

**THE CITY OF
KEY WEST
PLANNING BOARD
Staff Report**



To: Chairman and Planning Board Members

Through: Roy Bishop, Planning Director

From: Vanessa Sellers, Planner II

Meeting Date: October 17, 2019

Agenda Item: **Major Development Plan – Mallory Square (RE # 0072082-001100, 0000170-000000, 00072082-003700, 00072082-001400, 00072082-001900)** – A request for a reevaluation and approval of a major development plan and business plan to determine and confirm compliance with the LDRs considering modifications made by the applicant after receiving a recommendation of approval from the planning board via Resolution no. 2016-51.

Request: A recommendation of approval of a major development plan in order to reconstruct a restaurant.

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

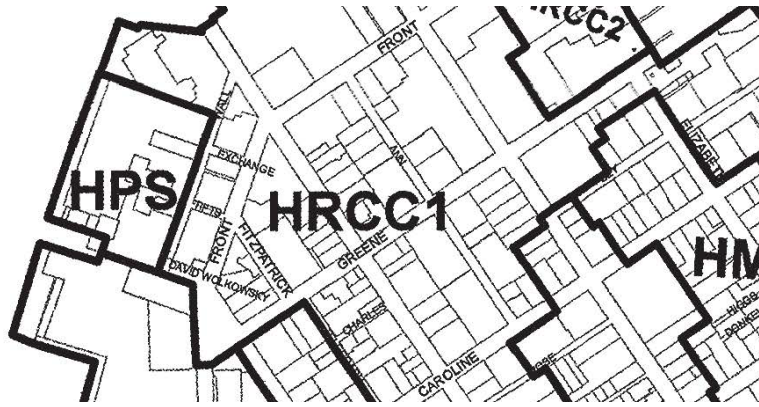
Property Owner: City of Key West

Location: Mallory Square (RE # 0072082-001100, 0000170-000000, 00072082-003700, 00072082-001400, 00072082-001900)

Zoning: Historic Public Service (HPS)



Aerial of the subject properties



Zoning map of the subject properties

Background:

In 2010, the City of Key West issued a request for proposal (an RFP) for the Mallory Square historic cable huts. Tropical Soup Corporation was awarded the RFP, pursuant to resolution number 10-167. After several years of meetings, denials, revisions, and other actions, the proposal received a recommendation of approval from the planning board on October 20, 2016. However, on December 14, 2016, the demolition plan was denied by HARC and the major development plan was not heard due to the denial.

In 2017, a smaller design was proposed to HARC, but it, too, was denied. The applicant appealed the decision to the special magistrate and prevailed. Nonetheless, before the major development plan could be reviewed by the City Commission, the previous planning director for the City issued a determination pursuant to section 108-91 D. 1. & 2., to refer the matter back to the planning board due to significant material changes made to the proposed plan subsequent to the October 20, 2016 planning board recommendation of approval.

Existing Conditions:



Photograph of the property

Proposed Development:

The following description in italics is according to the applicant, sent in an email attachment to the current planning director for the City on October 8, 2019:

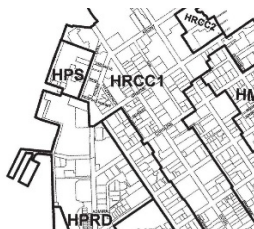
“The project proposes to rebuild an existing restaurant to comply fully with ADA and FEMA requirements and create ADA access to the historic Hospitality House. A portion of an existing cable tank will be preserved and incorporated into the restaurant seating area as feasible. Completion of the project will result in improvements to existing active outdoor recreation, increases in landscaping, reductions in impervious surface, improved water management and open space provisions, additional public restrooms, significant rental income to the City, and a long overdue rehabilitation of the critically important Waterfront Park and tourist destination at of Mallory Square. The project will use the Historic Hospitality House as a museum. It will build a park and green space. It will preserve the historic elements of the cable tank and will rebuild and re-use the existing non-conforming restaurant.

The project is on publicly owned land (Mallory Square). The structure will comply with FEMA elevation requirements. The flood zone was officially and legally corrected after engineers and Tropical Soup petitioned FEMA to modify it in order to allow the re-construction of the proposed restaurant. No variances are being requested. This project is being built with private funds but will become the property of the City of Key West.”

The applicant is proposing one (1) phase of development for the properties.

- Major development plan review is required due to the reconstruction of greater than 2,500-square-feet of nonresidential gross floor area pursuant to Section 108-91 A. 2. (b) of the Land Development Regulations (LDRs) of the Code of Ordinances (the “Code”) of the City of Key West (the “City”).

Surrounding Zoning and Uses:



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 a parking lot, restaurants, a theatre, transient lodging, an aquarium, and commercial retail.

Process:

Development Review Committee: April 28, 2016 (passed)
 Preliminary Tree Commission: Not required, per the Urban Forester
 Planning Board: October 20, 2016 (passed)

A motion was made by Mr. Lloyd, seconded by Mr. Browning, that the Planning Resolution be Passed, with the following conditions; 156 cap on seating, and to leave at least 50% of the Cable Hut. The motion carried by the following vote:

No: 1 - Mr. Varela Sr.
Recuse: 1 - Mr. Pike
Absent: 1 - Mr. Gilleran
Yes: 4 - Mr. Browning, Mr. Lloyd, Ms. Spottswood, and Chairman Holland

Final Tree Commission: March 13, 2018 (approved)
 Planning Board (reexamination): October 17, 2019
 City Commission: TBD
 DEO review: Up to 45 days, following local appeal period

Evaluation for Compliance with the Land Development Regulations (LDRs) and Comprehensive Plan:

Section 108-91 A. 2. (b) of the City of Key West Land Development Regulations requires that any proposed plan within the historic district including the addition or reconstruction of equal to or greater than 2,500-square-feet of gross floor area shall require a Major Development plan approval.

Section 108-196 (a) of the Land Development Regulations states that “after reviewing a Major Development Plan or a Minor Development Plan for a property and staff recommendations therefor, the Planning Board shall act by resolution to approve, approve with conditions, or disapprove it based on specific development review criteria contained in the Land Development Regulations and the intent of the Land Development Regulations and Comprehensive Plan.”

Planning staff, as required by Chapter 108 of the City LDRs, has reviewed the following for compliance with the City's LDRs and Comprehensive Plan as summarized in the following table:

Project Data Summary					
Dimensional Requirement	Required/ Allowed		Existing	Proposed	Variance Required?
Zoning District	HPS				
Flood Zone	AE-9 and AE-10				
Maximum Floor Area Ratio	1.0		0.25	0.28	No.
Maximum Density	N/A		N/A	N/A	No.
Maximum Height	25'		28'-8"	13'-6"	No.
Maximum Building Coverage	40%		21%	25%	No.
Maximum Impervious Surface	50%		90.85%	90.83%	No.
Minimum Open Space	20% (commercial)		9.14%	9.14%	No.
Minimum Setbacks	Front: 20' Side: greater of 5' or 10% of lot width to a max of 15' Rear: 20'		Front: 261'-4" (South) Side: 14' (North) Side: 420'-4" Rear: 44'-1"	Front: 256'-3" (South) Side: 15' (North) Side: 388'-4" Rear: 24'-4"	No.
Off-Street Parking for Automobiles	Restaurants, Bars, & Lounges	1 space per 45 sf of serving and /or consumption area	~100	~100	No.

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. 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 Major Development Plan application. Staff reviewed the provided concurrency analysis following the criteria in Code Section 94-36 and determines that public facilities are expected to accommodate the proposed development at the adopted level of service (LOS) standards. This portion of the report shall serve as the required written determination of compliance:

1. Potable water supply.

Pursuant to City Code Section 94-68, the potable water LOS standard for nonresidential uses is 650 gallons per acre per day. According to the applicant, the leasehold area is approximately 9,404-square-feet, or .22 acres. Utilizing this LOS standard, potable water demand is estimated as follows:

Based on per acre nonresidential: $650 \text{ gal/acre/day} \times .22 \text{ acre} = 143 \text{ gal/day}$

The applicant submitted an estimate of 1,560 gallons per day, based upon the number of seats (156) the proposed restaurant will accommodate.

The adopted potable water LOS standard is expected to be adequate to serve the proposed development. The property is serviced with potable water by the by the Florida Keys Aqueduct Authority, which has been notified of the upcoming development and has available capacity to service the proposed development with the existing infrastructure currently in place.

2. Wastewater management.

Pursuant to City Code Section 94-67, the sanitary sewer LOS standard for nonresidential uses is 660 gallons per acre per day. Utilizing this LOS standard, sanitary sewer capacity demand is estimated as follows:

Based on per acre nonresidential: $660 \text{ gal/acre/day} \times .22 \text{ acre} = 145 \text{ gal/day}$

The adopted sanitary sewer capacity LOS standard is anticipated to be adequate to serve the proposed development.

3. Water quality.

No harmful consequences are expected before, during, or after the completion of construction.

4. Stormwater management / drainage.

The stormwater management or drainage LOS standard pursuant to City Code Section 94-69 is: i) post-development runoff shall not exceed predevelopment runoff for a 25-year storm event, up to and including an event with a 24-hour duration; ii) onsite treatment of the first one inch of rainfall

must be provided to meet water quality standards; and iii) storm water facilities must be designed so as to not degrade any receiving water body.

A drainage plan was submitted indicating that a full stormwater management system will be installed. The existing gutter and downspout systems for the Hospitality House will be repaired as required. Stormwater will be retained on-site through roof downspouts that will be tied into a developed stormwater system. No adverse impacts to stormwater management or drainage facilities are anticipated.

5. Solid waste.

Pursuant to City Code Section 94-71, the solid waste LOS standard for nonresidential uses is 6.37 pounds per capita per day. Utilizing these LOS standards, the demand for solid waste collection and disposal capacity is estimated as follows:

Based on per capita nonresidential: $6.37 \text{ lbs/capita/day} \times 156 = \mathbf{994 \text{ lbs/day}}$

The properties are currently served by Waste Management. One (1) trash and recycling enclosure is reflected on the plans. The adopted solid waste LOS is anticipated to be adequate to serve the proposed development.

6. Roadways.

The applicant has not submitted a traffic analysis as required by Section 94-101 (d) (2) of the LDRs. In an email to city staff, dated October 14, 2019, the applicant asserted that the Comprehensive Plan Policy 2-1.1.3 exempts the application from transportation concurrency requirements.

***Policy 2-1.1.3: Dense Urban Land Area.** The City of Key West is a substantially developed dense urban land area and is thereby exempted from transportation concurrency requirements for roadways. The City recognizes that its development characteristics make substantive expansion of capacity of the roadway system prohibitive. The City will therefore prioritize improving the safety and function of existing roads and multi-modal transportation improvements (i.e. transit, air, boat, bicycles, pedestrianism, mixed-use development) as its primary strategies for addressing current and projected transportation needs.*

7. Recreation.

The plans do not show onsite recreation as defined in Section 86-9 of the LDRs. However, it is not anticipated that the City's adopted level of service for public recreation will be adversely impacted.

8. Fire Protection.

The proposed plans do not include a life safety plan. However, the project was reviewed on April 28, 2016 by the Development Review Committee (DRC), of which the fire chief or his designated staff is a member. In addition, the applicant provided a copy of a survey to city staff with a handwritten notation of a fire hydrant location over 500-feet away from the cable huts' location.

9. Reclaimed water system.

The proposed project does not include a reclaimed water system.

10. Other public facilities.

Based on comments received from the DRC members, and based on the applicant's concurrency analysis, all public facilities would be expected to accommodate the proposed development at the adopted LOS standards.

Appearance, design, and compatibility (City Code Section 108-234):

The development plan shall satisfy criteria established in:

City Code Chapter 102 (historic preservation)

The property is located within the historic district and requires a certificate of appropriateness. A certificate of appropriateness was issued via a Special Magistrate order.

Articles III (site plan), IV (traffic impacts) and V (open space, screening, and buffers) of City Code Chapter 108 (planning and development)

Article III: The City shall not approve a site plan unless a finding is made that such site plan conforms to all applicable sections of the LDRs.

Article IV: The applicant has not submitted a traffic study or statement.

Article V: The open space ratio will improve as a result of the proposed reconstruction.

City Code Section 108-956 (potable water and wastewater)

Potable water and wastewater were found to be in compliance in the concurrency determination above.

Article II (archaeological resources) of City Code Chapter 110 (resource protection)

There are no known archaeological resources on the property. If any archeological resources are discovered during construction, the Applicant would be required to comply with this article of the LDRs.

Site location and character of use (City Code Section 108-235):

- (a) *Compliance.* The submitted major development plan has been reviewed for compliance with all applicable performance criteria set forth in Code Chapter 94 (concurrency management), Articles I and III through IX of Code Chapter 108 (planning and development), Code Chapter 110 (resource protection) and Code Chapter 114 (signs).
- (b) *Vicinity map.* The subject properties are within Mallory Square.
- (c) *Land use compatibility.* Properties within 100-feet are located in the Conservation Open Water (C-OW), the Historic Public Service (HPS), and the Historic Planned Redevelopment (HPRD) zoning districts. Adjacent land uses within 300-feet include a parking lot, restaurants, a theatre,

transient lodging, an aquarium, and commercial retail. No unincorporated parts of the county are located nearby, nor would any be impacted by the proposed development.

(d) *Historic and archeological resource protection.* Not applicable.

(e) *Subdivision of land.* No subdivision of land is proposed.

Appearance of site and structures (City Code Section 108-236):

The Applicant submitted a major development plan that generally exhibits harmonious overall design characteristics in compliance with the performance standards stipulated in Code Sections 108-278 through 108-288, as analyzed below.

Site plan (City Code Section 108-237):

The Applicant submitted a site plan pursuant to City Code Section 108-237, which is analyzed in greater detail below.

Architectural drawings (City Code Section 108-238):

The Applicant submitted architectural drawings prepared by a professional architect registered in Florida pursuant to City Code Section 108-238.

Site amenities (City Code Section 108-239):

Proposed site amenities include a landscaped area, new restrooms compliant with the Americans with Disabilities Act (ADA), an active recreation area, a stormwater drainage system, landscaping, and site lighting. This project qualifies for the 1% set-aside for public art.

Site survey (City Code Section 108-240):

The Applicant submitted a site survey prepared by Island Surveying, Inc. pursuant to City Code Section 108-240.

Soil survey (City Code Section 108-241):

A soil evaluation is not proposed.

Environmentally sensitive areas (City Code Section 108-242):

The proposed site does not contain environmentally sensitive areas.

Land clearing, excavation and fill, tree protection, landscaping, and irrigation plan (City Code Section 108-243):

(a) *Land clearing, excavation, and fill.* The existing land is currently developed, no excavation or fill are being proposed.

- (b) *Tree protection.* Tree protection detail information was provided on sheet L-1 of the plan set. All building permits will be reviewed by the Urban Forester to ensure the protection of the existing trees on site.
- (c) *Landscaping plan.* The applicant received a final landscape approval from the Tree Commission on March 13, 2018.
- (d) *Irrigation plan.* The applicant submitted a detailed irrigation plan (sheet numbers L800, L801, and L802).

On-site and off-site parking and vehicular, bicycle, and pedestrian circulation (City Code Section 108-244):

The proposed development is located entirely within the Historic Commercial Pedestrian-Oriented Area. According to the applicant, no new consumption area related to the restaurant is proposed; further, the square footage and proposed use of the historic Hospitality House is expected to remain consistent with recent uses. Remaining development consists of improvement to public spaces; therefore, no additional parking is required for the project.

Housing (City Code Section 108-245):

No housing is proposed as part of this Major Development Plan application.

Economic resources (City Code Section 108-246):

An analysis of estimated average ad valorem tax yield from the proposed project was not yet submitted by the applicant as of the date of this report. However, it is expected the tax yield would be greater than that from the existing improvements on the property. No construction expenditure was given by the applicant.

Special considerations (City Code Section 108-247):

- (a) The relationship of the proposed development to the City's land use plans, objectives and policies is being evaluated as part of this analysis. The relationship of the proposed development to public facilities was evaluated above and no conflicts were identified.
- (b) The proposed project is located in the historic district. The parcels fall within the AE-9 and AE-10 flood zones.
- (c) No unincorporated portions of the county would be impacted by the proposed development.
- (d) No shoreline access will be impeded.
- (e) No special facilities are proposed at this time to accommodate bus ridership. However, the area is serviced by the Duval Loop, a free and frequent bus route that runs from the Gulf of Mexico to the Atlantic Ocean and from White Street to the Truman Waterfront Park.

- (f) According to the Site Lighting Plan, Sheet L900 and L901, all exterior fixtures will be installed to prevent glare and unwanted direct light. All fixtures east of the coastal construction control line will be placed on a separate zone that will be completely turned off during turtle season (May 1st through October 31st).
- (g) The properties are located within the AE-9 and AE-10 flood zones.
- (h) The proposed development would improve the open space ratio.
- (i) Coordination with applicable agencies is being facilitated through the DRC.
- (j) All permits must be reviewed by the City's Biologist and all State and Federal permits for construction that affects submerged land need to be obtained.

Construction management plan and inspection schedule (City Code Section 108-248):

The development is proposed in one (1) phase. According to the application, Phase I will commence as soon as possible following the approval and the project will progress continually based on the LDRs and the Florida Building Code.

Truman Waterfront Port facilities (City Code Section 108-249):

Not applicable.

Site plan (City Code Chapter 108, Article III):

The City shall not approve a site plan unless a finding is made that such site plan conforms to all applicable sections of the LDRs, pursuant to City Code Section 108-276, as analyzed below.

Site location and character of use (City Code Section 108-277):

The comprehensive plan together with the LDRs, including size and dimension regulations, general provisions, performance criteria, and the list of permitted and conditional uses, off-street parking, landscaping, required open spaces, yards and building setbacks shall collectively be the principal guides in determining the suitability of the location of the proposed use.

Appearance of site and structures (City Code Section 108-278):

The proposed project, and its choice of building materials, plant materials, lighting, and other site improvements will create a pleasing and harmonious overall environment. The AIPP board will be instrumental in incorporating public art on the property.

Location and screening of mechanical equipment, utility hardware and waste storage areas (City Code Section 108-279 & 280):

One (1) solid waste and recycling receptacle area is reflected on the plans.

Roll-off compactor container location requirements (City Code Section 108-281):

None proposed.

Utility lines (City Code Section 108-282):

No change in utility lines is being proposed. At time of building permit review KEYS Energy will do a full project review.

Commercial and manufacturing activities conducted in enclosed buildings (City Code Section 108-283):

None proposed.

Exterior lighting (City Code Section 108-284):

According to the applicant, all proposed lighting will be shielded, and the lighting sources will meet “dark sky” standards.

Signs (City Code Section 108-285):

No signage is reflected on the plans. However, all signs will require HARC review and approval.

Pedestrian sidewalks (City Code Section 108-286):

No new sidewalks are proposed.

Loading docks (City Code Section 108-287):

No loading docks are proposed, and no loading/unloading is indicated.

Storage areas (City Code Section 108-288):

No exterior storage areas are proposed.

Land clearing, excavation, or fill (City Code Section 108-289):

Any land clearing will require compliance with section 108-289. According to the applicant, the site will be graded and stormwater improvements will be made to prepare the site for construction.

Landscaping (Code Chapter 108, Article VI):

A landscape plan is required as part of development plan review, pursuant to City Code Section 108-411. The submitted plan indicates landscaping incorporated throughout the site. The applicant received final approval of the landscape plan from the Tree Commission. Full compliance with all landscape buffer requirements of the LDRs is not proposed and the applicant declined to request a landscape waiver / modification pursuant to section 108-517 of the LDRs.

Off-street parking and loading (Code Chapter 108, Article VII):

The entire project is located within the Historic Commercial Pedestrian-Oriented Area. According to the applicant, no new consumption area related to the restaurant is proposed; further, the square footage and proposed use of the historic Hospitality House is expected to remain consistent with recent uses. Remaining development consists of improvement to public spaces; therefore, no additional parking is required for the project.

Stormwater and surface water management (Code Chapter 108, Article VIII):

A drainage plan was submitted indicating that a full stormwater management system will be installed. The existing gutter and downspout systems for the Hospitality House will be repaired as required. Stormwater will be retained on-site through roof downspouts that will be tied into a developed stormwater system. No adverse impacts to stormwater management or drainage facilities are anticipated.

Utilities (Code Chapter 108, Article IX):

Access to potable water, access to wastewater disposal systems, and conservation of potable water supply were analyzed in the above concurrency management determination and were found in compliance.

Art in Public Places (City Code Section 2-487):

The proposed development, being a Major Development Plan, qualifies for the City's Art in Public Places (AIPP) program, pursuant to City Code Section 2-487. The AIPP program requires 1% of construction costs to be set aside for the acquisition, commission, and installation of artwork on the subject property. The program applies to new construction projects exceeding \$500,000 and renovation projects exceeding \$100,000. Approval of a full public art plan will be required prior to the issuance of building permits.

RECOMMENDATION:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends to the Planning Board that the request for Major Development Plan be **Approved with the following conditions:**

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, the applicant shall provide an agreement or resolution of the disputed area and its use by and between Tropical Shell and Tropical Soup to the satisfaction of the City.

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.