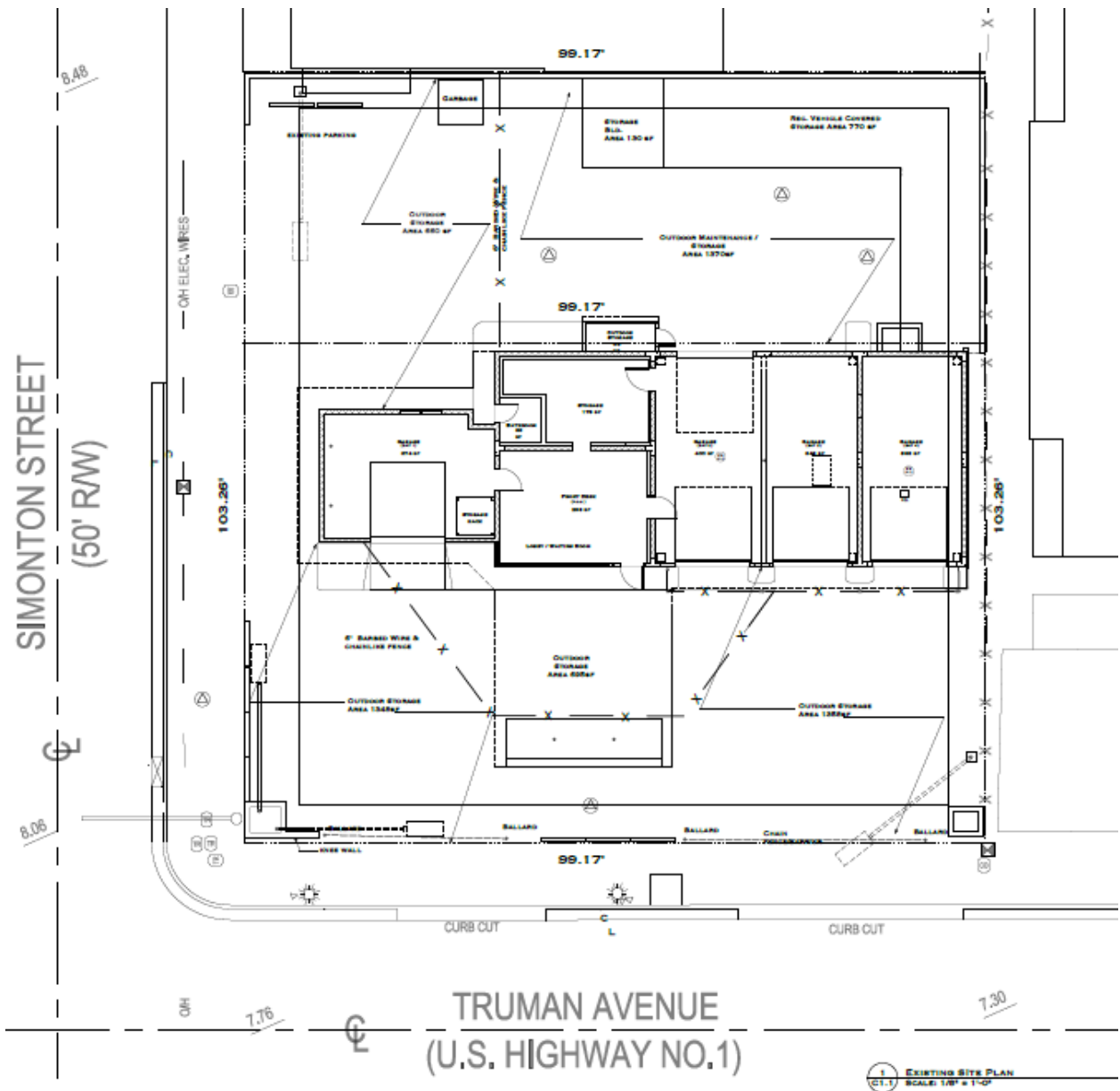
Today this property is considered a brownfield site due to contaminated fluids that leaked into the soil over the years. The owner purchased the site in this condition and has sought creative ways to redevelop and mitigate, while also providing a benefit to the City by providing new housing and a neighborhood cafe. The planning challenge here is recognizing the high cost of remediating a contaminated site, versus the continued potential damage the pollutants could have to groundwater sources, and also balancing the benefits that redevelopment could bring the City.



Code Sections 90-395 and 108-517.

The Applicant is requesting variances to the following requirements:

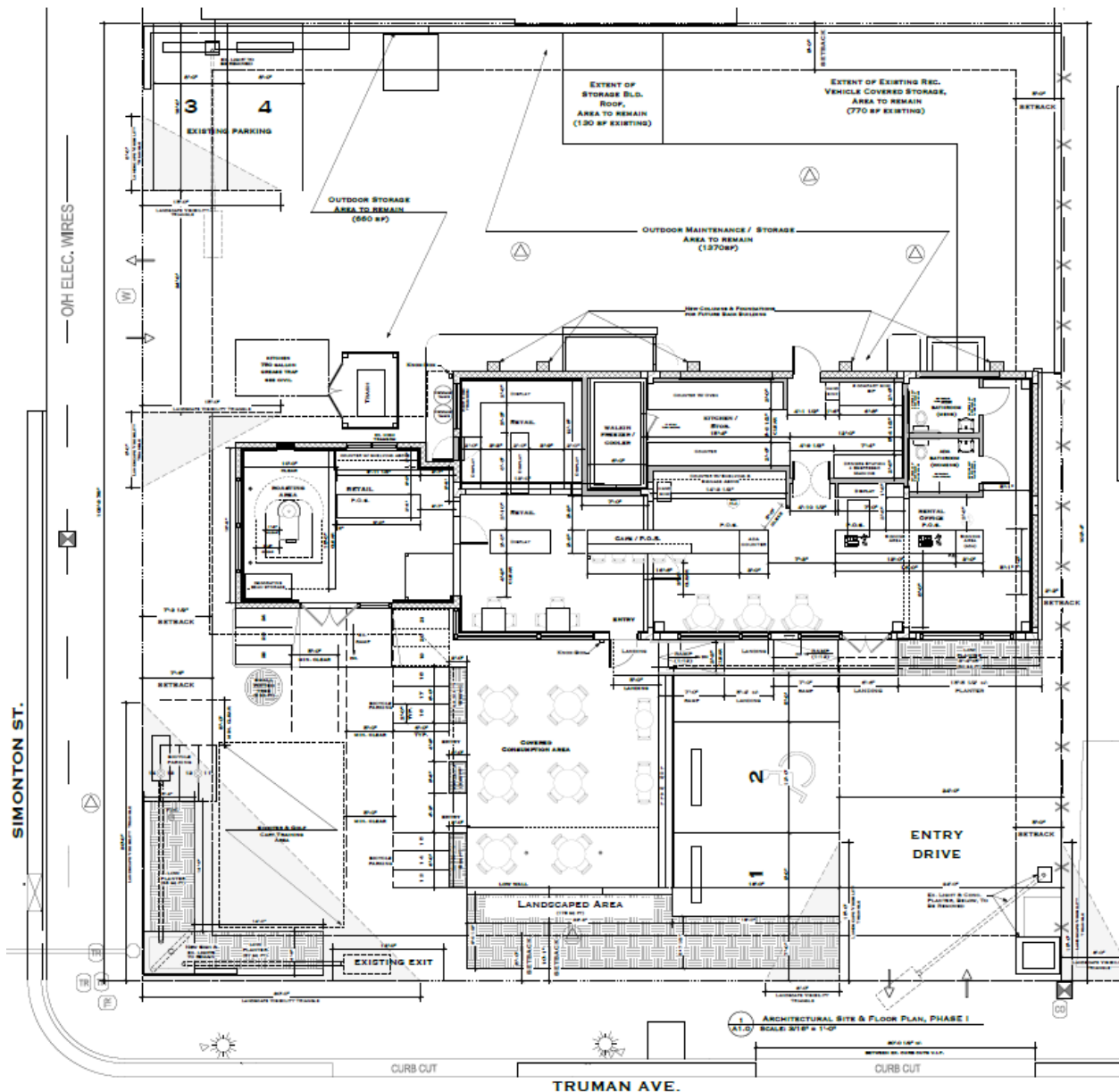
1. The required maximum building coverage is 50%, or 5,120 square feet, existing building coverage on site is 42%, or 4,308 square feet. Whereas, the Applicant is proposing a total of 53% building coverage, or 5,468 square feet.
2. The required maximum impervious surface is 60%, or 6,143 square feet, existing impervious surface is 100%, or 10,239 square feet. Whereas, the Applicant is proposing 93%, or 9,618 square feet.
3. 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.
4. The required minimum side setback is 5 feet, existing east side setback is 0 feet. Whereas, the applicant is proposing 2.2 feet.
5. The required minimum rear setback is 15 feet, existing north rear setback is 0 feet. Whereas, the applicant is proposing 5.2 feet.
6. 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.
7. The required minimum parking is 33 spaces, 2 spaces are currently existing. Whereas the applicant is proposing a total of 4 spaces, 1 ADA and 3 that are 8'x18'. Due to the minimum size requirements for a standard parking space, the 3 non-ADA spaces do not meet the code and are not counted as meeting on-site parking. The applicant is proposing 1 ADA parking space, and could revise the site to create 2 standard spaces that meet the required size.
8. The required unit size within the HNC-1 zoning district is 750 square feet, whereas the applicant is proposing units that vary in size between 325 and 366 square feet.



### 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, currently used as 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 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 applicant should submit 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.

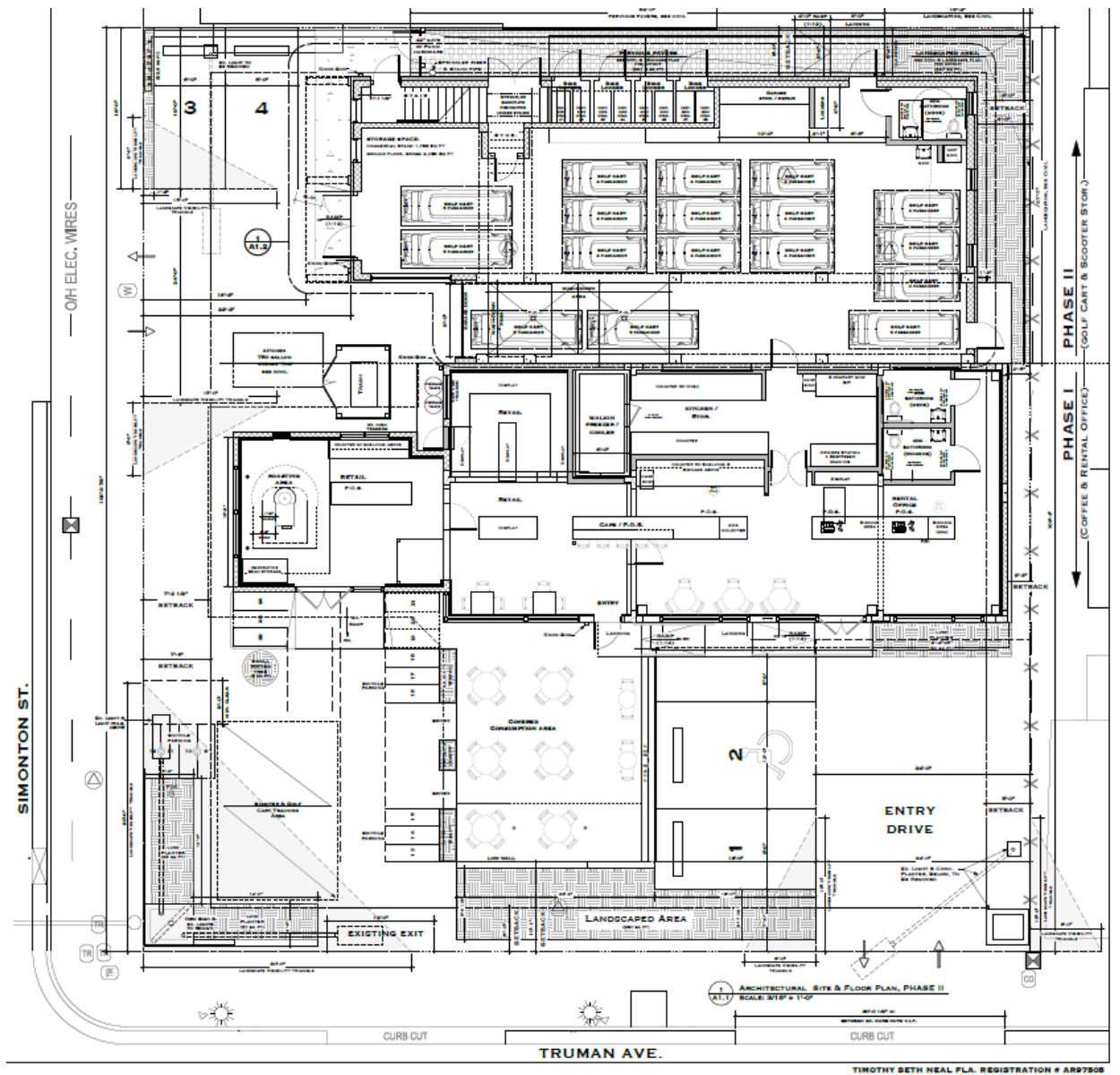
d. The schedule shall acknowledge in writing that a new building permit must be obtained whenever:

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

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 accessory units in the HNC-1 zoning district is 750 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.

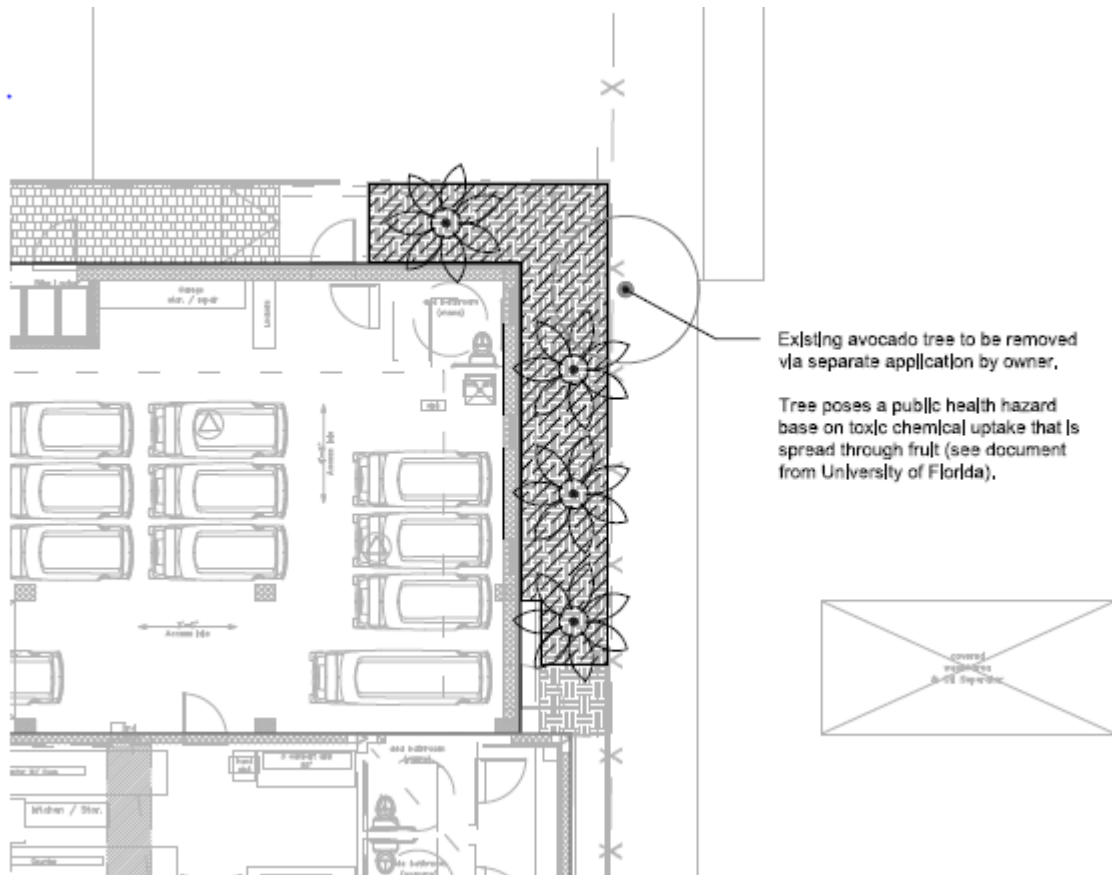
The first level commercial space will consist of a total of 2,086 s.f., and will be used for the continuation of the existing recreational rental vehicle business that exists on the site today. The vehicles will be stored indoors, which will be designed to accommodate eighteen golf carts. There will 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 golf cart customer training, per City requirements. The customer rental desk will be located within the restaurant, the building is designed with a 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 33 spaces, two spaces currently exist. Whereas the applicant is proposing a total of 4 spaces, 1 ADA and 3 that are 8'x18'. Due to the minimum size requirements for a standard parking space, the 3 non-ADA spaces do not meet the code and are not counted as meeting on-site parking. The applicant is proposing 1 ADA parking space, and could revise the site to create 2 standard spaces that meet the required size. The site includes a total of 24 bike parking spaces to encourage multi-modal options within a neighborhood which already embraces active transportation modes.

### 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, it is a recommendation by the City's Urban Forestry Manager that the applicant provide correspondence from the FDEP as to the soils and the protocols regarding any disturbance of the substrate for this property.

<b>SITE DATA Zoning HNC-1</b>				
<b>Dimensional Requirements</b>	<b>Required/Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Variance Needed</b>
Height	35 feet	16 feet	23.5 feet	None
Unit Size	750 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% 3,475 square 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 – commercial, restaurant, residential, retail – total of 33 spaces	2 spaces	1 ADA space	Variance needed 32 spaces
Bicycle Parking	24	0	24 spaces	None

Landscaping				Landscape Waiver needed
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**Process:**

Development Review Committee: June 24, 2021  
 Planning Board Meeting: June 16, 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.

## **6. Roadways**

The roadway LOS standard is set forth in City Code Section 94-72.

## **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 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)*

**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)**

There are a total of 4 spaces proposed, 1 ADA and 3 that are 8'x18'. Due to the minimum size requirements for a standard parking space, the 3 non-ADA spaces do not meet the code and are not counted as meeting on-site parking. The applicant is proposing 1 ADA parking space, and could revise the site to create 2 standard spaces that meet the required size. The site includes a total of 24 bike parking spaces.

#### **Housing (City Code Section 108-245)**

The proposed project includes four affordable studio housing units as accessory units. Each unit will be under 750 square feet in size, which is the minimum required in this zoning district.

#### **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 were not provided with this application. There is a time limit on the Building Permit Allocations for the four units associated with this development. The applicant should submit 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)**

No exterior storage areas are proposed.

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

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

**Landscaping (Code Chapter 108, Article VI)**

A landscape plan is required as part of a development plan review, pursuant to City Code Section 108-411. The applicant had submitted a conceptual plan along with an application for a landscape waiver. The original conceptual plan submittal provided that the plants would be planted in the ground with the caveat that they would be planted sometime in the future, whenever the contamination in the soil dropped to “acceptable levels”. The assumed projection for the planting would have been between 5 to 20 years. It was suggested by the Urban Forestry Manager to use raised beds to avoid the issue with the soils and provide landscaping immediately on the property. A landscape waiver review was still required.

The Tree Commission gave approval of the conceptual landscape plan with the raised beds but had concerns about the planters at the corner of Truman and Simonton and stated such in the approval letter. The appropriate staff to review and provide approval was the City Engineer. The Commission further stated that if no significant changes are made to the landscape plan, the Urban Forestry Manger was given approval to approve the final landscape plan.

No subsequent plans were submitted for review and approval by the City Engineer and therefore, the Urban Forestry Manager did not have plans to review for the Section 108 analysis and provide a recommendation to the Planning Board for the landscape waiver.

**The evaluation to the Planning Board for the applicant’s landscape waiver request has not been completed and staff has requested postponement of this item.**

The applicant has specifically requested a landscape waiver for not meeting the following requirements:

- 20% Open space
- Required buffer yard “B” screening
- Minimum 20% landscaping
- 10’ wide street frontage landscaping and screening
- Interior area landscaping
- 4 trees/2,000 s.f. of non-vehicular use open space
- Irrigation

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 fact that the applicant has not provided staff with plans to address safety issues and prepare the review for the landscape waiver staff recommends denial of the requested landscape modifications and waivers.**

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

The proposed development includes 1 ADA space and twenty four bicycle parking spaces are proposed on the property.

**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:**

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, traffic-generating characteristics 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.

(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 would 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 Major Development Plan, Conditional Use, and Landscape Waiver be **Denied**.

However, if the Planning Board chooses to approve this request, the Planning Department offers the following conditions for consideration:

#### **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 33 spaces, 2 spaces are currently existing. Whereas the applicant is proposing a total of 4 spaces, 1 ADA and 3 that are 8'x18'. Due to the minimum size requirements for a standard parking space, the 3 non-ADA spaces do not meet the code and are not counted as meeting on-site parking. The applicant is proposing 1 ADA parking space, and could revise the site to create 2 standard spaces that meet the



required size. The required unit size within the HNC-1 zoning district is 750 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. 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.  
A construction management plan and schedule shall be provided.

**Conditions prior to the City Commission hearing:**

9. The applicant must obtain a Certificate of Appropriateness from the Historic Architectural Review Commission (HARC).
10. Final Landscape approval required from Urban Forestry Manager on behalf of Tree Commission.
11. An approval from the City Engineer is required to approve all raised landscape planter locations.
12. The applicant is encouraged to revise the site to create 2 standard parking spaces that meet the required size.
13. The applicant is to provide correspondence from the FDEP as to the soils and the protocols regarding any disturbance of the substrate for this property.
14. The applicant is to submit a recorded unity of title to reflect aggregation of the two lots.
15. The applicant shall submit a Construction Management Plan and Inspection Schedule pursuant to Section 108-248, for review at least three weeks prior to being placed on City Commission agenda. The Plan shall include BPAS, landscaping, environmental remediation, in addition to Code required components.

**Conditions prior to issuance of a building permit:**

16. 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.
17. New building addresses will be required prior to building permits for new buildings.

**Conditions prior to issuance of a Certificate of Occupancy:**

18. On-site artwork shall be installed and inspected by the City pursuant to Code Section 2-487.
19. 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.
20. 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 a recovered unit for allocation during the following sequential award year.
21. Approved landscaping must be installed in the area being requested for the CO as per City Code Sec 108-516.