



MEMORANDUM

Date: January 7th, 2025

To: Honorable Mayor and Commissioners

Via: Todd Stoughton, Interim City Manager

From: Katie P. Halloran, Planning Director

Subject: **File 24-5775 - Request for a Major Development Plan at 621 Duval Street (RE#00012380-000000) for property located in the Historic Residential Commercial Core – 1 (HRCC-1) zoning district.**

Introduction

The subject property is currently improved with a commercial retail space on the first floor, and vacant space on the second, with an empty lot in the rear of the property. The applicant is requesting development plan approval for a new two-story residential structure including six residential units along with landscape waivers and variances for building coverage, impervious surface, open space, and parking. **The Planning Board recommended approval of the plan at their November 20, 2024, Special Called Meeting through Resolution No. 2024-038.** Planning Department staff recommend the City Commission review the need for Building Permit Application System units for construction, as outlined in the following section.

A Major Development Plan is required for the proposed construction pursuant to Section 108-91 of the City Code. Pursuant to Section 108-198 (Review and action by City Commission), *“A development plan shall be reviewed by the city commission either in its final approval capacity or its appellate capacity, as provided in section 108-196(b). The city commission shall approve with or without conditions or disapprove the development plan based on specific development review criteria contained in the land development regulations and based on the intent of the land development regulations and comprehensive plan. The city commission may attach to its approval of a*

development plan any reasonable conditions, limitations or requirements that are found necessary, in its judgment, to effectuate the purpose of this article and carry out the spirit and purpose of the comprehensive plan and the land development regulations. Any condition shall be

made a written record and affixed to the development plan as approved. If the city commission disapproves a development plan, the reasons shall be stated in writing.”

Background and Housing Analysis

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

- *Pre 1995 - 2 retail stores and 7 residential units existed according to a 2019 staff build back letter.*
- *August 1995 – A fire burns down the entire property*
- *Nov 1995 – Retail and Restaurant reconstruction is approved through Res 95-439 (No res units)*
- *2005 – PB Res 05-169 Grants property to build 6 affordable res units.*
- *2006 - CC Res -06-047 Grants Major Development Plan Approval for 6 affordable units*
- *2007 - Res 07-043 Grants a one year extension for Dev Plan*
- *2008- Building Permits were granted for 6 affordable units, however, it doesn't appear these units were ever constructed once permits were pulled.*
- *2019 – Trepanier requests a build back letter from City, Roy Bishop writes to Trepanier stating in final sentence “In summary, this letter establishes mixed-use of commercial and residential units existed on the properties”*
- *2023 – Trepanier meets with Planning Director and is told that the units destroyed in 1995 are not allowed to be built back without BPAS allocations*
- *2023 - Trepanier sends letter to Charles Ittah disagreeing with this opinion from Planning Director*
- *Jan 2024 – Trepanier meets with Raj Ramsingh to discuss Major Development, Build back rights, and Variances.*
- *March 2024 – Trepanier submits MDP for 6 market rate units at 621 Duval Street.*
- *November 2024 – Planning Staff recommends denial at Planning Board. Board approves and removes BPAS Condition.*

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

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

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

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

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

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

In this instance, the property owner currently maintains a reasonable use of the property as a commercial (retail) business. In addition, the prior housing units did not exist at the time of the 2010 and are, as a result, not entitled to a Lawful Unit Determination. As a result, approval of the requested Major Development Plan first requires application for the six (6) market rate allocations through the BPAS. The applicant claims exemption from BPAS or LUD given their finding of unexpired vested rights to these units.

As noted above, the Planning Board approved the Development Plan after removal of a staff

recommended condition that a BPAS application would be required to allocate the proposed new market rate dwelling units.

Recommendation

The Planning Board recommended approval of the proposed development plan at their November 20, 2024, Special Called Meeting through Resolution No. 2024-038. Planning Department staff recommends the City Commission review the need for a Building Permit Application System allocation together with the City Attorney. Conditions #3 and #6 below, and in the draft ordinance, reflect staff recommendations for City Commission review; the remainder of the proposed conditions have been recommended for approval by the City of Key West Planning Board.

1. The proposed development shall be consistent with the plans dated October 21, 2024 by William Horn, the landscape plans dated October 9, 2024 by Keith Oropeza, notwithstanding any revisions requested and recommended by staff. Construction drawings for permitting shall be dated as approved herein, with any proposed revisions (modifications) clearly noted. Development plan modifications that do not rise to the status of minor or major plan modifications may be approved by the city planner as per Section 108-91(c)(1). All modifications shall be submitted for review and approval to the Planning Department prior to building permit application. Minor and major development plan modifications are addressed as per Section 108(c).
2. Final landscape plan approval required from Tree Commission prior to issuance of a building permit. If no significant changes occur to the approved landscape plan, then the Urban Forestry Manager can review for approval.
3. Heavy maintenance trimming of the Gumbo Limbo tree located at 620 Josephine Parker Way shall be done prior to issuance of building permits by a certified arborist.
4. During all phases of construction, temporary fencing shall be installed and maintained. All adjacent City streets and sidewalks shall be kept clean and clear of construction debris unless permitted by the City.
5. Per the Fire Marshall's request, the multi-family two story structure must have a sprinkler system installed in each unit.
6. All six (6) of the market rate residential units are subject to the Building Permit Allocation (BPAS) process. No permits to be issued unless and until any needed market rate residential allocations have been secured through the annual BPAS cycle.