

STAFF REPORT

DATE: February 27, 2018

RE: **Mallory Square (permit application # T18-8856)**

FROM: Karen DeMaria, City of Key West Urban Forestry Manager

An application was received requesting Final Landscape Plan Approval with Tree removal for the creation of a restaurant at Mallory Square. The property is owned by the City of Key West but leased by Tropical Soup Corporation. The development would result in the **removal of (1) Royal Poinciana tree and the transplantation of (2) Coconut Palms.**

A site inspection was done on November 15, 2017 to document changes to the area after Hurricane Irma. Many of the trees originally approved to removal had been removed by the hurricane. Below are updated photo of the area.





Tree #2:
Gumbo
Limbo





Trees 1 & 2



Trees 3
& 4:
Palms



Tree #5 (Ficus) and Tree #4 (Palm)

The plans submitted do incorporate the changes since Hurricane Irma impacted the area and does incorporate 70% native vegetation appropriate for the location.

The removal of the Royal Poinciana tree, approved with the Conceptual Landscape Plan at the June 9, 2015 Tree Commission meeting, requires 9.1 caliper inches of approved trees be replanted in the proposed work area and incorporated into the landscape plan. The landscape plan meets this requirement and the Coconut palms will be immediately transplanted into their new position on the property.

Recommend approval of the Final Landscape Plan with Tree Removal to include the removal of (1) Royal Poinciana tree to be replaced with 9.1 caliper inches of approved trees on site and the transplantation of (2) Coconut palms. Any changes made to the plan may result in the plan having to be re-reviewed by the Tree Commission.



THE CITY OF KEY WEST

Tree Commission

Post Office Box 1409 Key West, FL 33041-1409

Telephone: 305-809-3764

June 10, 2015

City of Key West
P.O. Box 1409
Key West, FL 33041

To Whom It May Concern:

The City of Key West Tree Commission recently considered your permit application regarding property located at Mallory Square, Tropical Soup Corporation project, at their regularly scheduled meeting on June 9, 2015.

The request of the permit application, T15-7424, was for Conceptual Approval of the Landscape Plan with Tree Removal for the above mentioned property. The Tree Commission approved the conceptual landscape plan to allow the project to proceed through the permitting process with HARC and the Planning Board, with conditions that the landscape architect continue to work with the Urban Forestry Manager on a final plant list for the landscape plan. Specifically that the plant list is indeed 70% native. Once you have received approval from HARC and the Planning Board, application should be made again to the Tree Commission for Final Landscape Plan approval with Tree Removal.

If you have any questions please call the office at (305) 809-3768.

Sincerely,

A handwritten signature in blue ink, appearing to read "Karen DeMaria", is written over the word "Sincerely,".

Karen DeMaria
Urban Forestry Program Manager
City of Key West
3140 Flagler Avenue
Key West, FL 33040
Office: 305/809-3768
Fax: 305/809-3978
kdemaria@cityofkeywest-fl.gov

Cc: Keith Oropeza-Little John Engineering Assoc, Inc
Kevin Sullivan-Trepanier & Assoc

STAFF REPORT

DATE: May 27, 2015

RE: **Mallory Square-Tropical Soup (permit application # T15-7424)**

FROM: Karen DeMaria, Urban Forestry Manager,
City of Key West

An application was received for the removal of **(1) Sea Grape, (1) Gumbo Limbo, (1) Royal Poinciana, (2) Stangler Fig trees, (1) Coconut Palm, and (1) Washingtonian Palm**. A site inspection was done on May 6, 2015 and documented the following:





Tree #1
(Strangler
Fig) to
remain

Tree #12 (Coconut
Palm) to remain



Tree #1

Tree #11 (Coconut
Palm) to remain

Tree #10 (Coconut
Palm) to remain



Tree #2
dead tree to
be removed



Trees #3A
and 3B to
remain

Tree #9 (Strangler Fig) to be removed

Tree #8 (Coconut Palm) to be removed



Trees #3A
and #3B
(Sea Grapes)

Tree #6
(Gumbo
Limbo)
to
remove



Tree #7
(Royal
Poinciana)
to remove



Tree
#6

Tree #7



Tree#5
(Gumbo
Limbo)
to
remain

Tree #4
(Sea Grape)
to remove

Tree #14
(Strangler
Fig) to
remove



Tree
#4



Tree #14



Tree #13 (Washingtonian Palm)
to be removed

Values for Tree to be removed:

Tree #4: Sea Grape (*Cocoloba uvifera*)
Diameter: 14" (multi trunked)
Location: 60%
Species: 100% (on protected tree list)
Condition: 60% (fair)
Total Average Value = 73%
Value x Diameter = 10.2 replacement caliper inches

Tree #6: Gumbo Limbo (*Bursera simaruba*)
Diameter: 12"
Location: 70%
Species: 100% (on protected tree list)
Condition: 50% (fair-base of trunk damaged by old decking)
Total Average Value = 73%
Value x Diameter = 8.7 replacement caliper inches

Tree #7: Royal Poinciana (*Delonix regia*)
Diameter: 11"
Location: 70%
Species: 100% (on protected tree list)
Condition: 80% (good)
Total Average Value = 83%
Value x Diameter = 9.1 replacement caliper inches

Tree #9: Strangler Fig (*Ficus aurea*)
Diameter: 4"
Location: 60%
Species: 100% (on protected tree list)
Condition: 60% (fair)
Total Average Value = 73%
Value x Diameter = 2.9 replacement caliper inches

Tree #14 Strangler Fig (*Ficus aurea*)
Diameter: 5"
Location: 60%
Species: 100% (on protected tree list)
Condition: 40% (poor)
Total Average Value = 66%
Value x Diameter = 3.3 replacement caliper inches

Palm Trees to be removed: #8 Coconut Palm
#13 Washingtonian Palm
Replacement of 2-native palms

Total required replacements in landscape plan if all requested trees approved for removal (1-Sea Grape, 1-Gumbo Limbo, 1-Royal Poinciana, 2-Strangler fig trees, 1-Coconut Palms, and 1-Washingtonian Palm) is 34.2 caliper inches FL#1 trees from approved tree list and 2 native palms.

September 2013 photo of property

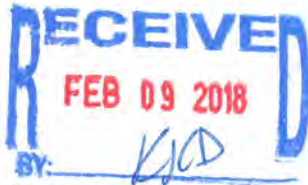


Above photos shows decking around tree #6 and #7.

Property History: In 2010, the property was involved in a Major Development Plan. At that time, the project requested removal of 3-Sea Grape, 1-Royal Poinciana, 1- Strangler Fig, 4-Coconut Palms, and 1-Washingtonian palm, and the transplantation of 2-Gumbo Limbo trees. The project did receive approvals from the Tree Commission, the Planning Board, and HARC but did not receive City Commission approval.

Landscape Plan: The submitted landscape plan does not address the required replacement inches on the property. The plan also does not meet code requirements of 70%.

Application



8856

Final
Landscape
w/ tree removal

Tree Permit Application

Date: November 18, 2017

Please Clearly Print All Information unless indicated otherwise.

Tree Address Tropical Soup, Mallory Square, Key West Florida 33040
Cross/Corner Street Wall Street & David Wolkowsky Street
List Tree Name(s) and Quantity Refer to sheet L102 Tree disposition Plan
Species Type(s) check all that apply (☒ Palm) (☒ Flowering) (☐ Fruit) (☒ Shade) (☐ Unsure)
Reason(s) for Application:

(☒ REMOVE) (☐ Tree Health) (☐ Safety) (☒ Other/Explain below)
(☒ TRANSPLANT) (☐ New Location) (☒ Same Property) (☐ Other/Explain below)
(☐ HEAVY MAINTENANCE) (☐ Branch Removal) (☐ Crown Cleaning/Thinning) (☐ Crown Reduction)
Other/Explain Tree conflicts with proposed activity deck

Reason for Request Site Improvements

Property Owner Name Joe Walsh / Tropical Soup Corporation
Property Owner eMail Address Tropicalsoup1@gmail.com
Property Owner Mailing Address P.O. Box 4147
Property Owner Mailing City Key West **State** FL **Zip** 33041
Property Owner Phone Number (305) 731 - 9972
Property Owner Signature [Signature]

Representative Name Tyler Nielsen
Representative eMail Address Tyler@nielsenlandarch.com
Representative Mailing Address 357 Cypress Drive, Suite 10
Representative Mailing City Tequesta **State** Florida **Zip** 33469
Representative Phone Number (561) 402 - 9414

NOTE: A Tree Representation Authorization form must accompany this application if someone other than the owner will be representing the owner at a Tree Commission meeting or picking up an issued Tree Permit.

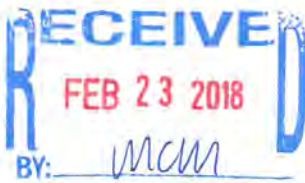
Tree Representation Authorization form attached (☐)

<<<<< Sketch location of tree in this area including cross/corner Street >>>>>

Please identify tree(s) with colored tape

REFER TO SHEET LSRV & L102 FOR TREE LOCATIONS & SPECIES

If this process requires blocking of a City right-of-way, a separate ROW Permit is required. Please contact 305-809-3740.



Tree Representation Authorization

Date: 2/12/2018

Attendance at the Tree Commission meeting on the date when your request will be discussed is necessary in order to expedite the resolution of your application. This **Tree Representation Authorization** form must accompany the application if the property owner is unable to attend or will have someone else pick up the Tree Permit once issued.

Please Clearly Print All Information unless indicated otherwise.

Tree Address 1 Mallory Square

Property Owner Name Tropical Soup Corporation
Property Owner eMail Address tropicalsoup1@gmail.com
Property Owner Mailing Address 7 Cypress terrace
Property Owner Mailing City Key West **State** Fl **Zip** 33040
Property Owner Phone Number (305) 731 - 9972
Property Owner Signature _____

Representative Name Tyler Nielsen (Nielsen Landscape Architects)
Representative eMail Address Tyler@Nielsenlandarch.com
Representative Mailing Address 357 Cypress Drive, Suite 10
Representative Mailing City Tequesta **State** Fl **Zip** 33469
Representative Phone Number (561) 402 - 9414

I Joseph Walsh / For Tropical Soup Corp, hereby authorize the above listed agent(s) to represent me in the matter of obtaining a Tree Permit from the City of Key West for my property at the tree address above listed. You may contact me at the telephone listed above if there are any questions or need access to my property.

Property Owner Signature _____

The forgoing instrument was acknowledged before me on this 23 day February 2018.

By (Print name of Affiant) Joe Walsh who is personally known to me or has produced _____ as identification and who did take an oath.

NOTARY PUBLIC

Sign Name: Christina M. Geide

Notary Public - State of Florida (seal)

Print Name: Christina M. Geide

My Commission Expires: _____



City of Key West
Planning Department



Authorization Form
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, James K. Scholl as City Manager of the City of Key West, FL hereby authorize

Tropical Soup Corporation and their professional team:

- o Trepanier & Associates, Inc.
- o Pike Architects, Inc.
- o Little John Engineering Associates, Inc.
- o Perez Engineering, Inc.

to be the representative for this application and act on my/our behalf before the City of Key West.

James K. Scholl
Signature of person with authority to execute documents on behalf on entity owner

Subscribed and sworn to (or affirmed) before me on this 1, May, 2015 Date

by Jim Scholl
Name of person with authority to execute documents on behalf on entity owner

He/She is personally known to me or has presented _____ as identification.

Maria G. Ratcliff
Notary's Signature and Seal

Maria G. Ratcliff
Name of Acknowledger typed, printed or stamped

March 22, 2019
Commission Number, if any



City of Key West
Planning Department



Verification Form
(Where Authorized Representative is an entity)

I, James K Scholl, in my capacity as City Manager
(print name) (print position; president, managing member)
of City of Key West
(print name of entity serving as Authorized Representative)

being duly sworn, depose and say that I am the Authorized Representative of the Owner (as appears on the deed), for the following property identified as the subject matter of this application:

Mallory Square

Street Address of subject property

All of the answers to the above questions, drawings, plans and any other attached data which make up the application, are true and correct to the best of my knowledge and belief. In the event the City or the Planning Department relies on any representation herein which proves to be untrue or incorrect, any action or approval based on said representation shall be subject to revocation.


Signature of Authorized Representative

Subscribed and sworn to (or affirmed) before me on this 1, May, 2015 by
date
Jim Scholl
Name of Authorized Representative

He/She is personally known to me or has presented _____ as identification.


Notary's Signature and Seal

Maria G. Ratcliff
Name of Acknowledger typed, printed or stamped



March 22, 2019
Commission Number, if any

Karen DeMaria

From: tyler nielsen <tyler@nielsenlandarch.com>
Sent: Monday, November 20, 2017 5:05 PM
To: Karen DeMaria
Cc: Joe Walsh; seth@pikearchitects.com
Subject: Tree Commission - Submission
Attachments: Tree forms.pdf; 2017_1118 - Tropical Soup TREE Com.pdf

Karen-

I hope you had a great day. As discussed, I am submitting a tree removal application and drawings for the Tropical Soup property at Mallory Square. Attached to this email are the following:

- Tree Permit Application
- Tree Representative Authorization Form
- Tree Survey / Disposition / Landscape Drawings SIGNED & SEALED

As discussed, are intentions are to be included on the December 12th agenda.

Please call or email with any questions or concerns.

Thanks-

Tyler Nielsen PLA 6667067 LEED AP

nielsen landscape architects, llc
357 cypress drive, suite 10
tequesta, florida 33469

561.402.9414
www.nielsenlandarch.com

Karen DeMaria

From: Ronald Ramsingh
Sent: Friday, February 09, 2018 2:48 PM
To: Karen DeMaria; tropicalsoup1@gmail.com; Van Fischer
Cc: Patrick Wright
Subject: RE: Mallory Square landscape Plan

Van/ Joe:

The City will process your request to go before the Tree Commission. Please bear in mind that the reason for the Planning Dept policy requiring HARC approval first is to prevent projects from going back through boards a 2nd time if in the event the application changes. In this instance, if the City's appeal is successful, the applicant will have to go back to HARC and start the whole process over which could have an impact on the Tree Commission approval that you seek. So, with that caveat that it is quite possible that this whole process could be repeated again, Karen will process your application

Ron

From: Karen DeMaria
Sent: Friday, February 09, 2018 12:03 PM
To: Ronald Ramsingh <rramsingh@cityofkeywest-fl.gov>; Patrick Wright <pwright@cityofkeywest-fl.gov>
Subject: FW: Mallory Square landscape Plan

Patrick:

This is a procedural issue. Can you or Ron respond please.

Sincerely,

Karen

From: Joe Walsh [<mailto:tropicalsoup1@gmail.com>]
Sent: Friday, February 09, 2018 11:59 AM
To: Karen DeMaria <kdemaria@cityofkeywest-fl.gov>; Ronald Ramsingh <rramsingh@cityofkeywest-fl.gov>; Patrick Wright <pwright@cityofkeywest-fl.gov>
Cc: tyler nielsen <tyler@nielsenlandarch.com>; Van Fischer <van@vdf-law.com>
Subject: Mallory Square landscape Plan

Karen Demaria,

Please place the landscape plan for the Tropical Soup project to revitalize Mallory Square on the next Tree commission Agenda. The proposal is the same one that your office received on 11/20/17.

Sec 108-411 requires that the Landscape Plan be approved, prior to the Planning Board review, or that your office determines that the subject plan is compliant with the relevant criteria. As you are aware, multiple requests made to change the design of the project from the HARC Board and staff have required that we tweak the landscape design from the approved original plan, requiring the Tree Commission approval anticipated in this code section. I believe that there has been some discussion about waiting for the issuance of the HARC certificate of appropriateness prior to setting the item for the Tree Commission Agenda. I don't see the logic, or code support, for this delay as the current order of

development approvals (meetings) under the Code is DRC, Tree, Planning, and then HARC. A HARC Certificate of Appropriateness is not a prerequisite to a Landscape approval.

The current condition of the property and its landscaping is deplorable, and deteriorating.

This proposal was removed from the December tree agenda despite being timely filed, on the City's decision, apparently based on this aforementioned order of approvals question, and the erroneous reading of Sec. 90-431 (6) that states that an appeal to the Special Magistrate *"shall upon filing, stay all work on the premises and all proceedings in furtherance of the order, requirement, decision or determination appealed from..."*

The City's error was twofold. (1) the Tree Commission and landscaping plan approval are not related to the issue under appeal, and so should not be stayed. (2) The Special Magistrate has already made his ruling, finding for my Company, thereby ending the appeal and any stay of any action related to this project as anticipated in this code section.

At this time the Circuit Court has not accepted the petition appealing the Special Magistrate's ruling and has actually relinquished jurisdiction of the matter. The City has not made any filings or motions requesting a stay from the Circuit Court, and the Circuit Court has not issued any orders staying any actions of the City or my Company. The City code requiring a stay of the project is not applicable to appeals to the Circuit Court, absent a court order.

The City has been delaying this critical project unfairly and in bad faith for a long time. It has cost the tax payers and my company huge sums of money, and subjected tourists to the unsightly and unsafe mess at the edge of Mallory Square. The defense of a tortured and invalid reading of the HARC guidelines, as well as this bureaucratic delay, unsupported by the city's code, continue this pattern of unfair denials and delays.

I am aware that there was some internal discussions, and that the City attorney refused to allow this project to be set for hearing on the December agenda. The plain reading of Sec. 90-431 (6) and 108-411, shows that the outcome of these discussions was in error.

Thank you for your assistance on this project.
Please let me know when it is placed on the agenda.

—
Joe Walsh
Tropical Soup Corporation
[305-731-9972](tel:305-731-9972)

Karen DeMaria

From: tyler nielsen <tyler@nielsenlandarch.com>
Sent: Tuesday, February 27, 2018 3:09 PM
To: Karen DeMaria
Subject: Tree Commission

Karen-

Is it possible to place Tropical Soup last on the agenda? My plane lands at 4:05 pm.

Talk soon-

Tyler Nielsen PLA 6667067 LEED AP

nielsen landscape architects, llc
357 cypress drive, suite 10
tequesta, florida 33469

561.402.9414
www.nielsenlandarch.com

Karen DeMaria

From: tyler nielsen <tyler@nielsenlandarch.com>
Sent: Tuesday, February 27, 2018 4:30 PM
To: Karen DeMaria
Subject: RE: Tree Commission

Karen-

They are to be immediately transplanted so that the deck can be built around the root balls.

Tyler Nielsen PLA 6667067 LEED AP

nielsen landscape architects, llc
357 cypress drive, suite 10
tequesta, florida 33469

561.402.9414
www.nielsenlandarch.com

From: Karen DeMaria [mailto:kdemaria@cityofkeywest-fl.gov]
Sent: Tuesday, February 27, 2018 4:29 PM
To: tyler nielsen <tyler@nielsenlandarch.com>
Subject: RE: Tree Commission

Sure, I will put on the end of the agenda.

By the way, I am going through the plans and I am not sure if I saw anything that states what is to happen to the two coconut palm transplants. Will they be placed in a storage area or immediately planted in the ground? Please provide details.

Sincerely,

Karen

From: tyler nielsen [<mailto:tyler@nielsenlandarch.com>]
Sent: Tuesday, February 27, 2018 3:09 PM
To: Karen DeMaria <kdemaria@cityofkeywest-fl.gov>
Subject: Tree Commission

Karen-

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Tyler Nielsen PLA 6667067 LEED AP

nielsen landscape architects, llc