

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



To: Chairman and Planning Board Members

From: Nicole Malo

Through: Donald L. Craig, AICP, Interim Planning Director

Meeting Date: January 20, 2011

Agenda Item: Major Development Plan – Mallory Square (RE# 00072082-001100, 00072082-001400 and 0072082-003700) – A Major Development Plan application for redevelopment of a restaurant and adjacent property located in the HPS zoning district per Section 108-91 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

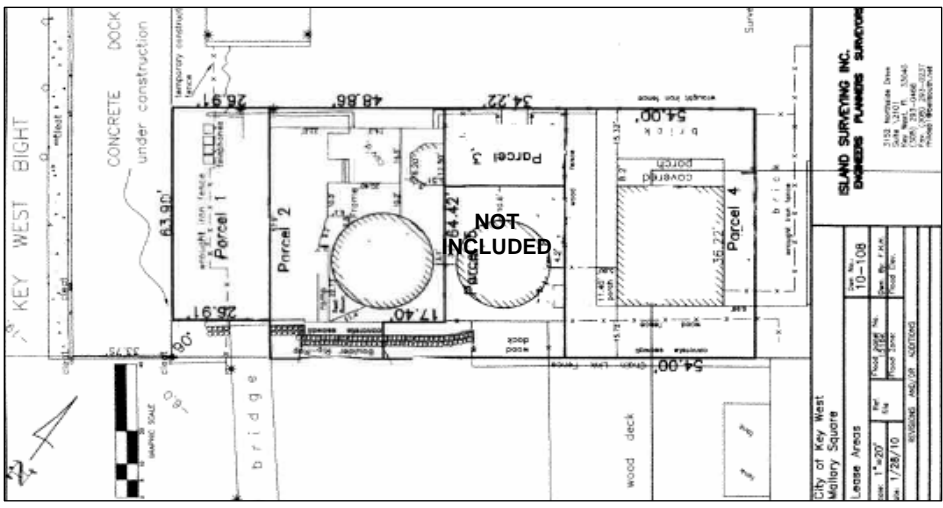
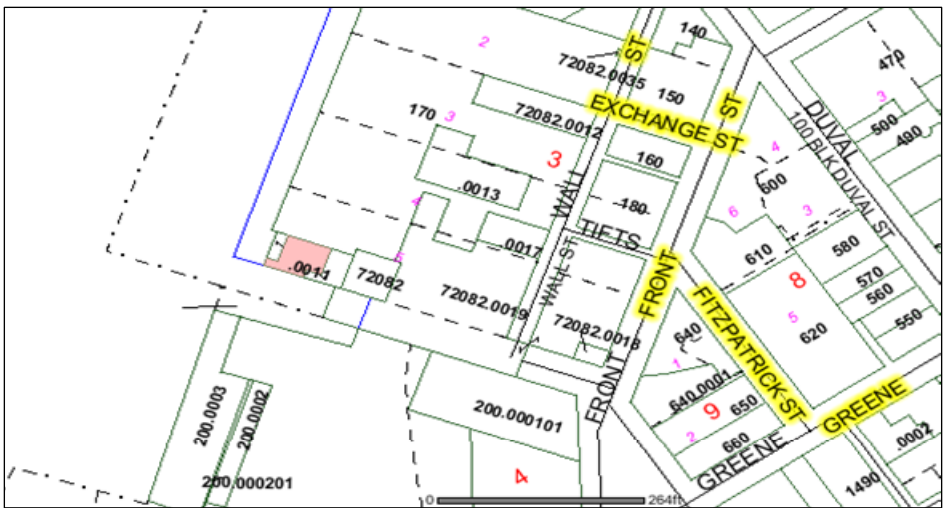
Request: Redevelopment of four city-owned areas on Mallory Square to include a new structure with a restaurant (using established legally non-conforming consumption area), public plazas and open space, and use of an existing historic structure

Applicant: Trepanier and Associates, Inc.

Property Owner: City of Key West

Location: Mallory Square
RE Number 00072082-001100, 00072082-001400 and 0072082-003700

Zoning: Historic Public Service (HPS)



- Area 1 and 3 - RE# 00072082-003700
- Area 2 - RE# 00072082-001100
- Area 4 - RE# 00072082-001400

Background:

The proposed development includes four areas which have been defined based on leasehold areas within the larger context of Mallory Square. Mallory Square has evolved from a historic industrial waterfront into an important port and public plaza which includes a number of commercial and cultural buildings, a memorial, historic cable hut structures, a sculpture garden, deep water ship berth, and multiuse open space. In the evenings a nightly sunset celebration, consisting of performers and commercial vendors, occupies the waterfront portion of the plaza and attracts hundreds of visitors.

The four areas included in this specific request include the following existing features and entitlements:

- Area 1: This area serves as a public access way linking Mallory Square across the bridge to the Weston Hotel area. It includes an existing iron fence, telephones and a sidewalk.
- Area 2: This area consists of an existing restaurant development, bathroom, decks, and a historic cable hut (the hut is one of two on in vicinity and was used to store portions of telephone lines which extended from Key West to Cuba). The cable hut in this area is considered historic under city code, but is not listed as a contributing structure and has documented structural concerns due to past alterations. This entire area is subject to a lease agreement from 1999 which resolved litigation in favor of a series of uses, including restaurant consumption area. That lease forms the basis of consumption area calculations relevant to determining the legal non-conforming uses enabled in this application.
- Area 3: This area links Areas 2 and 4 and is partially developed as an open area. This area is immediately adjacent to Area 5, which is not included in this application but which features the second cable hut. The cable hut in Area 5 is listed as contributing by the City of Key West.
- Area 4: This area contains the Hospitality House, a contributing historic structure which was relocated to this parcel in the 1980's and has since served as a welcome center.

These four contiguous areas together form the area addressed in this application. However, because these areas are not parcels (as legally defined in the city's land development regulations) but rather lease areas within a much larger parcel, site calculations provided are for the entire Mallory Square area. In addition, the city is aware that the applicant proposes to place portions of improvements outside of the initially advertised demised areas on city property, including a portion of the one garbage and recycling area, a service area, roof overhangs, and restaurant structural areas associated with the staircase. The city and applicant (Tropical Soup Corporation) will execute a final lease agreement after project approvals have been secured, and it is expected that the leasehold area will be adjusted to ensure that essential structural and operational elements are included in the demised area at that time.

Request:

The proposed project provides a cohesive approach to the four areas involved while recognizing that certain rights (such as the restaurant use) are limited to specific areas. As such, the plan calls for landscaped and hardscaped areas which link the historic hospitality house to the proposed restaurant structure and waterfront. Public access is proposed in all open space areas and

important access ways along the waterfront, particularly between the pedestrian bridge and Mallory Square, are proposed to remain.

The new restaurant structure is proposed to be two stories and to include 2,344 square feet of consumption area which translates to a maximum of 156 seats. This consumption area derives from square footage associated with the 1999 lease. The calculation of consumption area from that lease excludes kitchen and bathroom areas and is considered by the Planning Department to represent a conservative approach to understanding the legally established restaurant-related entitlements. A graphic showing the calculation area and the associated referenced lease are included as attachments to this application package. In an effort to ensure full disclosure, the applicant has indicated that an increase in seating beyond this amount may be requested in the future; however, this application only addresses 2,344 square feet of consumption area and the associated 156 seats. An increase in consumption area will be the subject of a future application if the zoning district is amended to allow restaurant uses.

The applicant has indicated that in the near term the Hospitality House is expected to continue to be a maritime and Mallory Square-related educational center. Although the applicant has not proposed a specific long term use for the Hospitality House, any future use will need to comport with the Land Development Regulations.

The entire project is located within the Historic Commercial Pedestrian-Oriented Area. 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.

Due to the situation of the proposed restaurant structure within the lease area boundaries (which are immediately adjacent to the waterfront to southwest) a side yard variance is requested. Additional variances to impervious surface ratio and open space requirements due to the existing hardscape and development of Mallory Square, and to the Coastal Construction Control Line setback are required for the proposed development. In addition a height variance for non-habitable space is necessary to accommodate the proposed roof design; that variance will be heard by the Board of Adjustment due to charter provisions.

Surrounding Zoning and Uses:

North: HPS: Restaurant, theatre, tourist and retail shops

South: C-OW: Open water leading to Key West Harbor

East: HPS: Public plaza and retail shops

West: HPS: Public plaza

Uses Permitted in the HPS Zoning District Per Section 122-957, Code of Ordinances:

- (1) Community centers, clubs, and lodges.
- (2) Educational institutions and day care.
- (3) Hospitals and extensive care.
- (4) Nursing homes, rest homes and convalescent homes.
- (5) Parks and recreation, active and passive.

- (6) Places of worship.
- (7) Business and professional offices.
- (8) Medical services.
- (9) Parking lots and facilities.
- (10) Cemeteries

Conditional Uses in the HPS Zoning District Per Section 122-978, Code of Ordinances:

- (1) Cemeteries.
- (2) Cultural and civic activities.
- (3) Protective services.
- (4) Public and private utilities.
- (5) Marinas

Process:

Development Review Committee Meeting: October 28, 2010
HARC Meeting: September 28, 2010 – H10-010-355
Tree Commission Meeting: October 12, 2010
Planning Board Meeting: November 18, 2010 - Postponed
 December 16, 2010 - No quorum
 January 20, 2011
City Commission Meeting: To be determined

Analysis – Evaluation for Compliance With The Land Development Regulations:

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 or greater than 2,500 square feet of gross floor area shall require a Major Development plan. 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, 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 Code of Ordinances, has reviewed the following for compliance with the City’s Land Development Regulations and Comprehensive Plan:

Project Data				
	Required/ Allowed	Existing	Proposed	Variance Request
Zoning	HPS			
Flood Zone	V-13			
Size of Site	154,988 s.f			
Front Setback (Wall Street)	20’	3’11”	No Change Proposed (Not within leasehold area)	
South Side Setback	Greater of 5’ or 10% of lot width	9’	3’9”	11’3” (Within leasehold)

	(Max 15')			area)
North Side Setback	Greater of 5' or 10% of lot width (Max 15')	8'4"	No Change Proposed (Not within leasehold area)	
Rear Setback	20'	20'	20'	None Required
Coastal Construction Control Line	30'	25'	18'	12'
F.A.R	1.0 (154,988 s.f)	0.25 (38,795 s.f)	0.28 (43,296 s.f)	None Required
Building Coverage	40% (61,995 s.f)	21% (33,162 s.f)	23% (36,017 s.f)	None Required
Impervious Surface	50% (77,494 s.f)	91% (140,815s.f)	91% (140,780.s.f)	41% (63,321s.f)
Parking	None Required			
Bicycle Parking	None		16	None
*Open Space/Landscaping	20% (30,997 s.f)	9% (14,173 s.f)	9% (14,208 s.f)	11% (16,789 s.f)
Non-habitable Height	25'	28'8"	33'7 1/2 "	8'7 1/2"

* According to Code Section 108-346(a), active recreation areas may be counted as open space, even if they are impervious. Mallory Square conforms to the definition of an active recreation area; however, in an abundance of caution the applicant has chosen to define open space calculations as permeable open surfaces only.

Concurrency Facilities and Other Utilities or Services (Section 108-233):

The City's Comprehensive Plan Objective 9-1.5 directs the City to ensure that 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. Section 94-36 requires a concurrency determination to be made concerning proposed development. The applicant provided a concurrency analysis as part of this application. Staff has reviewed the provided concurrency analysis report and determined that the proposed project meets the City's requirements for concurrency management with the exception of stormwater management. The City's General Services Department has specified improvements necessary to meet code requirements and as such compliance with stormwater management requirements are addressed as a recommended condition of approval.

Fire Protection (Section 108-233 (8)):

The Fire Marshall reviewed the proposed development plans had no stated concerns at the DRC meeting on October 28, 2010.

Other Public Facilities (Section 108-233 (10)):

Based on comments received at the DRC meeting, and based on the information in the concurrency analysis, the proposed major development plan is not anticipated to increase adverse effects upon public facilities with the exception of stormwater management. The applicant must meet applicable standards as a condition of approval to ensure that all impacts are addressed.

Appearance, Design and Compatibility (Section 108-234):

1. Compliance with Chapter 102; Articles 111, IV and V:

The Planning Department coordinated with the City's Historic Preservation Planner, and determined that the proposed project is in compliance with Articles III, IV, and V of Chapter 102 of the City Code. A Certificate of Appropriateness for the proposed development was issued by H.A.R.C. on September 28, 2010 (H10-010-355). The structure known as the Hospitality House in Area 4 is listed as contributing in the Historic Architectural Survey. Renovations to that structure were approved for new paint and a handicap ramp. Although the Cable Hut within Area 2 is not considered to be contributing, the structure is over fifty years old and therefore considered historic. The current plans incorporate the cable hut into the restaurant design; however, because the structure is not considered historic under FEMA regulations, and because extensive renovations will be required to ensure that the structure is structurally sound, FEMA regulations require that the structure be demolished or elevated to meet federal standards. As such, preservation objectives would be compromised and a FEMA variance request will be required and must be approved in order to maintain the cable hut structure. If a variance cannot be obtained, interior plans for the structure may be modified. As long as the total consumption area does not exceed that which is proposed, such interior changes are expected to be acceptable.

2. Compliance with Section 108-956:

The applicant has demonstrated that there is access to potable water and to wastewater disposal systems in the concurrency management report.

3. Compliance with Chapter 110; Article II:

If any archeologically significant resources are discovered during the development of the site, the applicant will be required to comply with this article of the Land Development Regulations.

Site Location and Character of Use (Section 108-235):

The proposed development is in compliance with standards set forth in Section 108-235 of the Code.

Sheet A-1 of the site plan package shows the proposed project in context to other structures and uses within Mallory Square. Surrounding uses include the aquarium, one and two story retail shops, Key West Harbor (including a deep water berth used for cruise ships and Navy vessels), the Waterfront Play House, and a two story restaurant. Importantly, significant portions of the plaza are open, heavily used recreation areas, including the portion of the square along the waterfront reserved for daily "sunset celebrations" when vendors and performers transform portions of the plaza into retail/entertainment uses. The proposed plan appears to be compatible with adjacent land uses and other structures in Mallory Square (many of which are two story) and hotel and retail uses in the vicinity. Importantly, the facility is not expected to impede existing visual or physical access to the waterfront, or to impact existing pedestrian patterns along the harbor. The proposed restaurant structure is more massive than the existing building on site, and HARC required several plan revisions before approving the architecture, massing and scale of the proposed building and related plaza.

1. Appearance of site and structures (Section 108-236):

The development plan includes design characteristics which are sensitive to the historic structures within and adjacent to the lease areas, as well as use of building materials consistent with the history and urban fabric of Mallory Square and Old Town in general. The round shape of the historically contributing cable hut (off site) is reflected and emphasized in the proposed plaza design. The façade and proportions of the proposed restaurant structure reflect the proportions and design of the historic Hospitality House. Further, proposed building materials are compatible with traditional materials such as siding (fibrous cement which looks similar to wood is proposed) and metal roofs. The project also incorporates traditional forms and porches. The Historic Preservation Planner has noted that the horizontal elements of each structure are maintained and provide a transition between the old and new buildings. Further, the proposed design is in compliance with the performance standards stipulated in Sections 108-278 of the City Code. The site improvements include increased open space and improved and new landscape areas. A proposed public plaza will connect the restaurant to the Hospitality House through a landscaped and hardscaped area. Lighting is proposed to be designed energy efficient and to “Dark Sky” lighting standards.

2. Appearance of site and structures (Section 108-278):

The site appears to be in overall compliance with Chapter 108-278 of the City Code. The plans have been approved by H.A.R.C.

3. Location and screening of mechanical equipment, utility hardware and waste storage areas (Section 108-279):

Three waste and recycling storage areas will be used for solid waste disposal. According to the site plans waste storage will be temporarily stored in the rear of the structure in a gated service area along the waterfront and then transferred to a service area alongside the Hospitality House, buffered by a 6 foot fence and landscaping, as shown on the proposed site plans (see site plan A-1.1). Solid waste will be hauled to the existing dumpsters that service Mallory Square uses located in the onsite parking lot. The two storage areas appear be adequate to accommodate the proposed uses and are screened shielded from public view by landscaping. The dumpster area is close to Wall Street and partially shielded from view by a wall. All mechanical equipment, condenser units and utility hardware areas are proposed to be located within the service area near the Hospitality House.

4. Utility lines (Section 108-282):

New construction is proposed that requires the continued utilization of existing of underground utility lines. Keys Energy has provided a letter of no objection for this property and existing electric lines will be used.

5. Commercial and manufacturing activities conducted in enclosed buildings (Section 108-283):

All commercial activities will take place within the enclosed building. Two outdoor waste storage areas are proposed as temporary storage areas with code compliant

screening. No permanent outdoor storage or display of merchandise has been applied for or approved.

6. Exterior Lighting (Section 108-284):

According to the application exterior lighting will be energy efficient and to “Dark Sky” lighting standards.

7. Signs (Section 108-285):

No signage has been proposed as part of the Major Development Plan. Any signage requires H.A.R.C approval.

8. Pedestrian sidewalks (Section 108-286):

No pedestrian sidewalks are required or proposed as part of this Major Development Plan. The existing access area leading to the pedestrian bridge that links Mallory Square to the Westin Marina will remain accessible as a condition of this approval. Further, proposed plazas will be open to the public as well.

Importantly, the city has established certain restricted areas along Mallory Dock when cruise ships are at port. Further, when military vessels are berthed at Mallory Dock stand offs may also be required. Port security measures will take precedence during periods of vessel deployment and may impact the applicant’s and public’s use of Area 1 (the area closest to the waterfront). The city’s Facility Security Officer is familiar with the plans; however, a condition requiring continued coordination with the city in this regard, and the precedence of port security compliance, is being recommended. Please note that port security plans or operations are not available for public review or detailed discussion.

9. Loading docks (Section 108-287):

No loading docks are being proposed as part of the Major Development Plan.

10. Storage Areas (Section 108-288):

The waste and recycling service areas are located on at the rear of the proposed restaurant and the rear and side of the Hospitality House for temporary storage. The area is screened from view by a fence and landscaping as shown on Site Plan L-2.0 and L-2.1 and meets the requirements as set fourth in the above Section.

On-Site and Off-Site Parking and Vehicular, Bicycle, and Pedestrian Circulation (Section 108-244):

Development plans shall satisfy on-and off-site vehicular and bicycle circulation, and parking requirements in Articles IV and VII of Chapter 108. The entire project is located within the Historic Commercial Pedestrian-Oriented Area. 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. Therefore, no on or off- site parking is required or proposed with this development approval. However, the applicant has coordinated with the city and is proposing to provide 16 bicycle parking spaces as shown on Sheet A-1.1.

Housing (Section 108-245):

No housing is proposed as part of the Major Development Plan.

Economic resources (Section 108-246):

This provision of the City Code is not applicable to the proposed Major Development Plan.

Special Conditions (Section 108-247):

The proposed development is either consistent with the HPS district or consists of established legally non-conforming restaurant use. Therefore it does not conflict with the intent of the land development regulations, and is not anticipated to cause any conflict in relation to existing public facilities that are in place. A condition establishing consumption area and operational conditions to ensure that the proposed project operates as a restaurant is proposed. The project is located within the Coastal Construction Control Line and a variance is request is proposed. The Coastal Construction Control Line is established from the mean high water line, and is 30' in this area. Because Mallory Dock is constructed out over the water approximately 36' from the mean high water line, the project appears to be approximately 54' from the waterfront. However, when measured from the mean high water line, 12' of the proposed building falls within the setback area. As a condition of approval the development shall not impede movement along existing pedestrian ways near the waterfront.

The applicant has proposed that all construction will comport with Chapter 255.2575(2). Florida Statutes which requires compliance with an accepted third party environmental standard (see Attachment for the full language of the relevant section of the statute) and efficient lighting and water saving features will be installed. In addition, the applicant has committed to recycling and has provided adequate areas for storage of recycled materials. Therefore, the proposed project meets the applicable standards outlined in Section 108-247 of the City Code.

Several project components fall outside of the existing proposed leasehold areas. These include one service area in the side yard area, a portion of the service area adjacent to the Hospitality House, a portion of the structure on the southern corner of the building and roof overhangs at the northern entrance. Portions of landscape buffering and plaza areas are also partially outside of the existing lease areas. Additionally, the applicant has proposed to design and install new landscaping on portions of Mallory Square outlined in Site Plan A-1 as Scope of Work and in the Landscape Plans. The City is expected to address these items at its discretion through the final lease negotiation process, which is expected to occur after land use approvals have been processed.

Construction Management Plan and Inspection Schedule (Section 108-248):

The proposed development is not phased. The applicant would like to commence construction as soon as possible.

Open Space, Screening, Buffers and Landscaping (Article V and VI) of Chapter 108:

In conjunction with the major development plan application, the applicant has submitted an application for variances to impervious surface ratio, side yard setback requirements, open space requirements and setback regulations for the Coastal Construction Control Line relative to site

data calculations based on the entirety of Mallory Square. Additionally, a variance request to height requirements is required from the Board of Adjustment. According to Code Section 108-346(a), active recreation areas may be counted as open space, even if they are impervious. Mallory Square conforms to the definition of an active recreation area, therefore the area appears to exceed open space requirements; however, in an abundance of caution the applicant has chosen to define open space calculations as permeable open surfaces and request a variance.

The project was required to go to the Tree Commission, and a permit was issued on October 12, 2010 for the removal, transplant and replanting of landscaping on site. Please see the Tree Permit and the memo provided by the Urban Forestry Manager included in this package. Please note that the Landscape Plans depict landscaping improvements to Area 5 (not part of the leasehold areas) and plan adjustments may be required to adjust those landscape improvements.

Off-street Parking and Loading (Article VII) of Chapter 108:

The entire project is located within the Historic Commercial Pedestrian-Oriented Area. 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 (Article VIII):

As part of the site design additional drainage is proposed as shown in the Conceptual Drainage Plan C-1. However, the General Services Department has requested additional stormwater treatment and has outlined expectations in a memo dated November 10, 2010, and attached to this report. The applicant is expected to technically meet these requirements and final stormwater approval is established as a suggested condition.

Flood Hazard Areas (Division 4 - Sections 108-821 through 108-927):

The proposed development is located in the V-13 flood zone and the area of proposed development averages five (5) feet above sea level. Therefore the proposed development is required to meet local, state and federal flood prevention requirements at the building permit stage.

Portions of the proposed development lie within the Coastal Construction Control Line which requires that no building shall be constructed within 30 feet of the mean high water line (within this specified zone) in accordance with Code Section 122-1148(a)2. Mallory Dock extends approximately 36' over the mean high water line; however, this additional extension is not considered under the code definition and therefore the applicant is applying for a variance to the Coastal Construction Control Line requirements.

Utilities (Article IX):

According to information submitted to the Department, FKAA and Keys Energy Services are able to provide utilities to the site. The proposed development project will use existing utility mains for potable and sewer water and existing underground electrical lines as shown in the concurrency management report. The Utilities department has requested a Utility Connection

Plan and further coordination with the department for the development. Landscaping will consist of native species as shown on the proposed landscape plan.

RECOMMENDATION:

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

1. A total of 2,344 square feet of restaurant consumption area which equates to 156 seats is allowed within the area known as Area 2, shown as Parcel 2 on the January 28, 2010 site survey. The location of the consumption area within the restaurant may be modified 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.
2. That variance requests for impervious surface ratio, the side yard setback requirement, open space requirement and Coastal Construction Control Line setback requirement are approved by the Planning Board.
3. That a variance request to height requirements for non-habitable space is approved by the Board of Adjustment.
4. 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.
5. Stormwater plans must be approved by the General Services Department prior to Building Permit issuance.
6. The proposed structures will be included in the final leasehold area determined by the City at the City’s discretion.
7. 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.
8. 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.