

**OBJECTION TO CONDITIONAL USE
Restaurant (15 seats)**

The below named neighbors join in this Objection to Conditional Use Application:

Linda Wheeler	1213 White Street
Robert Kruse	1213 White Street
Sean Cowles	1216 White Street
Adele Williams Cowles	1216 White Street
Ross and Jodie Williams	1217 White Street
Tim and Anne Sullivan	1204-1206 Duncan Street
Robert Koske	1208 Duncan Street
Barbara Haveland	1209 Duncan Street
Brian Schmitt d/b/a Coldwell Banker Schmitt	1201-1211 White Street
Lynn Kaufelt and David Kaufelt	1120 White Street
Dr. Ana Marie Camarotti	1220 Georgia Street
Cynthia Vinson Dean	1327 Duncan Street
Mrs. Valter Vinson	1215 Georgia Street
Robert Silver	1327 Duncan Street
Candida Andriole-Cobb	1016 Varela Street
Georgia and Thomas Favelli	1108 White Street
Bill and Ann Lorraine	1028 Catherine Street
Ron Oldham and Patricia Kennedy	1120 Catherine Street

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- A. Background Statement
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- C. ARGUMENTS FOR DENIAL OF CONDITIONAL-USE APPLICATION
- D. CONCLUSION
- E. EXHIBITS

A. Operative Facts Entirely Uncontested:

1. The site is located in the HARC district. It is zoned HNC-1, designated for residential and light-commercial mixed use.
2. The site consists of a single building located on the corner of White and Catherine Streets. The building contains approximately 4,875 sf of commercial space on the ground floor and 2 residential apartments on the 2nd floor (1,198 sf).
3. The adjacent parking lot is located mid-block. It will accommodate parking for a maximum of 3 vehicles.
4. The site previously hosted a walk-up coffee shop window (non-conforming use with “no seats” occupational license); a bakery (non-conforming use abandoned over 4 years ago¹); and a retail tile shop (permitted-use vacant for over 10 years).
5. Applicant’s applications for parking variance and conditional uses have been pending since September 2012. During the pendency of the case, Applicant has amended or revised his applications at various times - including April 1, 2014. Other hearings before the planning board were September 19, 2013 (tabled after approximately 2 hours of testimony and public comments) and March 20, 2014 (tabled after approximately 1.5 hours). Among Applicant’s more recent revisions were the withdrawal of two conditional-use businesses earlier proposed for this site (moped rentals and service/repair shop).
6. Applicant’s current application (revised 4/1/14) proposes the following uses:

15-seat Restaurant (1,585sf) (conditional use)
Retail sales of mopeds (2745 sf) (conditional use if floor area is over 2500sf)
Professional offices (426sf) (permitted use)
7. Each proposed use at this site must conform to the current land development

¹ See Section 122-30 (Abandonment of nonconforming use) which states, in pertinent part: “If a nonconforming use ceases.... any and every future use of the building or structure and/or premise shall be in conformity with the use sections of the land development regulations..... A nonconforming use shall be considered abandoned when such use has ceased for a period of 24 months.....”

regulations, including parking requirements, and other site amenities (waste bin screening, landscaping, open space, storm water management, ADA access, lighting, signage, etc.)²

8. Applicant's existing parking lot must be maintained in perpetuity as a parking lot.³
9. The Applicant has calculated that 18 parking spaces are required for Applicant's proposed mix of permitted-by-right and conditional-use businesses at this site.
10. Applicant's site can accommodate a total of 3 parking spaces.
11. Without any parking variance or any conditional-use approval, Applicant may enjoy 100% **reasonable economic use** of this site by operation (or lease) of permitted-by-right retail sales shop(s) and professional office(s).
12. Mr. Mills may use 100% of his building for professional office space (any number of offices, of unrestricted sizes) , as well as lease the two (2) apartments on the second floor, without triggering any additional parking requirements or creating any need for a parking variance.⁴
13. Professional offices and retail sales stores (less than 2500sf) are "**reasonable uses**" for Applicant's property in this HNC-1 district. These "permitted-by-right" uses are codified under the current LDR's (Section 122-807 (5) and (6)).

² Sec. 108-571: "Parking shall be provided in all districts at the time any building or structure is erected or enlarged or increased in capacity by a change of use or the addition of dwelling units, transient units, floor area, seats, beds, employees or other factors impacting parking demand as stated in this article."

Sec. 108-575(5): "Applicability of standards to expanding uses. Whenever a building or use is enlarged in floor area, number of dwelling units, seating capacity or in any other manner so as to create a need for a greater number of parking spaces than that existing, such spaces shall be provided in accordance with this section. Any parking deficiency shall be brought into conformity concurrently with the enlargement or change of use."

³ Section 108-573 (c) "Any preexisting off-street parking serving the structure must be maintained to service the new use."

⁴ See memo from city planning director Donald Craig dated 4/4/14 and city planner Kevin Bond dated 4/15/14, attached to Exhibits.

14. The entire 1200 block of White Street contains approximately 19 on-street parking spaces.
15. It is only due to Applicant's proposal to introduce conditional-use businesses which has resulted in the pending applications for conditional uses and a 15-space parking variance.⁵

B. STANDARD FOR REVIEW:

1. Section 122-61 (Purpose and Intent) provides that: "*... a conditional use **shall only be permitted** on specific sites where the proposed use may be adequately accommodated **without generating adverse impacts on properties and land uses within the immediate vicinity.**"*
2. Section 122-62 (Criteria for Conditional Use Review and Approval) (c) (1-6) provides that: "*Applications for a conditional use **shall clearly demonstrate the following:***
 - (1) *Land Use Compatibility;*
 - (2) *Sufficient size, adequate specifications and infrastructure to accommodate proposed use;*
 - (3) *Proper use of mitigative techniques;*
 - (4) *Hazardous waste;*
 - (5) *Compliant with applicable laws and ordinances;*
 - (6) *Additional criteria applicable to specific land uses.*

C. Argument for **DENIAL** OF Application for Conditional Use:

Applicant's proposed restaurant use cannot be adequately accommodated at this site without generating severe and permanent adverse impacts on properties and land uses within the immediate vicinity.

⁵ See city planner Kevin Bond's memo dated 4/15/14: "*It is Mr. Mills's request for restaurant use that is triggering the need to bring his parking into compliance with the code, and thus his variance request. The restaurant use has a higher parking requirement than retail or office, which is what triggers bringing parking into compliance.*"

1. Restaurants are not a permitted-by-right use in this residential and light commercial mixed-use district. (The restaurants operating in the 1300 & 1400 blocks of White Street have long-standing “grandfathered” parking and use exemptions not applicable to this site or this Applicant.)
2. Applicant’s proposed conditional use would introduce a 15-seat, 1,585 sf, full-service restaurant (breakfast, lunch and dinner), open 7 days a week between 7am-11pm (weekends) and 7am-9pm (weekdays).
3. Applicant’s site is insufficient to accommodate the amenities required or the parking demands generated by the proposed restaurant use.
4. The parking demands generated by Applicant’s proposed businesses are 18 spaces. The Applicant has 3 off-street spaces. The entire 1200 block of White Street contains only 19 spaces.
5. Introduction of such a high density, high traffic use, without adequate off-street parking, would effectively deprive each and every property owner in the 1200 block of White Street of the existing public parking upon which the residents now depend for their convenience and existing business now depend for servicing their existing customers.
6. If Applicant’s proposed conditional-use restaurant were introduced into this district, surrounding property owners would experience permanent loss of quality-of-life rights and diminution of their property values.
7. The proposed full-service restaurant would greatly increase density, intensity of use, and traffic at this site. 10+ employees will be present to service all of the uses proposed for this site. 127 daily trips are estimated for a high-turnover restaurant. (Compare this with 44 daily for retail space or 11 daily trips for offices.
8. The proposed conditional use restaurant would also create serious and dangerous safety issues to local pedestrians and the driving public. There is no loading zone (and introduction of one would only further diminish the limited street parking now available). Large refrigerated food, beverage and other delivery trucks would be required to idle in the ROW of White Street or Catherine

Street, or more dangerously, use the driveway and (illegally) back out into the ongoing traffic ROW of White Street.

9. Applicant's introduction of the conditional use restaurant would also create increased noise, odor, litter, pollution, traffic congestion and other adverse and harmful effects to the neighboring properties.

Applicant has failed to satisfy the Criteria for Review and Approval of the proposed conditional uses pursuant to Section 122-62 (c). Specifically:

1. **Land Use Compatibility:**

- A. The proposed 15-seat restaurant is described as an "expansion" of the walk up sidewalk window.⁶ The previous sidewalk walk-up window was a non-conforming use, holding an occupational license for "no-seats" food service. The previous walk-up window created a public nuisance for years at this site. Unlike other walk-up coffee shop windows in the area, it operated at night, sold beer (illegally), engendered drinking in public, street brawls, loud music, urination in public, and other disruptive activities. Its negative atmosphere prevented residents from safely walking in front of the establishment. When Applicant was asked why he allowed the continuation of this disturbing business, he told his neighbor that he needed to collect his rents and that if there were any disturbances at night they "should just call the police." Applicant allowed these disturbances to continue until he began renovations of the building. The neighbors have little confidence that Applicant would be any more responsive to the disruptions inherent with operation of full-service 1,585 sf food service establishment.
- B. Applicant cannot provide the off-street spaces for the parking requirements his proposed conditional-use restaurant would generate. His expansion of a non-conforming "no-seat" coffee window into a 1,585sf restaurant would create increased traffic, increased intensity and increased density of use - all of which is intrusive, incompatible, and materially adverse to the surrounding neighbors.

⁶ See Applicant's Second Amended Addendum to Amended Conditional Use Application dated November 15, 2013.

D. This site is zoned for residential and light-commercial. Applicant is permitted-by-right to operate retail sales and professional offices at this site without any necessity for a parking variance. Applicant's proposed conditional-use would intensify use and increase density at this site by converting approximately 1,585 sf of retail/office space into a restaurant which generates at least twice as many daily trips and almost twice the parking demands. Additionally, the proposed use would introduce issues of odor, noise, pollution, litter, sanitation and disposal of raw food, added volumes of solid waste, and disposal of used cooking oils which are not associated with retail sales or professional office space.

2. **Sufficient size, adequate specifications and infrastructure to accommodate proposed use:**

A. Applicant's proposed conditional-use restaurant materially expands floor area and the intensity of use at this site. Applicant's site is without adequate size or infrastructure to accommodate this increased intensity of use. Applicant's surrounding neighbors would bear the burden entirely of these permanent and adverse consequences.

B. Applicant's proposed conditional-use business cannot be adequately accommodated at this site. The size and shape of the parking lot do not allow for drive-through ingress and egress. Only 3 parking spaces can be accommodated on this lot. The parking lot must also provide the following amenities or other functions:

(1) **HANDICAP ACCESS RAMP AND PAVED WALKWAY:**

Subject property is 14" above grade which necessitates installation of a handicap ramp and walk over a portion of the parking lot.

(2) **STORM WATER DRAINAGE COLLECTION:**

The parking lot is 100% impermeable surface. An exfiltration trench or drain field for retention of rainfall is required. During the pendency of these applications, Applicant (without HARC approval or issuance of a building permit-) removed a masonry wall separating the parking lot from the neighbor's residence. The parking lot is 14" above

grade. Removal of the existing retaining wall now subjects the neighbor's residence to potential flooding until this issue is satisfactorily resolved.

(3) STORAGE OF SOLID WASTE AND RECYCLING BINS:

There is currently 1 front-end loaded dumpster sitting unscreened in the middle of the parking lot. Un-contained construction debris and trailers of mopeds and cannibalized motor parts have occupied the parking lot for well over 1 year. Waste and recycling bins for the upstairs apartments are permanently (and illegally) housed the Catherine Street sidewalk. (*Section 108-279 requires that "All refuse and waste storage areas shall be screened from adjacent properties and public ways by appropriate fences, walls or landscaping. Front-end loaded refuse containers shall also be required to be screened by vegetation or structural means to shield an unsightly condition."*)

(4) PROPANE-GAS STORAGE TANK:

There is currently 1 propane tank sitting unscreened at the rear of the parking lot (non-conforming set-back). Applicant's revised application fails to disclose or address the volume of propane gas, the number of canisters, or the frequency of servicing which will be necessary to support the proposed 1,585 sf restaurant operational for approximately 16 hours per day, 7 days a week. Applicant's blanket representation that "Normal office, retail, and restaurant service vehicles are anticipated⁷" fails to adequately address or reasonably satisfy the criteria required for this proposed conditional use. Additionally, Applicant provides no plan or proposal for the location, screening and method of servicing such gas tanks. To fill the existing propane tank, a propane delivery truck must idle in the ROW on White Street and drag its hose to the rear of the parking lot, or alternately, the propane delivery truck must pull into the driveway and then (illegally)

⁷ See revised 2/27/14 application, page 3 section (1) e.

back out into the ROW on White Street. Both delivery methods pose serious safety issues for pedestrians and the driving public and violate. [INSERT CITATION PROHIBITING BACKING OUT ON ROW].

(5) CONTAINMENT AND STORAGE AREA FOR HAZARDOUS WASTE MATERIALS:

Applicant's revised (2/27/14) application states that "Applicant shall maintain disposal contracts for all hazardous waste." This blanket statement is contradictory to Applicant's representations that NO repair or servicing of mopeds or other motor vehicles shall take place at this site. Hazardous waste disposal of used tires, old motor oils, and cannibalized engine parts is necessary only if repair or servicing of motor vehicles is still contemplated.

The proposed conditional-use restaurant may require disposal of discarded cooking oils if frying is to be performed at restaurant. Applicant has failed to disclose or address the volume of used cooking oils which may be necessary contain and store, or the proposed method for its disposal.

(6) OUTDOOR STORAGE:

Applicant revised (2/27/14) application states that NO outside storage and display of inventory shall occur. This statement is wholly inconsistent with his proposal for "parking 18 mopeds and bikes" in the area previously designated as the "Outdoor Storage Area." Pursuant to Section 108-288 *"Any proposed exterior storage areas shall be located at the rear of the principal structure. Such outside storage area shall be enclosed by a solid wall with solid entrance and exit gates..."*.

- D. Applicant's site is not of sufficient size or adequate specifications to accommodate the proposed conditional use restaurant.⁸ Specifically:

⁸ See Exhibit "D" DETAILS OF ADVERSE IMPACTS UPON SURROUNDING NEIGHBORS OF THIS HNC-1 DISTRICT

- (1) LACK OF NECESSARY OFF-STREET PARKING
- (2) DANGEROUS AND UNSAFE EGRESS FROM PARKING LOT
- (3) INABILITY TO COMPLY WITH REQUIRED ON-SITE AMENITIES
- (4) INCREASED AND ADVERSE DENSITY, TRAFFIC, AND INTENSITY OF USE CREATED BY PROPOSED CONDITIONAL-USES.

3. Proper use of mitigative techniques;

- A. Applicant has failed to provide or propose any meaningful mitigation for the odor, noise, pollution, increased traffic, increased trip-generation, intensity of use, increase of density, and the overwhelming parking demands created by his proposed conditional-use restaurant.
- B. Since Applicant's purchase of the property he has improved the exterior appearance of the building. The windows and doors have been replaced and the exterior walls have been stuccoed. Applicant's neighbors have applauded these efforts to improve the exterior, however, "*better-than-it-was*" is not the standard of review for conditional-uses or parking variances.
- C. Applicant's proposed conditional use expansion of a 1,585 sf restaurant is overly aggressive and intrusive for this site. Cosmetic improvements to the building or a landscape plan simply cannot mitigate the permanent and harmful impact such conditional use would impose upon this neighborhood.
- E. Applicant's proposed solutions to mitigate the adverse impacts of the proposed conditional use businesses have resulted in representations and promises which are dismissive or grossly unresponsive to the legitimate concerns of the city and neighbors. Specifically:
 - 1. SOLID WASTE/RECYCLING: Applicant conditional-use application fails to address the total volume of solid waste and recycling from all uses. This site contains 5800 sf of commercial space and 2 residential apartments. Applicant proposes to use a single "roll out" dumpster kept inside the building. Without accurate data of the anticipated volume of solid waste and recycling generated, and the proposed solution for its containment,

storage and disposal, it is impossible for the Planning Department (or the Planning Board and public) to evaluate the sufficiency of the proposal or whether such plan is practical, feasible or even permissible under existing sanitation, health, and fire codes.

Applicant's revised application (revised 2/27/14) provided a site drawing with a single dumpster sitting unscreened in the rear (illegal setback) of the parking lot. Applicant's blanket comment that "Normal service vehicles are anticipated"⁹ fails to address or successfully mitigate these issues.

2. DELIVERIES/LOADING DECK: The proposed 1,585 sf restaurant is intended to operate 7 days per week for approximately 16 hours per day. Multiple trucks shall be required to service and deliver food, beverages and other supplies. Such deliveries shall be made by refrigerated trucks idling on Catherine or White Streets in the ROW, or by using the parking lot for deliveries, which are then transported by hand cart of the sidewalk. All deliveries via the parking lot would result in the delivery trucks backing out (illegally) into the on-going traffic of White Street. Applicant's comment that "Normal service vehicles are anticipated"¹⁰ wholly fails to address or offer mitigation of this serious safety issue.

3. TRAFFIC/TRIP GENERATION: Applicant commissioned a "trip generation analysis"¹¹ concerning the traffic impact created by the proposed conditional uses. Applicant's own expert estimated that the restaurant would generate **141 daily 2-way trips**. Applicant's revised application (revised 2/27/14) states that a "high turn-over" restaurant would generate **120+ daily 2-way trips**. These traffic/trip impacts are in addition to the daily round-trips generated by the Applicant's other intended uses: 2-residential apartments (**13.4 daily 2-way trips**);

⁹ See revised 2/27/14 application, page 3 section (1) e.

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¹¹ See "1200 White Street Trip Generation Analysis" prepared by David Plummer & Associates and submitted by Applicant

professional office **(3.42 daily2-way trips)**. Applicant has offered no mitigation proposal for the severe increase in traffic created by the proposed conditional-use restaurant.

4. SCALE AND SCOPE OF CONDITIONAL USE: Applicant's most recent "mitigation" proposal does not reduce the number of seats, limit the hours of operation, or offer any downsizing of the food service activities intended at the site. Incredibly, Applicant's "mitigation plan" simply reduces the consumption area of the 15 seats from 640 sf to 225 sf. It defies logic and common sense that 15 patrons sitting in 15 chairs crammed within 225 sf of consumption space creates any less parking impact in the neighborhood than 15 patrons sitting in 15 chairs within 640 sf. of consumption space. Applicant's "mitigation" plan is for the sole purpose of reducing the number of parking spaces required for this conditional use from 15 spaces to 5 spaces (640sf x 1 per 45sf vs 225sf x 1 per 45sf). It is NOT proposed for the intention of mitigating the very real and adverse impacts the conditional use restaurant would have on the surrounding neighborhood.

4. **Hazardous waste:**

- A. Applicant's previous application stated that "for the short time between acquisition of any hazardous waste materials and their disposal, storage of the items will be **inside the premises in fire resistant cabinets.**"¹²
- C. Applicant has withdrawn his request to repair and service mopeds, motorcycles and other motor vehicles, however, hazardous waste of certain restaurant by product shall be necessary. Applicant's blanket comment that "Normal service vehicles are anticipated."¹³ fails to successfully address or mitigate this issue of hazardous waste disposal. Without such data, it is impossible to determine (and unfair to the Planning Board and the public) to evaluate the impact of Applicant's

¹² See page 16 of Applicant's Second Amended Addendum to Amended Conditional Use Application

¹³ See revised 2/27/14 application, page 3 section (1) e.

conditional use, or to determine if containment, storage and disposal of hazardous waste materials at this site are practical, feasible or even permissible under existing sanitation, health, and fire codes.

5. **Compliant with applicable laws and ordinances:**

- A. Applicant is non-compliant with applicable laws and ordinances. For the last 15 months, Applicant has operated a moped and motorcycle rental business and an engine and motor vehicle repair shop at the site without valid licensing or any conditional-use approval by this board. In January 2014, the code enforcement office (finally) required the Applicant to cease such operations.
- B. Applicant has underestimated the parking requirements of the proposed conditional-use restaurant in each and every one of his amended and revised applications. Without full and accurate disclosure by the Applicant of the site's floor areas, it is impossible to fairly evaluate the parking impact of the proposed project or the accurate number of parking spaces required or necessary for variance approval.
- C. Applicant's revised application (revised 2/27/14) omits any "Outside Storage Area", however Applicant proposes to use this same 450sf outside area for "parking of 18 mopeds and bikes." Applicant's business practices at this site (and for many years at his previous location on the corner of Whitehead and Southard Streets) involved cat-and-mouse tactics with the city's code enforcement department concerning Applicant's repeated violations for displaying inventory in the parking lot and in the city ROW. Applicant's use of the parking lot for display of his own merchandise and inventory is prohibited. See also *Section 108-278 (Appearance of Site and Structures)*¹⁴ and *Section 108-573 (Special provisions within historic*

¹⁴ See *Section 108-278 (Appearance of Site and Structures)*, which provides: **"Within all zoning districts within the city, the appearance of a site and structures shall be coordinated for the purpose of creating a pleasing and harmonious overall environment. The choice of site improvements shall be commensurate with the objectives of the subject use and considering impact on surrounding properties and transportation corridors."** [Emphasis added]

*commercial pedestrian-oriented area.)*¹⁵

D. CONCLUSION

Applicant has failed to meet the criteria for approval of the proposed conditional use restaurant. The parking issues, noise, odors, pollution, increase of density, the intensity of use, and the excessive traffic and trip generation created by the proposed conditional-use would permanently and adversely change the character of this mixed-use neighborhood and would impose unnecessary, permanent and harmful burdens on the surrounding residential and business neighbors and the walking and driving public.

Pursuant to Section 122-61 (Purpose and Intent) “... a conditional use **shall only be permitted on specific sites where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity.**”

Applicant is simply unable to meet this criteria.

White Street is flourishing. All of the existing and newly-introduced businesses are light-commercial (business and professional offices and light retail shops). The Applicant should respect his neighbors and the zoning contemplated by the city’s land development regulations and use his site for permitted-by-right businesses that do not require a parking variance, and do not detrimentally impact his residential and business neighbors.

The Planning Department previously recommended DENIAL of all conditional uses proposed at this site. It has recently recommended APPROVAL, but with myriad “conditions” which, no matter how well intentioned, will not operate to make this project compatible with the surrounding neighbors.

¹⁵ Section 108-573 (Special provisions within historic commercial pedestrian-oriented area.)“... **Any preexisting off-street parking serving the structure must be maintained to service the new use. Similarly, preexisting parking shall not be used as a site for additional floor area unless the total off-street parking required pursuant to this article is made available to accommodate the existing and new proposed floor area.**”

RE: 1200-1212 White Street/Victor Mills
Objection to Revised (2/27/14) Conditional Use Application

The residential and commercial neighbors joining in this objection live, work and own properties **within the immediate vicinity of the site**. Their properties have a combined assessed value of over \$7.8 million. They are the most personally and (financially) adversely impacted by the proposed variance and conditional use applications.

We respectfully request the Planning Board to uphold the pertinent sections of the Land Development Regulations and to follow the Planning Department's previous recommendations for DENIAL of the applications for conditional use and parking variance.

Thank you for your consideration of these matters of great and lasting importance to our neighborhood and to this City.

Respectfully submitted on behalf of above-named concerned neighbors,

Linda B. Wheeler, Esq.
Attorney at Law
1213 White Street
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Mobile 305/509-2145
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12. Mr. Mills may use 100% of his building for professional office space (any number of offices, of unrestricted sizes) , as well as lease the two (2) apartments on the second floor, without triggering any additional parking requirements or creating any need for a parking variance.⁴
13. Professional offices and retail sales stores (less than 2500sf) are "**reasonable uses**" for Applicant's property in this HNC-1 district. These "permitted-by-right" uses are codified under the current LDR's (Section 122-807 (5) and (6)).

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2. Applicant’s proposed conditional use would introduce a 15-seat, 1,585 sf, full-service restaurant (breakfast, lunch and dinner), open 7 days a week between 7am-11pm (weekends) and 7am-9pm (weekdays).
3. Applicant’s site is insufficient to accommodate the amenities required or the parking demands generated by the proposed restaurant use.
4. The parking demands generated by Applicant’s proposed businesses are 18 spaces. The Applicant has 3 off-street spaces. The entire 1200 block of White Street contains only 19 spaces.
5. Introduction of such a high density, high traffic use, without adequate off-street parking, would effectively deprive each and every property owner in the 1200 block of White Street of the existing public parking upon which the residents now depend for their convenience and existing business now depend for servicing their existing customers.
6. If Applicant’s proposed conditional-use restaurant were introduced into this district, surrounding property owners would experience permanent loss of quality-of-life rights and diminution of their property values.
7. The proposed full-service restaurant would greatly increase density, intensity of use, and traffic at this site. 10+ employees will be present to service all of the uses proposed for this site. 127 daily trips are estimated for a high-turnover restaurant. (Compare this with 44 daily for retail space or 11 daily trips for offices.
8. The proposed conditional use restaurant would also create serious and dangerous safety issues to local pedestrians and the driving public. There is no loading zone (and introduction of one would only further diminish the limited street parking now available). Large refrigerated food, beverage and other delivery trucks would be required to idle in the ROW of White Street or Catherine

Street, or more dangerously, use the driveway and (illegally) back out into the ongoing traffic ROW of White Street.

9. Applicant's introduction of the conditional use restaurant would also create increased noise, odor, litter, pollution, traffic congestion and other adverse and harmful effects to the neighboring properties.

Applicant has failed to satisfy the Criteria for Review and Approval of the proposed conditional uses pursuant to Section 122-62 (c). Specifically:

1. **Land Use Compatibility:**

- A. The proposed 15-seat restaurant is described as an "expansion" of the walk up sidewalk window.⁶ The previous sidewalk walk-up window was a non-conforming use, holding an occupational license for "no-seats" food service. The previous walk-up window created a public nuisance for years at this site. Unlike other walk-up coffee shop windows in the area, it operated at night, sold beer (illegally), engendered drinking in public, street brawls, loud music, urination in public, and other disruptive activities. Its negative atmosphere prevented residents from safely walking in front of the establishment. When Applicant was asked why he allowed the continuation of this disturbing business, he told his neighbor that he needed to collect his rents and that if there were any disturbances at night they "should just call the police." Applicant allowed these disturbances to continue until he began renovations of the building. The neighbors have little confidence that Applicant would be any more responsive to the disruptions inherent with operation of full-service 1,585 sf food service establishment.
- B. Applicant cannot provide the off-street spaces for the parking requirements his proposed conditional-use restaurant would generate. His expansion of a non-conforming "no-seat" coffee window into a 1,585sf restaurant would create increased traffic, increased intensity and increased density of use - all of which is intrusive, incompatible, and materially adverse to the surrounding neighbors.

⁶ See Applicant's Second Amended Addendum to Amended Conditional Use Application dated November 15, 2013.

D. This site is zoned for residential and light-commercial. Applicant is permitted-by-right to operate retail sales and professional offices at this site without any necessity for a parking variance. Applicant's proposed conditional-use would intensify use and increase density at this site by converting approximately 1,585 sf of retail/office space into a restaurant which generates at least twice as many daily trips and almost twice the parking demands. Additionally, the proposed use would introduce issues of odor, noise, pollution, litter, sanitation and disposal of raw food, added volumes of solid waste, and disposal of used cooking oils which are not associated with retail sales or professional office space.

2. **Sufficient size, adequate specifications and infrastructure to accommodate proposed use:**

A. Applicant's proposed conditional-use restaurant materially expands floor area and the intensity of use at this site. Applicant's site is without adequate size or infrastructure to accommodate this increased intensity of use. Applicant's surrounding neighbors would bear the burden entirely of these permanent and adverse consequences.

B. Applicant's proposed conditional-use business cannot be adequately accommodated at this site. The size and shape of the parking lot do not allow for drive-through ingress and egress. Only 3 parking spaces can be accommodated on this lot. The parking lot must also provide the following amenities or other functions:

(1) **HANDICAP ACCESS RAMP AND PAVED WALKWAY:**

Subject property is 14" above grade which necessitates installation of a handicap ramp and walk over a portion of the parking lot.

(2) **STORM WATER DRAINAGE COLLECTION:**

The parking lot is 100% impermeable surface. An exfiltration trench or drain field for retention of rainfall is required. During the pendency of these applications, Applicant (without HARC approval or issuance of a building permit-) removed a masonry wall separating the parking lot from the neighbor's residence. The parking lot is 14" above

grade. Removal of the existing retaining wall now subjects the neighbor's residence to potential flooding until this issue is satisfactorily resolved.

(3) STORAGE OF SOLID WASTE AND RECYCLING BINS:

There is currently 1 front-end loaded dumpster sitting unscreened in the middle of the parking lot. Un-contained construction debris and trailers of mopeds and cannibalized motor parts have occupied the parking lot for well over 1 year. Waste and recycling bins for the upstairs apartments are permanently (and illegally) housed the Catherine Street sidewalk. (*Section 108-279 requires that "All refuse and waste storage areas shall be screened from adjacent properties and public ways by appropriate fences, walls or landscaping. Front-end loaded refuse containers shall also be required to be screened by vegetation or structural means to shield an unsightly condition."*)

(4) PROPANE-GAS STORAGE TANK:

There is currently 1 propane tank sitting unscreened at the rear of the parking lot (non-conforming set-back). Applicant's revised application fails to disclose or address the volume of propane gas, the number of canisters, or the frequency of servicing which will be necessary to support the proposed 1,585 sf restaurant operational for approximately 16 hours per day, 7 days a week. Applicant's blanket representation that "Normal office, retail, and restaurant service vehicles are anticipated⁷" fails to adequately address or reasonably satisfy the criteria required for this proposed conditional use. Additionally, Applicant provides no plan or proposal for the location, screening and method of servicing such gas tanks. To fill the existing propane tank, a propane delivery truck must idle in the ROW on White Street and drag its hose to the rear of the parking lot, or alternately, the propane delivery truck must pull into the driveway and then (illegally)

⁷ See revised 2/27/14 application, page 3 section (1) e.

back out into the ROW on White Street. Both delivery methods pose serious safety issues for pedestrians and the driving public and violate. [INSERT CITATION PROHIBITING BACKING OUT ON ROW].

(5) CONTAINMENT AND STORAGE AREA FOR HAZARDOUS WASTE MATERIALS:

Applicant's revised (2/27/14) application states that "Applicant shall maintain disposal contracts for all hazardous waste." This blanket statement is contradictory to Applicant's representations that NO repair or servicing of mopeds or other motor vehicles shall take place at this site. Hazardous waste disposal of used tires, old motor oils, and cannibalized engine parts is necessary only if repair or servicing of motor vehicles is still contemplated.

The proposed conditional-use restaurant may require disposal of discarded cooking oils if frying is to be performed at restaurant. Applicant has failed to disclose or address the volume of used cooking oils which may be necessary contain and store, or the proposed method for its disposal.

(6) OUTDOOR STORAGE:

Applicant revised (2/27/14) application states that NO outside storage and display of inventory shall occur. This statement is wholly inconsistent with his proposal for "parking 18 mopeds and bikes" in the area previously designated as the "Outdoor Storage Area." Pursuant to Section 108-288 "*Any proposed exterior storage areas shall be located at the rear of the principal structure. Such outside storage area shall be enclosed by a solid wall with solid entrance and exit gates...*".

- D. Applicant's site is not of sufficient size or adequate specifications to accommodate the proposed conditional use restaurant.⁸ Specifically:

⁸ See Exhibit "D" DETAILS OF ADVERSE IMPACTS UPON SURROUNDING NEIGHBORS OF THIS HNC-1 DISTRICT

- (1) LACK OF NECESSARY OFF-STREET PARKING
- (2) DANGEROUS AND UNSAFE EGRESS FROM PARKING LOT
- (3) INABILITY TO COMPLY WITH REQUIRED ON-SITE AMENITIES
- (4) INCREASED AND ADVERSE DENSITY, TRAFFIC, AND INTENSITY OF USE CREATED BY PROPOSED CONDITIONAL-USES.

3. Proper use of mitigative techniques;

- A. Applicant has failed to provide or propose any meaningful mitigation for the odor, noise, pollution, increased traffic, increased trip-generation, intensity of use, increase of density, and the overwhelming parking demands created by his proposed conditional-use restaurant.
- B. Since Applicant's purchase of the property he has improved the exterior appearance of the building. The windows and doors have been replaced and the exterior walls have been stuccoed. Applicant's neighbors have applauded these efforts to improve the exterior, however, "*better-than-it-was*" is not the standard of review for conditional-uses or parking variances.
- C. Applicant's proposed conditional use expansion of a 1,585 sf restaurant is overly aggressive and intrusive for this site. Cosmetic improvements to the building or a landscape plan simply cannot mitigate the permanent and harmful impact such conditional use would impose upon this neighborhood.
- E. Applicant's proposed solutions to mitigate the adverse impacts of the proposed conditional use businesses have resulted in representations and promises which are dismissive or grossly unresponsive to the legitimate concerns of the city and neighbors. Specifically:
 - 1. SOLID WASTE/RECYCLING: Applicant conditional-use application fails to address the total volume of solid waste and recycling from all uses. This site contains 5800 sf of commercial space and 2 residential apartments. Applicant proposes to use a single "roll out" dumpster kept inside the building. Without accurate data of the anticipated volume of solid waste and recycling generated, and the proposed solution for its containment,

storage and disposal, it is impossible for the Planning Department (or the Planning Board and public) to evaluate the sufficiency of the proposal or whether such plan is practical, feasible or even permissible under existing sanitation, health, and fire codes.

Applicant's revised application (revised 2/27/14) provided a site drawing with a single dumpster sitting unscreened in the rear (illegal setback) of the parking lot. Applicant's blanket comment that "Normal service vehicles are anticipated"⁹ fails to address or successfully mitigate these issues.

2. DELIVERIES/LOADING DECK: The proposed 1,585 sf restaurant is intended to operate 7 days per week for approximately 16 hours per day. Multiple trucks shall be required to service and deliver food, beverages and other supplies. Such deliveries shall be made by refrigerated trucks idling on Catherine or White Streets in the ROW, or by using the parking lot for deliveries, which are then transported by hand cart to the sidewalk. All deliveries via the parking lot would result in the delivery trucks backing out (illegally) into the on-going traffic of White Street. Applicant's comment that "Normal service vehicles are anticipated"¹⁰ wholly fails to address or offer mitigation of this serious safety issue.

3. TRAFFIC/TRIP GENERATION: Applicant commissioned a "trip generation analysis"¹¹ concerning the traffic impact created by the proposed conditional uses. Applicant's own expert estimated that the restaurant would generate **141 daily 2-way trips**. Applicant's revised application (revised 2/27/14) states that a "high turn-over" restaurant would generate **120+ daily 2-way trips**. These traffic/trip impacts are in addition to the daily round-trips generated by the Applicant's other intended uses: 2-residential apartments (**13.4 daily 2-way trips**);

⁹ See revised 2/27/14 application, page 3 section (1) e.

¹⁰ See revised 2/27/14 application, page 3 section (1) e.

¹¹ See "1200 White Street Trip Generation Analysis" prepared by David Plummer & Associates and submitted by Applicant

professional office **(3.42 daily2-way trips)**. Applicant has offered no mitigation proposal for the severe increase in traffic created by the proposed conditional-use restaurant.

4. SCALE AND SCOPE OF CONDITIONAL USE: Applicant's most recent "mitigation" proposal does not reduce the number of seats, limit the hours of operation, or offer any downsizing of the food service activities intended at the site. Incredibly, Applicant's "mitigation plan" simply reduces the consumption area of the 15 seats from 640 sf to 225 sf. It defies logic and common sense that 15 patrons sitting in 15 chairs crammed within 225 sf of consumption space creates any less parking impact in the neighborhood than 15 patrons sitting in 15 chairs within 640 sf. of consumption space. Applicant's "mitigation" plan is for the sole purpose of reducing the number of parking spaces required for this conditional use from 15 spaces to 5 spaces (640sf x 1 per 45sf vs 225sf x 1 per 45sf). It is NOT proposed for the intention of mitigating the very real and adverse impacts the conditional use restaurant would have on the surrounding neighborhood.

4. **Hazardous waste:**

- A. Applicant's previous application stated that "for the short time between acquisition of any hazardous waste materials and their disposal, storage of the items will be **inside the premises in fire resistant cabinets.**"¹²
- C. Applicant has withdrawn his request to repair and service mopeds, motorcycles and other motor vehicles, however, hazardous waste of certain restaurant by product shall be necessary. Applicant's blanket comment that "Normal service vehicles are anticipated."¹³ fails to successfully address or mitigate this issue of hazardous waste disposal. Without such data, it is impossible to determine (and unfair to the Planning Board and the public) to evaluate the impact of Applicant's

¹² See page 16 of Applicant's Second Amended Addendum to Amended Conditional Use Application

¹³ See revised 2/27/14 application, page 3 section (1) e.

conditional use, or to determine if containment, storage and disposal of hazardous waste materials at this site are practical, feasible or even permissible under existing sanitation, health, and fire codes.

5. **Compliant with applicable laws and ordinances:**

- A. Applicant is non-compliant with applicable laws and ordinances. For the last 15 months, Applicant has operated a moped and motorcycle rental business and an engine and motor vehicle repair shop at the site without valid licensing or any conditional-use approval by this board. In January 2014, the code enforcement office (finally) required the Applicant to cease such operations.
- B. Applicant has underestimated the parking requirements of the proposed conditional-use restaurant in each and every one of his amended and revised applications. Without full and accurate disclosure by the Applicant of the site's floor areas, it is impossible to fairly evaluate the parking impact of the proposed project or the accurate number of parking spaces required or necessary for variance approval.
- C. Applicant's revised application (revised 2/27/14) omits any "Outside Storage Area", however Applicant proposes to use this same 450sf outside area for "parking of 18 mopeds and bikes." Applicant's business practices at this site (and for many years at his previous location on the corner of Whitehead and Southard Streets) involved cat-and-mouse tactics with the city's code enforcement department concerning Applicant's repeated violations for displaying inventory in the parking lot and in the city ROW. Applicant's use of the parking lot for display of his own merchandise and inventory is prohibited. See also *Section 108-278 (Appearance of Site and Structures)*¹⁴ and *Section 108-573 (Special provisions within historic*

¹⁴ See *Section 108-278 (Appearance of Site and Structures)*, which provides: "**Within all zoning districts within the city, the appearance of a site and structures shall be coordinated for the purpose of creating a pleasing and harmonious overall environment. The choice of site improvements shall be commensurate with the objectives of the subject use and considering impact on surrounding properties and transportation corridors.**" [Emphasis added]

*commercial pedestrian-oriented area.)*¹⁵

D. CONCLUSION

Applicant has failed to meet the criteria for approval of the proposed conditional use restaurant. The parking issues, noise, odors, pollution, increase of density, the intensity of use, and the excessive traffic and trip generation created by the proposed conditional-use would permanently and adversely change the character of this mixed-use neighborhood and would impose unnecessary, permanent and harmful burdens on the surrounding residential and business neighbors and the walking and driving public.

Pursuant to Section 122-61 (Purpose and Intent) “... a conditional use **shall only be permitted on specific sites where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity.**”

Applicant is simply unable to meet this criteria.

White Street is flourishing. All of the existing and newly-introduced businesses are light-commercial (business and professional offices and light retail shops). The Applicant should respect his neighbors and the zoning contemplated by the city’s land development regulations and use his site for permitted-by-right businesses that do not require a parking variance, and do not detrimentally impact his residential and business neighbors.

The Planning Department previously recommended DENIAL of all conditional uses proposed at this site. It has recently recommended APPROVAL, but with myriad “conditions” which, no matter how well intentioned, will not operate to make this project compatible with the surrounding neighbors.

¹⁵ Section 108-573 (Special provisions within historic commercial pedestrian-oriented area.)“... Any preexisting off-street parking serving the structure must be maintained to service the new use. Similarly, preexisting parking shall not be used as a site for additional floor area unless the total off-street parking required pursuant to this article is made available to accommodate the existing and new proposed floor area.”

RE: 1200-1212 White Street/Victor Mills
Objection to Revised (2/27/14) Conditional Use Application

The residential and commercial neighbors joining in this objection live, work and own properties **within the immediate vicinity of the site**. Their properties have a combined assessed value of over \$7.8 million. They are the most personally and (financially) adversely impacted by the proposed variance and conditional use applications.

We respectfully request the Planning Board to uphold the pertinent sections of the Land Development Regulations and to follow the Planning Department's previous recommendations for DENIAL of the applications for conditional use and parking variance.

Thank you for your consideration of these matters of great and lasting importance to our neighborhood and to this City.

Respectfully submitted on behalf of above-named concerned neighbors,

Linda B. Wheeler, Esq.
Attorney at Law
1213 White Street
Key West, Florida 33040
Telephone 305 294-0683
Facsimile 305 296-2155
Mobile 305/509-2145
email: lwheeleraal@earthlink.net

**OBJECTION TO CONDITIONAL USE
Restaurant (15 seats)**

The below named neighbors join in this Objection to Conditional Use Application:

Linda Wheeler	1213 White Street
Robert Kruse	1213 White Street
Sean Cowles	1216 White Street
Adele Williams Cowles	1216 White Street
Ross and Jodie Williams	1217 White Street
Tim and Anne Sullivan	1204-1206 Duncan Street
Robert Koske	1208 Duncan Street
Barbara Haveland	1209 Duncan Street
Brian Schmitt d/b/a Coldwell Banker Schmitt	1201-1211 White Street
Lynn Kaufelt and David Kaufelt	1120 White Street
Dr. Ana Marie Camarotti	1220 Georgia Street
Cynthia Vinson Dean	1327 Duncan Street
Mrs. Valter Vinson	1215 Georgia Street
Robert Silver	1327 Duncan Street
Candida Andriole-Cobb	1016 Varela Street
Georgia and Thomas Favelli	1108 White Street
Bill and Ann Lorraine	1028 Catherine Street
Ron Oldham and Patricia Kennedy	1120 Catherine Street

Contents:

- A. Background Statement
- B. STANDARD OF REVIEW
- C. ARGUMENTS FOR DENIAL OF CONDITIONAL-USE APPLICATION
- D. CONCLUSION
- E. EXHIBITS

A. Operative Facts Entirely Uncontested:

1. The site is located in the HARC district. It is zoned HNC-1, designated for residential and light-commercial mixed use.
2. The site consists of a single building located on the corner of White and Catherine Streets. The building contains approximately 4,875 sf of commercial space on the ground floor and 2 residential apartments on the 2nd floor (1,198 sf).
3. The adjacent parking lot is located mid-block. It will accommodate parking for a maximum of 3 vehicles.
4. The site previously hosted a walk-up coffee shop window (non-conforming use with “no seats” occupational license); a bakery (non-conforming use abandoned over 4 years ago¹); and a retail tile shop (permitted-use vacant for over 10 years).
5. Applicant’s applications for parking variance and conditional uses have been pending since September 2012. During the pendency of the case, Applicant has amended or revised his applications at various times - including April 1, 2014. Other hearings before the planning board were September 19, 2013 (tabled after approximately 2 hours of testimony and public comments) and March 20, 2014 (tabled after approximately 1.5 hours). Among Applicant’s more recent revisions were the withdrawal of two conditional-use businesses earlier proposed for this site (moped rentals and service/repair shop).
6. Applicant’s current application (revised 4/1/14) proposes the following uses:

15-seat Restaurant (1,585sf) (conditional use)
Retail sales of mopeds (2745 sf) (conditional use if floor area is over 2500sf)
Professional offices (426sf) (permitted use)
7. Each proposed use at this site must conform to the current land development

¹ See Section 122-30 (Abandonment of nonconforming use) which states, in pertinent part: “If a nonconforming use ceases.... any and every future use of the building or structure and/or premise shall be in conformity with the use sections of the land development regulations..... A nonconforming use shall be considered abandoned when such use has ceased for a period of 24 months.....”

regulations, including parking requirements, and other site amenities (waste bin screening, landscaping, open space, storm water management, ADA access, lighting, signage, etc.)²

8. Applicant's existing parking lot must be maintained in perpetuity as a parking lot.³
9. The Applicant has calculated that 18 parking spaces are required for Applicant's proposed mix of permitted-by-right and conditional-use businesses at this site.
10. Applicant's site can accommodate a total of 3 parking spaces.
11. Without any parking variance or any conditional-use approval, Applicant may enjoy 100% **reasonable economic use** of this site by operation (or lease) of permitted-by-right retail sales shop(s) and professional office(s).
12. Mr. Mills may use 100% of his building for professional office space (any number of offices, of unrestricted sizes) , as well as lease the two (2) apartments on the second floor, without triggering any additional parking requirements or creating any need for a parking variance.⁴
13. Professional offices and retail sales stores (less than 2500sf) are "**reasonable uses**" for Applicant's property in this HNC-1 district. These "permitted-by-right" uses are codified under the current LDR's (Section 122-807 (5) and (6)).

² Sec. 108-571: "Parking shall be provided in all districts at the time any building or structure is erected or enlarged or increased in capacity by a change of use or the addition of dwelling units, transient units, floor area, seats, beds, employees or other factors impacting parking demand as stated in this article."

Sec. 108-575(5): "Applicability of standards to expanding uses. Whenever a building or use is enlarged in floor area, number of dwelling units, seating capacity or in any other manner so as to create a need for a greater number of parking spaces than that existing, such spaces shall be provided in accordance with this section. Any parking deficiency shall be brought into conformity concurrently with the enlargement or change of use."

³ Section 108-573 (c) "Any preexisting off-street parking serving the structure must be maintained to service the new use."

⁴ See memo from city planning director Donald Craig dated 4/4/14 and city planner Kevin Bond dated 4/15/14, attached to Exhibits.

14. The entire 1200 block of White Street contains approximately 19 on-street parking spaces.
15. It is only due to Applicant's proposal to introduce conditional-use businesses which has resulted in the pending applications for conditional uses and a 15-space parking variance.⁵

B. STANDARD FOR REVIEW:

1. Section 122-61 (Purpose and Intent) provides that: "*... a conditional use **shall only be permitted** on specific sites where the proposed use may be adequately accommodated **without generating adverse impacts on properties and land uses within the immediate vicinity.**"*
2. Section 122-62 (Criteria for Conditional Use Review and Approval) (c) (1-6) provides that: "*Applications for a conditional use **shall clearly demonstrate the following:***
 - (1) *Land Use Compatibility;*
 - (2) *Sufficient size, adequate specifications and infrastructure to accommodate proposed use;*
 - (3) *Proper use of mitigative techniques;*
 - (4) *Hazardous waste;*
 - (5) *Compliant with applicable laws and ordinances;*
 - (6) *Additional criteria applicable to specific land uses.*

C. Argument for **DENIAL** OF Application for Conditional Use:

Applicant's proposed restaurant use cannot be adequately accommodated at this site without generating severe and permanent adverse impacts on properties and land uses within the immediate vicinity.

⁵ See city planner Kevin Bond's memo dated 4/15/14: "*It is Mr. Mills's request for restaurant use that is triggering the need to bring his parking into compliance with the code, and thus his variance request. The restaurant use has a higher parking requirement than retail or office, which is what triggers bringing parking into compliance.*"

1. Restaurants are not a permitted-by-right use in this residential and light commercial mixed-use district. (The restaurants operating in the 1300 & 1400 blocks of White Street have long-standing “grandfathered” parking and use exemptions not applicable to this site or this Applicant.)
2. Applicant’s proposed conditional use would introduce a 15-seat, 1,585 sf, full-service restaurant (breakfast, lunch and dinner), open 7 days a week between 7am-11pm (weekends) and 7am-9pm (weekdays).
3. Applicant’s site is insufficient to accommodate the amenities required or the parking demands generated by the proposed restaurant use.
4. The parking demands generated by Applicant’s proposed businesses are 18 spaces. The Applicant has 3 off-street spaces. The entire 1200 block of White Street contains only 19 spaces.
5. Introduction of such a high density, high traffic use, without adequate off-street parking, would effectively deprive each and every property owner in the 1200 block of White Street of the existing public parking upon which the residents now depend for their convenience and existing business now depend for servicing their existing customers.
6. If Applicant’s proposed conditional-use restaurant were introduced into this district, surrounding property owners would experience permanent loss of quality-of-life rights and diminution of their property values.
7. The proposed full-service restaurant would greatly increase density, intensity of use, and traffic at this site. 10+ employees will be present to service all of the uses proposed for this site. 127 daily trips are estimated for a high-turnover restaurant. (Compare this with 44 daily for retail space or 11 daily trips for offices.
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- B. Applicant cannot provide the off-street spaces for the parking requirements his proposed conditional-use restaurant would generate. His expansion of a non-conforming "no-seat" coffee window into a 1,585sf restaurant would create increased traffic, increased intensity and increased density of use - all of which is intrusive, incompatible, and materially adverse to the surrounding neighbors.

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D. This site is zoned for residential and light-commercial. Applicant is permitted-by-right to operate retail sales and professional offices at this site without any necessity for a parking variance. Applicant's proposed conditional-use would intensify use and increase density at this site by converting approximately 1,585 sf of retail/office space into a restaurant which generates at least twice as many daily trips and almost twice the parking demands. Additionally, the proposed use would introduce issues of odor, noise, pollution, litter, sanitation and disposal of raw food, added volumes of solid waste, and disposal of used cooking oils which are not associated with retail sales or professional office space.

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B. Applicant's proposed conditional-use business cannot be adequately accommodated at this site. The size and shape of the parking lot do not allow for drive-through ingress and egress. Only 3 parking spaces can be accommodated on this lot. The parking lot must also provide the following amenities or other functions:

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Subject property is 14" above grade which necessitates installation of a handicap ramp and walk over a portion of the parking lot.

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There is currently 1 propane tank sitting unscreened at the rear of the parking lot (non-conforming set-back). Applicant's revised application fails to disclose or address the volume of propane gas, the number of canisters, or the frequency of servicing which will be necessary to support the proposed 1,585 sf restaurant operational for approximately 16 hours per day, 7 days a week. Applicant's blanket representation that "Normal office, retail, and restaurant service vehicles are anticipated⁷" fails to adequately address or reasonably satisfy the criteria required for this proposed conditional use. Additionally, Applicant provides no plan or proposal for the location, screening and method of servicing such gas tanks. To fill the existing propane tank, a propane delivery truck must idle in the ROW on White Street and drag its hose to the rear of the parking lot, or alternately, the propane delivery truck must pull into the driveway and then (illegally)

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back out into the ROW on White Street. Both delivery methods pose serious safety issues for pedestrians and the driving public and violate. [INSERT CITATION PROHIBITING BACKING OUT ON ROW].

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The proposed conditional-use restaurant may require disposal of discarded cooking oils if frying is to be performed at restaurant. Applicant has failed to disclose or address the volume of used cooking oils which may be necessary contain and store, or the proposed method for its disposal.

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Applicant revised (2/27/14) application states that NO outside storage and display of inventory shall occur. This statement is wholly inconsistent with his proposal for "parking 18 mopeds and bikes" in the area previously designated as the "Outdoor Storage Area." Pursuant to Section 108-288 *"Any proposed exterior storage areas shall be located at the rear of the principal structure. Such outside storage area shall be enclosed by a solid wall with solid entrance and exit gates..."*.

- D. Applicant's site is not of sufficient size or adequate specifications to accommodate the proposed conditional use restaurant.⁸ Specifically:

⁸ See Exhibit "D" DETAILS OF ADVERSE IMPACTS UPON SURROUNDING NEIGHBORS OF THIS HNC-1 DISTRICT

- (1) LACK OF NECESSARY OFF-STREET PARKING
- (2) DANGEROUS AND UNSAFE EGRESS FROM PARKING LOT
- (3) INABILITY TO COMPLY WITH REQUIRED ON-SITE AMENITIES
- (4) INCREASED AND ADVERSE DENSITY, TRAFFIC, AND INTENSITY OF USE CREATED BY PROPOSED CONDITIONAL-USES.

3. Proper use of mitigative techniques;

- A. Applicant has failed to provide or propose any meaningful mitigation for the odor, noise, pollution, increased traffic, increased trip-generation, intensity of use, increase of density, and the overwhelming parking demands created by his proposed conditional-use restaurant.
- B. Since Applicant's purchase of the property he has improved the exterior appearance of the building. The windows and doors have been replaced and the exterior walls have been stuccoed. Applicant's neighbors have applauded these efforts to improve the exterior, however, "*better-than-it-was*" is not the standard of review for conditional-uses or parking variances.
- C. Applicant's proposed conditional use expansion of a 1,585 sf restaurant is overly aggressive and intrusive for this site. Cosmetic improvements to the building or a landscape plan simply cannot mitigate the permanent and harmful impact such conditional use would impose upon this neighborhood.
- E. Applicant's proposed solutions to mitigate the adverse impacts of the proposed conditional use businesses have resulted in representations and promises which are dismissive or grossly unresponsive to the legitimate concerns of the city and neighbors. Specifically:
 - 1. SOLID WASTE/RECYCLING: Applicant conditional-use application fails to address the total volume of solid waste and recycling from all uses. This site contains 5800 sf of commercial space and 2 residential apartments. Applicant proposes to use a single "roll out" dumpster kept inside the building. Without accurate data of the anticipated volume of solid waste and recycling generated, and the proposed solution for its containment,

storage and disposal, it is impossible for the Planning Department (or the Planning Board and public) to evaluate the sufficiency of the proposal or whether such plan is practical, feasible or even permissible under existing sanitation, health, and fire codes.

Applicant's revised application (revised 2/27/14) provided a site drawing with a single dumpster sitting unscreened in the rear (illegal setback) of the parking lot. Applicant's blanket comment that "Normal service vehicles are anticipated"⁹ fails to address or successfully mitigate these issues.

2. DELIVERIES/LOADING DECK: The proposed 1,585 sf restaurant is intended to operate 7 days per week for approximately 16 hours per day. Multiple trucks shall be required to service and deliver food, beverages and other supplies. Such deliveries shall be made by refrigerated trucks idling on Catherine or White Streets in the ROW, or by using the parking lot for deliveries, which are then transported by hand cart to the sidewalk. All deliveries via the parking lot would result in the delivery trucks backing out (illegally) into the on-going traffic of White Street. Applicant's comment that "Normal service vehicles are anticipated"¹⁰ wholly fails to address or offer mitigation of this serious safety issue.

3. TRAFFIC/TRIP GENERATION: Applicant commissioned a "trip generation analysis"¹¹ concerning the traffic impact created by the proposed conditional uses. Applicant's own expert estimated that the restaurant would generate **141 daily 2-way trips**. Applicant's revised application (revised 2/27/14) states that a "high turn-over" restaurant would generate **120+ daily 2-way trips**. These traffic/trip impacts are in addition to the daily round-trips generated by the Applicant's other intended uses: 2-residential apartments (**13.4 daily 2-way trips**);

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professional office (**3.42 daily2-way trips**). Applicant has offered no mitigation proposal for the severe increase in traffic created by the proposed conditional-use restaurant.

4. SCALE AND SCOPE OF CONDITIONAL USE: Applicant's most recent "mitigation" proposal does not reduce the number of seats, limit the hours of operation, or offer any downsizing of the food service activities intended at the site. Incredibly, Applicant's "mitigation plan" simply reduces the consumption area of the 15 seats from 640 sf to 225 sf. It defies logic and common sense that 15 patrons sitting in 15 chairs crammed within 225 sf of consumption space creates any less parking impact in the neighborhood than 15 patrons sitting in 15 chairs within 640 sf. of consumption space. Applicant's "mitigation" plan is for the sole purpose of reducing the number of parking spaces required for this conditional use from 15 spaces to 5 spaces (640sf x 1 per 45sf vs 225sf x 1 per 45sf). It is NOT proposed for the intention of mitigating the very real and adverse impacts the conditional use restaurant would have on the surrounding neighborhood.

4. **Hazardous waste:**

- A. Applicant's previous application stated that "for the short time between acquisition of any hazardous waste materials and their disposal, storage of the items will be **inside the premises in fire resistant cabinets.**"¹²
- C. Applicant has withdrawn his request to repair and service mopeds, motorcycles and other motor vehicles, however, hazardous waste of certain restaurant by product shall be necessary. Applicant's blanket comment that "Normal service vehicles are anticipated."¹³ fails to successfully address or mitigate this issue of hazardous waste disposal. Without such data, it is impossible to determine (and unfair to the Planning Board and the public) to evaluate the impact of Applicant's

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conditional use, or to determine if containment, storage and disposal of hazardous waste materials at this site are practical, feasible or even permissible under existing sanitation, health, and fire codes.

5. **Compliant with applicable laws and ordinances:**

- A. Applicant is non-compliant with applicable laws and ordinances. For the last 15 months, Applicant has operated a moped and motorcycle rental business and an engine and motor vehicle repair shop at the site without valid licensing or any conditional-use approval by this board. In January 2014, the code enforcement office (finally) required the Applicant to cease such operations.
- B. Applicant has underestimated the parking requirements of the proposed conditional-use restaurant in each and every one of his amended and revised applications. Without full and accurate disclosure by the Applicant of the site's floor areas, it is impossible to fairly evaluate the parking impact of the proposed project or the accurate number of parking spaces required or necessary for variance approval.
- C. Applicant's revised application (revised 2/27/14) omits any "Outside Storage Area", however Applicant proposes to use this same 450sf outside area for "parking of 18 mopeds and bikes." Applicant's business practices at this site (and for many years at his previous location on the corner of Whitehead and Southard Streets) involved cat-and-mouse tactics with the city's code enforcement department concerning Applicant's repeated violations for displaying inventory in the parking lot and in the city ROW. Applicant's use of the parking lot for display of his own merchandise and inventory is prohibited. See also *Section 108-278 (Appearance of Site and Structures)*¹⁴ and *Section 108-573 (Special provisions within historic*

¹⁴ See *Section 108-278 (Appearance of Site and Structures)*, which provides: **"Within all zoning districts within the city, the appearance of a site and structures shall be coordinated for the purpose of creating a pleasing and harmonious overall environment. The choice of site improvements shall be commensurate with the objectives of the subject use and considering impact on surrounding properties and transportation corridors."** [Emphasis added]

*commercial pedestrian-oriented area.)*¹⁵

D. CONCLUSION

Applicant has failed to meet the criteria for approval of the proposed conditional use restaurant. The parking issues, noise, odors, pollution, increase of density, the intensity of use, and the excessive traffic and trip generation created by the proposed conditional-use would permanently and adversely change the character of this mixed-use neighborhood and would impose unnecessary, permanent and harmful burdens on the surrounding residential and business neighbors and the walking and driving public.

Pursuant to Section 122-61 (Purpose and Intent) “... a conditional use **shall only be permitted on specific sites where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity.**”

Applicant is simply unable to meet this criteria.

White Street is flourishing. All of the existing and newly-introduced businesses are light-commercial (business and professional offices and light retail shops). The Applicant should respect his neighbors and the zoning contemplated by the city’s land development regulations and use his site for permitted-by-right businesses that do not require a parking variance, and do not detrimentally impact his residential and business neighbors.

The Planning Department previously recommended DENIAL of all conditional uses proposed at this site. It has recently recommended APPROVAL, but with myriad “conditions” which, no matter how well intentioned, will not operate to make this project compatible with the surrounding neighbors.

¹⁵ Section 108-573 (Special provisions within historic commercial pedestrian-oriented area.)“... Any preexisting off-street parking serving the structure must be maintained to service the new use. Similarly, preexisting parking shall not be used as a site for additional floor area unless the total off-street parking required pursuant to this article is made available to accommodate the existing and new proposed floor area.”

RE: 1200-1212 White Street/Victor Mills
Objection to Revised (2/27/14) Conditional Use Application

The residential and commercial neighbors joining in this objection live, work and own properties **within the immediate vicinity of the site**. Their properties have a combined assessed value of over \$7.8 million. They are the most personally and (financially) adversely impacted by the proposed variance and conditional use applications.

We respectfully request the Planning Board to uphold the pertinent sections of the Land Development Regulations and to follow the Planning Department's previous recommendations for DENIAL of the applications for conditional use and parking variance.

Thank you for your consideration of these matters of great and lasting importance to our neighborhood and to this City.

Respectfully submitted on behalf of above-named concerned neighbors,

Linda B. Wheeler, Esq.
Attorney at Law
1213 White Street
Key West, Florida 33040
Telephone 305 294-0683
Facsimile 305 296-2155
Mobile 305/509-2145
email: lwheeleraal@earthlink.net

**OBJECTION TO CONDITIONAL USE
Restaurant (15 seats)**

The below named neighbors join in this Objection to Conditional Use Application:

Linda Wheeler	1213 White Street
Robert Kruse	1213 White Street
Sean Cowles	1216 White Street
Adele Williams Cowles	1216 White Street
Ross and Jodie Williams	1217 White Street
Tim and Anne Sullivan	1204-1206 Duncan Street
Robert Koske	1208 Duncan Street
Barbara Haveland	1209 Duncan Street
Brian Schmitt d/b/a Coldwell Banker Schmitt	1201-1211 White Street
Lynn Kaufelt and David Kaufelt	1120 White Street
Dr. Ana Marie Camarotti	1220 Georgia Street
Cynthia Vinson Dean	1327 Duncan Street
Mrs. Valter Vinson	1215 Georgia Street
Robert Silver	1327 Duncan Street
Candida Andriole-Cobb	1016 Varela Street
Georgia and Thomas Favelli	1108 White Street
Bill and Ann Lorraine	1028 Catherine Street
Ron Oldham and Patricia Kennedy	1120 Catherine Street

Contents:

- A. Background Statement
- B. STANDARD OF REVIEW
- C. ARGUMENTS FOR DENIAL OF CONDITIONAL-USE APPLICATION
- D. CONCLUSION
- E. EXHIBITS

A. Operative Facts Entirely Uncontested:

1. The site is located in the HARC district. It is zoned HNC-1, designated for residential and light-commercial mixed use.
2. The site consists of a single building located on the corner of White and Catherine Streets. The building contains approximately 4,875 sf of commercial space on the ground floor and 2 residential apartments on the 2nd floor (1,198 sf).
3. The adjacent parking lot is located mid-block. It will accommodate parking for a maximum of 3 vehicles.
4. The site previously hosted a walk-up coffee shop window (non-conforming use with “no seats” occupational license); a bakery (non-conforming use abandoned over 4 years ago¹); and a retail tile shop (permitted-use vacant for over 10 years).
5. Applicant’s applications for parking variance and conditional uses have been pending since September 2012. During the pendency of the case, Applicant has amended or revised his applications at various times - including April 1, 2014. Other hearings before the planning board were September 19, 2013 (tabled after approximately 2 hours of testimony and public comments) and March 20, 2014 (tabled after approximately 1.5 hours). Among Applicant’s more recent revisions were the withdrawal of two conditional-use businesses earlier proposed for this site (moped rentals and service/repair shop).
6. Applicant’s current application (revised 4/1/14) proposes the following uses:

15-seat Restaurant (1,585sf) (conditional use)
Retail sales of mopeds (2745 sf) (conditional use if floor area is over 2500sf)
Professional offices (426sf) (permitted use)
7. Each proposed use at this site must conform to the current land development

¹ See Section 122-30 (Abandonment of nonconforming use) which states, in pertinent part: “If a nonconforming use ceases.... any and every future use of the building or structure and/or premise shall be in conformity with the use sections of the land development regulations..... A nonconforming use shall be considered abandoned when such use has ceased for a period of 24 months.....”

regulations, including parking requirements, and other site amenities (waste bin screening, landscaping, open space, storm water management, ADA access, lighting, signage, etc.)²

8. Applicant's existing parking lot must be maintained in perpetuity as a parking lot.³
9. The Applicant has calculated that 18 parking spaces are required for Applicant's proposed mix of permitted-by-right and conditional-use businesses at this site.
10. Applicant's site can accommodate a total of 3 parking spaces.
11. Without any parking variance or any conditional-use approval, Applicant may enjoy 100% **reasonable economic use** of this site by operation (or lease) of permitted-by-right retail sales shop(s) and professional office(s).
12. Mr. Mills may use 100% of his building for professional office space (any number of offices, of unrestricted sizes) , as well as lease the two (2) apartments on the second floor, without triggering any additional parking requirements or creating any need for a parking variance.⁴
13. Professional offices and retail sales stores (less than 2500sf) are "**reasonable uses**" for Applicant's property in this HNC-1 district. These "permitted-by-right" uses are codified under the current LDR's (Section 122-807 (5) and (6)).

² Sec. 108-571: "Parking shall be provided in all districts at the time any building or structure is erected or enlarged or increased in capacity by a change of use or the addition of dwelling units, transient units, floor area, seats, beds, employees or other factors impacting parking demand as stated in this article."

Sec. 108-575(5): "Applicability of standards to expanding uses. Whenever a building or use is enlarged in floor area, number of dwelling units, seating capacity or in any other manner so as to create a need for a greater number of parking spaces than that existing, such spaces shall be provided in accordance with this section. Any parking deficiency shall be brought into conformity concurrently with the enlargement or change of use."

³ Section 108-573 (c) "Any preexisting off-street parking serving the structure must be maintained to service the new use."

⁴ See memo from city planning director Donald Craig dated 4/4/14 and city planner Kevin Bond dated 4/15/14, attached to Exhibits.

14. The entire 1200 block of White Street contains approximately 19 on-street parking spaces.
15. It is only due to Applicant's proposal to introduce conditional-use businesses which has resulted in the pending applications for conditional uses and a 15-space parking variance.⁵

B. STANDARD FOR REVIEW:

1. Section 122-61 (Purpose and Intent) provides that: "*... a conditional use **shall only be permitted** on specific sites where the proposed use may be adequately accommodated **without generating adverse impacts on properties and land uses within the immediate vicinity.**"*
2. Section 122-62 (Criteria for Conditional Use Review and Approval) (c) (1-6) provides that: "*Applications for a conditional use **shall clearly demonstrate the following:***
 - (1) *Land Use Compatibility;*
 - (2) *Sufficient size, adequate specifications and infrastructure to accommodate proposed use;*
 - (3) *Proper use of mitigative techniques;*
 - (4) *Hazardous waste;*
 - (5) *Compliant with applicable laws and ordinances;*
 - (6) *Additional criteria applicable to specific land uses.*

C. Argument for **DENIAL** OF Application for Conditional Use:

Applicant's proposed restaurant use cannot be adequately accommodated at this site without generating severe and permanent adverse impacts on properties and land uses within the immediate vicinity.

⁵ See city planner Kevin Bond's memo dated 4/15/14: "*It is Mr. Mills's request for restaurant use that is triggering the need to bring his parking into compliance with the code, and thus his variance request. The restaurant use has a higher parking requirement than retail or office, which is what triggers bringing parking into compliance.*"

1. Restaurants are not a permitted-by-right use in this residential and light commercial mixed-use district. (The restaurants operating in the 1300 & 1400 blocks of White Street have long-standing “grandfathered” parking and use exemptions not applicable to this site or this Applicant.)
2. Applicant’s proposed conditional use would introduce a 15-seat, 1,585 sf, full-service restaurant (breakfast, lunch and dinner), open 7 days a week between 7am-11pm (weekends) and 7am-9pm (weekdays).
3. Applicant’s site is insufficient to accommodate the amenities required or the parking demands generated by the proposed restaurant use.
4. The parking demands generated by Applicant’s proposed businesses are 18 spaces. The Applicant has 3 off-street spaces. The entire 1200 block of White Street contains only 19 spaces.
5. Introduction of such a high density, high traffic use, without adequate off-street parking, would effectively deprive each and every property owner in the 1200 block of White Street of the existing public parking upon which the residents now depend for their convenience and existing business now depend for servicing their existing customers.
6. If Applicant’s proposed conditional-use restaurant were introduced into this district, surrounding property owners would experience permanent loss of quality-of-life rights and diminution of their property values.
7. The proposed full-service restaurant would greatly increase density, intensity of use, and traffic at this site. 10+ employees will be present to service all of the uses proposed for this site. 127 daily trips are estimated for a high-turnover restaurant. (Compare this with 44 daily for retail space or 11 daily trips for offices.
8. The proposed conditional use restaurant would also create serious and dangerous safety issues to local pedestrians and the driving public. There is no loading zone (and introduction of one would only further diminish the limited street parking now available). Large refrigerated food, beverage and other delivery trucks would be required to idle in the ROW of White Street or Catherine

Street, or more dangerously, use the driveway and (illegally) back out into the ongoing traffic ROW of White Street.

9. Applicant's introduction of the conditional use restaurant would also create increased noise, odor, litter, pollution, traffic congestion and other adverse and harmful effects to the neighboring properties.

Applicant has failed to satisfy the Criteria for Review and Approval of the proposed conditional uses pursuant to Section 122-62 (c). Specifically:

1. **Land Use Compatibility:**

- A. The proposed 15-seat restaurant is described as an "expansion" of the walk up sidewalk window.⁶ The previous sidewalk walk-up window was a non-conforming use, holding an occupational license for "no-seats" food service. The previous walk-up window created a public nuisance for years at this site. Unlike other walk-up coffee shop windows in the area, it operated at night, sold beer (illegally), engendered drinking in public, street brawls, loud music, urination in public, and other disruptive activities. Its negative atmosphere prevented residents from safely walking in front of the establishment. When Applicant was asked why he allowed the continuation of this disturbing business, he told his neighbor that he needed to collect his rents and that if there were any disturbances at night they "should just call the police." Applicant allowed these disturbances to continue until he began renovations of the building. The neighbors have little confidence that Applicant would be any more responsive to the disruptions inherent with operation of full-service 1,585 sf food service establishment.
- B. Applicant cannot provide the off-street spaces for the parking requirements his proposed conditional-use restaurant would generate. His expansion of a non-conforming "no-seat" coffee window into a 1,585sf restaurant would create increased traffic, increased intensity and increased density of use - all of which is intrusive, incompatible, and materially adverse to the surrounding neighbors.

⁶ See Applicant's Second Amended Addendum to Amended Conditional Use Application dated November 15, 2013.

D. This site is zoned for residential and light-commercial. Applicant is permitted-by-right to operate retail sales and professional offices at this site without any necessity for a parking variance. Applicant's proposed conditional-use would intensify use and increase density at this site by converting approximately 1,585 sf of retail/office space into a restaurant which generates at least twice as many daily trips and almost twice the parking demands. Additionally, the proposed use would introduce issues of odor, noise, pollution, litter, sanitation and disposal of raw food, added volumes of solid waste, and disposal of used cooking oils which are not associated with retail sales or professional office space.

2. **Sufficient size, adequate specifications and infrastructure to accommodate proposed use:**

A. Applicant's proposed conditional-use restaurant materially expands floor area and the intensity of use at this site. Applicant's site is without adequate size or infrastructure to accommodate this increased intensity of use. Applicant's surrounding neighbors would bear the burden entirely of these permanent and adverse consequences.

B. Applicant's proposed conditional-use business cannot be adequately accommodated at this site. The size and shape of the parking lot do not allow for drive-through ingress and egress. Only 3 parking spaces can be accommodated on this lot. The parking lot must also provide the following amenities or other functions:

(1) **HANDICAP ACCESS RAMP AND PAVED WALKWAY:**

Subject property is 14" above grade which necessitates installation of a handicap ramp and walk over a portion of the parking lot.

(2) **STORM WATER DRAINAGE COLLECTION:**

The parking lot is 100% impermeable surface. An exfiltration trench or drain field for retention of rainfall is required. During the pendency of these applications, Applicant (without HARC approval or issuance of a building permit-) removed a masonry wall separating the parking lot from the neighbor's residence. The parking lot is 14" above

grade. Removal of the existing retaining wall now subjects the neighbor's residence to potential flooding until this issue is satisfactorily resolved.

(3) STORAGE OF SOLID WASTE AND RECYCLING BINS:

There is currently 1 front-end loaded dumpster sitting unscreened in the middle of the parking lot. Un-contained construction debris and trailers of mopeds and cannibalized motor parts have occupied the parking lot for well over 1 year. Waste and recycling bins for the upstairs apartments are permanently (and illegally) housed the Catherine Street sidewalk. (*Section 108-279 requires that "All refuse and waste storage areas shall be screened from adjacent properties and public ways by appropriate fences, walls or landscaping. Front-end loaded refuse containers shall also be required to be screened by vegetation or structural means to shield an unsightly condition."*)

(4) PROPANE-GAS STORAGE TANK:

There is currently 1 propane tank sitting unscreened at the rear of the parking lot (non-conforming set-back). Applicant's revised application fails to disclose or address the volume of propane gas, the number of canisters, or the frequency of servicing which will be necessary to support the proposed 1,585 sf restaurant operational for approximately 16 hours per day, 7 days a week. Applicant's blanket representation that "Normal office, retail, and restaurant service vehicles are anticipated⁷" fails to adequately address or reasonably satisfy the criteria required for this proposed conditional use. Additionally, Applicant provides no plan or proposal for the location, screening and method of servicing such gas tanks. To fill the existing propane tank, a propane delivery truck must idle in the ROW on White Street and drag its hose to the rear of the parking lot, or alternately, the propane delivery truck must pull into the driveway and then (illegally)

⁷ See revised 2/27/14 application, page 3 section (1) e.

back out into the ROW on White Street. Both delivery methods pose serious safety issues for pedestrians and the driving public and violate. [INSERT CITATION PROHIBITING BACKING OUT ON ROW].

(5) CONTAINMENT AND STORAGE AREA FOR HAZARDOUS WASTE MATERIALS:

Applicant's revised (2/27/14) application states that "Applicant shall maintain disposal contracts for all hazardous waste." This blanket statement is contradictory to Applicant's representations that NO repair or servicing of mopeds or other motor vehicles shall take place at this site. Hazardous waste disposal of used tires, old motor oils, and cannibalized engine parts is necessary only if repair or servicing of motor vehicles is still contemplated.

The proposed conditional-use restaurant may require disposal of discarded cooking oils if frying is to be performed at restaurant. Applicant has failed to disclose or address the volume of used cooking oils which may be necessary contain and store, or the proposed method for its disposal.

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- C. Applicant's revised application (revised 2/27/14) omits any "Outside Storage Area", however Applicant proposes to use this same 450sf outside area for "parking of 18 mopeds and bikes." Applicant's business practices at this site (and for many years at his previous location on the corner of Whitehead and Southard Streets) involved cat-and-mouse tactics with the city's code enforcement department concerning Applicant's repeated violations for displaying inventory in the parking lot and in the city ROW. Applicant's use of the parking lot for display of his own merchandise and inventory is prohibited. See also *Section 108-278 (Appearance of Site and Structures)*¹⁴ and *Section 108-573 (Special provisions within historic*

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*commercial pedestrian-oriented area.)*¹⁵

D. CONCLUSION

Applicant has failed to meet the criteria for approval of the proposed conditional use restaurant. The parking issues, noise, odors, pollution, increase of density, the intensity of use, and the excessive traffic and trip generation created by the proposed conditional-use would permanently and adversely change the character of this mixed-use neighborhood and would impose unnecessary, permanent and harmful burdens on the surrounding residential and business neighbors and the walking and driving public.

Pursuant to Section 122-61 (Purpose and Intent) “... a conditional use **shall only be permitted on specific sites where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity.**”

Applicant is simply unable to meet this criteria.

White Street is flourishing. All of the existing and newly-introduced businesses are light-commercial (business and professional offices and light retail shops). The Applicant should respect his neighbors and the zoning contemplated by the city’s land development regulations and use his site for permitted-by-right businesses that do not require a parking variance, and do not detrimentally impact his residential and business neighbors.

The Planning Department previously recommended DENIAL of all conditional uses proposed at this site. It has recently recommended APPROVAL, but with myriad “conditions” which, no matter how well intentioned, will not operate to make this project compatible with the surrounding neighbors.

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RE: 1200-1212 White Street/Victor Mills
Objection to Revised (2/27/14) Conditional Use Application

The residential and commercial neighbors joining in this objection live, work and own properties **within the immediate vicinity of the site**. Their properties have a combined assessed value of over \$7.8 million. They are the most personally and (financially) adversely impacted by the proposed variance and conditional use applications.

We respectfully request the Planning Board to uphold the pertinent sections of the Land Development Regulations and to follow the Planning Department's previous recommendations for DENIAL of the applications for conditional use and parking variance.

Thank you for your consideration of these matters of great and lasting importance to our neighborhood and to this City.

Respectfully submitted on behalf of above-named concerned neighbors,

Linda B. Wheeler, Esq.
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Facsimile 305 296-2155
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**OBJECTION TO CONDITIONAL USE
Restaurant (15 seats)**

The below named neighbors join in this Objection to Conditional Use Application:

Linda Wheeler	1213 White Street
Robert Kruse	1213 White Street
Sean Cowles	1216 White Street
Adele Williams Cowles	1216 White Street
Ross and Jodie Williams	1217 White Street
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- A. Background Statement
- B. STANDARD OF REVIEW
- C. ARGUMENTS FOR DENIAL OF CONDITIONAL-USE APPLICATION
- D. CONCLUSION
- E. EXHIBITS

A. Operative Facts Entirely Uncontested:

1. The site is located in the HARC district. It is zoned HNC-1, designated for residential and light-commercial mixed use.
2. The site consists of a single building located on the corner of White and Catherine Streets. The building contains approximately 4,875 sf of commercial space on the ground floor and 2 residential apartments on the 2nd floor (1,198 sf).
3. The adjacent parking lot is located mid-block. It will accommodate parking for a maximum of 3 vehicles.
4. The site previously hosted a walk-up coffee shop window (non-conforming use with “no seats” occupational license); a bakery (non-conforming use abandoned over 4 years ago¹); and a retail tile shop (permitted-use vacant for over 10 years).
5. Applicant’s applications for parking variance and conditional uses have been pending since September 2012. During the pendency of the case, Applicant has amended or revised his applications at various times - including April 1, 2014. Other hearings before the planning board were September 19, 2013 (tabled after approximately 2 hours of testimony and public comments) and March 20, 2014 (tabled after approximately 1.5 hours). Among Applicant’s more recent revisions were the withdrawal of two conditional-use businesses earlier proposed for this site (moped rentals and service/repair shop).
6. Applicant’s current application (revised 4/1/14) proposes the following uses:

15-seat Restaurant (1,585sf) (conditional use)
Retail sales of mopeds (2745 sf) (conditional use if floor area is over 2500sf)
Professional offices (426sf) (permitted use)
7. Each proposed use at this site must conform to the current land development

¹ See Section 122-30 (Abandonment of nonconforming use) which states, in pertinent part: “If a nonconforming use ceases.... any and every future use of the building or structure and/or premise shall be in conformity with the use sections of the land development regulations..... A nonconforming use shall be considered abandoned when such use has ceased for a period of 24 months.....”

regulations, including parking requirements, and other site amenities (waste bin screening, landscaping, open space, storm water management, ADA access, lighting, signage, etc.)²

8. Applicant's existing parking lot must be maintained in perpetuity as a parking lot.³
9. The Applicant has calculated that 18 parking spaces are required for Applicant's proposed mix of permitted-by-right and conditional-use businesses at this site.
10. Applicant's site can accommodate a total of 3 parking spaces.
11. Without any parking variance or any conditional-use approval, Applicant may enjoy 100% **reasonable economic use** of this site by operation (or lease) of permitted-by-right retail sales shop(s) and professional office(s).
12. Mr. Mills may use 100% of his building for professional office space (any number of offices, of unrestricted sizes) , as well as lease the two (2) apartments on the second floor, without triggering any additional parking requirements or creating any need for a parking variance.⁴
13. Professional offices and retail sales stores (less than 2500sf) are "**reasonable uses**" for Applicant's property in this HNC-1 district. These "permitted-by-right" uses are codified under the current LDR's (Section 122-807 (5) and (6)).

² Sec. 108-571: "Parking shall be provided in all districts at the time any building or structure is erected or enlarged or increased in capacity by a change of use or the addition of dwelling units, transient units, floor area, seats, beds, employees or other factors impacting parking demand as stated in this article."

Sec. 108-575(5): "Applicability of standards to expanding uses. Whenever a building or use is enlarged in floor area, number of dwelling units, seating capacity or in any other manner so as to create a need for a greater number of parking spaces than that existing, such spaces shall be provided in accordance with this section. Any parking deficiency shall be brought into conformity concurrently with the enlargement or change of use."

³ Section 108-573 (c) "Any preexisting off-street parking serving the structure must be maintained to service the new use."

⁴ See memo from city planning director Donald Craig dated 4/4/14 and city planner Kevin Bond dated 4/15/14, attached to Exhibits.

14. The entire 1200 block of White Street contains approximately 19 on-street parking spaces.
15. It is only due to Applicant's proposal to introduce conditional-use businesses which has resulted in the pending applications for conditional uses and a 15-space parking variance.⁵

B. STANDARD FOR REVIEW:

1. Section 122-61 (Purpose and Intent) provides that: "*... a conditional use **shall only be permitted** on specific sites where the proposed use may be adequately accommodated **without generating adverse impacts on properties and land uses within the immediate vicinity.**"*
2. Section 122-62 (Criteria for Conditional Use Review and Approval) (c) (1-6) provides that: "*Applications for a conditional use **shall clearly demonstrate the following:***
 - (1) *Land Use Compatibility;*
 - (2) *Sufficient size, adequate specifications and infrastructure to accommodate proposed use;*
 - (3) *Proper use of mitigative techniques;*
 - (4) *Hazardous waste;*
 - (5) *Compliant with applicable laws and ordinances;*
 - (6) *Additional criteria applicable to specific land uses.*

C. Argument for **DENIAL** OF Application for Conditional Use:

Applicant's proposed restaurant use cannot be adequately accommodated at this site without generating severe and permanent adverse impacts on properties and land uses within the immediate vicinity.

⁵ See city planner Kevin Bond's memo dated 4/15/14: "*It is Mr. Mills's request for restaurant use that is triggering the need to bring his parking into compliance with the code, and thus his variance request. The restaurant use has a higher parking requirement than retail or office, which is what triggers bringing parking into compliance.*"

1. Restaurants are not a permitted-by-right use in this residential and light commercial mixed-use district. (The restaurants operating in the 1300 & 1400 blocks of White Street have long-standing “grandfathered” parking and use exemptions not applicable to this site or this Applicant.)
2. Applicant’s proposed conditional use would introduce a 15-seat, 1,585 sf, full-service restaurant (breakfast, lunch and dinner), open 7 days a week between 7am-11pm (weekends) and 7am-9pm (weekdays).
3. Applicant’s site is insufficient to accommodate the amenities required or the parking demands generated by the proposed restaurant use.
4. The parking demands generated by Applicant’s proposed businesses are 18 spaces. The Applicant has 3 off-street spaces. The entire 1200 block of White Street contains only 19 spaces.
5. Introduction of such a high density, high traffic use, without adequate off-street parking, would effectively deprive each and every property owner in the 1200 block of White Street of the existing public parking upon which the residents now depend for their convenience and existing business now depend for servicing their existing customers.
6. If Applicant’s proposed conditional-use restaurant were introduced into this district, surrounding property owners would experience permanent loss of quality-of-life rights and diminution of their property values.
7. The proposed full-service restaurant would greatly increase density, intensity of use, and traffic at this site. 10+ employees will be present to service all of the uses proposed for this site. 127 daily trips are estimated for a high-turnover restaurant. (Compare this with 44 daily for retail space or 11 daily trips for offices.
8. The proposed conditional use restaurant would also create serious and dangerous safety issues to local pedestrians and the driving public. There is no loading zone (and introduction of one would only further diminish the limited street parking now available). Large refrigerated food, beverage and other delivery trucks would be required to idle in the ROW of White Street or Catherine

Street, or more dangerously, use the driveway and (illegally) back out into the ongoing traffic ROW of White Street.

9. Applicant's introduction of the conditional use restaurant would also create increased noise, odor, litter, pollution, traffic congestion and other adverse and harmful effects to the neighboring properties.

Applicant has failed to satisfy the Criteria for Review and Approval of the proposed conditional uses pursuant to Section 122-62 (c). Specifically:

1. **Land Use Compatibility:**

- A. The proposed 15-seat restaurant is described as an "expansion" of the walk up sidewalk window.⁶ The previous sidewalk walk-up window was a non-conforming use, holding an occupational license for "no-seats" food service. The previous walk-up window created a public nuisance for years at this site. Unlike other walk-up coffee shop windows in the area, it operated at night, sold beer (illegally), engendered drinking in public, street brawls, loud music, urination in public, and other disruptive activities. Its negative atmosphere prevented residents from safely walking in front of the establishment. When Applicant was asked why he allowed the continuation of this disturbing business, he told his neighbor that he needed to collect his rents and that if there were any disturbances at night they "should just call the police." Applicant allowed these disturbances to continue until he began renovations of the building. The neighbors have little confidence that Applicant would be any more responsive to the disruptions inherent with operation of full-service 1,585 sf food service establishment.
- B. Applicant cannot provide the off-street spaces for the parking requirements his proposed conditional-use restaurant would generate. His expansion of a non-conforming "no-seat" coffee window into a 1,585sf restaurant would create increased traffic, increased intensity and increased density of use - all of which is intrusive, incompatible, and materially adverse to the surrounding neighbors.

⁶ See Applicant's Second Amended Addendum to Amended Conditional Use Application dated November 15, 2013.

D. This site is zoned for residential and light-commercial. Applicant is permitted-by-right to operate retail sales and professional offices at this site without any necessity for a parking variance. Applicant's proposed conditional-use would intensify use and increase density at this site by converting approximately 1,585 sf of retail/office space into a restaurant which generates at least twice as many daily trips and almost twice the parking demands. Additionally, the proposed use would introduce issues of odor, noise, pollution, litter, sanitation and disposal of raw food, added volumes of solid waste, and disposal of used cooking oils which are not associated with retail sales or professional office space.

2. **Sufficient size, adequate specifications and infrastructure to accommodate proposed use:**

A. Applicant's proposed conditional-use restaurant materially expands floor area and the intensity of use at this site. Applicant's site is without adequate size or infrastructure to accommodate this increased intensity of use. Applicant's surrounding neighbors would bear the burden entirely of these permanent and adverse consequences.

B. Applicant's proposed conditional-use business cannot be adequately accommodated at this site. The size and shape of the parking lot do not allow for drive-through ingress and egress. Only 3 parking spaces can be accommodated on this lot. The parking lot must also provide the following amenities or other functions:

(1) **HANDICAP ACCESS RAMP AND PAVED WALKWAY:**

Subject property is 14" above grade which necessitates installation of a handicap ramp and walk over a portion of the parking lot.

(2) **STORM WATER DRAINAGE COLLECTION:**

The parking lot is 100% impermeable surface. An exfiltration trench or drain field for retention of rainfall is required. During the pendency of these applications, Applicant (without HARC approval or issuance of a building permit-) removed a masonry wall separating the parking lot from the neighbor's residence. The parking lot is 14" above

grade. Removal of the existing retaining wall now subjects the neighbor's residence to potential flooding until this issue is satisfactorily resolved.

(3) STORAGE OF SOLID WASTE AND RECYCLING BINS:

There is currently 1 front-end loaded dumpster sitting unscreened in the middle of the parking lot. Un-contained construction debris and trailers of mopeds and cannibalized motor parts have occupied the parking lot for well over 1 year. Waste and recycling bins for the upstairs apartments are permanently (and illegally) housed the Catherine Street sidewalk. (*Section 108-279 requires that "All refuse and waste storage areas shall be screened from adjacent properties and public ways by appropriate fences, walls or landscaping. Front-end loaded refuse containers shall also be required to be screened by vegetation or structural means to shield an unsightly condition."*)

(4) PROPANE-GAS STORAGE TANK:

There is currently 1 propane tank sitting unscreened at the rear of the parking lot (non-conforming set-back). Applicant's revised application fails to disclose or address the volume of propane gas, the number of canisters, or the frequency of servicing which will be necessary to support the proposed 1,585 sf restaurant operational for approximately 16 hours per day, 7 days a week. Applicant's blanket representation that "Normal office, retail, and restaurant service vehicles are anticipated⁷" fails to adequately address or reasonably satisfy the criteria required for this proposed conditional use. Additionally, Applicant provides no plan or proposal for the location, screening and method of servicing such gas tanks. To fill the existing propane tank, a propane delivery truck must idle in the ROW on White Street and drag its hose to the rear of the parking lot, or alternately, the propane delivery truck must pull into the driveway and then (illegally)

⁷ See revised 2/27/14 application, page 3 section (1) e.

back out into the ROW on White Street. Both delivery methods pose serious safety issues for pedestrians and the driving public and violate. [INSERT CITATION PROHIBITING BACKING OUT ON ROW].

(5) CONTAINMENT AND STORAGE AREA FOR HAZARDOUS WASTE MATERIALS:

Applicant's revised (2/27/14) application states that "Applicant shall maintain disposal contracts for all hazardous waste." This blanket statement is contradictory to Applicant's representations that NO repair or servicing of mopeds or other motor vehicles shall take place at this site. Hazardous waste disposal of used tires, old motor oils, and cannibalized engine parts is necessary only if repair or servicing of motor vehicles is still contemplated.

The proposed conditional-use restaurant may require disposal of discarded cooking oils if frying is to be performed at restaurant. Applicant has failed to disclose or address the volume of used cooking oils which may be necessary contain and store, or the proposed method for its disposal.

(6) OUTDOOR STORAGE:

Applicant revised (2/27/14) application states that NO outside storage and display of inventory shall occur. This statement is wholly inconsistent with his proposal for "parking 18 mopeds and bikes" in the area previously designated as the "Outdoor Storage Area." Pursuant to Section 108-288 "*Any proposed exterior storage areas shall be located at the rear of the principal structure. Such outside storage area shall be enclosed by a solid wall with solid entrance and exit gates...*".

- D. Applicant's site is not of sufficient size or adequate specifications to accommodate the proposed conditional use restaurant.⁸ Specifically:

⁸ See Exhibit "D" DETAILS OF ADVERSE IMPACTS UPON SURROUNDING NEIGHBORS OF THIS HNC-1 DISTRICT

- (1) LACK OF NECESSARY OFF-STREET PARKING
- (2) DANGEROUS AND UNSAFE EGRESS FROM PARKING LOT
- (3) INABILITY TO COMPLY WITH REQUIRED ON-SITE AMENITIES
- (4) INCREASED AND ADVERSE DENSITY, TRAFFIC, AND INTENSITY OF USE CREATED BY PROPOSED CONDITIONAL-USES.

3. Proper use of mitigative techniques;

- A. Applicant has failed to provide or propose any meaningful mitigation for the odor, noise, pollution, increased traffic, increased trip-generation, intensity of use, increase of density, and the overwhelming parking demands created by his proposed conditional-use restaurant.
- B. Since Applicant's purchase of the property he has improved the exterior appearance of the building. The windows and doors have been replaced and the exterior walls have been stuccoed. Applicant's neighbors have applauded these efforts to improve the exterior, however, "*better-than-it-was*" is not the standard of review for conditional-uses or parking variances.
- C. Applicant's proposed conditional use expansion of a 1,585 sf restaurant is overly aggressive and intrusive for this site. Cosmetic improvements to the building or a landscape plan simply cannot mitigate the permanent and harmful impact such conditional use would impose upon this neighborhood.
- E. Applicant's proposed solutions to mitigate the adverse impacts of the proposed conditional use businesses have resulted in representations and promises which are dismissive or grossly unresponsive to the legitimate concerns of the city and neighbors. Specifically:
 - 1. SOLID WASTE/RECYCLING: Applicant conditional-use application fails to address the total volume of solid waste and recycling from all uses. This site contains 5800 sf of commercial space and 2 residential apartments. Applicant proposes to use a single "roll out" dumpster kept inside the building. Without accurate data of the anticipated volume of solid waste and recycling generated, and the proposed solution for its containment,

storage and disposal, it is impossible for the Planning Department (or the Planning Board and public) to evaluate the sufficiency of the proposal or whether such plan is practical, feasible or even permissible under existing sanitation, health, and fire codes.

Applicant's revised application (revised 2/27/14) provided a site drawing with a single dumpster sitting unscreened in the rear (illegal setback) of the parking lot. Applicant's blanket comment that "Normal service vehicles are anticipated"⁹ fails to address or successfully mitigate these issues.

2. DELIVERIES/LOADING DECK: The proposed 1,585 sf restaurant is intended to operate 7 days per week for approximately 16 hours per day. Multiple trucks shall be required to service and deliver food, beverages and other supplies. Such deliveries shall be made by refrigerated trucks idling on Catherine or White Streets in the ROW, or by using the parking lot for deliveries, which are then transported by hand cart of the sidewalk. All deliveries via the parking lot would result in the delivery trucks backing out (illegally) into the on-going traffic of White Street. Applicant's comment that "Normal service vehicles are anticipated"¹⁰ wholly fails to address or offer mitigation of this serious safety issue.

3. TRAFFIC/TRIP GENERATION: Applicant commissioned a "trip generation analysis"¹¹ concerning the traffic impact created by the proposed conditional uses. Applicant's own expert estimated that the restaurant would generate **141 daily 2-way trips**. Applicant's revised application (revised 2/27/14) states that a "high turn-over" restaurant would generate **120+ daily 2-way trips**. These traffic/trip impacts are in addition to the daily round-trips generated by the Applicant's other intended uses: 2-residential apartments (**13.4 daily 2-way trips**);

⁹ See revised 2/27/14 application, page 3 section (1) e.

¹⁰ See revised 2/27/14 application, page 3 section (1) e.

¹¹ See "1200 White Street Trip Generation Analysis" prepared by David Plummer & Associates and submitted by Applicant

professional office **(3.42 daily2-way trips)**. Applicant has offered no mitigation proposal for the severe increase in traffic created by the proposed conditional-use restaurant.

4. SCALE AND SCOPE OF CONDITIONAL USE: Applicant's most recent "mitigation" proposal does not reduce the number of seats, limit the hours of operation, or offer any downsizing of the food service activities intended at the site. Incredibly, Applicant's "mitigation plan" simply reduces the consumption area of the 15 seats from 640 sf to 225 sf. It defies logic and common sense that 15 patrons sitting in 15 chairs crammed within 225 sf of consumption space creates any less parking impact in the neighborhood than 15 patrons sitting in 15 chairs within 640 sf. of consumption space. Applicant's "mitigation" plan is for the sole purpose of reducing the number of parking spaces required for this conditional use from 15 spaces to 5 spaces (640sf x 1 per 45sf vs 225sf x 1 per 45sf). It is NOT proposed for the intention of mitigating the very real and adverse impacts the conditional use restaurant would have on the surrounding neighborhood.

4. **Hazardous waste:**

- A. Applicant's previous application stated that "for the short time between acquisition of any hazardous waste materials and their disposal, storage of the items will be **inside the premises in fire resistant cabinets.**"¹²
- C. Applicant has withdrawn his request to repair and service mopeds, motorcycles and other motor vehicles, however, hazardous waste of certain restaurant by product shall be necessary. Applicant's blanket comment that "Normal service vehicles are anticipated."¹³ fails to successfully address or mitigate this issue of hazardous waste disposal. Without such data, it is impossible to determine (and unfair to the Planning Board and the public) to evaluate the impact of Applicant's

¹² See page 16 of Applicant's Second Amended Addendum to Amended Conditional Use Application

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conditional use, or to determine if containment, storage and disposal of hazardous waste materials at this site are practical, feasible or even permissible under existing sanitation, health, and fire codes.

5. **Compliant with applicable laws and ordinances:**

- A. Applicant is non-compliant with applicable laws and ordinances. For the last 15 months, Applicant has operated a moped and motorcycle rental business and an engine and motor vehicle repair shop at the site without valid licensing or any conditional-use approval by this board. In January 2014, the code enforcement office (finally) required the Applicant to cease such operations.
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*commercial pedestrian-oriented area.)*¹⁵

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Thank you for your consideration of these matters of great and lasting importance to our neighborhood and to this City.

Respectfully submitted on behalf of above-named concerned neighbors,

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The below named neighbors join in this Objection to Conditional Use Application:

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regulations, including parking requirements, and other site amenities (waste bin screening, landscaping, open space, storm water management, ADA access, lighting, signage, etc.)²

8. Applicant's existing parking lot must be maintained in perpetuity as a parking lot.³
9. The Applicant has calculated that 18 parking spaces are required for Applicant's proposed mix of permitted-by-right and conditional-use businesses at this site.
10. Applicant's site can accommodate a total of 3 parking spaces.
11. Without any parking variance or any conditional-use approval, Applicant may enjoy 100% **reasonable economic use** of this site by operation (or lease) of permitted-by-right retail sales shop(s) and professional office(s).
12. Mr. Mills may use 100% of his building for professional office space (any number of offices, of unrestricted sizes) , as well as lease the two (2) apartments on the second floor, without triggering any additional parking requirements or creating any need for a parking variance.⁴
13. Professional offices and retail sales stores (less than 2500sf) are "**reasonable uses**" for Applicant's property in this HNC-1 district. These "permitted-by-right" uses are codified under the current LDR's (Section 122-807 (5) and (6)).

² Sec. 108-571: "Parking shall be provided in all districts at the time any building or structure is erected or enlarged or increased in capacity by a change of use or the addition of dwelling units, transient units, floor area, seats, beds, employees or other factors impacting parking demand as stated in this article."

Sec. 108-575(5): "Applicability of standards to expanding uses. Whenever a building or use is enlarged in floor area, number of dwelling units, seating capacity or in any other manner so as to create a need for a greater number of parking spaces than that existing, such spaces shall be provided in accordance with this section. Any parking deficiency shall be brought into conformity concurrently with the enlargement or change of use."

³ Section 108-573 (c) "Any preexisting off-street parking serving the structure must be maintained to service the new use."

⁴ See memo from city planning director Donald Craig dated 4/4/14 and city planner Kevin Bond dated 4/15/14, attached to Exhibits.

14. The entire 1200 block of White Street contains approximately 19 on-street parking spaces.
15. It is only due to Applicant's proposal to introduce conditional-use businesses which has resulted in the pending applications for conditional uses and a 15-space parking variance.⁵

B. STANDARD FOR REVIEW:

1. Section 122-61 (Purpose and Intent) provides that: "*... a conditional use **shall only be permitted** on specific sites where the proposed use may be adequately accommodated **without generating adverse impacts on properties and land uses within the immediate vicinity.**"*
2. Section 122-62 (Criteria for Conditional Use Review and Approval) (c) (1-6) provides that: "*Applications for a conditional use **shall clearly demonstrate the following:***
 - (1) *Land Use Compatibility;*
 - (2) *Sufficient size, adequate specifications and infrastructure to accommodate proposed use;*
 - (3) *Proper use of mitigative techniques;*
 - (4) *Hazardous waste;*
 - (5) *Compliant with applicable laws and ordinances;*
 - (6) *Additional criteria applicable to specific land uses.*

C. Argument for **DENIAL** OF Application for Conditional Use:

Applicant's proposed restaurant use cannot be adequately accommodated at this site without generating severe and permanent adverse impacts on properties and land uses within the immediate vicinity.

⁵ See city planner Kevin Bond's memo dated 4/15/14: "*It is Mr. Mills's request for restaurant use that is triggering the need to bring his parking into compliance with the code, and thus his variance request. The restaurant use has a higher parking requirement than retail or office, which is what triggers bringing parking into compliance.*"

1. Restaurants are not a permitted-by-right use in this residential and light commercial mixed-use district. (The restaurants operating in the 1300 & 1400 blocks of White Street have long-standing “grandfathered” parking and use exemptions not applicable to this site or this Applicant.)
2. Applicant’s proposed conditional use would introduce a 15-seat, 1,585 sf, full-service restaurant (breakfast, lunch and dinner), open 7 days a week between 7am-11pm (weekends) and 7am-9pm (weekdays).
3. Applicant’s site is insufficient to accommodate the amenities required or the parking demands generated by the proposed restaurant use.
4. The parking demands generated by Applicant’s proposed businesses are 18 spaces. The Applicant has 3 off-street spaces. The entire 1200 block of White Street contains only 19 spaces.
5. Introduction of such a high density, high traffic use, without adequate off-street parking, would effectively deprive each and every property owner in the 1200 block of White Street of the existing public parking upon which the residents now depend for their convenience and existing business now depend for servicing their existing customers.
6. If Applicant’s proposed conditional-use restaurant were introduced into this district, surrounding property owners would experience permanent loss of quality-of-life rights and diminution of their property values.
7. The proposed full-service restaurant would greatly increase density, intensity of use, and traffic at this site. 10+ employees will be present to service all of the uses proposed for this site. 127 daily trips are estimated for a high-turnover restaurant. (Compare this with 44 daily for retail space or 11 daily trips for offices.
8. The proposed conditional use restaurant would also create serious and dangerous safety issues to local pedestrians and the driving public. There is no loading zone (and introduction of one would only further diminish the limited street parking now available). Large refrigerated food, beverage and other delivery trucks would be required to idle in the ROW of White Street or Catherine

Street, or more dangerously, use the driveway and (illegally) back out into the ongoing traffic ROW of White Street.

9. Applicant's introduction of the conditional use restaurant would also create increased noise, odor, litter, pollution, traffic congestion and other adverse and harmful effects to the neighboring properties.

Applicant has failed to satisfy the Criteria for Review and Approval of the proposed conditional uses pursuant to Section 122-62 (c). Specifically:

1. **Land Use Compatibility:**

- A. The proposed 15-seat restaurant is described as an "expansion" of the walk up sidewalk window.⁶ The previous sidewalk walk-up window was a non-conforming use, holding an occupational license for "no-seats" food service. The previous walk-up window created a public nuisance for years at this site. Unlike other walk-up coffee shop windows in the area, it operated at night, sold beer (illegally), engendered drinking in public, street brawls, loud music, urination in public, and other disruptive activities. Its negative atmosphere prevented residents from safely walking in front of the establishment. When Applicant was asked why he allowed the continuation of this disturbing business, he told his neighbor that he needed to collect his rents and that if there were any disturbances at night they "should just call the police." Applicant allowed these disturbances to continue until he began renovations of the building. The neighbors have little confidence that Applicant would be any more responsive to the disruptions inherent with operation of full-service 1,585 sf food service establishment.
- B. Applicant cannot provide the off-street spaces for the parking requirements his proposed conditional-use restaurant would generate. His expansion of a non-conforming "no-seat" coffee window into a 1,585sf restaurant would create increased traffic, increased intensity and increased density of use - all of which is intrusive, incompatible, and materially adverse to the surrounding neighbors.

⁶ See Applicant's Second Amended Addendum to Amended Conditional Use Application dated November 15, 2013.

D. This site is zoned for residential and light-commercial. Applicant is permitted-by-right to operate retail sales and professional offices at this site without any necessity for a parking variance. Applicant's proposed conditional-use would intensify use and increase density at this site by converting approximately 1,585 sf of retail/office space into a restaurant which generates at least twice as many daily trips and almost twice the parking demands. Additionally, the proposed use would introduce issues of odor, noise, pollution, litter, sanitation and disposal of raw food, added volumes of solid waste, and disposal of used cooking oils which are not associated with retail sales or professional office space.

2. **Sufficient size, adequate specifications and infrastructure to accommodate proposed use:**

A. Applicant's proposed conditional-use restaurant materially expands floor area and the intensity of use at this site. Applicant's site is without adequate size or infrastructure to accommodate this increased intensity of use. Applicant's surrounding neighbors would bear the burden entirely of these permanent and adverse consequences.

B. Applicant's proposed conditional-use business cannot be adequately accommodated at this site. The size and shape of the parking lot do not allow for drive-through ingress and egress. Only 3 parking spaces can be accommodated on this lot. The parking lot must also provide the following amenities or other functions:

(1) **HANDICAP ACCESS RAMP AND PAVED WALKWAY:**

Subject property is 14" above grade which necessitates installation of a handicap ramp and walk over a portion of the parking lot.

(2) **STORM WATER DRAINAGE COLLECTION:**

The parking lot is 100% impermeable surface. An exfiltration trench or drain field for retention of rainfall is required. During the pendency of these applications, Applicant (without HARC approval or issuance of a building permit-) removed a masonry wall separating the parking lot from the neighbor's residence. The parking lot is 14" above

grade. Removal of the existing retaining wall now subjects the neighbor's residence to potential flooding until this issue is satisfactorily resolved.

(3) STORAGE OF SOLID WASTE AND RECYCLING BINS:

There is currently 1 front-end loaded dumpster sitting unscreened in the middle of the parking lot. Un-contained construction debris and trailers of mopeds and cannibalized motor parts have occupied the parking lot for well over 1 year. Waste and recycling bins for the upstairs apartments are permanently (and illegally) housed the Catherine Street sidewalk. (*Section 108-279 requires that "All refuse and waste storage areas shall be screened from adjacent properties and public ways by appropriate fences, walls or landscaping. Front-end loaded refuse containers shall also be required to be screened by vegetation or structural means to shield an unsightly condition."*)

(4) PROPANE-GAS STORAGE TANK:

There is currently 1 propane tank sitting unscreened at the rear of the parking lot (non-conforming set-back). Applicant's revised application fails to disclose or address the volume of propane gas, the number of canisters, or the frequency of servicing which will be necessary to support the proposed 1,585 sf restaurant operational for approximately 16 hours per day, 7 days a week. Applicant's blanket representation that "Normal office, retail, and restaurant service vehicles are anticipated⁷" fails to adequately address or reasonably satisfy the criteria required for this proposed conditional use. Additionally, Applicant provides no plan or proposal for the location, screening and method of servicing such gas tanks. To fill the existing propane tank, a propane delivery truck must idle in the ROW on White Street and drag its hose to the rear of the parking lot, or alternately, the propane delivery truck must pull into the driveway and then (illegally)

⁷ See revised 2/27/14 application, page 3 section (1) e.

back out into the ROW on White Street. Both delivery methods pose serious safety issues for pedestrians and the driving public and violate. [INSERT CITATION PROHIBITING BACKING OUT ON ROW].

(5) CONTAINMENT AND STORAGE AREA FOR HAZARDOUS WASTE MATERIALS:

Applicant's revised (2/27/14) application states that "Applicant shall maintain disposal contracts for all hazardous waste." This blanket statement is contradictory to Applicant's representations that NO repair or servicing of mopeds or other motor vehicles shall take place at this site. Hazardous waste disposal of used tires, old motor oils, and cannibalized engine parts is necessary only if repair or servicing of motor vehicles is still contemplated.

The proposed conditional-use restaurant may require disposal of discarded cooking oils if frying is to be performed at restaurant. Applicant has failed to disclose or address the volume of used cooking oils which may be necessary contain and store, or the proposed method for its disposal.

(6) OUTDOOR STORAGE:

Applicant revised (2/27/14) application states that NO outside storage and display of inventory shall occur. This statement is wholly inconsistent with his proposal for "parking 18 mopeds and bikes" in the area previously designated as the "Outdoor Storage Area." Pursuant to Section 108-288 *"Any proposed exterior storage areas shall be located at the rear of the principal structure. Such outside storage area shall be enclosed by a solid wall with solid entrance and exit gates..."*.

- D. Applicant's site is not of sufficient size or adequate specifications to accommodate the proposed conditional use restaurant.⁸ Specifically:

⁸ See Exhibit "D" DETAILS OF ADVERSE IMPACTS UPON SURROUNDING NEIGHBORS OF THIS HNC-1 DISTRICT

- (1) LACK OF NECESSARY OFF-STREET PARKING
- (2) DANGEROUS AND UNSAFE EGRESS FROM PARKING LOT
- (3) INABILITY TO COMPLY WITH REQUIRED ON-SITE AMENITIES
- (4) INCREASED AND ADVERSE DENSITY, TRAFFIC, AND INTENSITY OF USE CREATED BY PROPOSED CONDITIONAL-USES.

3. Proper use of mitigative techniques;

- A. Applicant has failed to provide or propose any meaningful mitigation for the odor, noise, pollution, increased traffic, increased trip-generation, intensity of use, increase of density, and the overwhelming parking demands created by his proposed conditional-use restaurant.
- B. Since Applicant's purchase of the property he has improved the exterior appearance of the building. The windows and doors have been replaced and the exterior walls have been stuccoed. Applicant's neighbors have applauded these efforts to improve the exterior, however, "*better-than-it-was*" is not the standard of review for conditional-uses or parking variances.
- C. Applicant's proposed conditional use expansion of a 1,585 sf restaurant is overly aggressive and intrusive for this site. Cosmetic improvements to the building or a landscape plan simply cannot mitigate the permanent and harmful impact such conditional use would impose upon this neighborhood.
- E. Applicant's proposed solutions to mitigate the adverse impacts of the proposed conditional use businesses have resulted in representations and promises which are dismissive or grossly unresponsive to the legitimate concerns of the city and neighbors. Specifically:
 - 1. SOLID WASTE/RECYCLING: Applicant conditional-use application fails to address the total volume of solid waste and recycling from all uses. This site contains 5800 sf of commercial space and 2 residential apartments. Applicant proposes to use a single "roll out" dumpster kept inside the building. Without accurate data of the anticipated volume of solid waste and recycling generated, and the proposed solution for its containment,

storage and disposal, it is impossible for the Planning Department (or the Planning Board and public) to evaluate the sufficiency of the proposal or whether such plan is practical, feasible or even permissible under existing sanitation, health, and fire codes.

Applicant's revised application (revised 2/27/14) provided a site drawing with a single dumpster sitting unscreened in the rear (illegal setback) of the parking lot. Applicant's blanket comment that "Normal service vehicles are anticipated"⁹ fails to address or successfully mitigate these issues.

2. DELIVERIES/LOADING DECK: The proposed 1,585 sf restaurant is intended to operate 7 days per week for approximately 16 hours per day. Multiple trucks shall be required to service and deliver food, beverages and other supplies. Such deliveries shall be made by refrigerated trucks idling on Catherine or White Streets in the ROW, or by using the parking lot for deliveries, which are then transported by hand cart to the sidewalk. All deliveries via the parking lot would result in the delivery trucks backing out (illegally) into the on-going traffic of White Street. Applicant's comment that "Normal service vehicles are anticipated"¹⁰ wholly fails to address or offer mitigation of this serious safety issue.

3. TRAFFIC/TRIP GENERATION: Applicant commissioned a "trip generation analysis"¹¹ concerning the traffic impact created by the proposed conditional uses. Applicant's own expert estimated that the restaurant would generate **141 daily 2-way trips**. Applicant's revised application (revised 2/27/14) states that a "high turn-over" restaurant would generate **120+ daily 2-way trips**. These traffic/trip impacts are in addition to the daily round-trips generated by the Applicant's other intended uses: 2-residential apartments (**13.4 daily 2-way trips**);

⁹ See revised 2/27/14 application, page 3 section (1) e.

¹⁰ See revised 2/27/14 application, page 3 section (1) e.

¹¹ See "1200 White Street Trip Generation Analysis" prepared by David Plummer & Associates and submitted by Applicant

professional office **(3.42 daily2-way trips)**. Applicant has offered no mitigation proposal for the severe increase in traffic created by the proposed conditional-use restaurant.

4. SCALE AND SCOPE OF CONDITIONAL USE: Applicant's most recent "mitigation" proposal does not reduce the number of seats, limit the hours of operation, or offer any downsizing of the food service activities intended at the site. Incredibly, Applicant's "mitigation plan" simply reduces the consumption area of the 15 seats from 640 sf to 225 sf. It defies logic and common sense that 15 patrons sitting in 15 chairs crammed within 225 sf of consumption space creates any less parking impact in the neighborhood than 15 patrons sitting in 15 chairs within 640 sf. of consumption space. Applicant's "mitigation" plan is for the sole purpose of reducing the number of parking spaces required for this conditional use from 15 spaces to 5 spaces (640sf x 1 per 45sf vs 225sf x 1 per 45sf). It is NOT proposed for the intention of mitigating the very real and adverse impacts the conditional use restaurant would have on the surrounding neighborhood.

4. **Hazardous waste:**

- A. Applicant's previous application stated that "for the short time between acquisition of any hazardous waste materials and their disposal, storage of the items will be **inside the premises in fire resistant cabinets.**"¹²
- C. Applicant has withdrawn his request to repair and service mopeds, motorcycles and other motor vehicles, however, hazardous waste of certain restaurant by product shall be necessary. Applicant's blanket comment that "Normal service vehicles are anticipated."¹³ fails to successfully address or mitigate this issue of hazardous waste disposal. Without such data, it is impossible to determine (and unfair to the Planning Board and the public) to evaluate the impact of Applicant's

¹² See page 16 of Applicant's Second Amended Addendum to Amended Conditional Use Application

¹³ See revised 2/27/14 application, page 3 section (1) e.

conditional use, or to determine if containment, storage and disposal of hazardous waste materials at this site are practical, feasible or even permissible under existing sanitation, health, and fire codes.

5. **Compliant with applicable laws and ordinances:**

- A. Applicant is non-compliant with applicable laws and ordinances. For the last 15 months, Applicant has operated a moped and motorcycle rental business and an engine and motor vehicle repair shop at the site without valid licensing or any conditional-use approval by this board. In January 2014, the code enforcement office (finally) required the Applicant to cease such operations.
- B. Applicant has underestimated the parking requirements of the proposed conditional-use restaurant in each and every one of his amended and revised applications. Without full and accurate disclosure by the Applicant of the site's floor areas, it is impossible to fairly evaluate the parking impact of the proposed project or the accurate number of parking spaces required or necessary for variance approval.
- C. Applicant's revised application (revised 2/27/14) omits any "Outside Storage Area", however Applicant proposes to use this same 450sf outside area for "parking of 18 mopeds and bikes." Applicant's business practices at this site (and for many years at his previous location on the corner of Whitehead and Southard Streets) involved cat-and-mouse tactics with the city's code enforcement department concerning Applicant's repeated violations for displaying inventory in the parking lot and in the city ROW. Applicant's use of the parking lot for display of his own merchandise and inventory is prohibited. See also *Section 108-278 (Appearance of Site and Structures)*¹⁴ and *Section 108-573 (Special provisions within historic*

¹⁴ See *Section 108-278 (Appearance of Site and Structures)*, which provides: "**Within all zoning districts within the city, the appearance of a site and structures shall be coordinated for the purpose of creating a pleasing and harmonious overall environment. The choice of site improvements shall be commensurate with the objectives of the subject use and considering impact on surrounding properties and transportation corridors.**" [Emphasis added]

*commercial pedestrian-oriented area.)*¹⁵

D. CONCLUSION

Applicant has failed to meet the criteria for approval of the proposed conditional use restaurant. The parking issues, noise, odors, pollution, increase of density, the intensity of use, and the excessive traffic and trip generation created by the proposed conditional-use would permanently and adversely change the character of this mixed-use neighborhood and would impose unnecessary, permanent and harmful burdens on the surrounding residential and business neighbors and the walking and driving public.

Pursuant to Section 122-61 (Purpose and Intent) “... a conditional use **shall only be permitted on specific sites where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity.**”

Applicant is simply unable to meet this criteria.

White Street is flourishing. All of the existing and newly-introduced businesses are light-commercial (business and professional offices and light retail shops). The Applicant should respect his neighbors and the zoning contemplated by the city’s land development regulations and use his site for permitted-by-right businesses that do not require a parking variance, and do not detrimentally impact his residential and business neighbors.

The Planning Department previously recommended DENIAL of all conditional uses proposed at this site. It has recently recommended APPROVAL, but with myriad “conditions” which, no matter how well intentioned, will not operate to make this project compatible with the surrounding neighbors.

¹⁵ Section 108-573 (Special provisions within historic commercial pedestrian-oriented area.)“... Any preexisting off-street parking serving the structure must be maintained to service the new use. Similarly, preexisting parking shall not be used as a site for additional floor area unless the total off-street parking required pursuant to this article is made available to accommodate the existing and new proposed floor area.”

RE: 1200-1212 White Street/Victor Mills
Objection to Revised (2/27/14) Conditional Use Application

The residential and commercial neighbors joining in this objection live, work and own properties **within the immediate vicinity of the site**. Their properties have a combined assessed value of over \$7.8 million. They are the most personally and (financially) adversely impacted by the proposed variance and conditional use applications.

We respectfully request the Planning Board to uphold the pertinent sections of the Land Development Regulations and to follow the Planning Department's previous recommendations for DENIAL of the applications for conditional use and parking variance.

Thank you for your consideration of these matters of great and lasting importance to our neighborhood and to this City.

Respectfully submitted on behalf of above-named concerned neighbors,

Linda B. Wheeler, Esq.
Attorney at Law
1213 White Street
Key West, Florida 33040
Telephone 305 294-0683
Facsimile 305 296-2155
Mobile 305/509-2145
email: lwheeleraal@earthlink.net

**OBJECTION TO CONDITIONAL USE
Restaurant (15 seats)**

The below named neighbors join in this Objection to Conditional Use Application:

Linda Wheeler	1213 White Street
Robert Kruse	1213 White Street
Sean Cowles	1216 White Street
Adele Williams Cowles	1216 White Street
Ross and Jodie Williams	1217 White Street
Tim and Anne Sullivan	1204-1206 Duncan Street
Robert Koske	1208 Duncan Street
Barbara Haveland	1209 Duncan Street
Brian Schmitt d/b/a Coldwell Banker Schmitt	1201-1211 White Street
Lynn Kaufelt and David Kaufelt	1120 White Street
Dr. Ana Marie Camarotti	1220 Georgia Street
Cynthia Vinson Dean	1327 Duncan Street
Mrs. Valter Vinson	1215 Georgia Street
Robert Silver	1327 Duncan Street
Candida Andriole-Cobb	1016 Varela Street
Georgia and Thomas Favelli	1108 White Street
Bill and Ann Lorraine	1028 Catherine Street
Ron Oldham and Patricia Kennedy	1120 Catherine Street

Contents:

- A. Background Statement
- B. STANDARD OF REVIEW
- C. ARGUMENTS FOR DENIAL OF CONDITIONAL-USE APPLICATION
- D. CONCLUSION
- E. EXHIBITS

A. Operative Facts Entirely Uncontested:

1. The site is located in the HARC district. It is zoned HNC-1, designated for residential and light-commercial mixed use.
2. The site consists of a single building located on the corner of White and Catherine Streets. The building contains approximately 4,875 sf of commercial space on the ground floor and 2 residential apartments on the 2nd floor (1,198 sf).
3. The adjacent parking lot is located mid-block. It will accommodate parking for a maximum of 3 vehicles.
4. The site previously hosted a walk-up coffee shop window (non-conforming use with “no seats” occupational license); a bakery (non-conforming use abandoned over 4 years ago¹); and a retail tile shop (permitted-use vacant for over 10 years).
5. Applicant’s applications for parking variance and conditional uses have been pending since September 2012. During the pendency of the case, Applicant has amended or revised his applications at various times - including April 1, 2014. Other hearings before the planning board were September 19, 2013 (tabled after approximately 2 hours of testimony and public comments) and March 20, 2014 (tabled after approximately 1.5 hours). Among Applicant’s more recent revisions were the withdrawal of two conditional-use businesses earlier proposed for this site (moped rentals and service/repair shop).
6. Applicant’s current application (revised 4/1/14) proposes the following uses:

15-seat Restaurant (1,585sf) (conditional use)
Retail sales of mopeds (2745 sf) (conditional use if floor area is over 2500sf)
Professional offices (426sf) (permitted use)
7. Each proposed use at this site must conform to the current land development

¹ See Section 122-30 (Abandonment of nonconforming use) which states, in pertinent part: “If a nonconforming use ceases.... any and every future use of the building or structure and/or premise shall be in conformity with the use sections of the land development regulations..... A nonconforming use shall be considered abandoned when such use has ceased for a period of 24 months.....”

regulations, including parking requirements, and other site amenities (waste bin screening, landscaping, open space, storm water management, ADA access, lighting, signage, etc.)²

8. Applicant's existing parking lot must be maintained in perpetuity as a parking lot.³
9. The Applicant has calculated that 18 parking spaces are required for Applicant's proposed mix of permitted-by-right and conditional-use businesses at this site.
10. Applicant's site can accommodate a total of 3 parking spaces.
11. Without any parking variance or any conditional-use approval, Applicant may enjoy 100% **reasonable economic use** of this site by operation (or lease) of permitted-by-right retail sales shop(s) and professional office(s).
12. Mr. Mills may use 100% of his building for professional office space (any number of offices, of unrestricted sizes) , as well as lease the two (2) apartments on the second floor, without triggering any additional parking requirements or creating any need for a parking variance.⁴
13. Professional offices and retail sales stores (less than 2500sf) are "**reasonable uses**" for Applicant's property in this HNC-1 district. These "permitted-by-right" uses are codified under the current LDR's (Section 122-807 (5) and (6)).

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2. Applicant’s proposed conditional use would introduce a 15-seat, 1,585 sf, full-service restaurant (breakfast, lunch and dinner), open 7 days a week between 7am-11pm (weekends) and 7am-9pm (weekdays).
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4. The parking demands generated by Applicant’s proposed businesses are 18 spaces. The Applicant has 3 off-street spaces. The entire 1200 block of White Street contains only 19 spaces.
5. Introduction of such a high density, high traffic use, without adequate off-street parking, would effectively deprive each and every property owner in the 1200 block of White Street of the existing public parking upon which the residents now depend for their convenience and existing business now depend for servicing their existing customers.
6. If Applicant’s proposed conditional-use restaurant were introduced into this district, surrounding property owners would experience permanent loss of quality-of-life rights and diminution of their property values.
7. The proposed full-service restaurant would greatly increase density, intensity of use, and traffic at this site. 10+ employees will be present to service all of the uses proposed for this site. 127 daily trips are estimated for a high-turnover restaurant. (Compare this with 44 daily for retail space or 11 daily trips for offices.
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Applicant has failed to satisfy the Criteria for Review and Approval of the proposed conditional uses pursuant to Section 122-62 (c). Specifically:

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- A. The proposed 15-seat restaurant is described as an "expansion" of the walk up sidewalk window.⁶ The previous sidewalk walk-up window was a non-conforming use, holding an occupational license for "no-seats" food service. The previous walk-up window created a public nuisance for years at this site. Unlike other walk-up coffee shop windows in the area, it operated at night, sold beer (illegally), engendered drinking in public, street brawls, loud music, urination in public, and other disruptive activities. Its negative atmosphere prevented residents from safely walking in front of the establishment. When Applicant was asked why he allowed the continuation of this disturbing business, he told his neighbor that he needed to collect his rents and that if there were any disturbances at night they "should just call the police." Applicant allowed these disturbances to continue until he began renovations of the building. The neighbors have little confidence that Applicant would be any more responsive to the disruptions inherent with operation of full-service 1,585 sf food service establishment.
- B. Applicant cannot provide the off-street spaces for the parking requirements his proposed conditional-use restaurant would generate. His expansion of a non-conforming "no-seat" coffee window into a 1,585sf restaurant would create increased traffic, increased intensity and increased density of use - all of which is intrusive, incompatible, and materially adverse to the surrounding neighbors.

⁶ See Applicant's Second Amended Addendum to Amended Conditional Use Application dated November 15, 2013.

D. This site is zoned for residential and light-commercial. Applicant is permitted-by-right to operate retail sales and professional offices at this site without any necessity for a parking variance. Applicant's proposed conditional-use would intensify use and increase density at this site by converting approximately 1,585 sf of retail/office space into a restaurant which generates at least twice as many daily trips and almost twice the parking demands. Additionally, the proposed use would introduce issues of odor, noise, pollution, litter, sanitation and disposal of raw food, added volumes of solid waste, and disposal of used cooking oils which are not associated with retail sales or professional office space.

2. **Sufficient size, adequate specifications and infrastructure to accommodate proposed use:**

A. Applicant's proposed conditional-use restaurant materially expands floor area and the intensity of use at this site. Applicant's site is without adequate size or infrastructure to accommodate this increased intensity of use. Applicant's surrounding neighbors would bear the burden entirely of these permanent and adverse consequences.

B. Applicant's proposed conditional-use business cannot be adequately accommodated at this site. The size and shape of the parking lot do not allow for drive-through ingress and egress. Only 3 parking spaces can be accommodated on this lot. The parking lot must also provide the following amenities or other functions:

(1) **HANDICAP ACCESS RAMP AND PAVED WALKWAY:**

Subject property is 14" above grade which necessitates installation of a handicap ramp and walk over a portion of the parking lot.

(2) **STORM WATER DRAINAGE COLLECTION:**

The parking lot is 100% impermeable surface. An exfiltration trench or drain field for retention of rainfall is required. During the pendency of these applications, Applicant (without HARC approval or issuance of a building permit-) removed a masonry wall separating the parking lot from the neighbor's residence. The parking lot is 14" above

grade. Removal of the existing retaining wall now subjects the neighbor's residence to potential flooding until this issue is satisfactorily resolved.

(3) STORAGE OF SOLID WASTE AND RECYCLING BINS:

There is currently 1 front-end loaded dumpster sitting unscreened in the middle of the parking lot. Un-contained construction debris and trailers of mopeds and cannibalized motor parts have occupied the parking lot for well over 1 year. Waste and recycling bins for the upstairs apartments are permanently (and illegally) housed the Catherine Street sidewalk. (*Section 108-279 requires that "All refuse and waste storage areas shall be screened from adjacent properties and public ways by appropriate fences, walls or landscaping. Front-end loaded refuse containers shall also be required to be screened by vegetation or structural means to shield an unsightly condition."*)

(4) PROPANE-GAS STORAGE TANK:

There is currently 1 propane tank sitting unscreened at the rear of the parking lot (non-conforming set-back). Applicant's revised application fails to disclose or address the volume of propane gas, the number of canisters, or the frequency of servicing which will be necessary to support the proposed 1,585 sf restaurant operational for approximately 16 hours per day, 7 days a week. Applicant's blanket representation that "Normal office, retail, and restaurant service vehicles are anticipated⁷" fails to adequately address or reasonably satisfy the criteria required for this proposed conditional use. Additionally, Applicant provides no plan or proposal for the location, screening and method of servicing such gas tanks. To fill the existing propane tank, a propane delivery truck must idle in the ROW on White Street and drag its hose to the rear of the parking lot, or alternately, the propane delivery truck must pull into the driveway and then (illegally)

⁷ See revised 2/27/14 application, page 3 section (1) e.

back out into the ROW on White Street. Both delivery methods pose serious safety issues for pedestrians and the driving public and violate. [INSERT CITATION PROHIBITING BACKING OUT ON ROW].

(5) CONTAINMENT AND STORAGE AREA FOR HAZARDOUS WASTE MATERIALS:

Applicant's revised (2/27/14) application states that "Applicant shall maintain disposal contracts for all hazardous waste." This blanket statement is contradictory to Applicant's representations that NO repair or servicing of mopeds or other motor vehicles shall take place at this site. Hazardous waste disposal of used tires, old motor oils, and cannibalized engine parts is necessary only if repair or servicing of motor vehicles is still contemplated.

The proposed conditional-use restaurant may require disposal of discarded cooking oils if frying is to be performed at restaurant. Applicant has failed to disclose or address the volume of used cooking oils which may be necessary contain and store, or the proposed method for its disposal.

(6) OUTDOOR STORAGE:

Applicant revised (2/27/14) application states that NO outside storage and display of inventory shall occur. This statement is wholly inconsistent with his proposal for "parking 18 mopeds and bikes" in the area previously designated as the "Outdoor Storage Area." Pursuant to Section 108-288 *"Any proposed exterior storage areas shall be located at the rear of the principal structure. Such outside storage area shall be enclosed by a solid wall with solid entrance and exit gates..."*.

- D. Applicant's site is not of sufficient size or adequate specifications to accommodate the proposed conditional use restaurant.⁸ Specifically:

⁸ See Exhibit "D" DETAILS OF ADVERSE IMPACTS UPON SURROUNDING NEIGHBORS OF THIS HNC-1 DISTRICT

- (1) LACK OF NECESSARY OFF-STREET PARKING
- (2) DANGEROUS AND UNSAFE EGRESS FROM PARKING LOT
- (3) INABILITY TO COMPLY WITH REQUIRED ON-SITE AMENITIES
- (4) INCREASED AND ADVERSE DENSITY, TRAFFIC, AND INTENSITY OF USE CREATED BY PROPOSED CONDITIONAL-USES.

3. Proper use of mitigative techniques;

- A. Applicant has failed to provide or propose any meaningful mitigation for the odor, noise, pollution, increased traffic, increased trip-generation, intensity of use, increase of density, and the overwhelming parking demands created by his proposed conditional-use restaurant.
- B. Since Applicant's purchase of the property he has improved the exterior appearance of the building. The windows and doors have been replaced and the exterior walls have been stuccoed. Applicant's neighbors have applauded these efforts to improve the exterior, however, "*better-than-it-was*" is not the standard of review for conditional-uses or parking variances.
- C. Applicant's proposed conditional use expansion of a 1,585 sf restaurant is overly aggressive and intrusive for this site. Cosmetic improvements to the building or a landscape plan simply cannot mitigate the permanent and harmful impact such conditional use would impose upon this neighborhood.
- E. Applicant's proposed solutions to mitigate the adverse impacts of the proposed conditional use businesses have resulted in representations and promises which are dismissive or grossly unresponsive to the legitimate concerns of the city and neighbors. Specifically:
 - 1. SOLID WASTE/RECYCLING: Applicant conditional-use application fails to address the total volume of solid waste and recycling from all uses. This site contains 5800 sf of commercial space and 2 residential apartments. Applicant proposes to use a single "roll out" dumpster kept inside the building. Without accurate data of the anticipated volume of solid waste and recycling generated, and the proposed solution for its containment,

storage and disposal, it is impossible for the Planning Department (or the Planning Board and public) to evaluate the sufficiency of the proposal or whether such plan is practical, feasible or even permissible under existing sanitation, health, and fire codes.

Applicant's revised application (revised 2/27/14) provided a site drawing with a single dumpster sitting unscreened in the rear (illegal setback) of the parking lot. Applicant's blanket comment that "Normal service vehicles are anticipated"⁹ fails to address or successfully mitigate these issues.

2. DELIVERIES/LOADING DECK: The proposed 1,585 sf restaurant is intended to operate 7 days per week for approximately 16 hours per day. Multiple trucks shall be required to service and deliver food, beverages and other supplies. Such deliveries shall be made by refrigerated trucks idling on Catherine or White Streets in the ROW, or by using the parking lot for deliveries, which are then transported by hand cart of the sidewalk. All deliveries via the parking lot would result in the delivery trucks backing out (illegally) into the on-going traffic of White Street. Applicant's comment that "Normal service vehicles are anticipated"¹⁰ wholly fails to address or offer mitigation of this serious safety issue.

3. TRAFFIC/TRIP GENERATION: Applicant commissioned a "trip generation analysis"¹¹ concerning the traffic impact created by the proposed conditional uses. Applicant's own expert estimated that the restaurant would generate **141 daily 2-way trips**. Applicant's revised application (revised 2/27/14) states that a "high turn-over" restaurant would generate **120+ daily 2-way trips**. These traffic/trip impacts are in addition to the daily round-trips generated by the Applicant's other intended uses: 2-residential apartments (**13.4 daily 2-way trips**);

⁹ See revised 2/27/14 application, page 3 section (1) e.

¹⁰ See revised 2/27/14 application, page 3 section (1) e.

¹¹ See "1200 White Street Trip Generation Analysis" prepared by David Plummer & Associates and submitted by Applicant

professional office (**3.42 daily2-way trips**). Applicant has offered no mitigation proposal for the severe increase in traffic created by the proposed conditional-use restaurant.

4. SCALE AND SCOPE OF CONDITIONAL USE: Applicant's most recent "mitigation" proposal does not reduce the number of seats, limit the hours of operation, or offer any downsizing of the food service activities intended at the site. Incredibly, Applicant's "mitigation plan" simply reduces the consumption area of the 15 seats from 640 sf to 225 sf. It defies logic and common sense that 15 patrons sitting in 15 chairs crammed within 225 sf of consumption space creates any less parking impact in the neighborhood than 15 patrons sitting in 15 chairs within 640 sf. of consumption space. Applicant's "mitigation" plan is for the sole purpose of reducing the number of parking spaces required for this conditional use from 15 spaces to 5 spaces (640sf x 1 per 45sf vs 225sf x 1 per 45sf). It is NOT proposed for the intention of mitigating the very real and adverse impacts the conditional use restaurant would have on the surrounding neighborhood.

4. **Hazardous waste:**

- A. Applicant's previous application stated that "for the short time between acquisition of any hazardous waste materials and their disposal, storage of the items will be **inside the premises in fire resistant cabinets.**"¹²
- C. Applicant has withdrawn his request to repair and service mopeds, motorcycles and other motor vehicles, however, hazardous waste of certain restaurant by product shall be necessary. Applicant's blanket comment that "Normal service vehicles are anticipated."¹³ fails to successfully address or mitigate this issue of hazardous waste disposal. Without such data, it is impossible to determine (and unfair to the Planning Board and the public) to evaluate the impact of Applicant's

¹² See page 16 of Applicant's Second Amended Addendum to Amended Conditional Use Application

¹³ See revised 2/27/14 application, page 3 section (1) e.

conditional use, or to determine if containment, storage and disposal of hazardous waste materials at this site are practical, feasible or even permissible under existing sanitation, health, and fire codes.

5. **Compliant with applicable laws and ordinances:**

- A. Applicant is non-compliant with applicable laws and ordinances. For the last 15 months, Applicant has operated a moped and motorcycle rental business and an engine and motor vehicle repair shop at the site without valid licensing or any conditional-use approval by this board. In January 2014, the code enforcement office (finally) required the Applicant to cease such operations.
- B. Applicant has underestimated the parking requirements of the proposed conditional-use restaurant in each and every one of his amended and revised applications. Without full and accurate disclosure by the Applicant of the site's floor areas, it is impossible to fairly evaluate the parking impact of the proposed project or the accurate number of parking spaces required or necessary for variance approval.
- C. Applicant's revised application (revised 2/27/14) omits any "Outside Storage Area", however Applicant proposes to use this same 450sf outside area for "parking of 18 mopeds and bikes." Applicant's business practices at this site (and for many years at his previous location on the corner of Whitehead and Southard Streets) involved cat-and-mouse tactics with the city's code enforcement department concerning Applicant's repeated violations for displaying inventory in the parking lot and in the city ROW. Applicant's use of the parking lot for display of his own merchandise and inventory is prohibited. See also *Section 108-278 (Appearance of Site and Structures)*¹⁴ and *Section 108-573 (Special provisions within historic*

¹⁴ See *Section 108-278 (Appearance of Site and Structures)*, which provides: **"Within all zoning districts within the city, the appearance of a site and structures shall be coordinated for the purpose of creating a pleasing and harmonious overall environment. The choice of site improvements shall be commensurate with the objectives of the subject use and considering impact on surrounding properties and transportation corridors."** [Emphasis added]

*commercial pedestrian-oriented area.)*¹⁵

D. CONCLUSION

Applicant has failed to meet the criteria for approval of the proposed conditional use restaurant. The parking issues, noise, odors, pollution, increase of density, the intensity of use, and the excessive traffic and trip generation created by the proposed conditional-use would permanently and adversely change the character of this mixed-use neighborhood and would impose unnecessary, permanent and harmful burdens on the surrounding residential and business neighbors and the walking and driving public.

Pursuant to Section 122-61 (Purpose and Intent) “... a conditional use **shall only be permitted on specific sites where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity.**”

Applicant is simply unable to meet this criteria.

White Street is flourishing. All of the existing and newly-introduced businesses are light-commercial (business and professional offices and light retail shops). The Applicant should respect his neighbors and the zoning contemplated by the city’s land development regulations and use his site for permitted-by-right businesses that do not require a parking variance, and do not detrimentally impact his residential and business neighbors.

The Planning Department previously recommended DENIAL of all conditional uses proposed at this site. It has recently recommended APPROVAL, but with myriad “conditions” which, no matter how well intentioned, will not operate to make this project compatible with the surrounding neighbors.

¹⁵ Section 108-573 (Special provisions within historic commercial pedestrian-oriented area.)“... Any preexisting off-street parking serving the structure must be maintained to service the new use. Similarly, preexisting parking shall not be used as a site for additional floor area unless the total off-street parking required pursuant to this article is made available to accommodate the existing and new proposed floor area.”

RE: 1200-1212 White Street/Victor Mills
Objection to Revised (2/27/14) Conditional Use Application

The residential and commercial neighbors joining in this objection live, work and own properties **within the immediate vicinity of the site**. Their properties have a combined assessed value of over \$7.8 million. They are the most personally and (financially) adversely impacted by the proposed variance and conditional use applications.

We respectfully request the Planning Board to uphold the pertinent sections of the Land Development Regulations and to follow the Planning Department's previous recommendations for DENIAL of the applications for conditional use and parking variance.

Thank you for your consideration of these matters of great and lasting importance to our neighborhood and to this City.

Respectfully submitted on behalf of above-named concerned neighbors,

Linda B. Wheeler, Esq.
Attorney at Law
1213 White Street
Key West, Florida 33040
Telephone 305 294-0683
Facsimile 305 296-2155
Mobile 305/509-2145
email: lwheeleraal@earthlink.net

**OBJECTION TO CONDITIONAL USE
Restaurant (15 seats)**

The below named neighbors join in this Objection to Conditional Use Application:

Linda Wheeler	1213 White Street
Robert Kruse	1213 White Street
Sean Cowles	1216 White Street
Adele Williams Cowles	1216 White Street
Ross and Jodie Williams	1217 White Street
Tim and Anne Sullivan	1204-1206 Duncan Street
Robert Koske	1208 Duncan Street
Barbara Haveland	1209 Duncan Street
Brian Schmitt d/b/a Coldwell Banker Schmitt	1201-1211 White Street
Lynn Kaufelt and David Kaufelt	1120 White Street
Dr. Ana Marie Camarotti	1220 Georgia Street
Cynthia Vinson Dean	1327 Duncan Street
Mrs. Valter Vinson	1215 Georgia Street
Robert Silver	1327 Duncan Street
Candida Andriole-Cobb	1016 Varela Street
Georgia and Thomas Favelli	1108 White Street
Bill and Ann Lorraine	1028 Catherine Street
Ron Oldham and Patricia Kennedy	1120 Catherine Street

Contents:

- A. Background Statement
- B. STANDARD OF REVIEW
- C. ARGUMENTS FOR DENIAL OF CONDITIONAL-USE APPLICATION
- D. CONCLUSION
- E. EXHIBITS

A. Operative Facts Entirely Uncontested:

1. The site is located in the HARC district. It is zoned HNC-1, designated for residential and light-commercial mixed use.
2. The site consists of a single building located on the corner of White and Catherine Streets. The building contains approximately 4,875 sf of commercial space on the ground floor and 2 residential apartments on the 2nd floor (1,198 sf).
3. The adjacent parking lot is located mid-block. It will accommodate parking for a maximum of 3 vehicles.
4. The site previously hosted a walk-up coffee shop window (non-conforming use with “no seats” occupational license); a bakery (non-conforming use abandoned over 4 years ago¹); and a retail tile shop (permitted-use vacant for over 10 years).
5. Applicant’s applications for parking variance and conditional uses have been pending since September 2012. During the pendency of the case, Applicant has amended or revised his applications at various times - including April 1, 2014. Other hearings before the planning board were September 19, 2013 (tabled after approximately 2 hours of testimony and public comments) and March 20, 2014 (tabled after approximately 1.5 hours). Among Applicant’s more recent revisions were the withdrawal of two conditional-use businesses earlier proposed for this site (moped rentals and service/repair shop).
6. Applicant’s current application (revised 4/1/14) proposes the following uses:

15-seat Restaurant (1,585sf) (conditional use)
Retail sales of mopeds (2745 sf) (conditional use if floor area is over 2500sf)
Professional offices (426sf) (permitted use)
7. Each proposed use at this site must conform to the current land development

¹ See Section 122-30 (Abandonment of nonconforming use) which states, in pertinent part: “If a nonconforming use ceases.... any and every future use of the building or structure and/or premise shall be in conformity with the use sections of the land development regulations..... A nonconforming use shall be considered abandoned when such use has ceased for a period of 24 months.....”

regulations, including parking requirements, and other site amenities (waste bin screening, landscaping, open space, storm water management, ADA access, lighting, signage, etc.)²

8. Applicant's existing parking lot must be maintained in perpetuity as a parking lot.³
9. The Applicant has calculated that 18 parking spaces are required for Applicant's proposed mix of permitted-by-right and conditional-use businesses at this site.
10. Applicant's site can accommodate a total of 3 parking spaces.
11. Without any parking variance or any conditional-use approval, Applicant may enjoy 100% **reasonable economic use** of this site by operation (or lease) of permitted-by-right retail sales shop(s) and professional office(s).
12. Mr. Mills may use 100% of his building for professional office space (any number of offices, of unrestricted sizes) , as well as lease the two (2) apartments on the second floor, without triggering any additional parking requirements or creating any need for a parking variance.⁴
13. Professional offices and retail sales stores (less than 2500sf) are "**reasonable uses**" for Applicant's property in this HNC-1 district. These "permitted-by-right" uses are codified under the current LDR's (Section 122-807 (5) and (6)).

² Sec. 108-571: "Parking shall be provided in all districts at the time any building or structure is erected or enlarged or increased in capacity by a change of use or the addition of dwelling units, transient units, floor area, seats, beds, employees or other factors impacting parking demand as stated in this article."

Sec. 108-575(5): "Applicability of standards to expanding uses. Whenever a building or use is enlarged in floor area, number of dwelling units, seating capacity or in any other manner so as to create a need for a greater number of parking spaces than that existing, such spaces shall be provided in accordance with this section. Any parking deficiency shall be brought into conformity concurrently with the enlargement or change of use."

³ Section 108-573 (c) "Any preexisting off-street parking serving the structure must be maintained to service the new use."

⁴ See memo from city planning director Donald Craig dated 4/4/14 and city planner Kevin Bond dated 4/15/14, attached to Exhibits.

14. The entire 1200 block of White Street contains approximately 19 on-street parking spaces.
15. It is only due to Applicant's proposal to introduce conditional-use businesses which has resulted in the pending applications for conditional uses and a 15-space parking variance.⁵

B. STANDARD FOR REVIEW:

1. Section 122-61 (Purpose and Intent) provides that: "*... a conditional use **shall only be permitted** on specific sites where the proposed use may be adequately accommodated **without generating adverse impacts on properties and land uses within the immediate vicinity.**"*
2. Section 122-62 (Criteria for Conditional Use Review and Approval) (c) (1-6) provides that: "*Applications for a conditional use **shall clearly demonstrate the following:***
 - (1) *Land Use Compatibility;*
 - (2) *Sufficient size, adequate specifications and infrastructure to accommodate proposed use;*
 - (3) *Proper use of mitigative techniques;*
 - (4) *Hazardous waste;*
 - (5) *Compliant with applicable laws and ordinances;*
 - (6) *Additional criteria applicable to specific land uses.*

C. Argument for **DENIAL** OF Application for Conditional Use:

Applicant's proposed restaurant use cannot be adequately accommodated at this site without generating severe and permanent adverse impacts on properties and land uses within the immediate vicinity.

⁵ See city planner Kevin Bond's memo dated 4/15/14: "*It is Mr. Mills's request for restaurant use that is triggering the need to bring his parking into compliance with the code, and thus his variance request. The restaurant use has a higher parking requirement than retail or office, which is what triggers bringing parking into compliance.*"

1. Restaurants are not a permitted-by-right use in this residential and light commercial mixed-use district. (The restaurants operating in the 1300 & 1400 blocks of White Street have long-standing “grandfathered” parking and use exemptions not applicable to this site or this Applicant.)
2. Applicant’s proposed conditional use would introduce a 15-seat, 1,585 sf, full-service restaurant (breakfast, lunch and dinner), open 7 days a week between 7am-11pm (weekends) and 7am-9pm (weekdays).
3. Applicant’s site is insufficient to accommodate the amenities required or the parking demands generated by the proposed restaurant use.
4. The parking demands generated by Applicant’s proposed businesses are 18 spaces. The Applicant has 3 off-street spaces. The entire 1200 block of White Street contains only 19 spaces.
5. Introduction of such a high density, high traffic use, without adequate off-street parking, would effectively deprive each and every property owner in the 1200 block of White Street of the existing public parking upon which the residents now depend for their convenience and existing business now depend for servicing their existing customers.
6. If Applicant’s proposed conditional-use restaurant were introduced into this district, surrounding property owners would experience permanent loss of quality-of-life rights and diminution of their property values.
7. The proposed full-service restaurant would greatly increase density, intensity of use, and traffic at this site. 10+ employees will be present to service all of the uses proposed for this site. 127 daily trips are estimated for a high-turnover restaurant. (Compare this with 44 daily for retail space or 11 daily trips for offices.
8. The proposed conditional use restaurant would also create serious and dangerous safety issues to local pedestrians and the driving public. There is no loading zone (and introduction of one would only further diminish the limited street parking now available). Large refrigerated food, beverage and other delivery trucks would be required to idle in the ROW of White Street or Catherine

Street, or more dangerously, use the driveway and (illegally) back out into the ongoing traffic ROW of White Street.

9. Applicant's introduction of the conditional use restaurant would also create increased noise, odor, litter, pollution, traffic congestion and other adverse and harmful effects to the neighboring properties.

Applicant has failed to satisfy the Criteria for Review and Approval of the proposed conditional uses pursuant to Section 122-62 (c). Specifically:

1. **Land Use Compatibility:**

- A. The proposed 15-seat restaurant is described as an "expansion" of the walk up sidewalk window.⁶ The previous sidewalk walk-up window was a non-conforming use, holding an occupational license for "no-seats" food service. The previous walk-up window created a public nuisance for years at this site. Unlike other walk-up coffee shop windows in the area, it operated at night, sold beer (illegally), engendered drinking in public, street brawls, loud music, urination in public, and other disruptive activities. Its negative atmosphere prevented residents from safely walking in front of the establishment. When Applicant was asked why he allowed the continuation of this disturbing business, he told his neighbor that he needed to collect his rents and that if there were any disturbances at night they "should just call the police." Applicant allowed these disturbances to continue until he began renovations of the building. The neighbors have little confidence that Applicant would be any more responsive to the disruptions inherent with operation of full-service 1,585 sf food service establishment.
- B. Applicant cannot provide the off-street spaces for the parking requirements his proposed conditional-use restaurant would generate. His expansion of a non-conforming "no-seat" coffee window into a 1,585sf restaurant would create increased traffic, increased intensity and increased density of use - all of which is intrusive, incompatible, and materially adverse to the surrounding neighbors.

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D. This site is zoned for residential and light-commercial. Applicant is permitted-by-right to operate retail sales and professional offices at this site without any necessity for a parking variance. Applicant's proposed conditional-use would intensify use and increase density at this site by converting approximately 1,585 sf of retail/office space into a restaurant which generates at least twice as many daily trips and almost twice the parking demands. Additionally, the proposed use would introduce issues of odor, noise, pollution, litter, sanitation and disposal of raw food, added volumes of solid waste, and disposal of used cooking oils which are not associated with retail sales or professional office space.

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- (2) DANGEROUS AND UNSAFE EGRESS FROM PARKING LOT
- (3) INABILITY TO COMPLY WITH REQUIRED ON-SITE AMENITIES
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storage and disposal, it is impossible for the Planning Department (or the Planning Board and public) to evaluate the sufficiency of the proposal or whether such plan is practical, feasible or even permissible under existing sanitation, health, and fire codes.

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3. TRAFFIC/TRIP GENERATION: Applicant commissioned a "trip generation analysis"¹¹ concerning the traffic impact created by the proposed conditional uses. Applicant's own expert estimated that the restaurant would generate **141 daily 2-way trips**. Applicant's revised application (revised 2/27/14) states that a "high turn-over" restaurant would generate **120+ daily 2-way trips**. These traffic/trip impacts are in addition to the daily round-trips generated by the Applicant's other intended uses: 2-residential apartments (**13.4 daily 2-way trips**);

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4. SCALE AND SCOPE OF CONDITIONAL USE: Applicant's most recent "mitigation" proposal does not reduce the number of seats, limit the hours of operation, or offer any downsizing of the food service activities intended at the site. Incredibly, Applicant's "mitigation plan" simply reduces the consumption area of the 15 seats from 640 sf to 225 sf. It defies logic and common sense that 15 patrons sitting in 15 chairs crammed within 225 sf of consumption space creates any less parking impact in the neighborhood than 15 patrons sitting in 15 chairs within 640 sf. of consumption space. Applicant's "mitigation" plan is for the sole purpose of reducing the number of parking spaces required for this conditional use from 15 spaces to 5 spaces (640sf x 1 per 45sf vs 225sf x 1 per 45sf). It is NOT proposed for the intention of mitigating the very real and adverse impacts the conditional use restaurant would have on the surrounding neighborhood.

4. **Hazardous waste:**

- A. Applicant's previous application stated that "for the short time between acquisition of any hazardous waste materials and their disposal, storage of the items will be **inside the premises in fire resistant cabinets.**"¹²
- C. Applicant has withdrawn his request to repair and service mopeds, motorcycles and other motor vehicles, however, hazardous waste of certain restaurant by product shall be necessary. Applicant's blanket comment that "Normal service vehicles are anticipated."¹³ fails to successfully address or mitigate this issue of hazardous waste disposal. Without such data, it is impossible to determine (and unfair to the Planning Board and the public) to evaluate the impact of Applicant's

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- A. Applicant is non-compliant with applicable laws and ordinances. For the last 15 months, Applicant has operated a moped and motorcycle rental business and an engine and motor vehicle repair shop at the site without valid licensing or any conditional-use approval by this board. In January 2014, the code enforcement office (finally) required the Applicant to cease such operations.
- B. Applicant has underestimated the parking requirements of the proposed conditional-use restaurant in each and every one of his amended and revised applications. Without full and accurate disclosure by the Applicant of the site's floor areas, it is impossible to fairly evaluate the parking impact of the proposed project or the accurate number of parking spaces required or necessary for variance approval.
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*commercial pedestrian-oriented area.)*¹⁵

D. CONCLUSION

Applicant has failed to meet the criteria for approval of the proposed conditional use restaurant. The parking issues, noise, odors, pollution, increase of density, the intensity of use, and the excessive traffic and trip generation created by the proposed conditional-use would permanently and adversely change the character of this mixed-use neighborhood and would impose unnecessary, permanent and harmful burdens on the surrounding residential and business neighbors and the walking and driving public.

Pursuant to Section 122-61 (Purpose and Intent) “... a conditional use **shall only be permitted on specific sites where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity.**”

Applicant is simply unable to meet this criteria.

White Street is flourishing. All of the existing and newly-introduced businesses are light-commercial (business and professional offices and light retail shops). The Applicant should respect his neighbors and the zoning contemplated by the city’s land development regulations and use his site for permitted-by-right businesses that do not require a parking variance, and do not detrimentally impact his residential and business neighbors.

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RE: 1200-1212 White Street/Victor Mills
Objection to Revised (2/27/14) Conditional Use Application

The residential and commercial neighbors joining in this objection live, work and own properties **within the immediate vicinity of the site**. Their properties have a combined assessed value of over \$7.8 million. They are the most personally and (financially) adversely impacted by the proposed variance and conditional use applications.

We respectfully request the Planning Board to uphold the pertinent sections of the Land Development Regulations and to follow the Planning Department's previous recommendations for DENIAL of the applications for conditional use and parking variance.

Thank you for your consideration of these matters of great and lasting importance to our neighborhood and to this City.

Respectfully submitted on behalf of above-named concerned neighbors,

Linda B. Wheeler, Esq.
Attorney at Law
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Key West, Florida 33040
Telephone 305 294-0683
Facsimile 305 296-2155
Mobile 305/509-2145
email: lwheeleraal@earthlink.net

**OBJECTION TO CONDITIONAL USE
Restaurant (15 seats)**

The below named neighbors join in this Objection to Conditional Use Application:

Linda Wheeler	1213 White Street
Robert Kruse	1213 White Street
Sean Cowles	1216 White Street
Adele Williams Cowles	1216 White Street
Ross and Jodie Williams	1217 White Street
Tim and Anne Sullivan	1204-1206 Duncan Street
Robert Koske	1208 Duncan Street
Barbara Haveland	1209 Duncan Street
Brian Schmitt d/b/a Coldwell Banker Schmitt	1201-1211 White Street
Lynn Kaufelt and David Kaufelt	1120 White Street
Dr. Ana Marie Camarotti	1220 Georgia Street
Cynthia Vinson Dean	1327 Duncan Street
Mrs. Valter Vinson	1215 Georgia Street
Robert Silver	1327 Duncan Street
Candida Andriole-Cobb	1016 Varela Street
Georgia and Thomas Favelli	1108 White Street
Bill and Ann Lorraine	1028 Catherine Street
Ron Oldham and Patricia Kennedy	1120 Catherine Street

Contents:

- A. Background Statement
- B. STANDARD OF REVIEW
- C. ARGUMENTS FOR DENIAL OF CONDITIONAL-USE APPLICATION
- D. CONCLUSION
- E. EXHIBITS

A. Operative Facts Entirely Uncontested:

1. The site is located in the HARC district. It is zoned HNC-1, designated for residential and light-commercial mixed use.
2. The site consists of a single building located on the corner of White and Catherine Streets. The building contains approximately 4,875 sf of commercial space on the ground floor and 2 residential apartments on the 2nd floor (1,198 sf).
3. The adjacent parking lot is located mid-block. It will accommodate parking for a maximum of 3 vehicles.
4. The site previously hosted a walk-up coffee shop window (non-conforming use with “no seats” occupational license); a bakery (non-conforming use abandoned over 4 years ago¹); and a retail tile shop (permitted-use vacant for over 10 years).
5. Applicant’s applications for parking variance and conditional uses have been pending since September 2012. During the pendency of the case, Applicant has amended or revised his applications at various times - including April 1, 2014. Other hearings before the planning board were September 19, 2013 (tabled after approximately 2 hours of testimony and public comments) and March 20, 2014 (tabled after approximately 1.5 hours). Among Applicant’s more recent revisions were the withdrawal of two conditional-use businesses earlier proposed for this site (moped rentals and service/repair shop).
6. Applicant’s current application (revised 4/1/14) proposes the following uses:

15-seat Restaurant (1,585sf) (conditional use)
Retail sales of mopeds (2745 sf) (conditional use if floor area is over 2500sf)
Professional offices (426sf) (permitted use)
7. Each proposed use at this site must conform to the current land development

¹ See Section 122-30 (Abandonment of nonconforming use) which states, in pertinent part: “If a nonconforming use ceases.... any and every future use of the building or structure and/or premise shall be in conformity with the use sections of the land development regulations..... A nonconforming use shall be considered abandoned when such use has ceased for a period of 24 months.....”

regulations, including parking requirements, and other site amenities (waste bin screening, landscaping, open space, storm water management, ADA access, lighting, signage, etc.)²

8. Applicant's existing parking lot must be maintained in perpetuity as a parking lot.³
9. The Applicant has calculated that 18 parking spaces are required for Applicant's proposed mix of permitted-by-right and conditional-use businesses at this site.
10. Applicant's site can accommodate a total of 3 parking spaces.
11. Without any parking variance or any conditional-use approval, Applicant may enjoy 100% **reasonable economic use** of this site by operation (or lease) of permitted-by-right retail sales shop(s) and professional office(s).
12. Mr. Mills may use 100% of his building for professional office space (any number of offices, of unrestricted sizes) , as well as lease the two (2) apartments on the second floor, without triggering any additional parking requirements or creating any need for a parking variance.⁴
13. Professional offices and retail sales stores (less than 2500sf) are "**reasonable uses**" for Applicant's property in this HNC-1 district. These "permitted-by-right" uses are codified under the current LDR's (Section 122-807 (5) and (6)).

² Sec. 108-571: "Parking shall be provided in all districts at the time any building or structure is erected or enlarged or increased in capacity by a change of use or the addition of dwelling units, transient units, floor area, seats, beds, employees or other factors impacting parking demand as stated in this article."

Sec. 108-575(5): "Applicability of standards to expanding uses. Whenever a building or use is enlarged in floor area, number of dwelling units, seating capacity or in any other manner so as to create a need for a greater number of parking spaces than that existing, such spaces shall be provided in accordance with this section. Any parking deficiency shall be brought into conformity concurrently with the enlargement or change of use."

³ Section 108-573 (c) "Any preexisting off-street parking serving the structure must be maintained to service the new use."

⁴ See memo from city planning director Donald Craig dated 4/4/14 and city planner Kevin Bond dated 4/15/14, attached to Exhibits.

14. The entire 1200 block of White Street contains approximately 19 on-street parking spaces.
15. It is only due to Applicant's proposal to introduce conditional-use businesses which has resulted in the pending applications for conditional uses and a 15-space parking variance.⁵

B. STANDARD FOR REVIEW:

1. Section 122-61 (Purpose and Intent) provides that: "*... a conditional use **shall only be permitted** on specific sites where the proposed use may be adequately accommodated **without generating adverse impacts on properties and land uses within the immediate vicinity.**"*
2. Section 122-62 (Criteria for Conditional Use Review and Approval) (c) (1-6) provides that: "*Applications for a conditional use **shall clearly demonstrate the following:***
 - (1) *Land Use Compatibility;*
 - (2) *Sufficient size, adequate specifications and infrastructure to accommodate proposed use;*
 - (3) *Proper use of mitigative techniques;*
 - (4) *Hazardous waste;*
 - (5) *Compliant with applicable laws and ordinances;*
 - (6) *Additional criteria applicable to specific land uses.*

C. Argument for **DENIAL** OF Application for Conditional Use:

Applicant's proposed restaurant use cannot be adequately accommodated at this site without generating severe and permanent adverse impacts on properties and land uses within the immediate vicinity.

⁵ See city planner Kevin Bond's memo dated 4/15/14: "*It is Mr. Mills's request for restaurant use that is triggering the need to bring his parking into compliance with the code, and thus his variance request. The restaurant use has a higher parking requirement than retail or office, which is what triggers bringing parking into compliance.*"

1. Restaurants are not a permitted-by-right use in this residential and light commercial mixed-use district. (The restaurants operating in the 1300 & 1400 blocks of White Street have long-standing “grandfathered” parking and use exemptions not applicable to this site or this Applicant.)
2. Applicant’s proposed conditional use would introduce a 15-seat, 1,585 sf, full-service restaurant (breakfast, lunch and dinner), open 7 days a week between 7am-11pm (weekends) and 7am-9pm (weekdays).
3. Applicant’s site is insufficient to accommodate the amenities required or the parking demands generated by the proposed restaurant use.
4. The parking demands generated by Applicant’s proposed businesses are 18 spaces. The Applicant has 3 off-street spaces. The entire 1200 block of White Street contains only 19 spaces.
5. Introduction of such a high density, high traffic use, without adequate off-street parking, would effectively deprive each and every property owner in the 1200 block of White Street of the existing public parking upon which the residents now depend for their convenience and existing business now depend for servicing their existing customers.
6. If Applicant’s proposed conditional-use restaurant were introduced into this district, surrounding property owners would experience permanent loss of quality-of-life rights and diminution of their property values.
7. The proposed full-service restaurant would greatly increase density, intensity of use, and traffic at this site. 10+ employees will be present to service all of the uses proposed for this site. 127 daily trips are estimated for a high-turnover restaurant. (Compare this with 44 daily for retail space or 11 daily trips for offices.
8. The proposed conditional use restaurant would also create serious and dangerous safety issues to local pedestrians and the driving public. There is no loading zone (and introduction of one would only further diminish the limited street parking now available). Large refrigerated food, beverage and other delivery trucks would be required to idle in the ROW of White Street or Catherine

Street, or more dangerously, use the driveway and (illegally) back out into the ongoing traffic ROW of White Street.

9. Applicant's introduction of the conditional use restaurant would also create increased noise, odor, litter, pollution, traffic congestion and other adverse and harmful effects to the neighboring properties.

Applicant has failed to satisfy the Criteria for Review and Approval of the proposed conditional uses pursuant to Section 122-62 (c). Specifically:

1. **Land Use Compatibility:**

- A. The proposed 15-seat restaurant is described as an "expansion" of the walk up sidewalk window.⁶ The previous sidewalk walk-up window was a non-conforming use, holding an occupational license for "no-seats" food service. The previous walk-up window created a public nuisance for years at this site. Unlike other walk-up coffee shop windows in the area, it operated at night, sold beer (illegally), engendered drinking in public, street brawls, loud music, urination in public, and other disruptive activities. Its negative atmosphere prevented residents from safely walking in front of the establishment. When Applicant was asked why he allowed the continuation of this disturbing business, he told his neighbor that he needed to collect his rents and that if there were any disturbances at night they "should just call the police." Applicant allowed these disturbances to continue until he began renovations of the building. The neighbors have little confidence that Applicant would be any more responsive to the disruptions inherent with operation of full-service 1,585 sf food service establishment.
- B. Applicant cannot provide the off-street spaces for the parking requirements his proposed conditional-use restaurant would generate. His expansion of a non-conforming "no-seat" coffee window into a 1,585sf restaurant would create increased traffic, increased intensity and increased density of use - all of which is intrusive, incompatible, and materially adverse to the surrounding neighbors.

⁶ See Applicant's Second Amended Addendum to Amended Conditional Use Application dated November 15, 2013.

D. This site is zoned for residential and light-commercial. Applicant is permitted-by-right to operate retail sales and professional offices at this site without any necessity for a parking variance. Applicant's proposed conditional-use would intensify use and increase density at this site by converting approximately 1,585 sf of retail/office space into a restaurant which generates at least twice as many daily trips and almost twice the parking demands. Additionally, the proposed use would introduce issues of odor, noise, pollution, litter, sanitation and disposal of raw food, added volumes of solid waste, and disposal of used cooking oils which are not associated with retail sales or professional office space.

2. **Sufficient size, adequate specifications and infrastructure to accommodate proposed use:**

A. Applicant's proposed conditional-use restaurant materially expands floor area and the intensity of use at this site. Applicant's site is without adequate size or infrastructure to accommodate this increased intensity of use. Applicant's surrounding neighbors would bear the burden entirely of these permanent and adverse consequences.

B. Applicant's proposed conditional-use business cannot be adequately accommodated at this site. The size and shape of the parking lot do not allow for drive-through ingress and egress. Only 3 parking spaces can be accommodated on this lot. The parking lot must also provide the following amenities or other functions:

(1) **HANDICAP ACCESS RAMP AND PAVED WALKWAY:**

Subject property is 14" above grade which necessitates installation of a handicap ramp and walk over a portion of the parking lot.

(2) **STORM WATER DRAINAGE COLLECTION:**

The parking lot is 100% impermeable surface. An exfiltration trench or drain field for retention of rainfall is required. During the pendency of these applications, Applicant (without HARC approval or issuance of a building permit-) removed a masonry wall separating the parking lot from the neighbor's residence. The parking lot is 14" above

grade. Removal of the existing retaining wall now subjects the neighbor's residence to potential flooding until this issue is satisfactorily resolved.

(3) STORAGE OF SOLID WASTE AND RECYCLING BINS:

There is currently 1 front-end loaded dumpster sitting unscreened in the middle of the parking lot. Un-contained construction debris and trailers of mopeds and cannibalized motor parts have occupied the parking lot for well over 1 year. Waste and recycling bins for the upstairs apartments are permanently (and illegally) housed the Catherine Street sidewalk. (*Section 108-279 requires that "All refuse and waste storage areas shall be screened from adjacent properties and public ways by appropriate fences, walls or landscaping. Front-end loaded refuse containers shall also be required to be screened by vegetation or structural means to shield an unsightly condition."*)

(4) PROPANE-GAS STORAGE TANK:

There is currently 1 propane tank sitting unscreened at the rear of the parking lot (non-conforming set-back). Applicant's revised application fails to disclose or address the volume of propane gas, the number of canisters, or the frequency of servicing which will be necessary to support the proposed 1,585 sf restaurant operational for approximately 16 hours per day, 7 days a week. Applicant's blanket representation that "Normal office, retail, and restaurant service vehicles are anticipated⁷" fails to adequately address or reasonably satisfy the criteria required for this proposed conditional use. Additionally, Applicant provides no plan or proposal for the location, screening and method of servicing such gas tanks. To fill the existing propane tank, a propane delivery truck must idle in the ROW on White Street and drag its hose to the rear of the parking lot, or alternately, the propane delivery truck must pull into the driveway and then (illegally)

⁷ See revised 2/27/14 application, page 3 section (1) e.

back out into the ROW on White Street. Both delivery methods pose serious safety issues for pedestrians and the driving public and violate. [INSERT CITATION PROHIBITING BACKING OUT ON ROW].

(5) CONTAINMENT AND STORAGE AREA FOR HAZARDOUS WASTE MATERIALS:

Applicant's revised (2/27/14) application states that "Applicant shall maintain disposal contracts for all hazardous waste." This blanket statement is contradictory to Applicant's representations that NO repair or servicing of mopeds or other motor vehicles shall take place at this site. Hazardous waste disposal of used tires, old motor oils, and cannibalized engine parts is necessary only if repair or servicing of motor vehicles is still contemplated.

The proposed conditional-use restaurant may require disposal of discarded cooking oils if frying is to be performed at restaurant. Applicant has failed to disclose or address the volume of used cooking oils which may be necessary contain and store, or the proposed method for its disposal.

(6) OUTDOOR STORAGE:

Applicant revised (2/27/14) application states that NO outside storage and display of inventory shall occur. This statement is wholly inconsistent with his proposal for "parking 18 mopeds and bikes" in the area previously designated as the "Outdoor Storage Area." Pursuant to Section 108-288 *"Any proposed exterior storage areas shall be located at the rear of the principal structure. Such outside storage area shall be enclosed by a solid wall with solid entrance and exit gates..."*.

- D. Applicant's site is not of sufficient size or adequate specifications to accommodate the proposed conditional use restaurant.⁸ Specifically:

⁸ See Exhibit "D" DETAILS OF ADVERSE IMPACTS UPON SURROUNDING NEIGHBORS OF THIS HNC-1 DISTRICT

- (1) LACK OF NECESSARY OFF-STREET PARKING
- (2) DANGEROUS AND UNSAFE EGRESS FROM PARKING LOT
- (3) INABILITY TO COMPLY WITH REQUIRED ON-SITE AMENITIES
- (4) INCREASED AND ADVERSE DENSITY, TRAFFIC, AND INTENSITY OF USE CREATED BY PROPOSED CONDITIONAL-USES.

3. Proper use of mitigative techniques;

- A. Applicant has failed to provide or propose any meaningful mitigation for the odor, noise, pollution, increased traffic, increased trip-generation, intensity of use, increase of density, and the overwhelming parking demands created by his proposed conditional-use restaurant.
- B. Since Applicant's purchase of the property he has improved the exterior appearance of the building. The windows and doors have been replaced and the exterior walls have been stuccoed. Applicant's neighbors have applauded these efforts to improve the exterior, however, "*better-than-it-was*" is not the standard of review for conditional-uses or parking variances.
- C. Applicant's proposed conditional use expansion of a 1,585 sf restaurant is overly aggressive and intrusive for this site. Cosmetic improvements to the building or a landscape plan simply cannot mitigate the permanent and harmful impact such conditional use would impose upon this neighborhood.
- E. Applicant's proposed solutions to mitigate the adverse impacts of the proposed conditional use businesses have resulted in representations and promises which are dismissive or grossly unresponsive to the legitimate concerns of the city and neighbors. Specifically:
 - 1. SOLID WASTE/RECYCLING: Applicant conditional-use application fails to address the total volume of solid waste and recycling from all uses. This site contains 5800 sf of commercial space and 2 residential apartments. Applicant proposes to use a single "roll out" dumpster kept inside the building. Without accurate data of the anticipated volume of solid waste and recycling generated, and the proposed solution for its containment,

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RE: 1200-1212 White Street/Victor Mills
Objection to Revised (2/27/14) Conditional Use Application

The residential and commercial neighbors joining in this objection live, work and own properties **within the immediate vicinity of the site**. Their properties have a combined assessed value of over \$7.8 million. They are the most personally and (financially) adversely impacted by the proposed variance and conditional use applications.

We respectfully request the Planning Board to uphold the pertinent sections of the Land Development Regulations and to follow the Planning Department's previous recommendations for DENIAL of the applications for conditional use and parking variance.

Thank you for your consideration of these matters of great and lasting importance to our neighborhood and to this City.

Respectfully submitted on behalf of above-named concerned neighbors,

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