



## EXECUTIVE SUMMARY

**To:** Bogdan Vitas Jr., City Manager

**Through:** Donald Leland Craig, AICP, Planning Director

**From:** Nicole Malo, Planner II

**Meeting Date:** February 20, 2013  
August 2, 2011 – Postponed

**RE:** 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

### **ACTION STATEMENT:**

**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.

**Location:** Mallory Square  
(RE#00072082-001100, AK#8801131; 00072082-001400, AK#8757808; and RE#0072082-003700, AK#8801131)

**Zoning:** Historic Public Service (HPS)

### **Background:**

This application for Major Development Plan is in response to a request to bid that was approved by the City Commission for a restaurant on the site, the bid was awarded to the Tropical Soup Corp in late 2010. On This application for a Major Development Plan was originally recommended for approval by the Planning Board through Resolution 2011-002, at a meeting held on January 20, 2011. The associated setback variance request was postponed by both the Board and the applicant to give the applicant and neighbors time to resolve concerns about the proposed variances. As a result the building was slightly reduced in length by eight feet (8') thus removing the need for a side yard setback

request. Subsequently, the remaining variance requests were approved through Resolution 2011-025 on June 16, 2011. Therefore, the site plans associated with this request for a Major Development Plan (MDP) have a revision date of June 3, 2011 (date stamped June 6, 2011) after the date of the Planning Board Major Development approval.

On August 2, 2011 the item was scheduled for City Commission review; however, at that time the Planning Board approvals for the MDP and Variance were appealed by a neighboring land owner and the item was indefinitely postponed. In response to the continual concern of the neighbors, the applicant altered the design again with a flat roof that met the height regulations; however, the HARC denied the application at a meeting held on May 9, 2012; therefore, the previous HARC approval of a pitched roof remains in effect. Subsequently, the Planning Board approval of the Major Development Plan and Variances was upheld by the Circuit Court (Judge Audlin presiding) on February 9, 2012 and again at the third District Court, on December 6, 2012. The application and site plans proposed as part of this request are the same documents approved by the Planning Board and HARC.

The variance approval associated with the proposed development plan includes 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. 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 city charter provisions.

The City Commission is responsible for the review of the Major Development Plan. The variance approved by the Planning Board, is contingent on one condition:

1. That the application for a Major Development Plan with conditions is approved.

Major Development Plan Planning Board Resolution 2011-002 has nine (9) conditions as follows:

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 required to construct the building are approved by the Planning Board or the need for such variances eliminated through design modifications.
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.
9. Hours of operation are limited to the hours of 11am until 11pm; except in the case that a special event permit is issue.

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 (see illustrations on page 6):

- Area 1: This area serves as a public access way linking Mallory Square across the bridge to the Westin Hotel area. It includes an existing iron fence, telephones and a sidewalk. The proposed project poses no changes to this area
- Area 2: This area consists of an existing restaurant development, bathroom, decks, and a historic cable hut (the hut is one of two 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. No new development is proposed.

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 minor improvements outside of the presently defined lease areas on city property, including the garbage and recycling area, a service area, and roof overhangs. 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 described above are included in the final demised lease 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. Any increase in consumption area will be subject to a future development approval process, 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.

The applicant has met all development plan requirements as set fourth in Chapter 108 Article II, Division 7 and Article III through Article IX for Major Development Plans.

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 Chapter 94, for concurrency management requirements 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.

**Previous City Actions:**

DRC Meeting	October 28, 2010
HARC Meeting	September 28, 2010 – H10-010-355 June 14, 2011 – H11-01-625 May 9, 2012 – Denial. H12-01-430
Tree Commission Meeting	October 12, 2010
Planning Board	November 18, 2010 – Variance and MDP postponed December 16, 2010 – No quorum January 20, 2011 – MDP approved, variance postponed February 17, 2011 - Variance postponed March 17, 2011- Variance postponed April 21, 2011 - Variance postponed June 16, 2011 – Variance approved
City Commission	August 2, 2011 - Postponed February 20, 2013
Circuit Court	February 9, 2012 - denial
Third District Court	December 6, 2012
Board of Adjustment (height variance)	February 20, 2013



**Options / Advantages / Disadvantages:**

**Option 1.** To approve the proposed Major Development Plan approval

1. **Consistency with the City's Strategic Plan, Vision and Mission:** The City's Strategic Plan, Vision, and Mission this application is consistent with the City's Strategic Plan, Vision, and Mission.
2. **Financial Impact:** If the proposed Major Development Plan is approved the City will collect upwards of \$300,000 in annual rent for the combined parcels in addition to a percentage of sales, as determined by the final lease.

**Option 2.** To deny the proposed Major Development Plan approval

1. **Consistency with the City's Strategic Plan, Vision and Mission:** The City's Strategic Plan, Vision, and Mission does not address this Option.
2. **Financial Impact:** If the proposed Major Development Plan is not approved the City would lose the potential to collect upwards of \$300,000 in annual rent for the combined parcels in addition to a percentage of sales, as determined by the final lease.

**RECOMMENDATION:**

Staff recommends the approval of **Option 1**, 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 required to construct the building are approved by the Planning Board or the need for such variances eliminated through design modifications.
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