

CITY OF KEY WEST

PLANNING DEPARTMENT MEMORANDUM

**TO:** G. Felix Cooper, City Manager  
**FROM:** Ted Strader, City Planner  
**RE:** Report on Duval and Front Retail Store

**DATE:** June 9, 1994

In response to the request of the City Commission at the regular meeting of June 7, 1994, I have reviewed the project files in the Planning Department, and, based on those files and my recollection, submit the following:

INTRODUCTION

The subject property, located at the southeast corner of Front and Duval streets, Key West, is 20,835.8 square feet (0.478 acres) in size. For several years prior to the recent development activity, it had been operated as a commercial parking facility. At that time the property was owned by the Southeast Bank, whose offices were located directly across Duval Street on the southwest corner of the intersection.

The property was purchased in late 1991/early 1992 by a Mr. Benny Hamuy for the purpose of redevelopment as commercial retail space. After the required approvals, by the HARC (Historic Architectural Review Commission) and the Key West Planning Board (Site Plan Review in accordance with Section 34.12 of the Key West Land Development Code), the owner applied for and received a building permit from the City. The building permit was issued on December 21, 1992.

Because of the apparent complications of excavation and de-watering, the initial stages of construction were slow. The superstructure, in the form of steel framing, was not visible to the public until May, 1994 -- over a year after the building permit was issued. Many citizens were alarmed by the size of the structure. Then, on the morning of May 19 (if my memory serves me right), a major rain storm hit Key West. The project was not advanced enough to handle the deluge, and the below-grade parking area filled up with water -- laced with construction debris and the contents of an overturned construction toilet.

This event galvanized the public outrage over the project. This outrage brought the issue before the City Commission. This memorandum responds to the request of the City Commission for a full report. I believe that the intent of the request is to provide the commission, and the public, with a thorough airing of the approval and permitting procedures which led to the construction.

The public criticism of the project revolves around several issues. This report will discuss each of those issues.

### COMMUNITY IMPACT ASSESSMENT STATEMENT (CIAS)

Section 34.02 et seq. of the City of Key West Land Development Code requires that any proposed non-residential project, of 10,000 square feet, or more, of gross floor space, must submit a CIAS to the City for review and approval before a building permit can be granted. The code further provides for relief from this requirement (Section 34.05 (f) and (g)), and, conversely, provides discretionary power to the commission to require a CIAS of proposed projects which fall below the prescribed thresholds (Section 34.05 (e)). (See Attachment R.)

After lengthy consideration, the City, through the Planning Department, acknowledged that the proposed development would not have to prepare and submit a CIAS, provided that the development did not exceed 10,000 gross square feet. (See Attachment C, Strader letter to Pope, dated November 7, 1991.)

This decision was based on the provisions of Section 34.05(e), which, in effect, requires that the planning designate prepare a written finding of fact that the proposed development would have a significant impact on environmental or urban resources. Since there was no evidence that this project would have significant impact on these resources, the planner could not, in good conscience, prepare such a finding of fact.

Section 34.05(e) also provides for City Commission initiative to require a CIAS at their discretion. The City Planner brought the question before the City Commission as a discussion item. At that time, the commission did not choose to impose that requirement, but, rather, directed the City Planner to prepare a finding of fact. As stated above, the planner, after research and consultation with other City officials, could not justify a finding of fact, and so notified the commissioners individually. Hearing no dissenting opinions from the commissioners, the planner notified the applicant that no CIAS was required.

The project's gross floor space was determined to be 9,957 gross square feet. As always, when determining whether or not a project is subject to the Community Impact Assessment Ordinance, the Standard Building Code definition was used in making this determination. That definition is: "the area within the inside perimeter of the exterior walls with no deduction for corridors, stairs, closets, thickness of walls, columns or other features, exclusive of areas open and unobstructed to the sky." (See Attachment Q.)

#### STORM DRAINAGE

Since the parking level of the building descends below the level of ground water, it is designed to expel any water which infiltrates or collects during rainfall. Water which collects in the structure is pumped into an on-site gravity injection well which returns the water into the ground. This is a technically sound approach and was acceptable to the City Engineer. Obviously, if the pumps don't work, the below-grade parking area will collect water.

Ideally, this project should result in a slight improvement in the stormwater drainage for the area. Prior to this project, all rainwater which fell on the site was directed onto the streets. This project is designed to retain all rainwater on-site. During episodes of tidal flooding, the project may take on water that overflows the driveway entrance. However, this will not have an adverse effect on adjacent properties or the public right-of-way.

#### FIRST FLOOR ELEVATION

The height of the first floor above the sidewalk was mandated by the requirements of the Federal Emergency Management Agency (FEMA). The City strictly enforces FEMA regulations in order to protect our flood insurance rates city-wide. FEMA has ruled that new structures in the historic district are not exempt from this requirement.

#### HISTORIC DISTRICT COMPATIBILITY

The determination of historic compatibility of any proposed new building within the designated Historic District of Key West is made by the Historic Architectural Review Commission (HARC). This project has been reviewed and approved, including the most recent modifications resulting from the change to steel framing.

STEEL FRAME

The original structural system presented to the Key West Building Department at building permit application was based on a concrete frame. For his own reasons, the developer chose to switch to steel framing. The Building Department shut down the job until the City was provided with the necessary structural drawings bearing the seal of a certified structural engineer. Upon receipt and approval of these documents, the construction was allowed to proceed. The final appearance of the building will not be affected by this change in basic structural technology.

CONFORMANCE WITH THE LAND DEVELOPMENT CODE

When presented to the planning staff for Site Plan Review pursuant to Section 34.12, the project complied with all applicable provisions of the zoning code -- with one exception. That exception was lot coverage. In the HP-2 zone district, lot coverage is limited to 50%. As calculated by the Planning Department, the lot coverage of the proposed project was 56%. (See Attachment F, letter from Strader to Pope, dated October 3, 1993.) The architect agreed to omit the awnings in order to bring the building into compliance.

SITE PLAN REVIEW

The proposed project was reviewed by the Key West Planning Board on September 17, 1992. It was approved conditional upon visual screening of all mechanical equipment from view, including dumpster and air conditioning and ventilation equipment, and upon meeting City of Key West standards for size and spacing of all trees and plantings. (See Attachment D, letter from Tucker to Pope, dated September 20, 1992.)

PROJECT HISTORY

Attached are the following documents from the Planning Department file on this project (submitted in order, by date):

| <u>Ref.</u> | <u>Date</u> | <u>To:</u>                       | <u>From:</u>  |
|-------------|-------------|----------------------------------|---------------|
| A           | 12/21/90    | Tom Pope                         | Ted Strader   |
| B           | 10/01/91    | Commission,<br>Manager and Clerk | Ted Strader   |
| C           | 11/07/91    | Tom Pope                         | Ted Strader   |
| D           | 09/20/92    | Tom Pope                         | Wendy Tucker  |
| E           | 09/20/92    | Tom Pope                         | Lou Hernandez |

Memo to Cooper, 06/09/94, page 5

|   |          |   |                  |
|---|----------|---|------------------|
| F | 10/03/92 | Tom Pope  | Ted Strader      |
| G | 11/17/92 | Mayor, Commission<br>City Attorney and<br>Staff | Dante Capas      |
| H | 11/18/92 | Building Dept.<br>Staff                         | Raymond Archer   |
| I | 11/20/92 | Mayor, Commission,<br>Attorney and Staff        | David Paul Horan |
| J | 12/10/92 | Mayor and<br>Commission                         | Ted Strader      |
| K | 01/07/93 | Ted Strader                                     | David Paul Horan |
| L | 01/13/93 | Mayor   | Ginny Stones     |
| M | 01/14/93 | David Paul Horan                                | Ted Strader      |
| N | 02/05/93 | Josephine Parker,<br>City Clerk                 | David Paul Horan |
| O | 02/19/93 | Raymond Archer                                  | Josephine Parker |
| P | 03/22/93 | G. Felix Cooper                                 | Joseph G. Pais   |

(THE FOLLOWING ARE UNDATED REFERENCE MATERIAL)

|   |  |
|---|--|
| Q | Standard Building Code definition of gross floor area              |
| R | Code Section 34.05 (in effect at time of project<br>consideration) |

Felix, I trust that this is responsive to the direction given by the Commission. Please advise if I can be of further assistance.

  
\_\_\_\_\_  
Ted Strader, City Planner



## THE CITY OF KEY WEST

Post Office Box 1409  
Key West, Fl. 33041-1409

Mr. Tom Pope  
610 White Street  
Key West, FL 33040

December 21, 1990

RE: Southeast Bank Parking Area  
Southeast corner Front and Duval Streets  
Key West, FL  
RE#'s 47 and 48

Dear Tom;

This letter will confirm our conversations regarding development of the subject properties. My understanding is that your client may be proposing approximately 10,000 square feet of commercial space plus a multi-story parking facility which would include some amount of commercially available parking.

Such a development would clearly require a Community Impact Assessment Statement (CIAS) under the provisions of Section 34.05(c). Should the development proposal be reduced in intensity to below 10,000 square feet, Section 34.05(c) would no longer apply; however, it would be my recommendation to the Mayor and City Commission that they exercise their discretion as authorized in Section 34.05(e), to require a CIAS on the grounds that the development "is expected to have a significant impact on urban resources."

Tom, I trust this is useful to you and your clients. Please feel free to call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Strader".

Theodore C. Strader, AIA  
CITY PLANNER

TCS/rcd

Exhibit A

A

CITY OF KEY WEST, FLORIDA

PLANNING OFFICE MEMORANDUM

Date: October 1, 1991

To: Mayor, Commissioners, City Manager, City Clerk

From: Ted Strader, City Planner

Subject: Potential development of Southeast Bank property at southeast corner of Front and Duval Streets

Development interests represented by architect Tom Pope have inquired regarding the need to prepare a Community Impact Assessment Statement (CIAS) for a proposed development on the vacant site at the southeast corner of Front and Duval, currently being used as a commercial parking lot.

As you may recall, they had tentatively proposed a mixed-use project of commercial uses and structural parking. They now are considering eliminating the structured parking and limiting the development to just under 10,000 square feet of commercial space--with required parking.

If they restrict the development to under 10,000 square feet they will be below the threshold for requiring a CIAS. On the other hand, the City Commission may, by a four-fifths vote, require a CIAS if the proposed development "is expected to have a significant impact upon environmental or urban resources;..." (See attached Sec. 34.05.)

I would like to bring this issue before the Commission as a discussion item in order to give direction to the developer and City staff.

CITY MANAGER: Would you please sponsor as a discussion item on City Commission agenda for October 8, 1991?


  
\_\_\_\_\_  
Ted Strader  
City Planner

Exhibit A

**B**



THE CITY OF KEY WEST

Post Office Box 1409  
Key West, FL 33041-1409

Mr. Tom Fopa  
610 White Street  
Key West, FL 33040

December 21, 1990

RE: Southeast Bank Parking Area  
Southeast corner Front and Duval Streets  
Key West, FL  
RE#'s 47 and 48

Dear Tom;

This letter will confirm our conversations regarding development of the subject properties. My understanding is that your client may be proposing approximately 10,000 square feet of commercial space plus a multi-story parking facility which would include some amount of commercially available parking.

Such a development would clearly require a Community Impact Assessment Statement (CIAS) under the provisions of Section 34.05(c). Should the development proposal be reduced in intensity to below 10,000 square feet, Section 34.05(c) would no longer apply; however, it would be my recommendation to the Mayor and City Commission that they exercise their discretion as authorized in Section 34.05(e), to require a CIAS on the grounds that the development "is expected to have a significant impact on urban resources."

Tom, I trust this is useful to you and your clients. Please feel free to call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "T.C. Strader".

Theodore C. Strader, AIA  
CITY PLANNER

TCS/rcd



~~(Ord. No. 76-5, § 2, 1-19-76; Ord. No. 85-52, § 1, 11-20-85)~~

### Sec. 34.04 Definitions.

The words defined below are words which have special or limited meanings as used in sections 34.02 through 34.12 inclusive and might not otherwise be clear. Words whose meaning is self evident as used herein are not defined. Words used in the present tense shall include the future; the singular includes the plural, and vice-versa; the word "shall" is mandatory; the word "may" is permissive.

*Zoning official.* The person, or his duly authorized representative, designated in the zoning ordinance, section 35.13 of this Code.

*Community impact assessment statement.* An evaluation of a given project or specific development's favorable or unfavorable impact on the overall environmental structure, natural ecology, and economic, historic, social, and related public resources of the City of Key West, including local and regional housing needs.

~~(Ord. No. 76-5, § 3, 1-19-75; Ord. No. 85-52, § 1, 11-20-85)~~

### Sec. 34.05 Developments requiring a community impact assessment statement.

A community impact assessment statement shall be submitted for:

- (a) Any development which causes a building to exceed forty (40) feet in height;
- (b) Projects containing sixteen (16) or more habitable units per acre and containing a minimum of ten (10) habitable units or projects containing twenty (20) or more total habitable units; the total number of units shall include the units in all phases of the total project or development or, any residential development in which the gross residential density is ten (10) or more units per acre and the development requires rezoning, variance or special exception modifying the presently allowed density; any units being replaced by the project shall be subtracted

in determining the applicability of this paragraph;

- (c) All business, commercial or industrial uses of one (1) or more acres or ten thousand (10,000) or more square feet of net additional gross floor space; and
- (d) Any development which occurs in or adjacent to wetland communities as defined by marshes and shallow areas which may periodically be inundated by tidal waters and which are normally characterized by the prevalence of salt and brackish water vegetation capable of growth and reproduction in saturated soil, including but not limited to batis (*Batis maritima*), black mangroves (*Avicennia germinans*), red mangroves (*Rhizophora mangle*) and white mangroves (*Laguncularia racemosa*), Cord grass (*Spartina* spp.), Buttonwood (*Conocarpus erectus*), glasswort (*Salicornia* spp.), Key Grass (*Monathocloe littoris*), sea daisy (*Borrchia* spp.) and sea purslane (*Sesuvium portulacastrum*);
- (e) Any development which at the discretion of the mayor or city commission is expected to have a significant impact upon environmental or urban resources; the mayor or planning designate shall prepare a written finding of fact regarding such impacts prior to requiring an impact assessment statement, or in the event the city commission requires the impact assessment statement, the written findings shall appear in the resolution requiring same. In requiring an impact assessment statement under this subsection, the following factors shall be considered by the mayor or city commission:
  - (1) The relation of the development to the surrounding neighborhood;
  - (2) The traffic pattern in the area of the proposed development;
  - (3) Available utilities; and
  - (4) All matters with regard to city services and impact on the city;
- (f) The city commission may relieve a development from the requirements of this sec-

tion by a four-fifths vote of the entire commission.

- (g) The zoning official may relieve a development from the requirements of this section if:
  - (1) The development contains nine (9) or fewer habitable units; any units being replaced by the development shall be subtracted in determining the applicability of this requirement;
  - (2) The development does not require a CIAS under paragraphs (a), (c) or (d) of this section; and
  - (3) The zoning official determines in writing that the development is consistent with the comprehensive plan and the applicable principles for guiding development.

(Ord. No. 76-5, § 3A, 1-19-76; Ord. No. 84-2, § 1, 1-4-84; Ord. No. 85-42, § 1, 10-1-85; Ord. No. 85-52, § 1, 11-20-85; Ord. No. 89-28, § 1, 8-21-89)

**Sec. 34.06 Procedures.**

(a) *Submission of impact assessment statement; application of zoning, rezoning, variance, special exception.* All landowners or developers proposing a development requiring an impact assessment statement shall submit the completed document for review and official action to the zoning official prior to issuance by the City of Key West of an order granting an application for zoning or rezoning approval, variance or special exception, site plan or plat approval. Submission of the impact assessment statement shall be coincident with such application. No building permits shall be issued for such developments until the applicant has complied with the provisions of section 34.02 through 34.12 inclusive, the CIAS has received final approval from the city commission, the plat has been duly filed when required, and the applicant has complied with all other applicable requirements of law. If no building permit for construction of a principal building has been issued within one (1) year from the date of approval of a development's CIAS, or if such a building permit has been issued within one (1) year but becomes inoperative, the approval shall expire and a new CIAS must be approved before any building per-

~~mits can be issued; no extensions of CIAS approvals shall be allowed. Approval of a development's CIAS by the city commission does not in and of itself constitute the granting of any application for zoning or rezoning approval, variance or special exception, site plan or plat approval, nor relieve the applicant of meeting all requirements of law prerequisite to the granting of any such application.~~

(b) *Review of application and statement.* The zoning official shall review the application within thirty (30) days for sufficiency and so notify the applicant. The impact assessment statement shall then be distributed to various city departments and other appropriate local agencies. The agencies shall review and return their comments to the zoning official within thirty (30) days.

(c) *Summary of comments.* The zoning official shall prepare a summary of comments and recommendations regarding the impact assessment statement and application for zoning or rezoning approval, variance or special exception, site plan or plat approval. In preparing the summary and recommendations the agency shall consider whether and the extent to which the development will have a favorable or unfavorable impact upon the environmental, fiscal, economic and urban resources of Key West and the extent to which the proposed development is consistent with local land use plan, policies and ordinances, and the critical area principles for guiding development.

(d) *Public hearing.* A public hearing shall be held on the application for zoning or rezoning approval, variance or special exception, site plan or plat approval and at such public hearing, comments shall also be received on the impact assessment and review comments.

(e) *Consideration of all comments in rendering decision.* In rendering its decision to approve, approve with conditions, or deny the application for zoning or rezoning approval, variance or special exception, site plan or plat approval, the city commission shall consider all comments received from any person, agency or government.

(f) After approval of a site plan no changes shall be made with regard to said site plan without



THE CITY OF KEY WEST

P. O. BOX 1409  
KEY WEST, FLORIDA 33040-1409

PLANNING DEPARTMENT  
(305) 292-8229

[Date on computer  
Planning Dept.]

"11/7/91"

Mr. Thomas E. Pope,  
Architect  
610 White St.  
Key West, FL 33040

Re: Southeast Bank property,  
southeast corner, Front  
and Duval Streets, Key West

Dear Tom:

This will verify my opinion and recommendation that development of the subject property with less than 10,000 square feet of commercial space will not require a Community Impact Assessment Statement (CIAS).

As you know, I had previously advised you, and others, that I would recommend to the city Commission that virtually any development proposal on the site be subject to CIAS review. At that time, I was concerned with the fact that the property had been previously committed as leased parking to meet the parking requirements of two neighboring uses. I was also concerned that the design of any proposed new development be responsive to the important location of the site--particularly with regard to the need for pedestrian space.

In conversations with the City attorney and other City officials, we have determined that Southeast Bank (or any subsequent owner of the property) does not bear responsibility for maintenance of parking to serve other uses. The City will pursue this issue separately with the appropriate other parties.

Regarding pedestrian space, I'm confident that you and your client will do a good job.

Sincerely,

Theodore C. Strader, AIA  
City Planner

cc: Felix Cooper, City Manager  
Ginny Stones, City Attorney

Exhibit A





THE CITY OF KEY WEST

Post Office Box 1409  
Key West, FL 33041-1409

Sept. 20, 1992

Mr. Thomas E. Pope  
Architect  
610 White St.  
Key West, FL 33040

Dear Mr. Pope:

This is to confirm that the Key West Planning Board, at its Regular Meeting on Thursday, Sept. 17, 1992, in the City Commission Chambers at Old City Hall, voted conditional acceptance of proposed retail shops with below-grade parking at Front and Duval Streets, owner Benny Hamuy.

The acceptance of the proposed retail shop complex with below-grade parking at Front and Duval Streets was conditional upon provision of visual screening of all mechanical equipment from view, including dumpster and air conditioning and ventilation equipment, and upon meeting City of Key West standards for size and spacing of all trees and plantings.

Sincerely,

A handwritten signature in cursive script that reads "Wendy Tucker".

Wendy Tucker, Secretary  
Key West Planning Board



THE CITY OF KEY WEST

Post Office Box 1409  
Key West, Fl. 33041-1409

Sept. 20, 1992

Mr. Thomas E. Pope  
Architect  
610 White St.  
Key West, FL 33040

Dear Mr. Pope:

This is to confirm that the Historic Architectural Review Commission, at its Regular Meeting on Monday, Sept. 14, 1992, in the City Commission Chambers at Old City Hall, gave final design approval for retail shops with below-grade parking at Front and Duval Streets, owner Benny Hamuy.

Sincerely,

A handwritten signature in cursive script, reading "Lou Hernandez".

Lou Hernandez, Chairman  
Historic Architectural Review Commission

Exhibit A

E

Valid Copy  
Reprinted on  
computer 10/4/92

Oct. 3, 1992

Mr. Thomas E. Pope  
610 White St.  
Key West, FL 33040

RE: Duval and Front Street retail store, Site Plan Review

Dear Tom:

As you are aware, we placed this site plan review submission on the Key West Planning Board (KWPB) agenda of September 17, 1992, in order to accommodate the urgency you had expressed. Obviously, there was insufficient time between our receipt of the materials and the meeting for us to do a thorough staff review. Since then, I have met with John Castro, Lead Building Inspector/Coordinator, and Roland Flowers, Acting City Engineer, regarding the site plan submission. Following are our collective comments and concerns.

1. Lot coverage. Lot coverage is based on that portion of the lot which is not open to the sky. In determining this, we start with a base plane which is approximately 30" above normal grade. I have calculated the "covered" area of this project at about 11,690 square feet. This results in lot coverage of 56%. Please note that we include fabric awnings in our lot coverage calculations.

2. Drainage. Concern has been expressed by members of the staff that the parking lies below the water table and consequently will be subject to flooding from groundwater infiltration as well as stormwater. We will expect the project's engineers to warrant to the City that the proposed drainage will operate effectively to maintain the parking function under all but extraordinary circumstances.

3. Landscaping. Regarding compliance with the City of Key West Landscaping Requirements Ordinance, we agree that Turf Block may be considered Landscaping under Section 32.04 if it is designed and placed in a manner which results in substantial permeability by surface water and is maintained with living grass.

Exhibit A

F

Mr. Thomas E. Pope, Page 2, Oct. 3, 1992

Tom, we appreciate your cooperation in this review process, and look forward to a successful project in this important location. Please feel free to contact me, John Castro or Roland Flowers if you have any questions.

Sincerely,



Theodore C. Strader, AIA  
City Planner

cc: John Castro  
Roland Flowers

# DUVAL AND FRONT RETAIL STORE

*I get 1,210 SF*

## GENERAL PROJECT INFORMATION

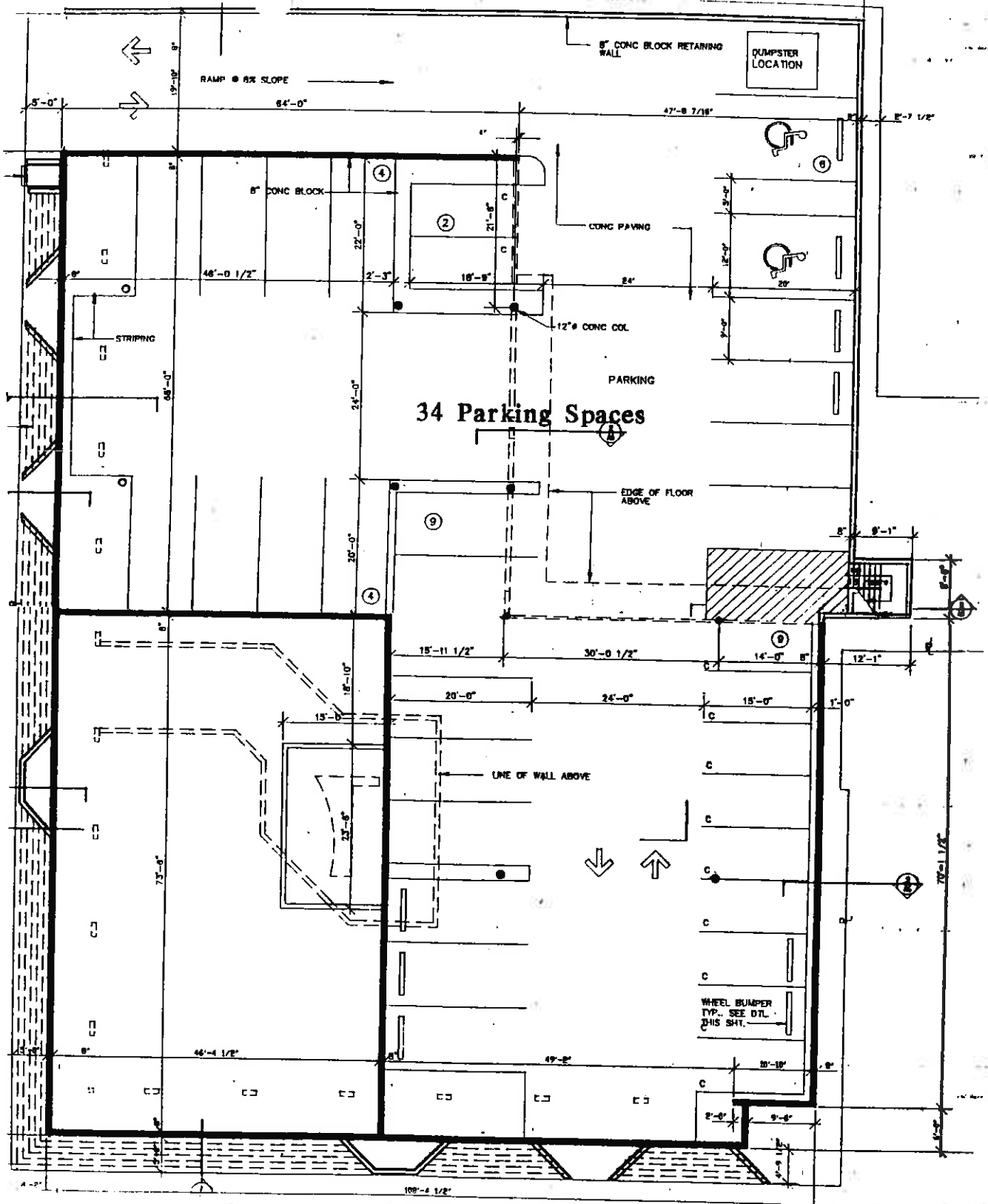
The proposed structure at Duval and Front will have commercial retail usage. The building will have 9,900 sq. ft. of enclosed commercial space with an additional 480 sq. ft. of covered arcaded walkway. The building facade will be twenty-five feet in height from sidewalk level, however the building will be elevated approximately four feet above sidewalk level to meet Flood Plain Requirements and will have an arcaded pedestrian level. The major existing trees will be maintained with landscaped courtyard features. The building materials will be a mixture of wood, concrete and stucco and will resemble the existing neighborhood in size, scale and detail. The project has already received final approval from the Historical Architectural Review commission #4-10978-92.

## SITE DATA:

|   |                                      |                        |
|---|--------------------------------------|------------------------|
| Lot area:                                   | 20,835.8 sq.ft.                      | <i>OK</i>              |
| <del>Building area:</del><br><i>Covered</i> | <del>10,380.0</del><br><i>11,690</i> |                        |
| Building area:                              | 10,380.0 sq.ft.                      |                        |
| Site Coverage:                              | <i>49%</i> <i>56%</i>                |                        |
| Floor Area Ratio:                           | 1 to .5                              |                        |
| Square Feet of Retail:                      | 9900 sq.ft.                          | <i>Gross Plan Area</i> |
| Square Feet of Paved Area:                  | 5911                                 |                        |
| Square Feet of Landscape:                   | 4544                                 |                        |
| Percentage of Landscape:                    | 21.8 %                               |                        |



FRONT STREET



DUVAL STREET

Parking Plan 

Exhibit A

F  
E-3

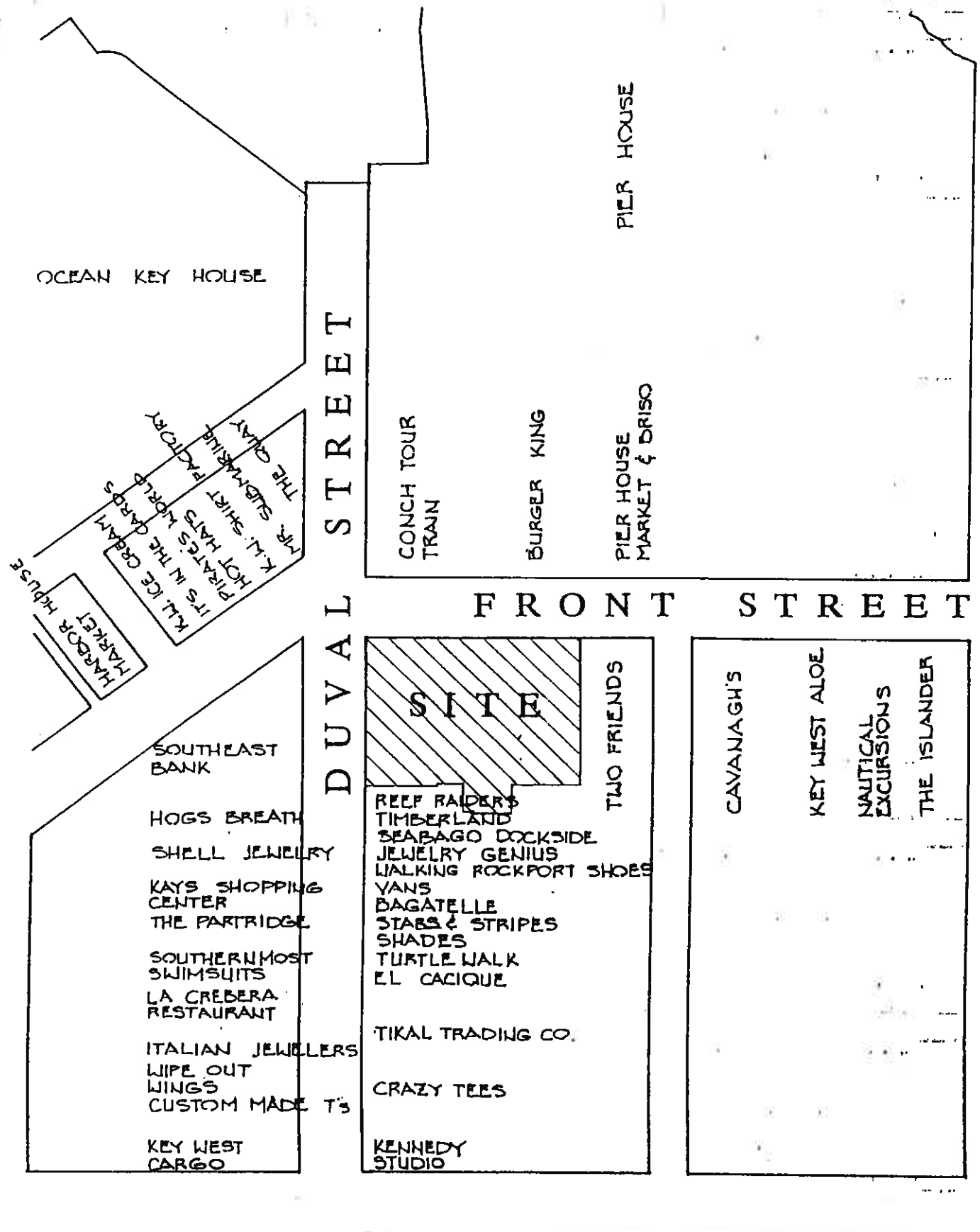
# DUVAL AND FRONT RETAIL STORE

## GENERAL PROJECT INFORMATION

The proposed structure at Duval and Front will have commercial retail usage. The building will have 9,900 sq. ft. of enclosed commercial space with an additional 480 sq.ft. of covered arcaded walkway. The building facade will be twenty-five feet in height from sidewalk level, however the building will be elevated approximately four feet above sidewalk level to meet Flood Plain Requirements and will have an arcaded pedestrian level. The major existing trees will be maintained with landscaped courtyard features. The building materials will be a mixture of wood, concrete and stucco and will resemble the existing neighborhood in size, scale and detail. The project has already received final approval from the Historical Architectural Review commission #4-10978-92.

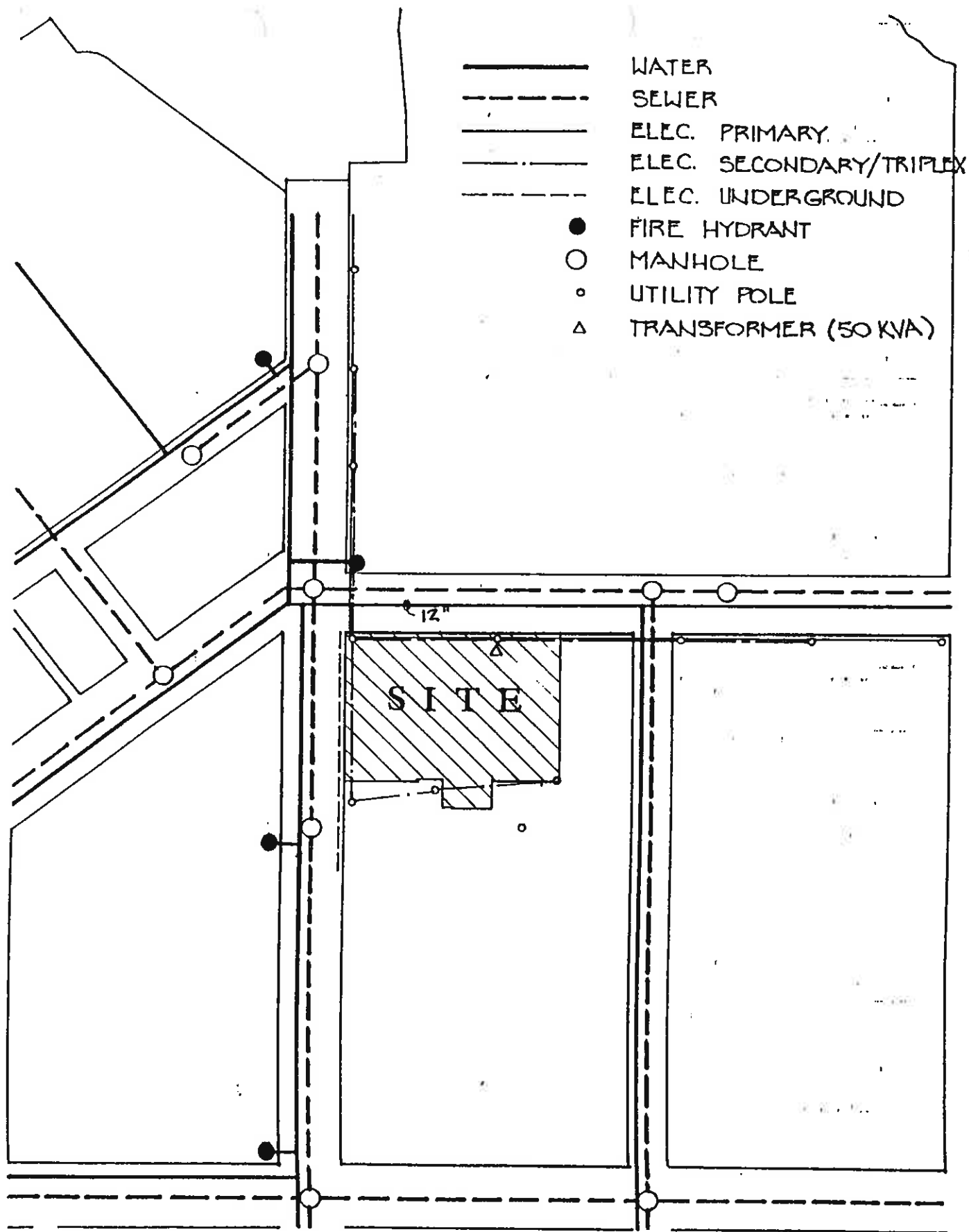
## SITE DATA:

|                            |                 |
|----------------------------|-----------------|
| Lot area:                  | 20,835.8 sq.ft. |
| Building area:             | 10,380.0 sq.ft. |
| Site Coverage:             | 49%             |
| Floor Area Ratio:          | 1 to .5         |
| Square Feet of Retail:     | 9900 sq.ft.     |
| Square Feet of Paved Area: | 5911            |
| Square Feet of Landscape:  | 4544            |
| Percentage of Landscape:   | 21.8 %          |



EXISTING LAND USE

F05

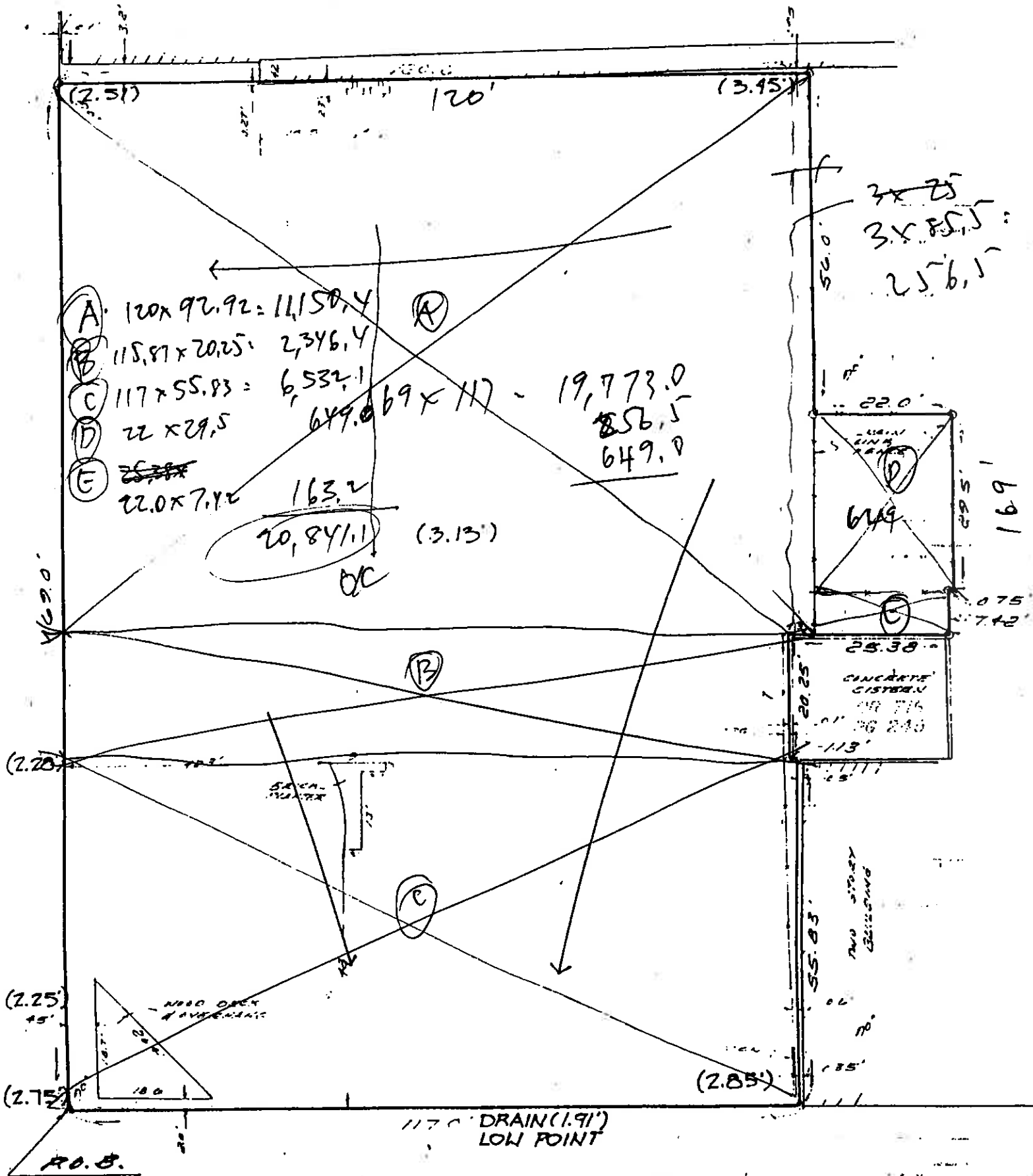


**Exhibit A**

PUBLIC UTILITIES

-A7a

Feb 1966



DUVAL ST.

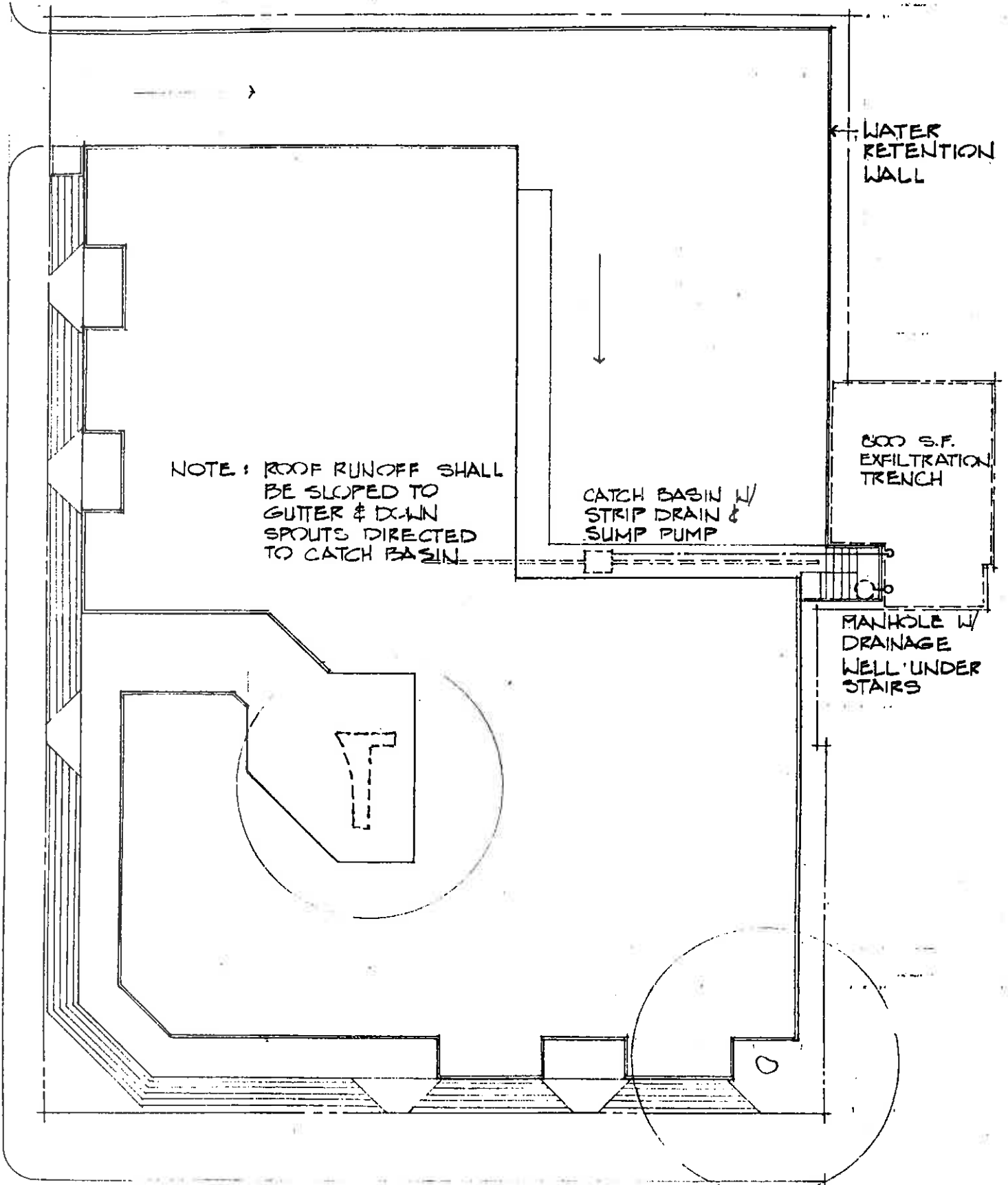
TOPOGRAPHIC MAP

Exhibit A

A3

F 27

FRONT STREET



Site Plan

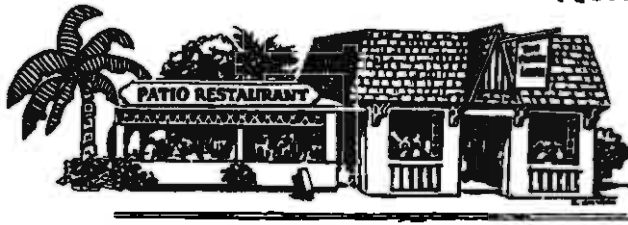


Drainage

Exhibit A

FE-8

# TWO FRIENDS PATIO RESTAURANT



512 FRONT STREET

KEY WEST, FLORIDA 33040

(305) 296-3124

(305) 296-9212

November 17, 1992

Attention: City Mayor  
City Commissioners  
City Attorney and Staff

From: Dante L. Capas  
Two Friends Patio Restaurant

The enclosed report was submitted to me from a group of businessmen who have asked to remain anonymous with regard to their position on the proposed Duval and Front Street Development. Apparently there is considerable concern as to the political ramifications associated with the various aspects of this development as detailed in the enclosed report.

Although I am impressed with the effort and research put forth, I was not involved in the research or preparation of the report so I can not confirm its accuracy. I trust you concur, however, that if in fact the report is accurate it is imperative the developer be obligated to comply with all aspects of the code and ordinances governing this type of development.

My personal concern has been stated repeatedly through my sons and my attorney. The present flooding problem is serious and damaging to my business. I can not allow a development to proceed which does not address the present flooding problem or one that will further amplify the situation. The photographs you received at the last meeting do not convey the loss of business, the stench of the storm sewer water when it overflows into the street or the massive cleanup associated with the frequent flooding situation.

It is my hope that you review the situation on Front Street personally to gain a perspective on the severity of the problem prior to considering this development as proposed. I make myself available to your schedules in an effort to meet with you personally. I ask for your cooperation in this request.

Respectfully submitted,

Dante L. Capas

Exhibit A

G

*This report has been respectfully prepared and submitted by  
The Committee to Promote Upscale Tourism in Old Town.*



**CRITIQUE**  
**of the Commercial Retail Project**  
**Proposed for Land Parcel at Duval & Front Streets**  
**HARC # 4-10978-92**  
**Total property: 20, 835.8 square feet**

In reviewing the plans and sketches submitted to various City agencies of the project noted above, several discrepancies are immediately evident. Our critique of the proposed structure will give first the claim made by the developer's plan, then an overview of the discrepancy, and then the specific questions or comments which arise.

**Claim:**

**Building will occupy 10,380 sq ft.**

Discrepancy:

A cursory calculation of the site plan's arithmetic indicates a covered space of 12,320 sq ft. This is more than 2000 sq ft of what is claimed.

**Claim:**

**Retail floor area will be approximately four feet above sidewalk level to meet flood plain requirement.**

Discrepancy:

Flood plain requirement is seven feet above the mean high tide. The mean high tide for that land parcel is roughly street level, while Spring tides are generally sidewalk level at the northeast corner of Front Street. If an elevation of more than four feet is needed to meet flood plain requirements, then the building's stairs to the floor level must change. If stairs with an eight inch rise and twelve inch tread are considered the norm, then an elevation of four feet eight inches gives a setback of five feet to the covered area. The requirement of a higher elevation indicates a deeper setback to accommodate standard-sized stairs (or approximately a one foot setback for each additional eight inch rise). If the setback is changed, the building's dimensions will also change.

Comment:

Building elevation as shown in developer's plans is probably one foot short of FEMA requirements.

**Claim:**

**Major trees existing on the site will be maintained.**

Discrepancy:

Submitted sketches and drawings of the site conflict with the actual parcel. The first tree in the center of the building area is a strangler fig on part of

an old cistern wall. The site plan indicates about a 300 sq ft space allotment with a parking area four to five feet below ground level along the south side. The upper story shows about 400 sq ft for light and water. The tree presently covers about 600 sq ft of branch area, indicating a 30% trimback just to fit inside the building area. As the tree is approximately 20 to 25 feet high, it will then be entirely surrounded by a building higher than itself.

The second tree (on the southwest corner of Duval Street) is an old ficus tree. Developer drawings indicate something other than this. The space allotted for this unusually large tree is 10 ft x 10 ft in the corner. Actual measurement taken on the parcel places the building at about the center of the trunk. Even if the building was modified to clear the trunk, all limbs and roots would have to be cut back on two sides of the tree. Limbs would have to be cut off to a height of 25 feet; roots to a depth of 5 to 6 feet. The tree presently shades an area of about 900 sq ft, and its visible root structure claims about 400 sq ft of the parcel. The existing site plan makes no provisions for the other trees already existing on the parcel, including a tropical almond tree which grows in the area planned to contain the stair/manhole of the exfiltration trench. The site plan also makes no mention of the several Christmas palms and coconut palms growing along Front and Duval Streets.

Especially notable is the fact that the current plan makes no provision for the large outstanding coconut palm thriving on the adjacent "Two Friends" property. On the current sketches and drawings, it appears that the "ramp" to the lower level of the building would certainly cut through this palm's root structure.

Question:

Does the current site plan make any real provisions for the preservation of trees already growing on the parcel?

Claim:

Site plans state that 4,544 sq ft (or 21.8%) of the parcel will be landscaped.

Discrepancy:

A closer scrutiny of the sketches reveals the following:

|   |                  |
|---|------------------|
| 2.5 ft setback from sideline accounts for | 640 sq ft        |
| exfiltration area accounts for            | 586 sq ft        |
| tree area accounts for                    | <u>460 sq ft</u> |
| Subtotal                                  | 1,686 sq ft      |

An in-depth look at the existing plan shows that a type of paving block used for the ramp and dumpster which incorporates plus grass in its design is being construed as "landscape." Even if the entire drive area were paved in the manner described above, the total additional square footage of this type of "landscape" would add 2,000 sq ft for a total landscape area of 3,686 sq ft

This total is **900 square feet short** of the site plan's claim.

Questions:

- 1/ Do potted plants and trees qualify as landscape? We don't believe so.
- 2/ Does a ramp incorporating plug grass in paving block qualify as landscape? Again, we do not believe so.
- 3/ A *maximum* of 3,686 sq ft (or 17.7%) of the parcel will be landscaped according to existing plans. If we are correct about item #2 above, then the *actual* total of landscape will be only 1,686 sq ft or 8% of the total parcel --far below the requirement.

**Claim:**

**Both site and roof water runoff will be dealt with as follows: water runoff will be sloped to gutters and downspouts which lead to a catch basin, strip drain, sump pump, and manhole --with the final drainage well located under the stairs, along a 600 sq ft exfiltration trench.**

Discrepancies:

1/ Since the underground parking garage is planned to be well below the water table (18 to 24 inches below ground level in normal tides) the project's engineers should be required to *prove* a water tight integrity both under "normal" conditions, i.e., no rainfall and no extremely high tides, as well as under either of the aforementioned (or both simultaneously). It is highly unlikely that they can prove this capability, especially since the plan indicates the ramp will be constructed from porous [non-solid?] materials.

2/ Assuming we are correct in #1 above, then there would be absolutely no way to "seal" the ramp from heavy seepage through its tiles.

3/ If the ramp's tiles are an overlay on concrete, then there is not enough earth to sustain either landscaping or green space, if this is indeed even being considered.

4/ As all Key Westers know, tropical downpours generating two or more inches of rainfall in just a few minutes are quite common. When such downpours occur (even without a high tide), most of Front Street, as well as parts of Duval and Ann Streets immediately flood to sidewalk level and above. These floods are routine occurrences because the area's storm sewer capacity is (and has been for some time) overloaded. During a torrential downpour which results in two inches of water in a short period of time, the parcel must be able to drain itself. 20,000 sq ft of water at a depth of two inches equates to 3,333 cubic feet of water. To get some sense of that number, imagine a block of water 20 feet x 30 feet x 5.5 feet high.

Questions:

1/ What preventive measures are being taken to ensure that high water from Front Street does not enter the underground parking facility via the ramp?

2/ When the parcel is struggling to drain 3,333 cubic feet of water, where does this water go? Does this project intend to have an above-ground reservoir? It certainly cannot plan to have an underground reservoir, for such a reservoir would be permanently and constantly filled to capacity with water.

3/ Yet another insufficiently addressed water question concerns how to

process the inevitable water caused by the construction process itself. How will this construction water be dealt with? The plan is mute on this issue.

- a) Will the construction site be configured with steel interlock piling to bedrock (at minus 40 feet) all around the site perimeter, in order to keep ground water from invading and flooding the construction site?
- b) Will the invasive ground water be constantly (around the clock) pumped out from the site?
- c) If invasive ground water is to be pumped out from the site, *where* will it be pumped to? Certainly not to an already overloaded storm sewer system, and then into an already over-taxed ecosystem.

Comments:

The City of Key West has the legal authority as well as the civic responsibility to require that any and all new development effectively deal with the negative impact it may have on existing systems or properties. It is incumbent upon the City of Key West to protect existing properties and businesses from the damage that will obviously be caused by poorly conceived erroneously engineered new development. And it is the duty of the City of Key West to enforce the laws regulating new development and the existing building codes. It is incumbent upon the City of Key West to require that all new development meet both the letter and the spirit of existing ordinances. In short, it is the City's duty to enforce the law.

**Claim:**

**The site has adequate parking and no encumbrances.**

Comments:

The site plan is curiously silent about parking. While the sketches do show a parking area of 34 spaces, no mention is made of how those spaces will be administered.

Questions:

1/ Will parking access be restricted solely to the project's tenants and their customers?

2/ Will any parking spaces (paid or free) be accessible to the general public?

3/ Does the project's management plan to use the valet method of parking? If valet parking is used, how will the inevitable traffic backup on Front Street be handled, while cars line up waiting for service?

4/ What about nearby businesses already in technical violation of their agreements with previous City Commissions to provide auto parking for their businesses? The following is a matter of public record:

- a) When the City granted permits to build what is now the Burger King building on Front Street, it required the land owner to provide for an additional five parking spaces within 50 feet of the new

building *in addition to* the 13 - 15 spaces that then existed along the side of the parcel adjacent to the Pier House. Those additional five spaces were leased from what was then Southeast Bank.

b) When the Pier House expanded, Conch Train management (which was and is also the land owner of the parcel) sold its 13 parking spaces to the Pier House, leaving both Burger King and the Conch Train with *virtually no* parking of their own, and totally dependent upon parking spaces in the Southeast Bank lot across the street.

c) The Conch Train/Burger King parking lease with Southeast Bank was terminated approximately a year ago, leaving them with *no parking of their own* for their customers at all, a situation which clearly violates a previous Commission's stipulated requirement for the construction of the Burger King building in the first place.

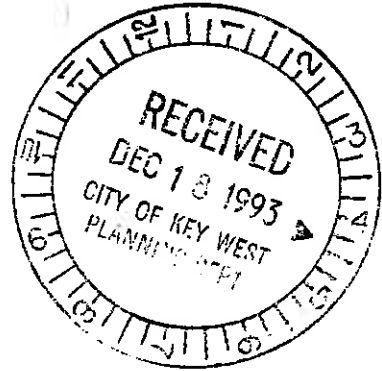
d) At the present time, the Conch Train, the Conch Train Gift Shop and Snack Bar, and Burger King have *virtually no parking of their own*. Parking (for a fee) is available at the commercial Front Street lot across the street, so their need to provide free customer parking based on seating may be somewhat mitigated.

e) If the commercial Front Street parking lot becomes inaccessible to Conch Train/Burger King customers, then it follows that these businesses will be in violation of and in non-compliance with both City code requiring restaurants to provide parking, and with the agreements the City required from the developer before issuing the permits for the Burger King building in the first place.

It is incumbent upon the present City Commission to require the landowner/developer to honor the pledges he made when applying for building permits, or to require him to show cause why the business licenses held by him and/or his tenants should not be immediately revoked for non-compliance with those pledges.

If the City fails to discharge its duty in the manner described above, it is sending a clear message to all future developers to do as they wish, since the City has building ordinances and requirements, but does or will not enforce them.

f) We may also add that when the Commission-approved Mallory Square Master Plan begins construction, approximately 250 parking spaces will be inaccessible for a long time, further impacting the downtown parking crunch, and exacerbating the existing traffic jams caused by cars in search of parking.



M E M O R A N D U M

M-117

To: John Castro, Lead Building Inspector/Coordinator  
Marta Cabaliero, Coordinator I

From: Raymond W. Archer *RWA* Director of Engineering & Facilities

Date: November 18, 1992

Subject: PROJECT/DUVAL & FRONT STREETS

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At last night's Commission meeting, much discussion took place regarding the new construction at the corner of Duval and Front Streets.

Please keep me advised on the progress of the permitting procedure for the project.

The City Commission requested that we do not issue a permit without their review. When you see a tentative date that you think you will be ready to issue a permit, please let me know so that I can schedule a special City Commission meeting. I really do not want to hamper or delay the project unnecessarily.

Thank you

RWA/tmt

cc: G. Felix Cooper, City Manager  
Ted Strader, City Planner  
Ginny Stones, City Attorney

Exhibit A

H

MEMORANDUM

TO: MAYOR WARDLOW, CITY COMMISSIONERS, CITY ATTORNEY AND  
CITY STAFF

FROM: DAVID PAUL HORAN, ESQ. *DPH 11-20-92*

RE: PROPOSED DEVELOPMENT - FRONT & DUVAL STREETS

Attached are the minutes of the October 8, 1991 Meeting of the City Commission. Staff was instructed to prepare Findings of Fact for consideration at the "next meeting". Therefore, if it came back two (2) weeks (or a month) later and a discretionary CIA was "denied", the question is - How long is a CIA for a specific development good for? Another way of asking this is, if a CIA had been prepared for this specific development and approved a year or more ago, would a new CIA (or a new decision on a discretionary CIA) now be required?

The fact is that a new CIA or decision on discretionary CIA is required! The legal rationale is:

1. No CIA can be considered for a specific development until the developer/landowner submits . . . "the completed document for review and official action. . .". §34.06(a) - Until the "completed document" is submitted there is no "discretion" to exercise regarding a discretionary CIA.

2. The Code also provides . . . "If no building permit for construction of a principal building has been issued within one (1) year from the date of approval of a developments CIA . . . The approval shall expire and a new CIA must be approved before any building permits can be issued; no extensions of CIA's approvals shall be allowed." §34.06(a)



The minutes of 10-8-91 show that there was no submission of . . . "the completed document for review and official action". What was represented to the Commission was that the developer had simple plans for an "L-shaped retail building" . . . of "about 8500 sq.ft." . . . with parking behind the building amounting to about . . . "25 spots". It was also represented that the buildings were "20 ft. high". Based upon these "facts" submitted by a prior owner, "The City Planner was directed to prepare a Finding of Fact on the project for the next meeting".

The next meeting would have occurred thirteen (13) months ago! The building now proposed is at least 9,900 sq. ft of enclosed commercial space and anywhere from 10,380 sq. ft. to 12,320 sq. ft. in area and it is 25 feet in height. The currently proposed building is either 19% or 31% larger and it is 20% higher than the building represented to the Commission on 10-8-91. The parking is under the building, not behind it as was previously represented.

If it was the same landowner, if there had been a "completed [development] document", if there had been an approval of the CIA for the specific development, if the buildings were the same square footage and height, and if the parking was behind the building - the CIA would now be "stale" and . . . "no extensions of the CIA's approvals shall be allowed!" §34.06(a)

Talk of "law suits" on "vested rights" based on a year+ old alleged "decision" not to require a discretionary CIA are totally



empty and baseless threats. The City Attorney has attempted to give more effect to a denial of a discretionary CIA than a decision to require a discretionary CIA! If the City had required a discretionary CIA for the specific project and approved it last October, a new CIA would now be required! It makes no sense to deny a discretionary CIA based on a development which is 20% higher and 19% to 31% larger than what was portrayed to the Commission thirteen (13) months ago. The City Code provides that . . . "no extensions of CIA's approvals shall be allowed".

If there is one area in this entire City where all development justified a discretionary CIA - it is the area around the Front and Duval intersection.

10/1/91  
~~YEAS: Commissioners Lewis, Barice, Weckley, Mayor Tarracino~~

NAYS: Commissioner Powell

SO ORDERED

DISCUSSION:

Construction and demolition recycling and disposal site.

Technical Services Director Paul Cates requested the Commission to give staff direction to go ahead and have the capability of entering into discussions with the County to possibly site a Class III landfill within the Florida Keys. It was the ~~consensus of the Commission for Mr. Cates to so proceed.~~

★ Potential development of Southeast Bank property at southeast corner of Front and Duval Streets.

City Planner Ted Strader explained that the developers of above-referenced project had originally intended to propose a project which would clearly require a Community Impact Assessment Statement. He stated they had requested him to advise them whether or not a smaller project on that site, one less than 10,000 square feet, would require a Community Impact Assessment Statement. He advised that in the Code under the category of Developments requiring a Community Impact Assessment Statement there was the following provision that he read in part: "any development which at the discretion of the Mayor or City Commission is expected to have a significant impact upon environmental or urban resources; the mayor or planning designate shall prepare a written finding of fact regarding such impacts prior to requiring an impact assessment statement..."

Michael Halpern stated that they had a very simple one-story plan of buildings that were compatible with the rest of the buildings on the block and it was very simple and an L-shaped retail building running along Duval Street and Front Street. He stated it was about 8,500', and behind it with an entrance on Front Street was the parking that supports the retail stores, about 25 spots. He stated they had 20' buildings, it was going to be compatible aesthetically with the rest of the neighborhood. He stated that the two significant trees on site were going to be retained. He stated that all water run-off would be retained on

site.

The City Planner was directed to prepare a finding of fact on the project for the next meeting.

~~License Agreement between City of Key West and Mark Rossi for 208 Duval~~

After a discussion on License Agreement and the fact that the City was not aware that the property licensed for covered trash storage and recycling sorting bins was a municipal sidewalk, the City Attorney was directed to send Mark Rossi d/b/a Rick's Bar 208 Duval Street, a letter placing him on notice that said license agreement terminates 30 days from date of letter.

License application by Steven Hollenbeck on behalf of Ramlo Development Corp., for use of city property behind 218 Duval St.

Michael Halpern withdrew above-referenced request.

Setting a date for City/County Workshop to discuss Comprehensive Plan Intergovernmental Element.

The City manager was directed to set up a workshop meeting with the County Commission after the November election.

Overseas Market/Key Plaza alternate rear access.

After a discussion, it was the consensus of the Commission for the City Attorney to prepare a Resolution authorizing the expenditure of \$275,000.00 of traffic impact fees to acquire an improved easement between Key Plaza Shopping Center and the Overseas Market.

Salt Run Bridge

Assistant City Manager Ron Herron updated the Commission on the Salt Run Bridge construction.

Cable House, Southernmost Point.

Assistant City Manager Ron Herron stated that they had the individual originally arrested for holding himself out as a charity and collecting money under false pretenses. He stated that the individual does have title, a Quit Claim Deed from Western Union for the Cable Hut, however, the notes and bounds of what he had showed turned out to be Whitehead Street. He stated that the individual had prepared the deed himself and sent it off to Western Union in Texas and they had prepared a Quit Claim Deed. Mr. Herron



Comprehensive Planning  
 Resort/Tourism Planning  
 Land Use Regulation  
 Development Feasibility  
 Site Design  
 Expert Witness

28 December 1992

Mr. Ray Capas  
 c/o Two Friends Restaurant  
 512 Front Street  
 Key West , Florida 33041

*Done -  
 296-3234*

830 Fleming Street  
 P.O. Box 372  
 Key West • Florida • 33041  
 305 • 294 • 1515 P/T/A

**Subject: Commercial Project - Duval and Front Streets**

Dear Ray:

As we discussed this afternoon, I believe there is sufficient justification within the existing City Zoning Code to require the City to demand that the developer of the project complete a Community Impact Assessment Statement. While the City Mayor of Commission may waive the requirement, the Code is clear in its requirements.

My reasoning is thus:

1. Section 35.05 (c) of the City of Key West Code requires " All business, commercial, or industrial uses of one (1) acres or more than ten thousand (10,000) or more square feet of net additional gross floor space:

2. There is no specific definition of the words, "gross floor space". The definition which is closest and upon which the City relies to implement Section 35.05(c) is the definition contained in Section 35.24 (46), "Total floor area or gross floor are", "The areas of of all floors of a building, including finished attics, finished basements and all covered areas, including porches, sheds, carports, and garages".

3. This definition is bolstered by the definition contained in Section 35.24(32) "Principal Use of a Structure", "....., An attached carport, shed, garage, or any other structure with one (1) or more walls or a part of one (1) wall being a a part of of the principal building and structurally dependent , totally or in part, on the principle building, shall comprise a part of the principle building and be subject to all regulations applied to the principal building.....".

Lacking definitions to the contrary in the City Code, it is my professional opinion

that at the very least, the portion of the garage which is directly beneath the occupied floor above and the areas under the covered porticos on both Front and Duval streets are considered "gross floor space" by the Code and therefore the project exceeds the minimum threshold for a CIAS.

It is my recommendation that the City staff and Commission be made aware of this interpretation and that the City Attorney be asked for a corroborating opinion.

When these provisions of City Code are added to the potential problems already identified of long term drainage maintenance ( to be further verified by engineering review), and the the parking proposed already being allocated by lease to the fast food restaurant across the street(without the provision of a variance) , at least in part, merits the the due diligence investigation that would be a part of any CIAS.

Should you have any questions, please contact me prior to my leaving for vacation. Thank you for the opportunity to assist.

Very Truly Yours



Donald Leland Craig, AICP

CITY OF KEY WEST

PLANNING DEPARTMENT MEMORANDUM

DATE: Dec. 10, 1992  
TO: Mayor and Commissioners  
FROM: Ted Strader, City Planner  
RE: Proposed development at Front and Duval

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While it was my recollection, as well as the recollection of other City staff members, that the current City Commission took affirmative action to not require a Community Impact Assessment Statement (CIAS) of simple one-story retail development of less than 10,000 square feet on the subject site, no record of such action can be found. Consequently, I have to assume that we may be confusing this project with another.

The reliable record is as follows:

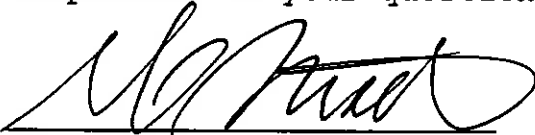
\* On December 21, 1990, I sent architect Tom Pope a letter (attached) in which I stated that I would recommend to the Mayor and Commission that they exercise their discretion to require a CIAS for development on the site even if it were proposed to be under the 10,000 square feet "threshold." I had frequently expressed the opinion that this site was extremely important to our downtown and that, in addition, it appeared to be "encumbered" as a parking site to meet the required parking for at least one adjacent development. These, and any other issues, would be thoroughly aired in a CIAS process.

\* On October 8, 1991, I brought the issue before the City Commission as a discussion item. By that time, the developers had given up their earlier plans to construct a mixed-use retail/commercial parking facility, and were proposing a simple one-story retail building of less than 10,000 square feet. Since I was on record as having advocated a CIAS for virtually any project on the property, I thought it was appropriate to get the sense of the Commission as well as ask their guidance. (A very brief transcript of that discussion item is attached.) It was left that I would prepare a written finding of fact regarding the significant impacts such development would have upon the environment or urban resources, as required by the Community Impact Assessment Ordinance.

\* On approximately November 11, 1991, I wrote another letter (attached) to Tom Pope in which I stated that my "opinion and recommendation" at that time was that the proposed development, under 10,000 square feet, would not require a CIAS.

In researching materials for the "finding," I obtained copies of the parking leases submitted by others to the City to meet their parking requirements by leasing space on the subject property. After conversation with the City Attorney, it seemed clear that the property owner of the subject site could not be held responsible for continuing to provide the parking for the adjacent uses. With this issue quieted, and with no other concerns being expressed by other City representatives with whom I discussed the project, I concluded that I could not, in good faith, proposed "findings" to the Commission. I am reasonably sure that I discussed this privately with each of the commissioners and got no objections.

I believe this is accurate in all respects and I hope it is responsive to your questions.



TED STRADER, CITY PLANNER

cc: G. Felix Cooper, City Manager  
Adele V. Stones, City Attorney  
Raymond Archer, Director of Engineering and Facilities  
Josephine Parker, City Clerk



THE CITY OF KEY WEST

Post Office Box 1409  
Key West, Fl. 33041-1409

Mr. Tom Papa  
610 White Street  
Key West, FL 33040

December 21, 1990

RE: Southeast Bank Parking Area  
Southeast corner Front and Duval Streets  
Key West, FL  
RE#'s 47 and 48

Dear Tom;

This letter will confirm our conversations regarding development of the subject properties. My understanding is that your client may be proposing approximately 10,000 square feet of commercial space plus a multi-story parking facility which would include some amount of commercially available parking.

Such a development would clearly require a Community Impact Assessment Statement (CIAS) under the provisions of Section 34.05(c). Should the development proposal be reduced in intensity to below 10,000 square feet, Section 34.05(c) would no longer apply; however, it would be my recommendation to the Mayor and City Commission that they exercise their discretion as authorized in Section 34.05(e), to require a CIAS on the grounds that the development "is expected to have a significant impact on urban resources."

Tom, I trust this is useful to you and your clients. Please feel free to call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Strader", is written over the typed name.

Theodore C. Strader, AIA  
CITY PLANNER

TCS/rcd



10/8/91

~~YEAS: Commissioners Lewis, Panico, Weckley, Mayor Tarracino~~

NAYS: Commissioner Powell

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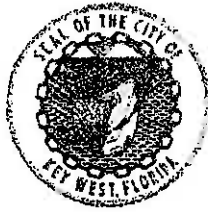
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**Exhibit A**

J-7



THE CITY OF KEY WEST

P. O. BOX 1409  
KEY WEST, FLORIDA 33040-1409

PLANNING DEPARTMENT  
(305) 292-8229

11/7/91

Mr. Thomas E. Poper,  
Architect  
610 White St.  
Key West, FL 33040

Re: Southeast Bank property,  
southeast corner, Front  
and Duval Streets, Key West

Dear Tom:

This will verify my opinion and recommendation that development of the subject property with less than 10,000 square feet of commercial space will not require a Community Impact Assessment Statement (CIAS).

As you know, I had previously advised you, and others, that I would recommend to the city Commission that virtually any development proposal on the site be subject to CIAS review. At that time, I was concerned with the fact that the property had been previously committed as leased parking to meet the parking requirements of two neighboring uses. I was also concerned that the design of any proposed new development be responsive to the important location of the site—particularly with regard to the need for pedestrian space.

In conversations with the City attorney and other City officials, we have determined that Southeast Bank (or any subsequent owner of the property) does not bear responsibility for maintenance of parking to serve other uses. The City will pursue this issue separately with the appropriate other parties.

Regarding pedestrian space, I'm confident that you and your client will do a good job.

Sincerely,

Theodore C. Strader, AIA  
City Planner

cc: Felix Cooper, City Manager  
Ginny Stones, City Attorney

**Exhibit A**

Key to the Caribbean - Average yearly temperature 77° F.

J-5

**HORAN, HORAN & ESQUINALDO**

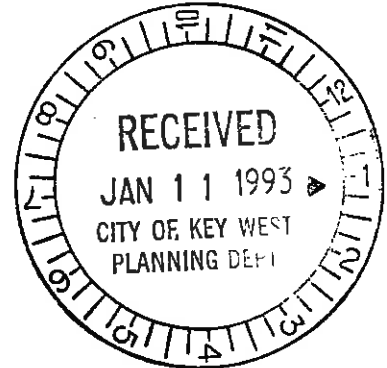
ATTORNEYS AT LAW  
608 WHITEHEAD STREET  
KEY WEST, FLORIDA 33040

DAVID PAUL HORAN, P.A.  
EDWARD W. HORAN, P.A.  
STEVEN B. ESQUINALDO, P.A.

(305) 294-4585  
(305) 294-3488  
FAX (305) 294-7822

January 7, 1993

Theodore C. Strader  
City Planner, City of Key West  
525 Angela Street  
Key West, Florida 33040



Re: Proposed Development - Front and Duval Streets

Dear Mr. Strader:

I hope that each Commissioner received a copy of my November 20, 1992, Memorandum regarding the prohibition against the extension of a Community Impact Assessment Approval. It was nearly fifteen (15) months ago that the Commission directed the City Planner to prepare a Finding of Fact on a proposed Front and Duval project for the . . . "next meeting". The building now being proposed is between 19% and 31% larger and it is 20% higher than the proposed building that was represented to the Commission back in October of 1991. I am enclosing a copy of the Memorandum in case you did not receive it or have misplaced it.

In addition to the November 20th, 1992 Memorandum, I am also enclosing a December 28th, 1992 letter from Donald Craig. Mr. Craig is a trained, experienced Land Use Planner and his analysis of the City Code regarding "gross floor space" and how it is figured, is certainly determinative with regard to the issues now facing the City. If "gross floor space" is the same as "gross floor area" as defined in Section 35.24(46) of the Key West City Code, then the proposed development as Front and Duval Streets exceeds 10,000 square feet of gross floor space (area). A Community Impact Assessment Statement is required unless affirmatively waived by the Mayor and Commission.

Frankly, I'm pretty much at a loss to determine how we got to the situation we now face. First, the Commission is told that there was an affirmative vote by the Commission

**Exhibit A**

**K**

Theodore C. Strader  
City Planner, City of Key West  
January 7, 1993  
Page 2

to not require a CIA. The Commission is then told that because the City has "affirmatively stated" that a CIA was not required, the new land owner could sue the City because the land was purchased based upon the City's "determination" that a CIA was not required. When we look into this matter further, we find that what actually happened in October of 1991 was that the matter was discussed and the staff was instructed to prepare Findings of Fact for consideration at the . . . "next meeting". What becomes clear is that the City never voted (one way or the other) as to whether to require a CIA. Under Section 34.06(a), until a "completed document" is submitted, there is no discretion to be exercised with regard to the Mayor and Commission requiring a CIA on a building of less than 10,000 square feet of gross floor space. We then find that even if a CIA had been considered and approved in October of 1991, it would only be good for one (1) year from the date of approval and no extension of a CIA approval is allowed. See Section 34.06(a) Key West City Code. Finally, it is clear that the proposed enclosed commercial space exceeds 10,000 square feet of "gross floor area" under Section 35.24(46) of the City Code and that the City of Key West is obligated to either require a CIA or, in the alternative, to affirmatively vote to waive the requirement.

As much of a problem as most land owners have with the City of Key West with regard to development, it is impossible to understand how the developers of the commercial project at Front and Duval Streets are getting such "help" in avoiding the investigation that is required in the origination of a CIA.

There are some major problems at the corner of Front and Duval Street, parking and drainage being the most sever. A CIA would address these problems and possibly come up with a solution. It is certainly time for the City to shoulder its responsibilities and require a Community Impact Assessment Statement for the proposed Front and Duval project. As I have stated before, if there is one area in this entire City where all development justifies a discretionary (or mandatory) CIA, it is the area intersection at Front and Duval.

Sincerely yours,



DAVID PAUL HORAN  
For the Firm

DPH:krh

**Exhibit A**

K-1

Front / Duval

MEMORANDUM

DATE: JANUARY 13, 1993  
TO: MAYOR WARDLOW  
FROM: ADELE V. STONES, CITY ATTORNEY *AVS*  
RE: HORAN CORRESPONDENCE FRONT STREET DEVELOPMENT

I am in receipt of the correspondence from David Paul Horan forward by your office. I am baffled by some of the statements made by Mr. Horan, as he cites ordinances out of context, and in fact incorrectly. Although Mr. Horan authoritatively cites Mr. Craig's opinion as to the calculation of gross floor space I believe that the City Commission should defer to the opinion of its City Planner, Ted Strader. I am certain that if the gross floor area exceeds 10,000 feet that Mr. Strader will agree a CIAS is required. This does not appear to be the case.

What Mr. Horan fails to acknowledge is that the City Planner rendered the opinion that no findings of fact as required by Code §34.05(e) existed to support a resolution required for the discretionary CIAS. Despite Mr. Horan's allegations that the development as proposed and the site plan as approved vary some 19% to 31% in size, any and all alterations occurred with the City Planner and Planning Board involved. The City Planner did not, based upon any alleged increase in square footage find a factual basis sufficiently compelling to readdress the discretionary CIAS.

The problems raised by Mr. Horan regarding parking and drainage in the area of Duval and Front Street are in fact real and indisputable. However, he is mistaken in his belief that those problems could be "solved" by a CIAS. Attorneys who practice in the area of land development in the City of Key West are well acquainted with Judge Lester's Order in the Fairways case which held that the CIAS is "informational only" and that a project cannot be denied based upon information contained in the CIAS. Any solution to the off-site parking and drainage problem will be an expense borne by the City and not the Developer. With that in mind, the exercise of requiring a CIAS is unlikely to yield the results desired.

\*It is Mr. Strader's opinion that the proposed developments' handling of its stormwater on site improves the existing off site drainage problems.

avs/dlr



January 14, 1993

Mr. David Paul Horan  
Horan, Horan & Esquinaldo  
Attorneys At Law  
608 Whitehead St.  
Key West, FL 33040

Dear Mr. Horan:

I am in receipt of your letter to me of Jan. 7, 1993, regarding the proposed development at Front and Duval Streets. It is my understanding, after discussion with other City staff members, that this letter has had wide distribution (although there is no reference to such in my copy of the letter).

Since the letter poses no direct questions, I assume that no response is expected.

Respectfully yours,

Theodore C. Strader, AIA  
City Planner

**Exhibit A**

**M**



THE CITY OF KEY WEST

Key West Florida

Under the Tree Ordinance, No. 86-5

Tree Commission

"The City Commission hereby finds that trees on private and publicly-owned property within the City of Key West are economic and aesthetic assets to the citizens of the City, and finds that a public purpose benefitting the health and economic welfare of the citizens can be served through protection of the trees and through encouragement of additional plantings. The City Commission further finds that this public purpose can best be achieved through a City agency have authority and responsibility to accomplish these goals."

CONTRIBUTION OF TREES TO CITY:

"Provision of shade which reduces heat gain in and on adjacent area, structure, and pavement, and thereby enhances human health, comfort, and economic savings."

Composition of Commission:

Seven residents of the City appointed by the Mayor with the advice and consent of the City Commission. Nominees provided by:

Key West Chamber of Commerce  
Latin Chamber of Commerce  
Old Island Restoration Society  
Key West Art and Historical Society  
Key West Garden Club  
Key West Board of Realtors  
Member of Licensed Landscape Industry

Powers and Duties of Commission:

The Tree Commission shall have the power and duty to protect trees of the City of Key West. Permits are required to remove or perform major maintenance on any dicot tree which is 5 inches or more in diameter, or any monocot tree (such as palms) which are 8 feet or more in height measure to the terminal bud, and on any size tree listed as "specifically protected".

Permits may be found at City Hall and are free. They should be submitted at least 5 days before the Tree Commission meets.

The Tree Commission meets the first Tuesday of every month at 5:00 pm in the City Commission Chambers at City Hall.

Any questions, call City Hall at 292-8195.

**Exhibit A**

M-1



Section 35-12 Specially Protected Trees:

The following species of trees are afforded special attention by the provisions of this Ordinance:

| Common Name                | Scientific Name               |
|----------------------------|-------------------------------|
| Bay-Cedar                  | Suriana maritima              |
| Black Ironwood             | Krugiodendron ferreum         |
| Black Mangrove             | Avicennia germinans           |
| Blolly                     | Guapira longitolia            |
| Brittle thatch palm        | Thrinax morrisii              |
| Buttonwood                 | Conocarpus erectus            |
| Cabbage palm               | Sabal palmetto                |
| Cherry or Buccaneer Palm   | Pseudophoenix sargentii       |
| Coconut palm               | Cocos nucifera                |
| Crabwood                   | Aferamnus lucidus             |
| Darling - plum             | Reynosa septentrionalis       |
| False boxwood              | Gyminda latifoli              |
| Geiger - tree              | Cordia sebestena              |
| Gumbo limbo                | Bursea simaruba               |
| Inkwood                    | Exothea paniculata            |
| Jamaica caper              | Capparis cynophallophora      |
| Jamaica - dogwood          | Piscidia piscipula            |
| Joewood                    | Jacquinia keyensis            |
| Lancewood                  | Nectandra coriacea            |
| Lignum - vitae             | Guaiacum sanctum              |
| Mahogany                   | Swietenia mahagoni            |
| Mastic                     | Mastichodendron foetidissimum |
| Pigeon - plum              | Coccoloba diversifolia        |
| Pond - apple               | Annona glabra                 |
| Red mangrove               | Rhizophora mangle             |
| Red stopper                | Eugenia rhombea               |
| Rough strongbark           | Bourreria succulenta          |
| Royal Poinciana            | Delonix regia                 |
| Sapodilla                  | Manilkara zapota              |
| Satinleaf                  | Chrysophyllum oliviforme      |
| Sea-grape                  | Coccoloba uvitera             |
| Seaside Hibiscus           | Hibiscus tiliaceus            |
| Seaside Mahoe or cork-tree | Thespesia populnea            |
| seven-year-apple           | Casasia clusiifolia           |
| shortleaf fig              | Ficus citrifolia              |
| Silver palm                | Cocothrinax argentata         |
| Slash Pine                 | Pinus elliottii var densa     |
| Smooth strongbark          | Bourreria succulenta          |
| Soapberry                  | Sapindus saponaria            |
| Spanish stopper            | Eugenia foetidaia             |
| Strongbark                 | Bourreria ovata               |
| Thatchpalm                 | Thrinax radiata               |
| Torchwood                  | Amyris elemifera              |
| White Mangrove             | Eugenia axillaris             |
| Wild dilly                 | Manilkara bahamensis          |
| Wild-tamarind              | Lysiloma bahamensis           |
| Willow bustic              | Dipholis salicifolia          |
| Yellowheart or Satinwood   | Zanthoxylum flavum            |

Unprotected Trees:

The provisions of Section 35-4 shall not be applicable to trees determined by the City Manager or his designee to have died of natural causes or to the following species of trees, which may be acted upon without permit from the Tree Commission:

|                                   |                                   |
|-----------------------------------|-----------------------------------|
| Norfolk Island Pine               | Araucaria Excelfa or Heterophylla |
| Queensland Umbrella Tree          | Shefflera Actinophylla            |
| Australian Pine                   | Casuarina equisetifolia           |
| Beefwood, (Brazilian Oak)         | Casuarina glauca                  |
| Brazilian Pepper, (Florida Holly) | Schinus terebinthifolia           |
| Melaleuca, (Cajeput, Funk Tree)   | Maelaleuca quinquenervia          |

Exhibit A

## 20.00 TREE COMMISSION\*

### Sec. 20.01 Findings, purpose; commission created.

(a) The city commission hereby finds that trees on private and publicly-owned property within the City of Key West are economic and aesthetic assets to the citizens of the city, and finds that a public purpose benefitting the health and economic welfare of the citizens can be served through protection of the health and growth of the trees and through encouragement of additional plantings. The city commission further finds that this public purpose can best be achieved through a city agency having authority and responsibility to accomplish these goals.

(b) There is hereby created the tree commission of the City of Key West, which shall have power and authority to accomplish said public purpose.

(Ord. No. 86-5, § 1, 4-1-86)

### Sec. 20.02 Composition and terms; compensation.

(a) The tree commission shall consist of seven (7) residents of the city who shall be appointed by the mayor with the advice and consent of the city commission. The mayor shall appoint members from lists of nominees provided by the Key West Chamber of Commerce, the Latin American Chamber of Commerce, the Old Island Restoration Foundation, the Key West Art and Historical Society, the Key West Garden Club, the Key West Board of Realtors, and a member of the licensed landscape industry, unless the mayor finds that an unlisted nominee is better qualified.

(b) Appointment of members of the tree commission shall be made on a staggered basis as follows: Upon enactment of this provision one (1) additional member shall be appointed for a term of one (1) year, and two (2) additional members shall be appointed to terms of three (3) years.

Upon expiration of the terms ending in 1988, one (1) member shall be appointed to a term of two (2) years, and three (3) members shall be appointed to terms of three (3) years. Thereafter, each appointment shall be for a term of three (3) years, except that appointments to replace a vacating member shall be for the unexpired term of said member.

(c) All members serve at the pleasure of the city commission and may be removed by majority vote of its full membership. If a member is absent from two (2) of three (3) consecutive regular meetings without cause and without prior approval of the chairperson, the tree commission shall declare the member's office vacant.

(d) All members shall serve without compensation but, as authorized by the city commission, may be reimbursed for actual expenses incurred in connection with their duties.

(Ord. No. 86-5, § 1, 4-1-86)

*Editor's note*—Sec. 2 of Ord. No. 86-5 provides that section 20.02(b) shall not operate to shorten the term of office to which any current member of the tree commission has been appointed, but shall apply only to appointments made after the date of enactment of this ordinance (Apr. 1, 1986).

### Sec. 20.03 Organization and rules.

(a) Four (4) members of the tree commission shall constitute a quorum for the transaction of business.

(b) From among its members, the tree commission annually shall elect a chairperson and such other officers as it deems necessary.

(c) The tree commission shall attempt to convene on a regularly scheduled basis at least once each month, and notice of such meeting shall be published in a newspaper of general circulation in the City of Key West at least five (5) days in advance thereof. At any special or regular meeting a future meeting date may be set.

\**Editor's note*—Prior to enactment of Ord. No. 86-5, § 1, adopted Apr. 1, 1986, provisions concerning the tree commission were derived from Sp. Acts, 70-765, §§ 2-4, 6-8, and Ord. No. 71-13, § 1, adopted Mar. 3, 1971.

*Cross reference*—Landscaping generally, § 32.01 et seq. Supp. No. 6

(d) Special meetings may be called by the chairperson or by written notice signed by three (3) members. No official action shall be taken during any special meeting unless four (4) members concur.

(e) Minutes shall be kept of all meeting of the tree commission or committees thereof. All such meetings shall be open to the public and, except in emergencies so designated by a majority of the full membership, notice of such meetings shall be published as for a regular meeting, and an agenda for each meeting shall be available to the public at City Hall forty-eight (48) hours in advance thereof. Copies of tree commission records shall be available to the public for a fee set forth in the tree commission regulations.

(f) From time to time, and by October 1st of each year, the tree commission shall recommend to the city commission regulations for the conduct of its business, which recommendation shall govern upon approval or amendment by the city commission, or upon the expiration of forty-five (45) days without final city commission action thereon. Said rules are at all times subject to amendment by the city commission.  
(Ord. No. 86-5, § 1, 4-1-86)

**Sec. 20.04 Powers and duties.**

(a) The tree commission shall have the power and responsibility to carry out the duties conferred upon it by this Code of Ordinances, and shall perform said duties in order to protect and enhance the health, growth, and planting of trees in the city.

(b) No person, whether on public or privately owned land, shall willfully cause harm or major maintenance to, or hatracking or removal of:

- (1) Any tree listed as "specially protected" in section 20.12 of this Code; or
- (2) Any monocot tree which is eight (8) feet or more in height measured to the terminal bud; or
- (3) Any dicot tree which is five (5) inches or more in diameter at d.b.h.

unless such person has first obtained a written approval from the tree commission and a permit issued by the chief building official, or unless the

Supp. No. 6

tree is specifically listed as "unprotected" in section 20.13.

(c) Application for a written approval from the tree commission shall be filed in writing with the commission which, within thirty (30) days and according to findings required by section 20.05 below, shall vote at its public meeting to approve or disapprove said application. Notice of the date upon which the vote will be taken shall be provided to the applicant, as shall written notice of the total vote. Applicants shall be given reasonable opportunity to be heard prior to the vote.

(d) Each written approval shall be issued by signature of the member who presided at the tree commission's meeting; if the application is disapproved, the applicant may modify and resubmit it according to tree commission regulations, or may appeal as hereinafter provided.

(e) Notice of its written approval shall be given by the tree commission to the city manager or his designee, who shall issue a permit.

(f) The applicant shall keep the permit posted upon the tree during the work.

(g) This section shall not apply to tree cutting by city electric system.

(h) Written approvals under this section shall expire one (1) year from the date issued.  
(Ord. No. 86-5, § 1, 4-1-86; Ord. No. 88-1, § 1, 1-4-88)

**Sec. 20.05 Tree commission findings.**

(a) The tree commission shall consider its finding of one (1) or more of the following facts as grounds supporting approval of an application for a permit:

- (1) The tree is a hazard to traffic, public utilities, buildings or structures;
- (2) The tree is injured, diseased or insect-infested such that it is a hazard to people, structures or other trees;
- (3) The tree prevents access to a lot or parcel;
- (4) The tree will be properly transplanted to another location in the city by the property owner with the consent of the owner of the new location;

- (5) The tree will be replaced with an equivalent tree or trees planted in a location suitable for healthy growth on the same lot or parcel;
- (6) The tree will be replaced with an equivalent tree or trees which are:
  - a. Donated to the public; and
  - b. Planted by the applicant on public property with the advice and consent of the tree commission; and
  - c. Are guaranteed by the applicant for ninety (90) days after planting; or
- (7) Funds equivalent to the value of the tree will be donated to the city as provided by section 20.09 of this chapter.

(b) The tree commission shall consider its finding of one (1) or more of the following facts as grounds supporting disapproval of an application for a permit:

- (1) The species, size, historical importance and/or condition of the tree make it a unique or rare specimen; or
- (2) The size or location of the tree make it easily accessible to public view.

(c) The tree commission shall determine whether to approve each permit application by weighing its findings made pursuant to its regulations and paragraphs (a) and (b) of this section. Determinations of equivalency shall include evaluation of the species, age, condition, dimension and setting of the tree. Except for trees meeting the criteria of either subparagraph (a)(1) and (a)(2) of this section, no permit for tree removal shall issue unless the tree commission makes an affirmative finding under subparagraph (a)(4), (a)(5), or (a)(6) of this section, and weighs such finding as provided herein.

(Ord. No. 86-5, § 1, 4-1-86)

**Sec. 20.06 Emergencies.**

In emergencies presenting apparent imminent threat to person or property, any person may cause removal of, or major maintenance to, a tree, provided that this action is reasonably calculated to

dissipate the threat. Within two (2) days of such action, said person shall file application to the tree commission for an after-the-fact tree permit. The applicant shall comply with all reasonable remedial action prescribed by the tree commission, which remedy shall be in the form described in section 20.05(a)(4), (5), or (6) of this chapter, unless the tree can be saved in its present location. (Ord. No. 86-5, § 1, 4-1-86)

**Sec. 20.07 Appeals.**

(a) An appeal from the tree commission vote required by section 20.04 may be taken:

- (1) By the applicant; or
- (2) In cases wherein written approval is granted, by:
  - a. Any person with a legal interest in real property located within two hundred (200) feet of the boundary of the lot or parcel on which the tree is located; or
  - b. By the city manager or his designee.

(b) Notice of the appeal must be filed in writing with the city clerk within fifteen (15) calendar days after the tree commission vote; appeals not so filed shall be deemed waived. Appeals shall be heard by the board of adjustment.

(c) Upon receipt of a notice of appeal, the city clerk shall provide copies thereof to the presiding officer of the board of adjustment, the city manager, and the city attorney, and, at least five (5) calendar days prior to the hearing of the appeal, shall cause publication of the time and date of the hearing in a local newspaper of general circulation in Key West.

(Ord. No. 86-5, § 1, 4-1-86)

**Sec. 20.08 Personnel.**

(a) As provided by the annual city budget, the city manager shall provide appropriate staff to enable the tree commission to fulfill its duties, and shall cause the minutes of all meetings to be recorded, transcribed in summary form and submitted to the tree commission for its approval.

(b) The city attorney or his designee shall serve as legal counsel to the tree commission in all matters.  
(Ord. No. 86-5, § 1, 4-1-86)

**Sec. 20.09 Funds.**

(a) The city manager shall establish within the operating budget of the city a special account which shall include all funds donated to the work of the tree commission by any person, all funds received from fines imposed in enforcement of this chapter by the code enforcement board, and all compensation paid for damage to trees belonging to the City of Key West.

(b) Funds in the special account shall be spent only as requested by the tree commission and approved by the city commission, and shall be used to finance education about city tree programs, and to finance protection, replacement, or additional plantings of trees in Key West.  
(Ord. No. 86-5, § 1, 4-1-86)

**Sec. 20.10 Enforcement.**

The code enforcement board of the City of Key West shall enforce compliance with the terms of this chapter. In cases where said board cannot secure compliance, the penalties provided by section 1.13 of this Code of Ordinances shall apply.  
(Ord. No. 86-5, § 1, 4-1-86)

**Sec. 20.11 Definitions.**

The following words and phrases shall have the following meanings when used in this chapter:

*Diameter breast height* or d.b.h. The diameter of a tree's main trunk measured four and one-half (4½) feet above the ground surface.

*Dicot.* A dicotyledonous angiospermous plant, having two (2) cotyledon or seed leaves and usually net venation, as in many long-lived trees and higher plants.

*Harm.* Actions which reduce the overall health of a tree, but not including minor maintenance.

*Hatracking.* Pollarding, or flat-cutting a tree such that the leader(s) are severed, or such that the canopy spread is reduced by one-third or more during any three hundred sixty-five-day period.

*Major maintenance.* Actions reducing the length of a tree or the breadth of its crown spread by one-third or more during any three hundred sixty-five-day period.

*Minor maintenance.* Pruning or diminishing a tree without reducing its length or crown spread by one-third or more during any three hundred sixty-five-day period, and without reducing its overall health.

*Monocot.* A monocotyledonous angiospermous plant, having a single cotyledon or seed leaf, and usually having parallel venation as in grasses and palms.

*Person.* Any individual, combination of individuals, or any business entity of any form or character.

*Removal.* Change in location; or damage, above or below ground, sufficient to kill the tree.

*Terminal bud.* The primary bud on the principal leader of a tree.

*Tree.* A woody or fibrous perennial plant, which normally grow to a minimum overall height of fifteen (15) feet and an average mature crown spread greater than fifteen (15) feet.  
(Ord. No. 86-5, § 1, 4-1-86)

**Sec. 20.12 Specially protected trees.**

The following species of trees are afforded special protection by the provisions of this chapter:

| <i>Common Name</i>       | <i>Scientific Name</i>   |
|--------------------------|--------------------------|
| Bay cedar                | Suriana maritima         |
| Black ironwood           | Krugiodendron ferreum    |
| Black mangrove           | Avicennia germinans      |
| Blolly                   | Guapira longitolia       |
| Brittle thatch palm      | Thrinax morrisii         |
| Buttonwood               | Conocarpus erectus       |
| Cabbage palm             | Sabal palmetto           |
| Cherry or buccaneer palm | Pseudophoenix sargentii  |
| Coconut palm             | Cocos nucifera           |
| Crabwood                 | Aferamnus lucidus        |
| Darling plum             | Reynosa septentrionalis  |
| False boxwood            | Gyminda latifoli         |
| Geiger tree              | Cordia sebestena         |
| Gumbo limbo              | Bursea simaruba          |
| Inkwood                  | Exothea paniculata       |
| Jamaica caper            | Capporis cynophallophora |
| Jamaica dogwood          | Piscidia piscipula       |
| Joewood                  | Jacquinia keyensis       |
| Lancewood                | Nectandra coriacea       |

m - b

*Common Name*

*Scientific Name*

|                            |                               |
|----------------------------|-------------------------------|
| Lignum vitae               | Guaiacum sanctum              |
| Mahogany                   | Swietenia mahagoni            |
| Mastic                     | Mastichodendron foetidissimum |
| Pigeon plum                | Coccoloba diversifolia        |
| Pond apple                 | Annona glabra                 |
| Red mangrove               | Rhizophora mangle             |
| Red stopper                | Eugenia rhombea               |
| Rough strongbark           | Bourreria succulenta          |
| Royal poinciana            | Delonix regia                 |
| Sapodilla                  | Manilkara zapota              |
| Satinleaf                  | Chrysophyllum oliviforme      |
| Sea-grape                  | Coccoloba uvitera             |
| Seaside hibiscus           | Hibiscus tiliaceus            |
| Seaside mahoe or cork-tree | Thespesia populnea            |
| Seven-year-apple           | Casasia clusiifolia           |
| Shortleaf fig              | Ficus citrifolia              |
| Silver palm                | Cocothrinax argentata         |
| Slash pine                 | Pinus elliottii var densa     |
| Smooth strongbark          | Bourreria succulenta          |
| Soapberry                  | Sapindus saponaria            |
| Spanish stopper            | Eugenia foetidaia             |
| Strongbark                 | Bourreria ovata               |
| Thatchpalm                 | Thrinax radiata               |
| Torchwood                  | Amyris elemifera              |
| White mangrove             | Languncularia racemosa        |
| White stopper              | Eugenia axillaris             |
| Wild dilly                 | Manilkara bahamensis          |
| Wild tamarind              | Lysiloma bahamensis           |
| Willow bustic              | Dipholis salicifolia          |
| Yellowheart or satinwood   | Zanthoxylum flavum            |

(Ord. No. 86-5, § 1, 4-1-86)

**Sec. 20.13 Unprotected trees.**

The provisions of section 20.04 shall not be applicable to trees determined by the city manager or his designee to have died of natural causes or to the following species of trees, which may be acted upon without permit from the tree commission:

|                                 |                                |
|---------------------------------|--------------------------------|
| Australian pine                 | Casuarina equisetifolia        |
| Beefwood, Brazilian oak         | Casuarina glauca               |
| Brazilian pepper, Florida holly | Schinus terebinthifolia        |
| Melaleuca, cajeput, punk tree   | Maelaleuca quinquenervia       |
| Queens Land umbrella            | Schefflera actinophylla        |
| Norfolk Island pine             | Araucaria excelfa/heterophylla |

(Ord. No. 86-5, § 1, 4-1-86; Ord. No. 89-32, § 1, 9-5-89)

**Sec. 20.14 Removal of portions of coconut palm trees prohibited, etc.**

(a) *Definitions.* The following words and phrases shall have the following meanings when used in this section:

*Coconut palm.* An individual plant, of whatever size or dimensions, of the species *cocos nucifera*.

*Person.* Any individual, combination of individuals, or business entity of any form or character.

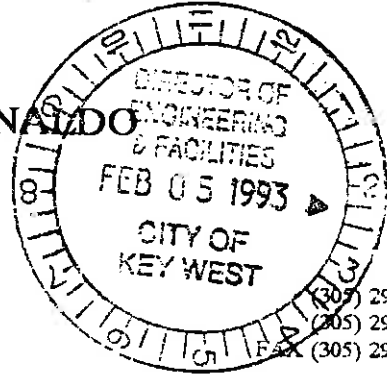
(b) *Prohibited acts.* No person shall intentionally cause removal of one (1) or more fronds, nuts, or fruit of, or any portion of the trunk or root system of, or otherwise deface or damage, any coconut palm located upon city owned property, city streets, or city rights-of-way.

(c) *Exceptions.* This section shall not apply to city employees or city contractors or state agencies or immediately adjacent property owners (limited to a five-year period) performing planting, maintenance, or removal functions with proper authorization.

(d) *Enforcement; penalty.* The code enforcement board of the city shall enforce compliance with the terms of this section. In cases where said board cannot secure compliance, the penalties provided by section 1.13 of this Code of Ordinances shall apply.

(Ord. No. 89-15, § 1, 4-17-89)

**HORAN, HORAN & ESQUINALDO**  
ATTORNEYS AT LAW  
608 WHITEHEAD STREET  
KEY WEST, FLORIDA 33040



DAVID PAUL HORAN, P.A.  
EDWARD W. HORAN, P.A.  
STEVEN B. ESQUINALDO, P.A.

February 5, 1993

Josephine Parker  
City Clerk  
525 Angela Street  
Key West, Florida 33040

Re: Appeal of Building Permit No. B-92-003242  
Issued December 21st, 1992

Dear Ms. Parker:

Please be advised that this Firm represents Dante Capas and the Two Friends Patio Restaurant, located at 512 Front Street, Key West, Florida. This property adjoins the proposed project for which Building Permit No. B-92-003242 was issued on December 21st, 1992. This Appeal is noticed pursuant to the provisions of Section 12.01 of the Code of the City of Key West. Prior consultation with the City Attorney has confirmed that this letter is the proper procedure for such appeals and that Section 12.01 et.seq. should be referred to in such appeals. The grounds for such appeal are set forth below.

1. In December of 1990, the City Planner, Theodore C. Strader had been approached by Architect Tom Pope regarding approximately 10,000 square feet of commercial space and a multi-story parking facility to be built at the corner of Front and Duval in the Southeast Bank parking area. Mr. Pope, as agent for the land owner at that time, was informed that a Community Impact Assessment Statement would have to be prepared. Mr. Strader confirmed that even if the size of the proposed development was reduced to less than 10,000 square feet, he would be recommending to the Mayor and City Commission that they exercise their discretion under Section 34.05(e) of the City Code to require a CIAS on the grounds that the development "is expected to have a significant impact on urban resources."

**Exhibit A-**



2. On October 8th, 1991, the matter was brought before the City Commission by the City Planner and the attorney for the land owner/developer. The City Commission was informed that in order to require a discretionary CIAS, the Mayor (or Planning designate) should prepare a . . . "written finding of fact regarding such (community) impacts prior to requiring an Impact Assessment Statement". The City Commission instructed the City Planner to prepare "Findings of Fact" for consideration at the "next meeting".

3. Although staff was instructed to prepare the Findings of Fact for consideration by the Commission, no such Findings of Fact (which may or may not have supported the need for a discretionary Community Impact Statement) were ever submitted to the Mayor and Commission. What did happen was that less than one (1) month after the Commission meeting, the City Planner wrote a letter to the Architect exercising his "discretion" and verifying that he did not believe that a Community Impact Assessment Statement would be required. It is respectfully submitted that City Planner Strader did not have the "discretion" to make a determination of whether a discretionary CIAS would have to be prepared.

4. In a letter from the City Planner (November 7th, 1991) the City Planner confirmed conversations with the City Attorney and other City officials that Southeast Bank (and any other subsequent owner of the property) would not bear any legal responsibility for maintaining the parking spaces which had previously been committed to serve other uses. The City Planner informed Architect Pope that, "The City will pursue this issue (parking for Burger King Restaurant) separately with the appropriate other parties."

5. Records of the City of Key West show that Certificate of Occupancy No. 803 issued July 25th, 1988 regarding the 501 Front Street, (Burger King) building required that parking be provided for the patrons at Burger King. In order to justify the 92 seats at the Burger King Restaurant, a Parking Lot Lease dated August 1st, 1983 between Southeast Bank and Conch Tour Train, Inc., was sent to the City. Based entirely upon this lease of parking spaces, the Certificate of Occupancy for the 92 seat restaurant was issued by the City.

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Director of Code Enforcement informed the owner of Burger King Restaurant that the required parking for the restaurant had been obtained based upon the Lease with Southeast Bank and that this was the reason that the Certificate of Occupancy was issued for the Burger King building. The City's Director of Code Enforcement requested verification of the parking arrangement no later than March 28th, 1989. On March 17th, 1989, Gerald Mosher, acting as agent for Burger King restaurant, sent a letter to the City of Key West advising the City that, "Our parking lot lease with Southeast Bank on the 501 Front Street (Burger King), Key West, Florida property is still active and in force."

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8. On November 4th, 1992, the undersigned attorney appeared before the City Commission appealing the HARC approval. The points made included the fact that the development was at the corner of the "business hub" of the City of Key West, and that it was the most densely built, most congested, most expensive business area in the City. The City Commission was informed by the undersigned attorney that, "HARC can't act and issue a Certificate of Appropriateness for a project which may require a Community Impact Statement and that there should be adequate notice in the form of signage and public notice published on the property." The Commission was informed that the area presently contained over 50+ parking spaces which were related to the bank and adjacent properties, including the 92 seat Burger King Restaurant. The Commission was informed that only the minimum off-street parking was included in the proposed development. The Commission was informed that although the proposed development was alleged to occupy only 9,900 square feet of retail space, that if there was a "anticipated impact on the surrounding neighborhood (traffic, utilities, City services, storm water run-off, etc.)" then requiring a CIAS was discretionary with the Commission. The Commission was informed that HARC could not grant a Certificate of Appropriateness unless a CIAS was presented and that an adjacent land-owner couldn't appeal on the basis of a lack of a CIAS until the HARC action was taken. It is impossible for the Mayor and Commission to anticipate the need for a discretionary CIAS until the proposed project is somehow brought before the Commission!

9. In response to the November 4, 1992 appeal of the HARC approval, the City Attorney informed the Commission that because this matter had come before the Commission nearly one (1) year ago, and because the City Commission had "denied a discretionary CIAS", the City was now somehow "estopped" to require a discretionary CIAS. It should be noted that this advise to the City was premised on the false impression by the City Attorney that the City Commission had actually been provided with the Findings by the City Planner after the October 8th, 1991 meeting. The City Attorney assumed that the Commission had made an affirmative determination that no discretionary CIAS would have to be prepared for the Front and Duval project of less than 10,000 square feet.

10. Based upon the advise of the City Attorney that the City was "estopped" to require a discretionary CIAS because of the prior "determination" that none was required, the HARC Appeal was denied by the City. However, an inquiry was made by the City Commission with regard to the alleged "prior action" of the City Commission regarding the "denial" of the need for a discretionary CIAS.

11. Since the November 4th, 1992 Board of Adjustment denial of the appeal from the HARC action, the City has been provided with information that the building covers 12,320 square feet of space. This is more than 2,000+ square feet over what was represented. Claims that the major trees would not be disturbed and that over 20% of the parcel would be landscaped were also refuted. The strangler fig on the old cistern wall would have to be tremendously cut back and would be surrounded by a building higher than itself. The large ficus tree would lose the majority of its limbs and root system on two (2) sides of the tree and no provision whatsoever was made as to other trees existing on the parcel. The "landscaping" was shown to have included the parking ramp itself and the place where the dumpster was incorporated into the building. The developer was representing that the paving blocks for the parking ramp (to the below-street parking levels) were "landscaping"! Information was provided to the City that only 8% of the total parcel, not in excess of 20%+, would be "landscaped". Issues were also taken as to storm-water run-off, tide induced flooding and parking.

12. On November 20th, 1992, the City was informed by the undersigned attorney that the currently proposed building was 19-31% larger and 20% higher than the building that was represented to the Commission on October 8th, 1991. The Commission was

informed that the parking was under the building and not behind it as previously represented. The Commission was informed that the City Attorney was attempting to give more effect to an "alleged" denial of discretionary CIAS than a decision to require a discretionary CIAS! It is clear that if the City had actually required a discretionary CIAS for a specific project in October of 1991, and approved it, a new CIAS would be required. In such a case, the building permit would not have been issued within one (1) year of the original CIAS approval. The City Code, Section 34.06(a) states that, "No extension of the CIAS approval shall be allowed". In spite of the Memorandum regarding the prohibition of the extension of a CIAS approval, the City, without Notice or an opportunity to protest, issued Building Permit B-92-003242 on December 21, 1992.

13. Not knowing of the issuance of the Building Permit, on January 7th, 1993, the undersigned attorney informed the City that if "gross floor space" is the same as "gross floor area" as defined in Section 35.24(46) of the City of Key West Code, then the proposed development at Front and Duval Streets was in excess of 10,000 square feet. The CIAS for the project was required, unless affirmatively waived by the Mayor and Commission!

14. At a City Commission meeting in January of 1993, when this matter was considered (brought up by Commissioner Pais) there seems to have been no reference to the fact that the Building Permit had already been issued. On January 14th, 1993 the City Planner corresponded with the undersigned attorney with regard to a January 7th, 1993 letter and he neglected to inform the undersigned attorney that the Building Permit had been issued nearly one (1) month before.

15. Although there are numerous businesses within the retail space, only one (1) sewer connection impact fee was paid on December 21, 1992 and the "pretense" that the retail space was less than 10,000 square feet was dropped entirely. The applicant applied for and paid the impact fees and stated that the retail space was "10,333 square feet".

There has been a major problem with regard to the way this development has been handled by the City Staff. The undersigned attorney has now determined that unless this appeal is heard, there will be no action by the City Staff nor the Commission to look into the severe parking problem around Front and Duval. This parking problem has been aggravated by the issuance of the Building Permit.

Josephine Parker, City Clerk  
February 5, 1993  
Page 6

If a restaurant had 40 seats and wished to expand to 90 seats, the City would certainly require that parking be provided. If for some reason, at some later date, the parking was no longer being provided, then the restaurant should clearly have to recede from the additional seating for which no parking was currently being provided. This Commission cannot turn its back on the most severely impacted business hub in the downtown area. To require other businesses to provide parking for their customers and to "wink" at other businesses is to provide an economic advantage to one business to the detriment of other businesses. It is imperative that this matter be thoroughly discussed and addressed by this commission. This appeal must be granted and that a Discretionary CIAS be required to address parking, storm-water run-off, etc.

Respectfully submitted,

HORAN, HORAN & ESQUINALDO  
608 Whitehead Street  
Key West, Florida 33040-6549  
Telephone (305) 294-4585  
Telefax (305) 294-7822



DAVID PAUL HORAN  
For the Firm  
FLA. BAR NO. 142474

Attorneys for Dante Capas and  
Two Friends Patio Restaurant  
512 Front Street  
Key West, Florida 33040

cc: Dennis Wardlow, Mayor  
City Commissioners

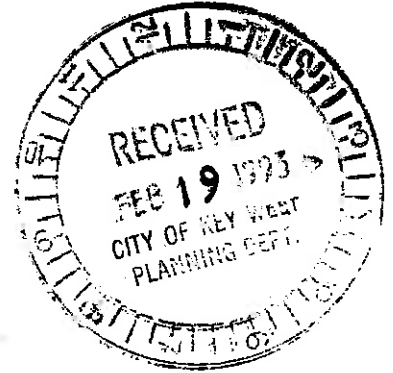
**Exhibit A**

N-5



THE CITY OF KEY WEST  
P. O. BOX 1409  
KEY WEST, FLORIDA 33040-1409

Josephine Parker  
City Clerk



HAND DELIVERED

February 19, 1993

Raymond Archer  
Director of Engineering & Facilities  
City of Key West  
P.O. Box 1409  
Key West, FL 33041

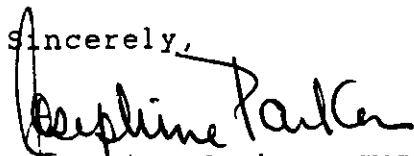
Subject: Appeal filed by Attorney David Paul Horan representing Dante Capas and Two Friends Patio Restaurant, 512 Front Street, appealing issuance of Building Permit No. B-92-003242 on December 21, 1992 for proposed project at Front and Duval Streets.

Dear Mr. Archer:

Please be advised that an Administrative Review will be held by the Board of Adjustment of the City of Key West, Florida, at 5:30 p.m., Thursday, March 4, 1993, in Commission Chambers at Old City Hall, 510 Greene Street, Key West, Florida, regarding above-referenced subject.

Your presence at this meeting is required.

Sincerely,

  
Josephine Parker, CMC  
City Clerk

JP/lh

pc: Ted Strader, City Planner  
Gary Addleman, Code Enforcement Director  
Tom Pope, Architect, Certified Mail # 004 195 305  
Michael Halpern, Attorney, Certified Mail # P 004 195 306

M-807

M E M O R A N D U M



TO: JOSEPH G. PAIS, CITY COMMISSIONER  
FROM: G. FELIX COOPER, CITY MANAGER *[Signature]*  
DATE: MARCH 22, 1993  
SUBJECT: MEMO OF 3/14/93 REGARDING FRONT AND DUVAL STREET

Since the City Commissioners, by a 4 to 1 vote, rejected the opposition to the issuance of a building permit at Front and Duval, the project will move on under our existing rules and regulations.

Since staff has not been able to convince you that we have been above board with you, the Commissioners, and the public concerning this matter, maybe an "outside investigation" as you suggest would be appropriate.

Please let me know what I can do to assist in your investigation.

GFC:PLG

cc: Mayor & City Commission w/memo  
Adele V. Stones, City Attorney  
Raymond Archer, Director of Engineering and Facilities  
Ted Strader, City Planner

Exhibit A

P

MEMORANDUM

MAR 15 1993  
CITY MANAGER'S  
OFFICE

DATE: March 14, 1993

TO: ✓ Felix Cooper, City Manager  
Ray Archer, Director Engineering Services & Facilities  
Ginny Stones, City Attorney

FROM: Joe Pais, City Commissioner *J. Pais*

SUBJECT: Front & Duval Street Permit

I would like to express my sincere disappointment concerning the continuing discussions related to the issuance of a Building Permit for the Front & Duval Street project.

The citizens and voters of this community were subjected to a thrilling presentation of abuse of administrative authority in every department of City Hall associated with the project.

A noted attorney of this community pointedly accused the City Attorney of incompetence in the execution of her duties.

City officials blatantly refused to provide information on the building permit issuance although they were directly questioned about the permit a month after issuance.

I feel strongly that, as City Manager, you should look into the Front & Duval Street debacle from the very beginning to the present. I would further request that you issue a written report detailing your findings and actions you will take. If you fail to do so I can assure you that I am prepared to request an outside investigation of this matter which I am certain will bring discredit upon the administration of this City.

Please provide your response to me no later than March 17, 1993.

TSD

In Lease  
From Building  
1/29

# STANDARD BUILDING CODE

## CHAPTER 2 DEFINITIONS

**AREA, BUILDING**—the maximum horizontally projected area of the building at or above grade, exclusive of areas open and unobstructed to the sky.

**AREA, GROSS FLOOR**—the area within the inside perimeter of the exterior walls with no deduction for corridors, stairs, closets, thickness of walls, columns or other features, exclusive of areas open and unobstructed to the sky.

**GROSS LEASABLE AREA**—the total floor area designed for tenant occupancy and exclusive use. The area of tenant occupancy is measured from the center lines of joint partitions to the outside of the tenant walls. All tenant areas, including areas used for storage, shall be included in calculating gross leasable area.

Gross Floor Space

|                |  |                          |                 |                          |               |                          |                  |                          |
|----------------|--|--------------------------|-----------------|--------------------------|---------------|--------------------------|------------------|--------------------------|
| COMMUNICATIONS | TO   | GS                       | DATE            | 1/29                     | TIME          | 11 45                    | (AM)<br>PM       |                          |
|                | FROM   | Joe Faus                 | AREA CODE       |                          |               |                          |                  |                          |
|                | OF   |                          | NO.             |                          |               |                          |                  |                          |
|                |  |                          | EXT.            |                          |               |                          |                  |                          |
|                | Wants to know at CC mtg what<br>some of the Code provisions are<br>re calculation of gross floor<br>space. Castro says he will get it<br>copied Friday, p.m. |                          |                 |                          |               |                          |                  |                          |
|                |  |                          |                 |                          |               |                          | SIGNED           |                          |
|                | PHONED   | <input type="checkbox"/> | CALL BACK       | <input type="checkbox"/> | RETURNED CALL | <input type="checkbox"/> | WANTS TO SEE YOU | <input type="checkbox"/> |
|                |  |                          | WILL CALL AGAIN | <input type="checkbox"/> | VAS IN        | <input type="checkbox"/> | URGENT           | <input type="checkbox"/> |

Exhibit A

Q



(Ord. No. 76-5, § 2, 1-19-76; Ord. No. 85-52, § 1, 11-20-85)

**Sec. 34.04 Definitions.**

The words defined below are words which have special or limited meanings as used in sections 34.02 through 34.12 inclusive and might not otherwise be clear. Words whose meaning is self evident as used herein are not defined. Words used in the present tense shall include the future; the singular includes the plural, and vice-versa; the word "shall" is mandatory; the word "may" is permissive.

*Zoning official.* The person, or his duly authorized representative, designated in the zoning ordinance, section 35.13 of this Code.

*Community impact assessment statement.* An evaluation of a given project or specific development's favorable or unfavorable impact on the overall environmental structure, natural ecology, and economic, historic, social, and related public resources of the City of Key West, including local and regional housing needs.

(Ord. No. 76-5, § 3, 1-19-75; Ord. No. 85-52, § 1, 11-20-85)

**Sec. 34.05 Developments requiring a community impact assessment statement.**

A community impact assessment statement shall be submitted for:

- (a) Any development which causes a building to exceed forty (40) feet in height;
- (b) Projects containing sixteen (16) or more habitable units per acre and containing a minimum of ten (10) habitable units or projects containing twenty (20) or more total habitable units; the total number of units shall include the units in all phases of the total project or development or, any residential development in which the gross residential density is ten (10) or more units per acre and the development requires rezoning, variance or special exception modifying the presently allowed density; any units being replaced by the project shall be subtracted

in determining the applicability of this paragraph;

- (c) All business, commercial or industrial uses of one (1) or more acres or ten thousand (10,000) or more square feet of net additional gross floor space; and
- (d) Any development which occurs in or adjacent to wetland communities as defined by marshes and shallow areas which may periodically be inundated by tidal waters and which are normally characterized by the prevalence of salt and brackish water vegetation capable of growth and reproduction in saturated soil, including but not limited to batis (*Batis maritima*), black mangroves (*Avicennia germinans*), red mangroves (*Rhizophora mangle*) and white mangroves (*Laguncularia racemosa*), Cord grass (*Spartina* spp.), Buttonwood (*Conocarpus erectus*), glasswort (*Salicornia* spp.), Key Grass (*Monathocloe littoris*), sea daisy (*Borrchia* spp.) and sea purslane (*Sesuvium portulacastrum*);
- (e) Any development which at the discretion of the mayor or city commission is expected to have a significant impact upon environmental or urban resources; the mayor or planning designate shall prepare a written finding of fact regarding such impacts prior to requiring an impact assessment statement, or in the event the city commission requires the impact assessment statement, the written findings shall appear in the resolution requiring same. In requiring an impact assessment statement under this subsection, the following factors shall be considered by the mayor or city commission:
  - (1) The relation of the development to the surrounding neighborhood;
  - (2) The traffic pattern in the area of the proposed development;
  - (3) Available utilities; and
  - (4) All matters with regard to city services and impact on the city;
- (f) The city commission may relieve a development from the requirements of this sec-



tion by a four-fifths vote of the entire commission.

- (g) The zoning official may relieve a development from the requirements of this section if:
- (1) The development contains nine (9) or fewer habitable units; any units being replaced by the development shall be subtracted in determining the applicability of this requirement;
  - (2) The development does not require a CIAS under paragraphs (a), (c) or (d) of this section; and
  - (3) The zoning official determines in writing that the development is consistent with the comprehensive plan and the applicable principles for guiding development.

(Ord. No. 76-5, § 3A, 1-19-76; Ord. No. 84-2, § 1, 1-4-84; Ord. No. 85-42, § 1, 10-1-85; Ord. No. 85-52, § 1, 11-20-85; Ord. No. 89-28, § 1, 8-21-89)

#### Sec. 34.06 Procedures.

(a) *Submission of impact assessment statement; application of zoning, rezoning, variance, special exception.* All landowners or developers proposing a development requiring an impact assessment statement shall submit the completed document for review and official action to the zoning official prior to issuance by the City of Key West of an order granting an application for zoning or rezoning approval, variance or special exception, site plan or plat approval. Submission of the impact assessment statement shall be coincident with such application. No building permits shall be issued for such developments until the applicant has complied with the provisions of section 34.02 through 34.12 inclusive, the CIAS has received final approval from the city commission, the plat has been duly filed when required, and the applicant has complied with all other applicable requirements of law. If no building permit for construction of a principal building has been issued within one (1) year from the date of approval of a development's CIAS, or if such a building permit has been issued within one (1) year but becomes inoperative, the approval shall expire and a new CIAS must be approved before any building per-

Supp. No. 23

mits can be issued; no extensions of CIAS approvals shall be allowed. Approval of a development's CIAS by the city commission does not in and of itself constitute the granting of any application for zoning or rezoning approval, variance or special exception, site plan or plat approval, nor relieve the applicant of meeting all requirements of law prerequisite to the granting of any such application.

(b) *Review of application and statement.* The zoning official shall review the application within thirty (30) days for sufficiency and so notify the applicant. The impact assessment statement shall then be distributed to various city departments and other appropriate local agencies. The agencies shall review and return their comments to the zoning official within thirty (30) days. The zoning official shall schedule the application to be reviewed by the KWPB at its next available meeting. The KWPB shall review the impact assessment statement and make recommendations to the city commission concerning the impact assessment statement.

(c) *Summary of comments.* The zoning official shall prepare a summary of comments and recommendations regarding the impact assessment statement and application for zoning or rezoning approval, variance or special exception, site plan or plat approval. In preparing the summary and recommendations the agency shall consider whether and the extent to which the development will have a favorable or unfavorable impact upon the environmental, fiscal, economic and urban resources of Key West and the extent to which the proposed development is consistent with local land use plan, policies and ordinances, and the critical area principles for guiding development.

(d) *Public hearing.* A public hearing shall be held on the application for zoning or rezoning approval, variance or special exception, site plan or plat approval and at such public hearing, comments shall also be received on the impact assessment and review comments.

(e) *Consideration of all comments in rendering decision.* In rendering its decision to approve, approve with conditions, or deny the application for

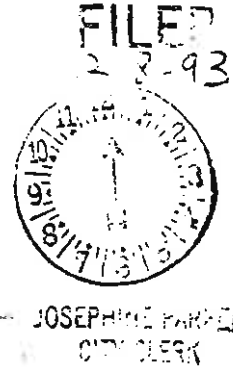
**HORAN, HORAN & ESQUINALDO**  
ATTORNEYS AT LAW  
608 WHITEHEAD STREET  
KEY WEST, FLORIDA 33040

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(305) 294-4585  
(305) 294-3488  
FAX (305) 294-7822

February 5, 1993

Josephine Parker  
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**Exhibit A**

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9. In response to the November 4, 1992 appeal of the HARC approval, the City Attorney informed the Commission that because this matter had come before the Commission nearly one (1) year ago, and because the City Commission had "denied a discretionary CIAS", the City was now somehow "estopped" to require a discretionary CIAS. It should be noted that this advise to the City was premised on the false impression by the City Attorney that the City Commission had actually been provided with the Findings by the City Planner after the October 8th, 1991 meeting. The City Attorney assumed that the Commission had made an affirmative determination that no discretionary CIAS would have to be prepared for the Front and Duval project of less than 10,000 square feet.

10. Based upon the advise of the City Attorney that the City was "estopped" to require a discretionary CIAS because of the prior "determination" that none was required, the HARC Appeal was denied by the City. However, an inquiry was made by the City Commission with regard to the alleged "prior action" of the City Commission regarding the "denial" of the need for a discretionary CIAS.

11. Since the November 4th, 1992 Board of Adjustment denial of the appeal from the HARC action, the City has been provided with information that the building covers 12,320 square feet of space. This is more than 2,000+ square feet over what was represented. Claims that the major trees would not be disturbed and that over 20% of the parcel would be landscaped were also refuted. The strangler fig on the old cistern wall would have to be tremendously cut back and would be surrounded by a building higher than itself. The large ficus tree would lose the majority of its limbs and root system on two (2) sides of the tree and no provision whatsoever was made as to other trees existing on the parcel. The "landscaping" was shown to have included the parking ramp itself and the place where the dumpster was incorporated into the building. The developer was representing that the paving blocks for the parking ramp (to the below-street parking levels) were "landscaping"! Information was provided to the City that only 8% of the total parcel, not in excess of 20%+, would be "landscaped". Issues were also taken as to storm-water run-off, tide induced flooding and parking.

12. On November 20th, 1992, the City was informed by the undersigned attorney that the currently proposed building was 19-31% larger and 20% higher than the building that was represented to the Commission on October 8th, 1991. The Commission was

informed that the parking was under the building and not behind it as previously represented. The Commission was informed that the City Attorney was attempting to give more effect to an "alleged" denial of discretionary CIAS than a decision to require a discretionary CIAS! It is clear that if the City had actually required a discretionary CIAS for a specific project in October of 1991, and approved it, a new CIAS would be required. In such a case, the building permit would not have been issued within one (1) year of the original CIAS approval. The City Code, Section 34.06(a) states that, "No extension of the CIAS approval shall be allowed". In spite of the Memorandum regarding the prohibition of the extension of a CIAS approval, the City, without Notice or an opportunity to protest, issued Building Permit B-92-003242 on December 21, 1992.

13. Not knowing of the issuance of the Building Permit, on January 7th, 1993, the undersigned attorney informed the City that if "gross floor space" is the same as "gross floor area" as defined in Section 35.24(46) of the City of Key West Code, then the proposed development at Front and Duval Streets was in excess of 10,000 square feet. The CIAS for the project was required, unless affirmatively waived by the Mayor and Commission!

14. At a City Commission meeting in January of 1993, when this matter was considered (brought up by Commissioner Pais) there seems to have been no reference to the fact that the Building Permit had already been issued. On January 14th, 1993 the City Planner corresponded with the undersigned attorney with regard to a January 7th, 1993 letter and he neglected to inform the undersigned attorney that the Building Permit had been issued nearly one (1) month before.

15. Although there are numerous businesses within the retail space, only one (1) sewer connection impact fee was paid on December 21, 1992 and the "pretense" that the retail space was less than 10,000 square feet was dropped entirely. The applicant applied for and paid the impact fees and stated that the retail space was "10,333 square feet".


There has been a major problem with regard to the way this development has been handled by the City Staff. The undersigned attorney has now determined that unless this appeal is heard, there will be no action by the City Staff nor the Commission to look into the severe parking problem around Front and Duval. This parking problem has been aggravated by the issuance of the Building Permit.

Josephine Parker, City Clerk  
February 5, 1993  
Page 6

If a restaurant had 40 seats and wished to expand to 90 seats, the City would certainly require that parking be provided. If for some reason, at some later date, the parking was no longer being provided, then the restaurant should clearly have to recede from the additional seating for which no parking was currently being provided. This Commission cannot turn its back on the most severely impacted business hub in the downtown area. To require other businesses to provide parking for their customers and to "wink" at other businesses is to provide an economic advantage to one business to the detriment of other businesses. It is imperative that this matter be thoroughly discussed and addressed by this commission. This appeal must be granted and that a Discretionary CIAS be required to address parking, storm-water run-off, etc.

Respectfully submitted,

HORAN, HORAN & ESQUINALDO  
608 Whitehead Street  
Key West, Florida 33040-6549  
Telephone (305) 294-4585  
Telefax (305) 294-7822

  
DAVID PAUL HORAN  
For the Firm  
FLA. BAR NO. 142474

Attorneys for Dante Capas and  
Two Friends Patio Restaurant  
512 Front Street  
Key West, Florida 33040

cc: Dennis Wardlow, Mayor  
City Commissioners

**Exhibit A**



CITY OF KEY WEST

PLANNING DEPARTMENT MEMORANDUM

DATE: Dec. 10, 1992  
TO: Mayor and Commissioners  
FROM: Ted Strader, City Planner  
RE: Proposed development at Front and Duval

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While it was my recollection, as well as the recollection of other City staff members, that the current City Commission took affirmative action to not require a Community Impact Assessment Statement (CIAS) of simple one-story retail development of less than 10,000 square feet on the subject site, no record of such action can be found. Consequently, I have to assume that we may be confusing this project with another.

The reliable record is as follows:

\* On December 21, 1990, I sent architect Tom Pope a letter (attached) in which I stated that I would recommend to the Mayor and Commission that they exercise their discretion to require a CIAS for development on the site even if it were proposed to be under the 10,000 square feet "threshold." I had frequently expressed the opinion that this site was extremely important to our downtown and that, in addition, it appeared to be "encumbered" as a parking site to meet the required parking for at least one adjacent development. These, and any other issues, would be thoroughly aired in a CIAS process.

\* On October 8, 1991, I brought the issue before the City Commission as a discussion item. By that time, the developers had given up their earlier plans to construct a mixed-use retail/commercial parking facility, and were proposing a simple one-story retail building of less than 10,000 square feet. Since I was on record as having advocated a CIAS for virtually any project on the property, I thought it was appropriate to get the sense of the Commission as well as ask their guidance. (A very brief transcript of that discussion item is attached.) It was left that I would prepare a written finding of fact regarding the significant impacts such development would have upon the environment or urban resources, as required by the Community Impact Assessment Ordinance.

\* On approximately November 11, 1991, I wrote another letter (attached) to Tom Pope in which I stated that my "opinion and recommendation" at that time was that the proposed development, under 10,000 square feet, would not require a CIAS.

In researching materials for the "finding," I obtained copies of the parking leases submitted by others to the City to meet their parking requirements by leasing space on the subject property. After conversation with the City Attorney, it seemed clear that the property owner of the subject site could not be held responsible for continuing to provide the parking for the adjacent uses. With this issue quieted, and with no other concerns being expressed by other City representatives with whom I discussed the project, I concluded that I could not, in good faith, proposed "findings" to the Commission. I am reasonably sure that I discussed this privately with each of the commissioners and got no objections.

I believe this is accurate in all respects and I hope it is responsive to your questions.



TED STRADER, CITY PLANNER

cc: G. Felix Cooper, City Manager  
Adele V. Stones, City Attorney  
Raymond Archer, Director of Engineering and Facilities  
Josephine Parker, City Clerk



THE CITY OF KEY WEST

Post Office Box 1409  
Key West, FL 33041-1409

Mr. Tom Papa  
610 White Street  
Key West, FL 33040

December 21, 1990

RE: Southeast Bank Parking Area  
Southeast corner Front and Duval Streets  
Key West, FL  
RE#'s 47 and 48

Dear Tom;

This letter will confirm our conversations regarding development of the subject properties. My understanding is that your client may be proposing approximately 10,000 square feet of commercial space plus a multi-story parking facility which would include some amount of commercially available parking.

Such a development would clearly require a Community Impact Assessment Statement (CIAS) under the provisions of Section 34.05(c). Should the development proposal be reduced in intensity to below 10,000 square feet, Section 34.05(c) would no longer apply; however, it would be my recommendation to the Mayor and City Commission that they exercise their discretion as authorized in Section 34.05(e), to require a CIAS on the grounds that the development "is expected to have a significant impact on urban resources."

Tom, I trust this is useful to you and your clients. Please feel free to call if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "T. Strader", is written over the typed name.

Theodore C. Strader, AIA  
CITY PLANNER

TCS/rcd

10/8/91

~~YEAS: Commissioners Lewis, Panico, Weekley, Mayor Tarracino~~

NAYS: Commissioner Powell

SO ORDERED

DISCUSSION:

Construction and demolition recycling and disposal site.

Technical Services Director Paul Cates requested the Commission to give staff direction to go ahead and have the capability of entering into discussions with the County to possibly site a Class III landfill within the Florida Keys. It was the consensus of the Commission for Mr. Cates to so proceed.

★ Potential development of Southeast Bank property at southeast corner of Front and Duval Streets.

City Planner Ted Strader explained that the developers of above-referenced project had originally intended to propose a project which would clearly require a Community Impact Assessment Statement. He stated they had requested him to advise them whether or not a smaller project on that site, one less than 10,000 square feet, would require a Community Impact Assessment Statement. He advised that in the Code under the category of Developments requiring a Community Impact Assessment Statement there was the following provision that he read in part: "any development which at the discretion of the Mayor or City Commission is expected to have a significant impact upon environmental or urban resources; the mayor or planning designate shall prepare a written finding of fact regarding such impacts prior to requiring an impact assessment statement..."

Michael Halpern stated that they had a very simple one-story plan of buildings that were compatible with the rest of the buildings on the block and it was very simple and an L-shaped retail building running along Duval Street and Front Street. He stated it was about 8,500', and behind it with an entrance on Front Street was the parking that supports the retail stores, about 25 spots. He stated they had 20' buildings, it was going to be compatible aesthetically with the rest of the neighborhood. He stated that the two significant trees on site were going to be retained. He stated that all water run-off would be retained on

**Exhibit A**

site.

The City Planner was directed to prepare a finding of fact on the project for the next meeting.

~~License Agreement between City of Key West and Mark Rossi for 208 Duval~~

After a discussion on License Agreement and the fact that the City was not aware that the property licensed for covered trash storage and recycling sorting bins was a municipal sidewalk, the City Attorney was directed to send Mark Rossi d/b/a Rick's Bar 208 Duval Street, a letter placing him on notice that said license agreement terminates 30 days from date of letter.

License application by Steven Hollenbeck on behalf of Ramlo Development Corp., for use of city property behind 218 Duval St.

Michael Halpern withdrew above-referenced request.

Setting a date for City/County Workshop to discuss Comprehensive Plan Intergovernmental Element.

The City manager was directed to set up a workshop meeting with the County Commission after the November election.

Overseas Market/Key Plaza alternate rear access.

After a discussion, it was the consensus of the Commission for the City Attorney to prepare a Resolution authorizing the expenditure of \$275,000.00 of traffic impact fees to acquire an improved easement between Key Plaza Shopping Center and the Overseas Market.

Salt Run Bridge

Assistant City Manager Ron Herron updated the Commission on the Salt Run Bridge construction.

Cable House, Southernmost Point.

Assistant City Manager Ron Herron stated that they had the individual originally arrested for holding himself out as a charity and collecting money under false pretenses. He stated that the individual does have title, a Quit Claim Deed from Western Union for the Cable Hut, however, the metes and bounds of what he had showed turned out to be Whitehead Street. He stated that the individual had prepared the deed himself and sent it off to Western Union in Texas and they had prepared a Quit Claim Deed. Mr. Herron

**Exhibit A**



THE CITY OF KEY WEST

P. O. BOX 1409  
KEY WEST, FLORIDA 33040-1409

PLANNING DEPARTMENT  
(305) 292-8229

11/7/91

Mr. Thomas E. Pope,  
Architect  
610 White St.  
Key West, FL 33040

Re: Southeast Bank property,  
southeast corner, Front  
and Duval Streets, Key West

Dear Tom:

This will verify my opinion and recommendation that development of the subject property with less than 10,000 square feet of commercial space will not require a Community Impact Assessment Statement (CIAS).

As you know, I had previously advised you, and others, that I would recommend to the city Commission that virtually any development proposal on the site be subject to CIAS review. At that time, I was concerned with the fact that the property had been previously committed as leased parking to meet the parking requirements of two neighboring uses. I was also concerned that the design of any proposed new development be responsive to the important location of the site--particularly with regard to the need for pedestrian space.

In conversations with the City attorney and other City officials, we have determined that Southeast Bank (or any subsequent owner of the property) does not bear responsibility for maintenance of parking to serve other uses. The City will pursue this issue separately with the appropriate other parties.

Regarding pedestrian space, I'm confident that you and your client will do a good job.

Sincerely,

A handwritten signature in black ink, appearing to read "Theodore C. Strader".

Theodore C. Strader, AIA  
City Planner

cc: Felix Cooper, City Manager  
Ginny Stones, City Attorney

**Exhibit A**

Key to the Caribbean - Average yearly temperature 77° F.

YEAS: Commissioners Lewis, Panico, Weekley, Mayor Tarracino

NAYS: Commissioner Powell

10/8/91

SO ORDERED

DISCUSSION:

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**THE CITY OF KEY WEST**

Post Office Box 1409  
Key West, Fl. 33041-1409

Mr. Tom Pope  
610 White Street  
Key West, FL 33040

December 21, 1990

RE: Southeast Bank Parking Area  
Southeast corner Front and Duval Streets  
Key West, FL  
RE#'s 47 and 48

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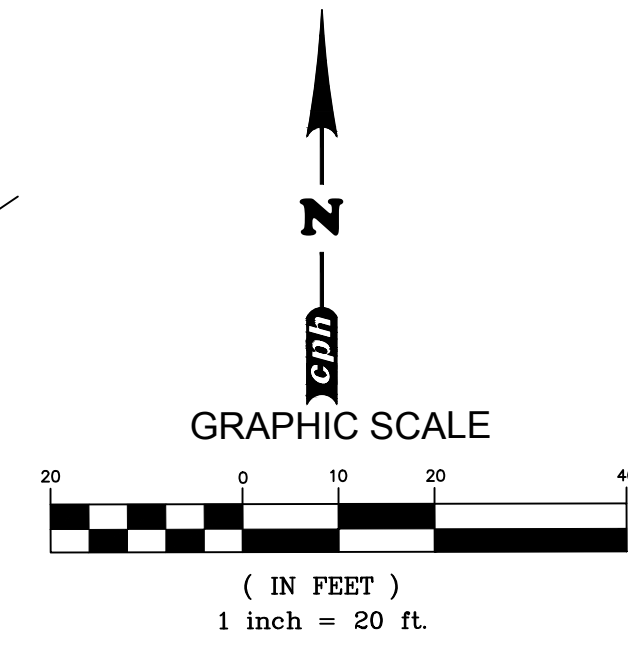
Sincerely,

A handwritten signature in cursive script, appearing to read "T.C. Strader".

Theodore C. Strader, AIA  
CITY PLANNER

TCS/rcd

| PROJECT DATA TABLE   |   |
|--|---|
| TOWNSHIP/SEC/RANGE   | T-68S, SEC-6, R-25E   |
| PARCEL NUMBERS   | 00000470-000000   |
| ZONING (INCLUDE ANY SPECIAL DISTRICTS)   | HRCC-1  |
| PROJECT SITE SIZE (ACREAGE AND/OR SQUARE FOOTAGE)                                      | 20,925 S.F. (0.48 AC.)  |
| LEGAL DESCRIPTION  | SEE SURVEY  |
| BUILDING SIZE  | EXISTING: 9,537 S.F.<br>PROPOSED: 10,631 S.F.   |
| FLOOR AREA RATIO, PERMITTED AND PROPOSED   | 0.50 PERMITTED GFA<br>0.508 PROPOSED GFA  |
| LOT COVERAGE, PERMITTED AND PROPOSED   | 0.70 PERMITTED<br>0.8958 (EXISTING AND PROPOSED)  |
| IMPERVIOUS SURFACE   | 90%   |
| PERVIOUS SURFACE   | 10%   |
| LANDSCAPE AREAS  | EXISTING PLANTERS   |
| PARKING SPACES, PERMITTED AND PROPOSED   | SEE BELOW CALCULATIONS  |
| EXISTING AND PROPOSED DEVELOPMENT TYPE DENOTED BY LAND USE INCLUDING DENSITY/INTENSITY | EXISTING COMMERCIAL RETAIL 9,537 S.F. (45.6%)<br>PROPOSED COMMERCIAL RETAIL 10,631 S.F. (50.8%) |
| SETBACKS   | 10', 2.5'   |



CUSTOM  
NO DRIVE THRU RELO  
STORE NUMBER: # 8368  
101 DUVAL STREET  
KEY WEST, FLORIDA  
PROJECT TYPE: CUSTOM  
DEAL TYPE: FEE FOR SERVICE  
CS PROJECT NUMBER: 76746

CONSULTANT:

www.cphcorp.com  
**A Full Service A & E Firm**  
Architects / Engineers / Environmental Planners / Landscape Architects  
M / E / P  
Surveyors / Traffic / Transportation

Plans Prepared By:  
**CPH, Inc.**  
1992 SW 1st St. Miami, FL 33135  
Ph: 305.274.4806  
Licenses:  
Eng. C.O.A. No. 3215 Arch. Lic. No. AA2600926  
Survey L.B. No. 7143 Landscp. Lic. No. LC0000298

CONSULTANT:

DEVELOPER:

5789 NW 151st STREET,  
SUITE B  
MIAMI LAKES, FL. 33014  
PHONE: (305) 828-8284  
FAX: (305) 828-9584

**BOOS**  
DEVELOPMENT GROUP

SEAL:

TODD H. HENDRIX, P.E.  
FL. REG. NO. 66794

REVISIONS:

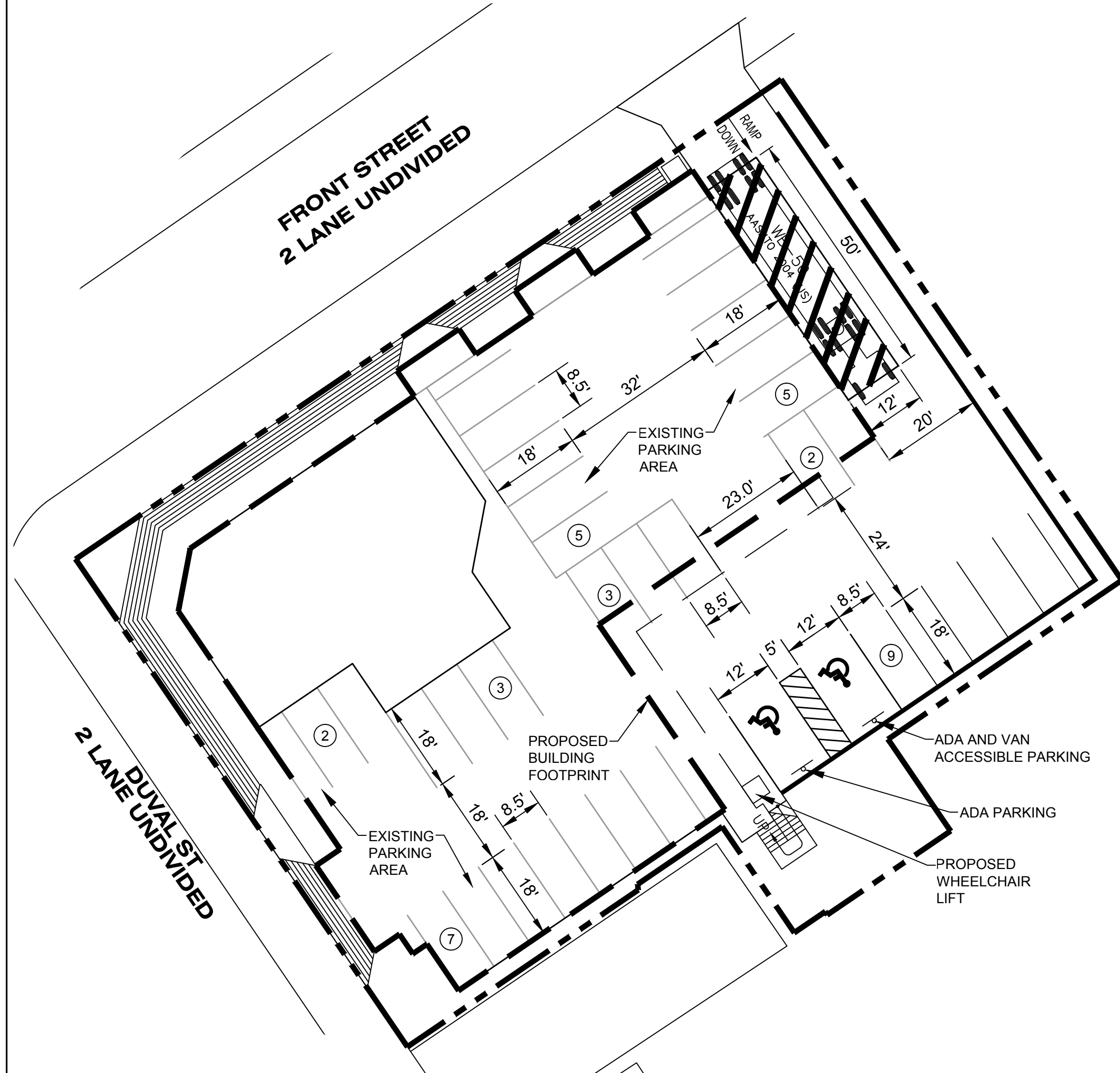
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DRAWING BY: A.T.S.  
DATE: 11-10-14  
JOB NUMBER: B112111  
TITLE:

SITE DIMENSION PLAN

SHEET NUMBER:  
C-2

COMMENTS:



**PARKING BELOW EXISTING BUILDING**

**PARKING DATA**

- 34 PROPOSED STANDARD PARKING (8.5' X 18')
- 2 PROPOSED ACCESSIBLE PARKING (12' X 18')
- 2 OFFSITE DEEDED PARKING SPACES (NOT SHOWN)
- 38 TOTAL PARKING SPACES

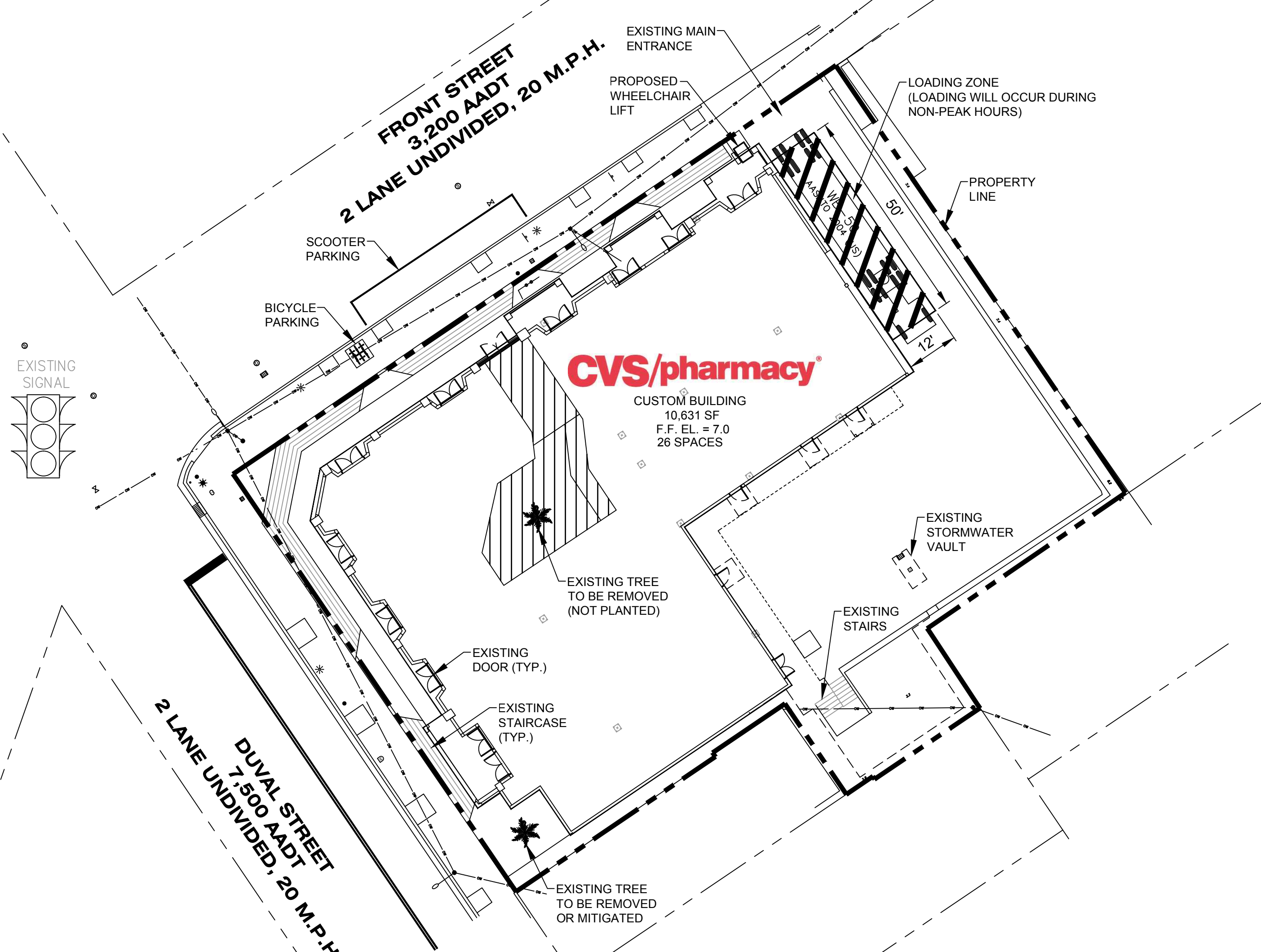
**LEGEND**

EXISTING COURTYARD TO BE CLOSED (1,094 S.F.)

HANDICAP PARKING SPACE (VAN-ACCESSIBLE)

WB-50 AASHTO 2004 (US) WB-50 DELIVERY TRUCK

**NOTE:**  
ALL TRASH GENERATED TO THE STORE WILL BE BROUGHT TO EXISTING OFF-SITE LOCATIONS (SIMILAR TO EXISTING STORE ACROSS THE STREET).



Always call 811 two full business days before you dig