

EXECUTIVE SUMMARY



To: Gregory Veliz, City Manager

Through: Katie P. Halloran, Planning Director

From: Daniel Sobczak, Planner I

Meeting Date: October 6, 2020

RE: **Major Development Plan – Mallory Square (RE # 00072082-001100, 00072082-001400, 0072082-003700, and 00000170-000000)** – A request for approval of a major development plan for redevelopment consisting of a partial demolition of a historic structure, the redevelopment of a nonconforming restaurant use, the conversion of a historic structure into a museum, and the creation of a park at a property located in the Historic Public Service (HPS) zoning district pursuant to Sections 108-91 and 122-28 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

ACTION STATEMENT:

Request: Partial demolition of a historic structure, the redevelopment of a nonconforming restaurant use, and the creation of a park.

Applicant: Tropical Soup Corporation and Trepanier & Associates, Inc.

Property Owner: City of Key West

Location: Mallory Square (RE # 00072082-001100, 00072082-001400, 0072082-003700, and 00000170-000000)

Zoning: Historic Public Service (HPS)



BACKGROUND:

The historic Key West Cable Huts were constructed and used by the American Telephone and Telegraph (AT&T) company in the 1920s. These Cable Huts were instrumental in the installation of the nation's first undersea international telephone line between Key West and Cuba. The Cable Huts were used to store underwater telegraph cables until the 1960s. The Cable Huts provide an indispensable link between Mallory Square's historic industrial working waterfront and today's tourist centered attraction.

In 2009 Sunset Margaritas ceased business operations at the Mallory Square historic Cable Hut location. In 2010, the City of Key West issued a request for proposal (RFP) for redevelopment of the westernmost historic Cable Hut as well as the historic Hospitality House at Mallory Square. Tropical Soup Corporation was awarded the RFP, pursuant to resolution number 10-167. The applicant proposed redevelopment on four city-owned parcels in Mallory Square including the erection of a new structure with a non-complying restaurant use, a public plaza and open space, and the use of an existing historic structure, the Hospitality House. Approvals for the original Major Development Plan were obtained from HARC, Tree Commission and Planning Board, but legal challenges to the Planning Board approved plans prevented the project from advancing to the City Commission. On December 6, 2012, the third District Court upheld the Planning Board decision and the project was submitted to the City Commission for review. On February 20, 2013 the City Commission denied the plans for the Major Development Plan (See City Commission Resolution 13-061).

City records indicate that in April 2013, the City and Tropical Soup Corporation begin meeting to identify objectional issues related to the first design proposal. In June 2014, Tropical Soup and the City, jointly, apply for a FEMA flood map revision to allow the structure to be built on the ground thereby reducing the mass and scale. In October 2014 FEMA issues a Letter of Map Revision converting the property from a "V" zone to an "AE" zone, thereby permitting a proposed structure to be built on ground level.

New plans for a Major Development Plan were submitted to the City in April 2015 and the project was then reviewed by the Development Review Committee and Tree Commission. The project was reviewed again by DRC in April of 2016 and then Planning Board in October 2016. On October 20, 2016, the Planning Board approved new submitted plans. (See Planning Board resolution 2016-5) On December 14, 2016, the Major Development Plan was denied by HARC, as the plans included partial demolition of historic portions of the westernmost Cable Hut, and therefore plans were not submitted to the City Commission due to HARC denial.

In 2017, an updated design was proposed to HARC but was also denied. The applicant appealed the decision to the Special Magistrate and prevailed. As the item was scheduled for City Commission review, on May 7, 2019, former City Planner Wright issued a determination pursuant to Section 108-91 D. 1 and 2 of the Land Development Regulations, as he determined that there were substantial alterations to the previously approved Major Development Plan and therefore the item needed to be reviewed again by the Planning Board before being brought to City Commission. Planning Board reviewed the updated proposal and approved the Major Development Plan on October 17th, 2019, with the conditions listed in Appendix 1.

Staff Analysis:

Major Development Plan approval is required when the redevelopment of a property is within the historic district and will consist of more than 2,500- square-feet of nonresidential gross floor area, pursuant to Section 108-91 A. 2. (b) of the Land Development Regulations (LDRs).

The applicant proposes a Major Development Plan for the redevelopment of the southwestern side of Mallory Square. This application proposes multiple projects including the partial demolition of non-historic elements, the renewal of an abandoned non-complying restaurant use, the construction of a new bar which will obscure the historic westernmost Cable Hut, the construction of a small park abutting the Cable Hut, and the conversion of the Historic Hospitality House into a museum with ADA accessible bathrooms for the restaurant use. The property under review is owned by the City of Key West. The applicant proposes to use private funds for the construction of the Major Development with terms for it to eventually become property of the City of Key West. All construction will be in accordance with the Florida Building Code and FEMA flood zone construction requirements.

The proposed Major Development Plan under review includes a restaurant, which is considered a nonconforming use under the HPS zoning district. The restaurant use was allowed per a Lease Agreement in 1999 and the lease has since expired. Sunset Margaritas, the restaurant formerly on the property ceased operations in 2009. Since 2009, the City of Key West has made continuous efforts together with the applicant demonstrating intent to continue the restaurant use at this property as can be seen in the summarized timeline of submittals, reviews, and legal actions in the “Background” section above. Land use case law suggests these efforts would refute claims that the restaurant use has been abandoned by the property owner.

The Sunset Margaritas restaurant use had thirty seats and approximately 970 square feet of consumption area. The City’s Land Development Regulations state that any expansion of a nonconforming use is prohibited per Section 122-32. The LDRs state that *intensity* is synonymous with *floor area ratio*. The term *floor area ratio* is defined in the code as “the total floor area of the buildings on any lot, parcel or site divided by the area of the lot, parcel or site.” Development beyond 970 square feet on the site intended to be used for a restaurant will be adding to the floor area ratio of the parcel. The application proposes the construction of a new restaurant and bar that will increase the floor area of the parcel and thus increase the non-conforming intensity of the parcel.

The proposed Major Development Plan does not include how the applicant will comply with the off-street parking requirements per Section 108-571 of the LDRs. The parcel is situated in the Historic Commercial Pedestrian-Oriented Area, as specified in Section 108-573. This allows special off-street parking except for when a parcel adds new nonresidential floor area, per Section 108-573. (b) (1). The applicant will be not only adding floor area per Section 86-9 but also floor area per Section 108-575 which states that *floor area calculations* is the “gross floor area of a specific use. The gross floor area for a specific use includes common area such as hallways, storage areas, restrooms, and similar areas.” Notably, for the computation of parking spaces, floor area calculations include not only the consumption area, but the gross floor area of the use. The applicant has not expressed how they will provide the additional required off-street parking spaces.

The Comprehensive Plan of the City of Key West's mission to protect or natural and built environmental and honor our local heritage and cultural identity. Comprehensive Plan Policy 1A-1.2.8 outlines the performance standards the city is to take in protecting sites of historic significance. These standards are to prevent the destruction or alteration of an historic site that are out of character. Policy 1A-1.2.10 states that "There shall be no loss of historic resources on City-owned properties. Sensitive adaptive re-use of historic structures shall be encouraged as an alternative to demolition." The Comprehensive Plan outlines that the city's mission is to protect our local heritage and the intent of Policy 1A is to identify and protect our historical and architectural resources. The historic Cable Huts are a part of the historic heritage and fabric of Mallory Square and are historical and architectural resources that shall be persevered and sensitively repurposed in order to avoid demolition.

The proposed development itself does not comply with impervious surface area nor open space requirements stated in the Land Development Regulations. The parcel, RE# 00072082-001100, currently consists of the historic Cable Hut and gravel. The City of Key West determines that gravel is a pervious material that allows water to quickly and readily permeate. The construction of a bar, outdoor dining, and decking will bring the total impervious surface of the parcels to 91% impervious. The construction of the bar in front of the historic Cable Hut will obscure the Hut and obfuscate it from passersby.

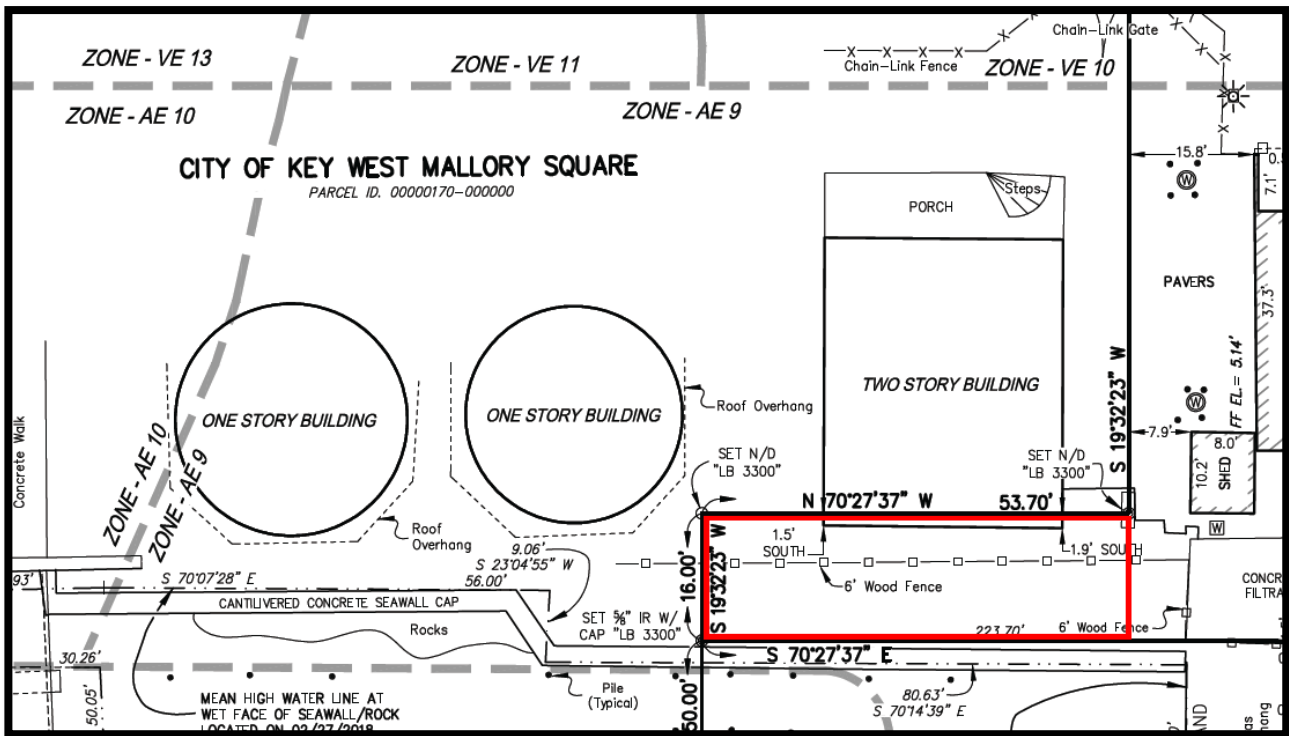
The applicant has also proposed compliance with F.S. 255.2575, Energy efficient and sustainable buildings, but has not identified what green building rating system will be used, nor submitted any materials that show an anticipated green building certification.

The applicant proposes to link the Cable Hut parcels and the historic Hospitality House into one site. The applicant proposes to link the historic Hospitality House to the historic Cable Huts with an ADA compliant pathway and ramp. A seating area abutting the restaurant will also be ADA compliant by the installation of an ADA accessible ramp. The applicant intends to rehabilitate and convert the historic Hospitality House into a museum and install a sculpture 54-feet from the entrance. The front façade of the historic Hospitality House would not change. The rear of the hospitality house would be renovated to contain ADA accessible men's and women's restrooms and a janitor's closet. The proposed park would be used as an active recreation space for sunset performers, artists, and the public.

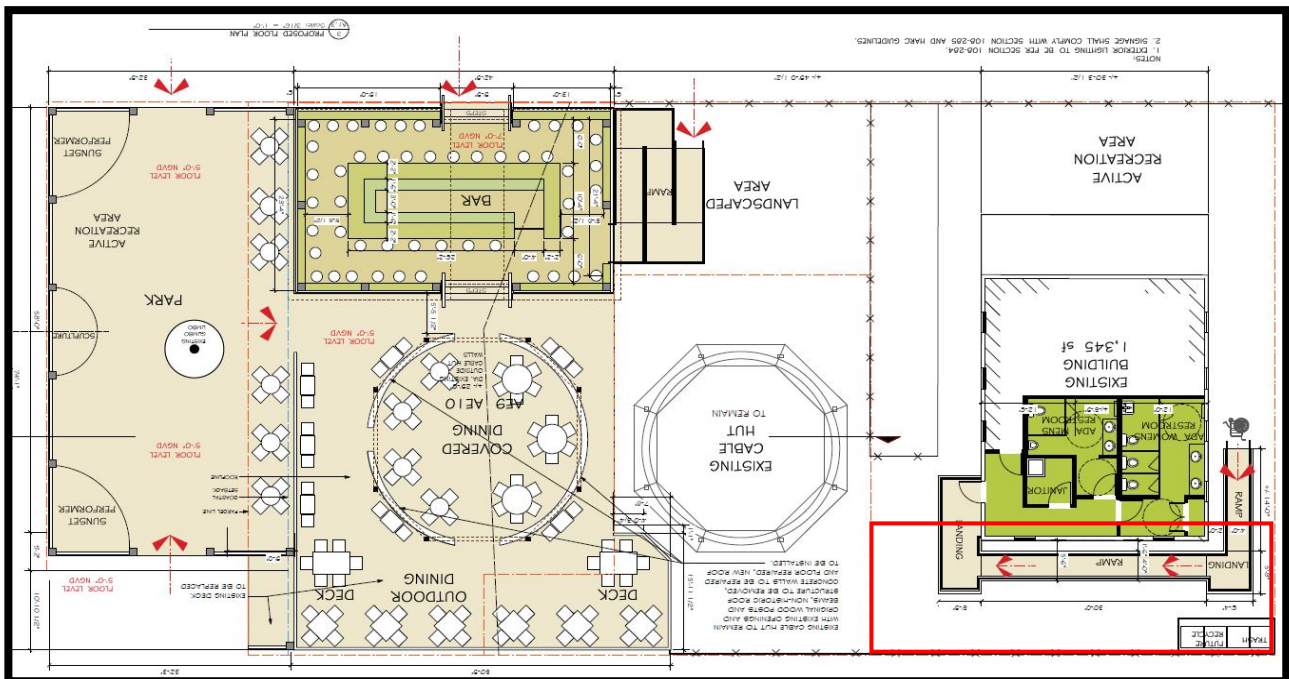
Prior to the October 17th, 2019 Planning Board meeting the City was advised of a conflicting claim by an existing City tenant, Tropical Shell and Gifts, Inc. to a portion of the property proposed to be included in the applicant's Major Development Plan. The Planning Board resolution approving the plan contains Condition 3 which states, "The MDP reflects two ADA ramps in a location that may be part of a lease between the City and Tropical Shell. Prior to City Commission consideration, an agreement or resolution of the disputed area and its use by and between Tropical Shell, Tropical Soup, and the City of Key West needs to be reached."

This issue was subject to litigation between the City, Tropical Shell and Gifts, Inc. and the applicant. The image on the following page indicates the area that was subject to litigation. At this time, litigation has concluded and the area in question is not available to be leased as part of this Major Development Plan as currently proposed and designed.

Excerpt of 2020 Survey of the Tropical Shell Lease Agreement from 1978



Excerpt of Major Development Plans submitted 2019 (Plans are inverted to allow comparison)



Finally, City records do not indicate that the applicant has provided signed and sealed plans as required per Condition #1 of Planning Board Resolution 2019-80 (see Appendix 1 on page 8).

Surrounding properties are within the Historic Public Service (HPS) district, the Historic Residential Commercial Core – 1 (HRCC-1) district, and the Historic Planned Redevelopment District (HPRD). Surrounding uses include public gathering spaces, a parking lot, a restaurant, a theatre, transient lodging, an aquarium, and commercial retail.

City Actions:

Development Review Committee: April 28, 2016 (passed)

Preliminary Tree Commission: Not required, per the Urban Forester

Planning Board: October 20, 2016 (passed)

Final Tree Commission: March 13, 2018 (approved)

Planning Board (reexamination): October 17, 2019 (approved with conditions)

City Commission: October 6, 2020

DEO review: Up to 45 days, following local appeal period

Options / Advantages / Disadvantages:

Option 1: Deny the request based on findings that the proposed development does not comply with the criteria established by the Comprehensive Plan and the Land Development Regulations.

- **Consistency with the City’s Ordinances, Vision, and Mission:** Denial of the requested development plan is consistent with the City’s ordinances, vision, and mission for the HPS zoning district.
- **Financial Impact:** There will be no cost to the City if this request is denied, a new RFP may be issued.

Option 2: Approve the request with conditions (listed below) as advised by the Planning Board in Resolution No. 2019-80:

- **Consistency with the City’s Ordinances, Vision, and Mission:** Approval of the requested development plan as recommended by the Planning Board in Resolution No. 2019-80.
- **Financial Impact:** The City would collect building permit, licensing, and impact fees during subsequent phases of development. There would be no cost to the City for granting the request. The City would also collect rent from the tenant.

Recommendation

The Cable Huts at Mallory Square built during 1920 and 1930, are historic structures designed as storage for telephone cables under saltwater. Their form and design represent the technology of the time to facilitate the storage and protection of the only available and efficient cables, made with gutta-percha, a material that needed to be submerged under saltwater. Once a cable was needed to repair a broken or damage segment of the submerged telegraph and telephone lines, it was removed from the Cable Hut, transferred to the Western Union Schooner and finally

submerged almost one-mile depth under water. This process maintained in good operations the telegraph communications between Key West and Cuba. This technology positioned Key West as one of the most prominent cities in the telecommunications industry in our Nation as our island city was the main connector between Cuba and other cities in the United States

Through the years, both Cable Huts have been adapted and redeveloped several times with various uses. The food service establishment that was operating in the westernmost Cable Hut, branded as Sunset Margaritas, ceased operations in 2009 and the City and applicant have subsequently worked to reinstate this use through the Request for Proposals process and the Major Development Plan review process, among other actions. However, the LDRs do not allow legal nonconforming uses to expand and a parking variance has not been issued for the increased floor area proposed for this project.

In addition, the Planning Board in 2019 granted approval for the Major Development Plan on the condition that the land dispute must be solved prior to being reviewed by the City Commission. Court proceedings have not resulted in a resolution that allows the project as currently designed. Given these obstacles and based on the criteria established by the Comprehensive Plan and Land Development Regulations, Planning Department staff recommend **Option 1** to the City Commission denying the request.

Appendix 1:

Conditions for Approval per Resolution 2019-80

Conditions prior to placement on a City Commission agenda:

1. The plans attached to the staff report for the October 17, 2019 planning board meeting shall be signed and sealed by the architect and shall provide a delineation of the proposed consumption area. Applicant shall submit the signed and sealed plans to the planning department.
2. Applicant shall submit a revised landscape plan application that matches the approved site plan to the urban forester.
3. The MDP reflects two ADA ramps in a location that may be part of a lease between the City and Tropical Shell. Prior to City Commission consideration, an agreement or resolution of the disputed area and its use by and between Tropical Shell, Tropical Soup, and the City of Key West needs to be reached.

General conditions:

4. A total of 2,344-square-feet of restaurant consumption area which equates to 156 seats is allowed within the lease hold area. The location of the consumption area within the restaurant may be modified in consultation with the City relative to final determinations regarding the cable hut located within the parcel. Alcohol sales are permitted as accessory to the principal restaurant business. The sale of food, dessert, and non-alcoholic beverages must constitute 51% or more of business and the sale of food must occur during the time in which service is being provided to the public.
5. During all phases of construction, temporary fencing and erosion barriers shall be installed and maintained. All adjacent City streets and sidewalks shall be kept clean and clear of construction debris.
6. The project will comply with green building standards established by Chapter 255.2575(2), F.S., and will also provide for recycling of solid waste and meet "dark sky" lighting standards.
7. The proposed structures will be included in the final leasehold area determined by the City at the City's discretion.
8. Public access to plazas and public access ways along Mallory Dock and the bridge to the Westin Marina shall remain unimpeded in perpetuity by the applicant. The city reserves the right to address access for public safety purposes.
9. The applicant will abide by Port Security requirements as required by the Port Facility Security Officer, including requirements deriving from the United States Navy when military vessels are berthed at this location.
10. Restaurant seating shall not exceed 156 seats on the site.
11. Sixty percent or more of the existing cable hut shall be retained into the new design.

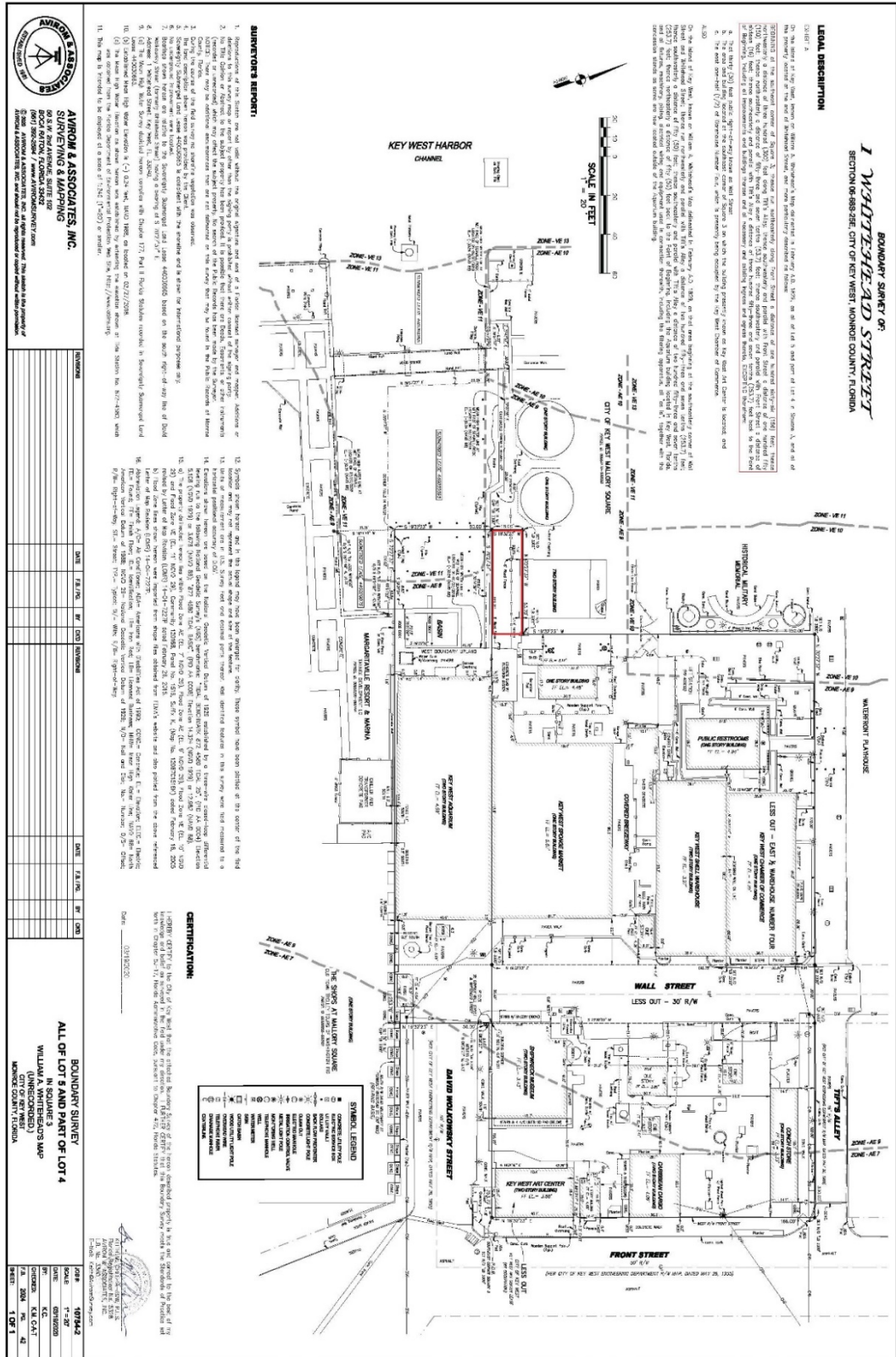
Conditions prior to issuance of a building permit:

12. Stormwater plans must be approved by the Utilities Department prior to Building Permit Issuance.
13. Approval of a Public Art Plan shall be obtained from the AIPP Board, pursuant to City Code Section 2-487, and may include payment of an in-lieu fee.

Conditions prior to issuance of a certificate of occupancy:

14. On-site artwork shall be installed and inspected by the City pursuant to Code Section 2-487.

2020 Survey of the land leased to Tropical Shell & Gifts INC. in 1978.



Appendix 3:

Tropical Soup Major Development Plans Submitted 2019

