

**THE CITY OF KEY WEST  
PLANNING BOARD**



**Staff Report**

**To:** Chairman and Planning Board Members  
**Through:** Katie P. Halloran, Planning Director  
**From:** Ben Gagnon, Planner I  
**Meeting Date:** March 12<sup>th</sup>, 2024

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

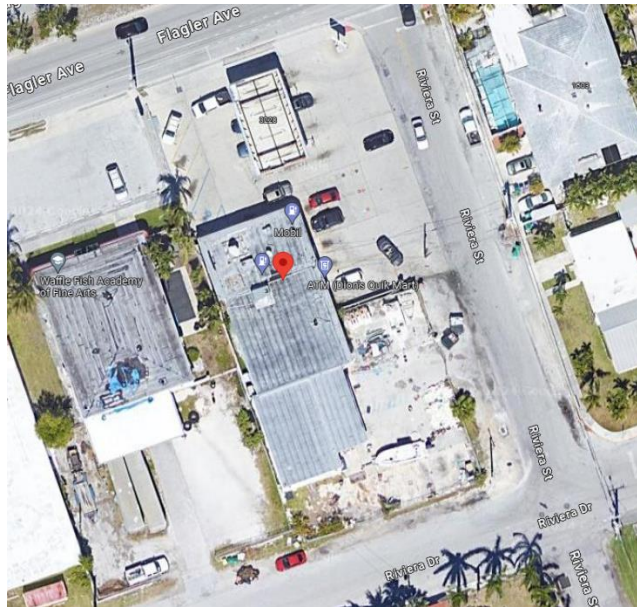
**Request:** This modification application proposes to increase the number of affordable units by one (1) and reduce the number of market rate units by one (1) for a total of three (3) market rate units, along with landscape waivers.

**Applicant:** Trepanier & Associates Inc

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

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

**Zoning:** Limited Commercial (CL)



## **Background and Housing Analysis**

The property currently consists of an active gas station and accessory retail store. The applicant was awarded an allocation for four (4) market-rate and four (4) affordable-rate BPAS units for the property at 3228 Flagler on April 26, 2018. The applicant, through emergency order extensions, has extended the original two year permit deadline to August of 2026.

The applicant submitted the original Minor Development Plan in 2017 to redevelop a light industrial building on the rear of the property of 3228 Flagler into eight (8) units, half market rate, half affordable. The front property is and will continue to be occupied by Dion's Fuel Station and Minimart. Parking will be provided on site. The applicant has stated that they will request City Commission approval to link affordable units at this project to satisfy affordable housing requirements for the development plan at 638 United St. The original major modification application submitted in 2023 requested a reduction in the number of affordable units from 4 to 3, and an increase in the number of market units from 4 to 5, which would not provide enough affordable units for this development to comply with affordable housing linkage requirements for the project at 638 United Street. Section 122-1476 of the City Code, as indicated below, requires that at least 30% of units be affordable and this request reduced the combined number of affordable units to 25% between the two developments.

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

*project to be built at the site of another project, so long as the affordable housing requirement of the latter development or redevelopment is fulfilled as well. . .”*

The Planning Board reviewed the 638 United Street project on December 12, 2023 and recommended approval to the City Commission through Resolution 2023-028 with a general condition that a minimum of 4 affordable units be provided for the 3228 Flagler St development to satisfy the 30% linkage requirement. On February 10, 2024, the applicant submitted new plans for 5 affordable units and 3 market rate units, resolving staff’s concerns over Sec 122-1467 and the 30% affordable unit requirement. An updated breakdown of what was approved in 2018 and what is currently proposed is indicated below.

	Previously Approved			New Proposed (2/10/24)		
	Affordable	Market	Total	Affordable	Market	Total
Flagler	4	4	8	5	3	8
United	0	5	5	0	4	4
Total units	4	9	13	5	7	12
Total %	31%	69%	100%	42%	58%	100%

The applicant has updated the application to also have the site meet Florida Green Building Coalition (FGBC) Gold certification, and the owner will make a monetary donation of \$2,500 to the City of Key West Tree Commission in lieu of Art in Public Places installation. The City has received a new request for BPAS allocations at this property, including new scoring, new unit size, and new landscaping. Should the applicant’s rankings result in eligibility for new BPAS allocations, the applicant has indicated they will return their current allocations back to the City. The applicant should also update their BPAS applications to reflect the latest plans submitted on 2/10/24.

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

This application was on the February 15, 2024 Planning Board agenda, but the applicant requested postponement to address comments and concerns raised by several neighbors regarding impacts to their properties. The applicant has since attempted coordinating with the neighbors, presenting potential site plan modifications to address their concerns. However, the applicant has indicated that the neighbors have been unresponsive and has therefore requested that this application move forward with the site plan submitted to the Planning Department on 2/10/24. It is the understanding of Planning Department staff that the neighbors are actively discussing the project at this time.

**Demolition Scope:**

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

**Proposed Development:**

Previously approved, and proposed modifications:

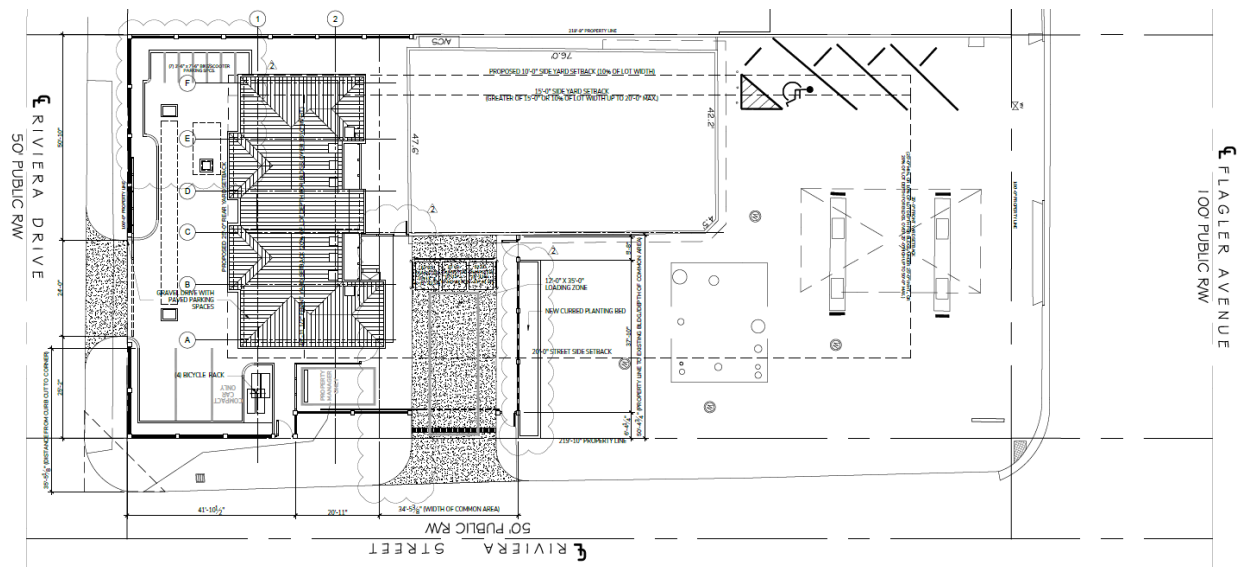
Site Data Table					
Site Data	Permitted	Existing	Approved 2018	Proposed 2024	Compliance
Zoning	CL	CL	CL	CL	
Min Lot Size	5,000	21,982	-	-	Yes
F.A.R	0.8	0.22	0.12	0.16	Yes
Density	16 D/U per Acre	0	8	8	Yes
Max Height	40'	20'	39'	39'-101/8"	Yes
Open Space	30% Min	<5%	16% (3,463 sf)	9% (1,990 sf)	
Building Coverage	40% Max	5%	38% (8,363 sf)	25% (5,553 sf)	Yes
Impervious	60% Max	97%	84% (18,477 sf)	84% (18,452 sf)	No*
Front Setback	25'	7'8"	73'-6"	73'-6"	Yes
Side	15'	0'-9"	3'-8"	3'-8"	No*
Street Side	20'	36'	20'	20'	Yes
Rear	25'	24'-11"	25'	25'	Yes

\*An 84% impervious surface ratio was approved under Resolution 2018-52. The new proposed impervious surface ratio does not require a variance as it is a reduction from what was previously approved.

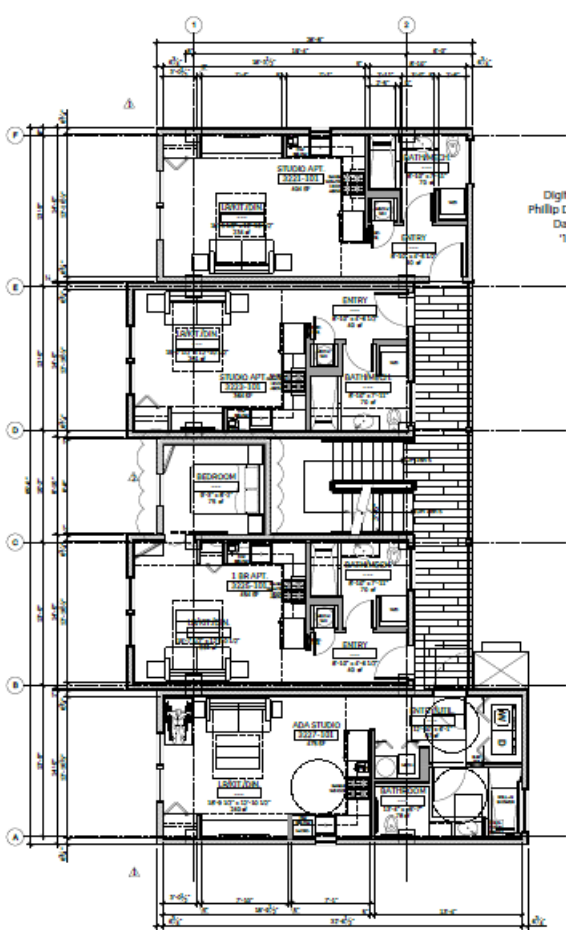
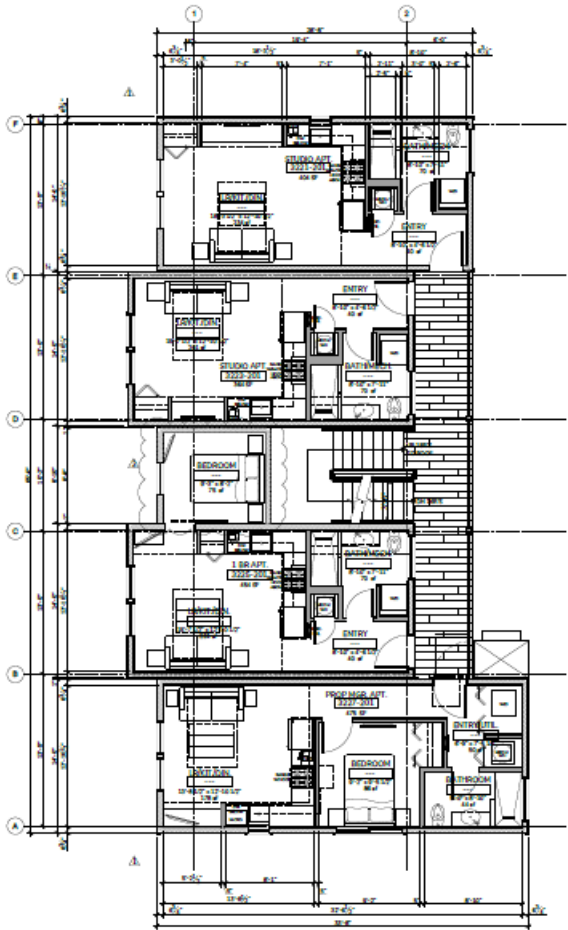
The current property is a paved lot and exceeds impervious surface requirements. The proposed development will result in reduced impervious surfaces on the property compared to the previous plan. The proposed development has been modified to reflect a larger commercial store, smaller residential units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

Building Data Table		
Building Data	Approved 2018	Proposed 2024
Existing Commercial Store	2,807 sf	3,545 sf
New Ground Floor	718 sf	N/A
New First Floor	4,454 sf	2,008 sf
Unit 101	558 sf	404 sf
102	558 sf	364 sf
103	987 sf	454 sf
104	1,891 sf	475 sf
Circulation	284 sf	311 sf
New Second Floor	4,388 sf	2,008 sf
Unit 201	558 sf	404 sf
202	558 sf	364 sf
203	1,439 sf	454 sf
204	1,439 sf	475 sf
Circulation	227 sf	311 sf
Building Total	9,560 sf	4,016 sf
Usable Roof Area	2,896 sf	140 sf

*Proposed Site Plan, submitted by applicant.*



Proposed Floor Plans, submitted by applicant.



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## **Surrounding Zoning and Uses:**

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

## **Process:**

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

## **Relevant Development Plan Code Analysis**

‘Good Neighbor’ Policy:

On Tuesday February 13<sup>th</sup> Planning received the attached public comment from neighbors George Wallace, Bradbury King, Dale Lockwood, and Stephen and Kathleen Russ. The applicant responded to these comments by submitting 4 alternative plans for the neighbors to review on February 22<sup>nd</sup>. However, the applicant has indicated that the neighbors have been unresponsive and has therefore requested that this application move forward with the site plan submitted to the Planning Department on 2/10/24. As noted previously, Planning Department staff have observed that the applicant and neighbors are currently in discussions regarding project design features, particularly landscaping, driveway locations and parking.

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

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

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



[illegible][illegible]



### *Existing Gas Station*



The following landscape waivers are required:

- Sec 108-346 City code requires 20% open space, 2018 approved 16%, the new proposal is 8%.
- Sec 108-347 (Bufferyards): western property line buffer area due to lack of plant unit counts.
- 108-350 Bufferyard exceptions: bufferyard exceptions: No bufferyard proposed for existing gas station portion of the property along the western property line.
- 108-412 The 2018 Planning Board resolution approved 16% landscaping, the 2023 modification proposes just 8% of the property to be landscaped.
- 108-413 Street buffer frontage width is required to be 20ft for properties over 0.5 acre in size (*staff had previously erred in stating that the requirement was for 10feet*). The proposed width of the landscape areas along Rivera Drive and Rivera Stret is 3.1 and 6.1 feet and no buffer is proposed for the Flagler Avenue portion of the property.
- 108-416 Interior area landscaping. Three trees of the required 4 trees are proposed to be planted.
- Sec 108-481 Specifications for plant material require all trees to be a minimum of 12 ft in height and the plan shall constitute no more than 25% palms. One of the proposed canopy trees is proposed to be 8-10 ft tall and the proposed plan includes over 76% palm species.

Planning Department staff together with the Urban Forestry Manager have recommended the following conditions as a part of their Landscape review:

1. The property maintenance plan must include continued maintenance of the property to remove any invasive exotic plant species (Brazilian Pepper, Australian Pine, Lead Tree).

2. Final landscape plan approval required from Tree Commission prior to issuance of a building permit. If no significant changes occur to the approved landscape plan, then the Urban Forestry Manager can review for approval.
3. With respect to the landscape waiver, and with consideration of neighbor input, the Planning Department recommend that at a minimum, additional improvements to the landscape plan should be required as reflected in the proposed condition of approval:
  - The applicant shall submit revised landscape plans approved by the Urban Forestry Manager and Planning Director prior to the issuance of building permits. Revised landscape plans shall at a minimum include trees and shrubs along the western lot line adjacent to the existing parking spaces extending from the building front to the front lot line, new landscaping within the existing pervious area between the sidewalk and Flagler Avenue, and new landscaping surrounding the existing pole sign on the northeast corner of the lot.

### **Concurrency Facilities and Other Utilities or Services (City Code Section 108-233)**

Comprehensive Plan Objective 9-1.5 directs the City to ensure that public facilities and services needed to support development are available concurrent with the impacts of new development. The analysis considers potable water, sanitary sewer, solid waste, drainage, vehicle trip generation and recreation. City Code Section 94-36 requires a concurrency review determination to be made concerning the proposed development. The Applicant provided a concurrency analysis as part of the Minor Development Plan application. Staff reviewed the provided concurrency analysis following the criteria in City Code Section 94-36 and determines that public facilities are expected to accommodate the proposed development at the adopted level of service (LOS) standards. Staff finds that the project meets Sec 108-233 to reasonable standards.

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

### **Sec 108-572 – Off street parking**

Outside of the historic district, multifamily developments require 2 spaces per dwelling unit. There are 8 dwelling units and 16 proposed vehicle spaces. All of the units are proposed as studio apartments. The application proposes 11 new bicycle and scooter parking spaces and 8 new vehicle parking spaces in addition to the existing 8 spaces serving the gas station, totaling 16 vehicular spaces for the property as a whole. The application notes 24 spaces, but the City Code does not allow for the 8 existing fuel pump stalls to be regarded as parking. Vehicular access to the development will be via Riviera Drive. The 11 new bicycle/scooter spaces being proposed satisfy the parking exemption under Sec. 122-1470 for the 5 affordable units in lieu of the vehicular parking requirement. As shown in the parking table below, the proposed development will improve the existing parking deficiency on this property from 11 spaces to 2 spaces.

	Area Intensity /	Parking Requirement	Total Required Parking	Total Provided Parking	Parking Deficiency
<b>Existing</b>					
Commercial Store	5,493 sq ft	1 space/300 sq. ft. gross floor area	18.3	8	
<b>TOTAL</b>			<b>19</b>	<b>8</b>	<b>11</b>
<b>Proposed</b>					
Commercial Store (reduced sq. ft.)	3,582 sq. ft.	1 space/300 sq. ft. gross floor area	11.9	8	
Affordable Units	5 Studio Apartments	2 scooter spaces per unit can be provided in lieu*	0	8	
Market Rate Units	3 Studio Apartments	2 spaces per unit	6		
<b>TOTAL</b>			<b>18</b>	<b>16</b>	<b>2</b>

The original minor development plan approved under Resolution 2018-52 included 15 new parking spaces in addition to the existing 8 spaces serving the gas station for a total of 23 spaces for the whole property.

## RECOMMENDATION

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

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations respectfully recommends to the Planning Board that the request for Major Modification to Minor Development Plan and Landscape Modifications / Waivers be **APPROVED with the conditions listed below**. Planning Department staff further recommend that given ongoing discussions between the neighbors and applicant at the time of publishing of this report, that the Board consider any further site plan modifications that may function to minimize nuisance, maximize pedestrian safety, and improve quality of life for future tenants and neighbors. Modified conditions from the original approval through Resolution 2018-52 are tracked below in a strike through underline format.

### General conditions:

1. The proposed development shall be consistent with the plans dated ~~September 28, 2018 by Robert Allen Steele, P.A.~~ No approval granted for any other work or improvements shown on the plans other than the proposed construction of the two story multi-family structure that includes five (5) deed restricted affordable units, three (3) market rate residential units, ground floor storage units, bocce courts, an underground catchment

system, parking, electric charging systems, and scooter/ bike spaces February 9, 2024 by Little Red Rooster LLC, and the landscape plans dated February 9, 2024 by RVi; notwithstanding any revisions requested and recommended by staff.

- ~~2. The relocation of the garbage enclosure shall in no way alter the number or size of the fifteen required (15) off-street parking spaces.~~
2. The applicant shall submit revised landscape plans approved by the Urban Forester and Planning Director prior to the issuance of building permits. Revised landscape plans shall at a minimum include trees and shrubs along the western lot line adjacent to the existing parking spaces extending from the building front to the front lot line, new landscaping within the existing pervious area between the sidewalk and Flagler Avenue, and new landscaping surrounding the existing pole sign on the northeast corner of the lot.
3. The property maintenance plan must include continued maintenance of the property to remove any invasive exotic plant species (Brazilian Pepper, Australian Pine, Lead Tree).
4. ~~Tree Commission Final approval~~ 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.
5. The hours of construction shall follow City Code and be limited to 8 a.m. to 7 p.m. on Monday to Friday, and 9 a.m. to 5 p.m. on Saturday.
6. 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.
7. Prior to obtaining a Certificate of Occupancy, the applicant must record the affordable deed restrictions identifying the five (5) affordable units in a form that is acceptable to the City, and approved by the City's Attorney.
8. Per the Fire Marshall's request, the multi-family two story structure must have a sprinkler system installed in each unit.
9. Prior to building permit application, the site plan shall be revised to reflect a rainwater catchment system which shall be installed in accordance with Section 108-997(b)(1)(c).