

May 5, 2019

TROPICAL SOUP'S RESPONSE TO OPPOSITION MEMO SUBMITTED BY BART SMITH, AND ADELE STONES DATED MAY 3, 2019

Objection 1- Applicant does not own the property or have an equitable interest in the property

This is a blatantly false claim by the opposition. A cursory reading of the application reveals that the Authorization Form on Page 5 (copy attached) granted Tropical Soup Corporation and others express authorization from the City to “be the representative for this application and act on my/our behalf before the City of Key West.” This authorization expressly made Tropical Soup an agent for the City with regard to this project proposal. Contrary to the assertions of the opposition, by virtue of the Authorization Form, Tropical Soup has an equitable interest in the property and, in fact, was granted the express right to represent the City and apply for the development approval. It is an argument for another day whether Tropical Soup’s efforts on behalf of the City of Key West to improve this property creates an additional equitable interest. Ownership of the property is not relevant for purposes of the application.

Objection 2- The building is substantially damaged and requires a variance to continue the nonconforming use (sic) which has not been obtained.

Again, this is a blatantly false claim by the opposition that purposely mis-interprets the plain language of the cited Code section. First, the opposition makes a specious allegation that the deterioration of the cable tank structure was a “voluntary act.” The natural progression of time and the impact of natural forces¹ is what led to the deterioration of the structure. While neglect is unfortunate, it is not a voluntary act as contemplated by Code section 122-28(d). Rather, the Code uses “voluntary” to mean the deliberate demolition of a structure. The deterioration of the cable tank structure was due to involuntary factors and no variance is required.

Second, the opposition incorrectly attempts to constrain the application of the 50% limit to the cable tank structure as opposed to the property (parcel 2) as a whole. This is contrary to the plain language of the Code which states that a variance is needed only where “reconstruction or replacement would exceed **50 percent of the property’s appraised or assessed value.**”

¹ Natural forces include, but are not limited to, termites, rot, mold, hurricanes, water intrusion, and life expectancy of materials.

(emphasis added). The current assessed value of the property by the Monroe County Property Appraiser is \$1,872,175.00 (property card attached). As such, the cost of the proposed project would have to exceed \$936,087.50 to trigger the variance requirement of Code section 122-28(d). The construction cost estimates for this portion of the proposed project range from approximately \$350,000.00 to \$600,000.00, which is well-below the 50% limit. Therefore, no variance is required.

The opposition spuriously and erroneously attempts to merge two independent 50% limits. There are separate and distinct 50% limits that apply to the Federal Emergency Management Act (FEMA) requirements and Code section 122-28(d). The SeaTech, Inc. engineering report cited to by the opposition analyzed the FEMA 50% limit as applied only to the cable tank structure.² The SeaTech report did not analyze the 50% limit as specified in Code section 122-28(d). The opposition's attempt to merge these two independent limits is objectively erroneous and should be disregarded. As previously stated, the proposed project is well-below the 50% limit of Code section 122-28(d) and does not require a variance.

Objection 3- Development is for a 156 Bar without a kitchen.

This is yet another specious argument made by the opposition. It is immaterial whether or not a kitchen is located on-site for purposes of determining if a project is defined as a restaurant. In fact, the Administrative Interpretation cited to by the opposition makes no mention whatsoever of "kitchen" as a factor for determining whether or not a use is defined as a restaurant. Rather, the Administrative Interpretation explains that a restaurant requires that the sale of food and non-alcoholic beverages must account for more than 51% of total sales. The proposed project has always been for a restaurant use and this has not changed because the kitchen is located off-site.

Tropical Soup is a company with extensive experience and knowledge of the food and beverage industry and understands the difference between a restaurant and a stand-alone bar. As explained, the presence of a kitchen on-site is not what determines whether or not a business is a restaurant. Rather, it is the sale of food accounting for a minimum of 51% of total sales. In fact, Tropical Soup specifically consulted with the Department of Business and Professional Regulation, Division of Hotels and Restaurants, and the Florida Department of Alcoholic Beverages and Tobacco to ensure compliance with the various regulations pertaining to the proposed restaurant. Contrary to the opposition, it is not an "absurdity" that the kitchen will

² The FEMA 50% limit only applies to the value of structures.

be off-site and, in fact, the proposed project includes an-site food preparation areas which meet the definition of “kitchen” pursuant to Code section 86-9.³

The current version of the proposed restaurant does not include a large kitchen due to myriad demands and objections made by the City of Key West and the very same objectors presenting opposition here. The original scope of the project was deemed to be too large for Mallory Square and a smaller sized restaurant was demanded, and removing parts of the kitchen was warranted. Tropical Soup accepted these demands and reduced the size and scope of the proposed restaurant to what it is today. While it is true that utilizing an off-site kitchen will make operations significantly more difficult, and that a larger on-site kitchen would be preferred, the proposed restaurant will fully comply with City and State requirements for a restaurant. Further, the utilization of a commissary to accommodate the space and labor required for food preparation at an adjacent licensed facility of Tropical Soup is not a violation of any City, County, and State codes, nor is it a violation of the RFP.

In Summary, the use of some off-site kitchen area is valid and does not affect the proposed project being a restaurant. The opposition’s specious argument regarding the absence of a kitchen on-site is nothing more than a red herring intended to mislead.

Objection 4 development proposed expands illegally (sic) expands non-conforming.

Good grief. This allegation is purposely misleading and identical to their prior claims that the proposed project somehow is an expansion of the existing nonconforming restaurant use. This allegation was previously litigated and failed. Thus, as a matter of law, this claim is barred by *res judicata* which prevents the opposition from attempting to continue to pursue this issue now.⁴ The February 9, 2012, Order from Circuit Court Judge Auldin (copy of Order attached) held that there was substantial evidence to support that the proposed project “constituted a restructuring of an existing non-conforming use, not an expansion thereof.”⁵ Therefore, the proposed project is not an expansion of the nonconforming restaurant use and any allegations to the contrary necessarily fail.

The opposition purposely misconstrues the Code and erroneously attempts to use an increase in seating capacity as a measure of increased intensity. Code section 86-9 provides that “*Intensity* means the floor area ration as defined in this section.” Section 86-9 provides that

³ *Kitchen* means any food preparation facility larger than a wetbar. Plumbing stub outs for more than a wetbar shall be considered a kitchen.

⁴ The prior litigation involved the same parties-- Tannex Development LC, Tropical Soup and the City.

⁵ It is important to note that the version of the project referenced by the Order was a two-story building that was substantially larger than the current proposal. Logic dictates that if the substantially larger version of the project was not an expansion of the nonconforming use, then the current and dramatically smaller version of the project cannot possibly be an expansion of the use.

“Floor area ratio means the total floor area of the buildings on any lot, parcel or site divided by the area of the lot, parcel or site.” As is readily apparent, intensity is not determined by the number of seats, but rather by floor area of buildings. The proposed project does not increase the floor area ratio of the site. Therefore, the proposed project does not increase the intensity of the nonconforming restaurant use.

The same “illegal expansion of a nonconforming restaurant use” arguments have been previously raised by the opposition and have consistently failed. The following list illustrates that the proposed project does not constitute an expansion of the nonconforming restaurant use.

1. January 2011 report by City Planners Don Craig and Nicole Malo explained the existing consumption area of the site.
2. January 20, 2011 Planning Board decision:

That a Major Development Plan application for redevelopment of a restaurant and adjacent property located in Mallory Square in the HPS zoning district per Section 108-91 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida (RE#00072082M01100, 00072082-001400 and 0072082-003700), as shown in the attached plans dated November 11, 2010 with the following conditions of approval:

1. A total of 2,344 square feet of restaurant consumption area which equates to 156 seats is allowed within the area known as Area 2, shown as Parcel 2 on the January 28, 2010 site survey. The location of the consumption area within the restaurant may be modified relative to final determinations regarding the cable hut located within the parcel. Alcohol sales are permitted as accessory to the principal restaurant business. The sale of food, dessert, and non-alcoholic beverages must constitute 51% or more of business and the sale of food must occur during the time in which service is being provided to the public.

3. February 9, 2012, Order by Circuit Court Judge Audlin:

Similarly, as to the suggestion that the variances constitute an improper expansion of the non-conforming use in violation of the code, the evidence and testimony in the record and set forth above were a sufficient basis for the [Planning] Board’s finding that the variances constituted a restructuring of an existing non-conforming use, not an expansion thereof

4. December 6, 2012, Third District Court of Appeals denial of opposition’s appeal of Judge Auldin’s Order: Attached.

TANNEX DEVELOPMENT L.C.
ETC.,
Appellant(s)/Petitioner(s),

CASE NO.: 3D12-643

vs.

PLANNING BOARD OF THE
CITY OF KEY WEST,
Appellee(s)/Respondent(s).

LOWER
TRIBUNAL NO. 11-807

Following review of the amended petition for writ of certiorari and the response and reply thereto, it is ordered that said petition is hereby denied.

CORTIÑAS, FERNANDEZ and LOGUE, JJ., concur.

5. 2016 Planning Report by City Planning Director Patrick Wright:

The new restaurant structure is proposed to be a single story and to include 2,344 square feet of consumption area which translates to a maximum of 156 seats. This consumption area derives from square footage associated with the 1999 lease. The calculation of consumption area from that lease excludes kitchen and bathroom areas and is considered by the Planning Department to represent a conservative approach to understanding the legally established restaurant-related entitlements. The consumption area is delineated on sheet A-3 of the attached plan set.

6. September 2016 Planning Board decision:

Major Development Plan – Mallory Square (RE# 00072082-001100, 00072082-001400, 0072082-003700; AK# 8757778, 8757808, 8801131)- A Major Development Plan application for redevelopment of a restaurant and adjacent property located in the HPS zoning district per Section 108-91 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.
A motion was made by Mr. Lloyd, seconded by Mr. Browning, that the Planning Resolution be Passed, with the following conditions; 156 cap on seating, and to leave at least 50% of the Cable Hut. The motion carried by the following vote:

7. April 2, 2019 Planner Vanessa Sellers report:

The new restaurant structure is proposed to be a single-story and to include 2,344-square-feet of consumption area which translates to a maximum of 156 seats. This consumption area derives from square footage associated with the 1999 lease. The calculation of consumption area from that lease excludes kitchen and bathroom areas and is considered by the Planning Department to represent a conservative approach to understanding the legally established restaurant-related entitlements. The consumption area is delineated on sheet A1.3 of the attached plan set.

The opposition's assertion that the proposed restaurant will somehow "illegally expand" the existing nonconforming restaurant use is not only unfounded but has already been settled. Importantly, the opposition was unsuccessful every time. As such, raising this same failed argument again now will not change the fact that this issue has been litigated and decided—the proposed project with 156 seats is not an expansion of the nonconforming restaurant use.

The prior leases for the property are not controlling and the opposition incorrectly attempts to imply that the consumption area is being expanded. While it is accurate that Tropical Soup's lease will include additional leased parcels, the additional areas will not be part of the consumption area. The nonconforming restaurant use is limited to the prior leased restaurant area identified in the multiple staff reports, Planning Board decisions, and Circuit Court Order all determined that the proposed restaurant does not expand the consumption area. Therefore, the opposition's assertions to the contrary are erroneous, and the proposed restaurant does not expand the existing nonconforming restaurant use.

Objection 5 Off-street parking

The off-street parking allegation is inaccurate and intended to mislead. As discussed above, the proposed project does not expand the existing nonconforming restaurant use or consumption area. As such, the off-street parking provisions of the Code are not triggered — there must be an expansion of consumption area per Code section 108-572 and there is no such expansion. Also, the proposed project is located in a Parking Waiver Zone and is part of Mallory Square which is a public park. The importance being that the Code does not have a parking requirement for public parks. Here, the opposition attempts to create an off-street parking requirement that does not actually exist under the Code. Therefore, the opposition's off-street parking allegations should be dismissed.

It is important to note that Mallory Square is located within the heart of the Historic Commercial Pedestrian-Oriented Area. As such, the existing Mallory Square restaurants and the proposed restaurant are primarily accessible by pedestrians, bicyclists and other

ambulatory-assistive vehicles. Further, Mallory square contains a 100-space parking lot, of which only one space is dedicated for a specific commercial use.

Objection 6) Roadway analysis not provided.

Roadway analysis is not required for the proposed restaurant. The City eliminated transportation concurrency upon adoption of the most recent Comprehensive Plan. Specifically, the Comprehensive Plan provides:

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

January 24, 2010 City of Key West (City) issues RFP for Cable Hut and Hospitality House (Exhibit A)

January 29, 2010 Sixteen prospective bidders including Tropical Soup tour the property and the existing restaurant for the mandatory pre-bid meeting.

March 3, 2010 The City receives two proposals. One from Tropical Soup, (Exhibit B) the other, from the partners of El Meson de Pepe restaurant.

May 18, 2010 City awards RFP to tropical Soup Corporation pursuant to Res. No. 10-167 (Exhibit C) Approved preliminary design is for a two story restaurant.

June/July/August/September 2010 Tropical Soup and its architect meet with planning staff and HARC staff to discuss its plan.

August 3, 2010 Engineer's Report produced by Seatech Inc

September 14, 2010 HARC meeting approval of demolition. Approval from the board with request to reduce height of roof.

September 28, 2010 HARC meeting approved demolition and design. (Exhibit E)

October 4, 2010 Tropical Soup makes application to the City for a Major Conditional Use Approval

November 1, 2010 City Planner (Kimball-Murley) requests that Tropical Soup delay its project due to concerns from Tannex Development Corp. (Westin Hotel and Marina)

November and December 2010 Tropical Soup has meetings with lawyers, consultants and owners of the Westin marina to discuss their concerns. (Exhibit D)

December 10, 2010 City Chief Building Official condemns Westernmost Cable Tank due to compromised structural integrity and FEMA requirements.

December 16, 2010 Planning Board meeting cancelled. No quorum

January 20, 2011 City Planning Board recommends the approval of the Major Development Plan to the City commission pursuant to Res. No. 2011-002 (Significant opposition from attorneys and consultants representing the Westin Hotel and Marina)

April 21, 2011 City Planning Board hears variance request and tables request due to the failure of the City to provide an independent Structural Analysis of the West Cable tank.

May 2011 Tropical Soup and its architects modify plans to avoid the immediate need for the City to pay for a new structural reports and to reduce the size of the project.

June 14, 2011 After consulting with City staff and addressing neighbor concerns, new HARC application to reduce the size of the structure to fit within the side-yard set-back

June 16, 2011 Planning board meeting. Board unanimously approves variances for Coastal Control Line, Impervious Surface coverage and lot coverage.

June 20, 2011 Litigation and appeal of the planning board Decision Filed by Tannex Corporation Appeal of variances, allegation of an increase in the non-conforming use and coastal control line. (Westin Hotel)

August 2011 City of Key West declares West cable tank to be historic. This contradicts earlier analysis. (Exhibits F and G)

July 2011 Project set for City Commission approval of development plan.

August 2, 2011 City Commission delays approvals and actions pending the outcome of the litigation filed by the Westin.

August 29, 2011 Structural Condition Assessment report created for the City by Chen Moore and Associates. (Findings similar to Sea-tech report)

August to November 2011 City of Key West Legal staff and Tropical Soup Corporation prepare pleadings and filings defending the City of Key West's planning board decisions against the lawsuit filed by Westin.

February 13, 2012 Order from Circuit Court upholding decision of Planning Board. City and Tropical Soup win. (Exhibit H)

March 2012 Request for writ of Certiorari by Tannex Corporation (Westin) requesting Third District Court of Appeals review of Circuit Court decision.

September 2011 to March 2012 conducted numerous meetings with City staff to eliminate or reduce the need for variances, particularly the height variance.

March 28, 2012 At request of City, submitted new architectural design to HARC reducing roof height by 8'6". Board stated that they preferred the previously approved (larger) design that required a height variance. (Exhibit I)

March- November 2012 City of Key West Legal Staff and Intervenor Tropical Soup Corporation Legal Team prepare appeals pleadings and filings defending the City of Key West's planning board decisions and the Circuit Court's ruling upholding those decisions.

January and February 2013, Tropical Soup meets with the CPS board to discuss challenges at Mallory Square and design and business concerns.

February 9, 2013 Appeal of Circuit Court Ruling is denied by the 3rd District Court of Appeals. City of Key West and Tropical Soup win again.

February 20, 2013 Despite the project's similarity to the design proposed in its RFP, City Commission denies Major Development Plan application based on architectural design concerns.

March 2013. The denial by the City forces Tropical Soup to try to redevelop Mallory Square with a much more difficult economic model.

April 2013- August 2013

City of Key West and Tropical Soup Corporation begin meeting to identify objectionable issues related to the first design proposal. The City Staff identify the proposal of a two story structure as a key problem. Tropical Soup Corporation points out that under current code (V flood zone) and the approved

RFP, the structure must be two stories. City staff inform Tropical Soup that they won't approve a two story structure.

October 5, 2013 Without consulting Tropical Soup, the City of Key West demolishes frame structures that make up the existing restaurant seating and bar area. This demolition also damages the roof, tearing the front mansard off, and damages the concrete walls. This damage is never repaired, and still exists today. (photo exhibit J)

August 2013-June 2014

At the request of the City, Tropical Soup again redesigns the project pursuant to comments of the City Commission and meetings with City staff. Despite Tropical Soup's original RFP design being a two story structure and the parcel's location in a "V" flood zone, and that structures on the "ground" are prohibited in a "V" zone. Tropical Soup, its architects and engineers conduct studies and designs to determine the feasibility of seeking a FEMA LOMR and subsequently constructing a single story restaurant

June 4, 2014

Tropical Soup applies for a FEMA flood map revision to analyze the flood zone. The goal being to change the flood zone to allow the structure to be built on the ground thereby reducing the mass and scale.

Fall 2014 Large concrete masonry panel on rear of the structure falls off, exposing the glass French doors added to the masonry utility structure around 1970.

February 26, 2015 FEMA issues a Letter of Map Revision converting the property from a "V"-zone to an "A"-zone, thereby permitting a proposed structure to be built on ground level. Effective date of LOMR: 2/26/15 (exhibit K)

April 1, 2015 Tropical Soup makes application to the City for Major Conditional Use approval based on new flood maps and reduced mass and scale

April 2015 City of Key West signs authorization forms for Tropical Soup to pursue major development plan. (Exhibit N)

April 23, 2015 DRC meeting for new Tropical Soup Mallory Square project. Tropical Soup works diligently to minimize impacts to neighbors.

April 29, 2015 Tropical Soup initiates correspondence with City Manager updating him on the status of the project and requesting assistance with the City's slow pace. No response.

May 5, 2015

DRC meeting notes produced for re-designed Tropical Soup project. HARC and Building Departments both express the need to "save the cable hut". Tropical Soup points out that the structures at Mallory Square were built as storage "tanks", that the terminology for a "cable hut" describes the type of historic structure adjacent to the Southernmost Point, where functioning cable connections and communication was made. The second tank is a commercial kitchen, with an exhaust hood, sinks, fire suppression equipment and a walk-in cooler.

May/June 2015 Landscape Plans updated. Reviewed with Urban Forestry Program Manager Discussions about replacing the large trees at Mallory Square that were cut down fifteen years ago.

June 1, 2015 Draft lease discussions between the City and Tropical Soup continue.

June 9, 2015 Preliminary Tree Commission Approval granted

June 29, 2015 Emails to City manager discussing Tropical Soup's ongoing efforts to re-develop blighted Mallory square and to clarify its continuation of the non-conforming use. No response

July/August/September 2015 Civil engineering and site work analysis of modified development plan

July/August/September/October/November/December 2015 Numerous discussions with City staff regarding political and other business' opposition to the redevelopment of Mallory Square, the difficult politics and the City's lack of fortitude.

November 10, 2015 Clarification meeting with City Planner regarding the process for moving forward including meeting schedules and the applicability of previous project approvals. City Planner clarifies that he wants Tropical Soup to re-submit plans to the DRC.

December 2015- Historic Structures Report created by Bender and Associates.

December 2015 In response to information requests City produces documents indicating 80 seats at the restaurant on Mallory Square (Exhibit Q)

April 28, 2016 City staff adopts the work of paid opponents of the project as a requirement for Tropical Soup to meet.

April 28, 2016 DRC meeting. Tropical Soup points out that there are ongoing significant negative financial, and reputational damages to the City and Mallory Square with the existing blighted area and continuing deterioration of historic properties.

May/June 2016 Discussions and site visits between Tropical Soup's landscape architect and the City's Urban Forestry Program Manager.

June 9, 2015 Tree Commission Board meeting. Preliminary approval of landscape Plan.

July 2016 Planning Board Scheduled. Delayed at the request of the City

June/July August 2016 After consultation with City staff, alternate Plans developed to eliminate all variances including the need for the previously granted Coastal Control Line variance.

August 18, 2016 Project noticed for Planning Board meeting: Major Development Plan and Variances. After meeting with Planning Staff and their concerns about variances Tropical Soup requests postponement until September.

August/September 2016 Tropical Soup meets with various City Commissioners updating them on progress of the redevelopment of Mallory Square.

September 2016 City of Key West changes its HARC guidelines and demands that Tropical Soup meet the new guidelines.

September 15, 2016 Planning Board Meeting. Major Development Plan postponed at request of City.

October 16, 2016 Conference call City attorney, City planner, Tropical Soup, Tropical Soup's Planner and Tropical Soup's attorney

October 20, 2016 Planning Board Meeting Major Development Plan approved.

December 12, 2016 Tropical Soup, its architects and artist make Art in Public Places conceptual proposal.

December 14, 2016 HARC meeting. Demolition Plan denied. Major Development Plan not heard due to denial of demolition. No suggestions made. Bender engineering report cited used as evidence and cited as reason for denial. Bender recuses himself from vote, but testifies against the project.

January 2017 Discussions between Tropical Soup and the City's Senior Property Manager regarding the status of the project and the lease.

January/February 2017- Multiple meetings with HARC staff, City FEMA coordinator and CBO. Discussions relating to the City's interpretation of historic features of the West Cable Tank and the applicability of FEMA regulations to its restoration.

March 2017 Discussion with City Leasing agent regarding the expected approvals of the new minimalist HARC design and the already approved development plan, These discussions covered definitions of demised premises construction schedules and lease commencement date as well as compensation for the City's change in the scope of the project. City Property manager argues for fidelity to the RFP despite the City's changes.

March 2017 Application including plan for restoration of the West Cable Tank timely submitted to HARC staff for the April meeting.

April 2017 Answered questions from City Planning department explaining that the only differences in the HARC application from the approved development plan were architectural and reductions in Floor area ratios and reductions in lot coverage.

April 2017 Added Design details modifying height of terraces at restaurant and detailing West Cable Tank and Hospitality House restoration work

April 2017 Tropical Soup proposal set for May HARC meeting.

May 2, 2017 Despite a Planning board approval and pending HARC application, proposal placed on City Commission to "cease negotiations" with Tropical Soup. After a call from a reporter alerting it to the agenda item Tropical Soup's legal counsel strenuously objects. Item withdrawn. (exhibit P)

May 23, 2017 Design denied by HARC. New design rehabilitates and adaptively re-uses existing restaurant kitchen. Design rehabilitates Hospitality House and minimizes obstructions and impediments to the Key west harbor and sunset view. No suggestions made about how the project could comply with the board's interpretation of the guidelines.

May 31, 2017 Tropical Soup appeals the HARC ruling to Special Magistrate.

June, July 2017 Tropical Soup continues its efforts to minimize impacts-. Adding bike racks, recycling areas, moving utilities to the least visible locations. Its engineers produce the concept video, showcasing current design.

August 30, 2017 Appeal argued before Special Magistrate. Special Magistrate decides in Tropical Soup's favor.

September 10 2017 Hurricane Irma landfall. Roofs and structures of properties further damaged. No effort at repair or mitigation of further damage to structures made to date.

October 18, 2017 Special Magistrate signs order finding that HARC decision improperly denied the project and was in error.

November 15, 2017 Almost unbelievably, rather than taking the opportunity to accept the Magistrate's decision and allowing Tropical Soup to begin to repair the blight at Mallory- The City seeks a clarification and narrowing in scope of Special Magistrate decision. City seeks a clarification and narrowing in scope of Special Magistrate decision.

November 17, 2017 City legal staff files writ of Certiorari requesting Circuit Court review of Special magistrate decision.

November 20, 2017 Tropical Soup applies with updated landscape plans for the December 12 Tree Commission agenda.

November 28, 2017 City files a 22 page appeal of the Special Magistrate's order, requesting review by the Circuit Court and litigating against the project.

November 28 City legal staff informs City urban forest manager that project has been stayed due to the City's appeal, and the item should not be placed on an agenda.

December, 2018 Tropical Soup points out that there has been no court ordered stay of the proceedings the landscape plan is unrelated to the HARC dispute, and should move forward.

January 2018 City requests Circuit Court relinquish jurisdiction back to Special magistrate so that he may re-hear the case.

February 28, 2018 City requested re-hearing and clarification of the Special Master's decision of August 2017. Special Master finds the same facts.

March 5, 2018 Special Magistrate signs order affirming his previous decision of August 30, 2017 and his previous order of October 18, 2017 that a Certificate of Appropriateness be issued. (Exhibit L)

March 13, 2018 Final landscape plan approved by City tree Commission.

April, May, June 2018 Tropical Soup pushes to be on City Commission agenda.

August 27, 2018 City files a motion requesting reinstatement of jurisdiction with the Circuit Court, effectively appealing again after a six month delay.

September 5, 2018 Development Plan approval on City Commission agenda. Postponed at request of the City Attorney.

October 2, 2018 Development Plan approval on City Commission agenda. Postponed at request of the City Attorney.

October 11, 2018 Tropical Soup appeals to City manager to stop litigating against the project and to let the revitalization plan for Mallory square be heard. (exhibit M)

October 12, 2018 City Manager responds with- have your attorney call my attorney..

October 16, 2018 Development Plan approval on City Commission agenda. Postponed at request of the City Attorney.

December 4, 2018 Development Plan approval on City Commission agenda. Postponed at request of the City Attorney.

December 6, 2018 Circuit Court hearing on City's appeal

January 15, 2019 Development Plan approval on City Commission agenda. Postponed at request of the City Attorney.

February 20, 2019 Development Plan approval on City Commission agenda. Postponed at request of the City Attorney.

March 4, 2019 Circuit Court issues order denying City appeal. Special Magistrate order and HARC approval stand.

March 21, 2019 Tropical Soup sends draft 8 of the proposed lease back to the City's Senior property manager for final review by City legal staff

April 26 2019 City staff sends lease sent back to Tropical Soup after City legal staff review.

PUBLIC NOTICE

**AVAILABLE FOR LEASE
MALLORY SQUARE**

**CABLE HOUSE PROPERTY PARCEL ID # 00072082-001100
HOSPITALITY HOUSE PROPERTY PARCEL ID # 00072082-001400**

Pursuant to City Ordinance Section 2-941, notice is hereby given that the City of Key West, Florida is seeking proposals to conform with section 2-941(c) for the market rate, highest and best use, lease of either one or both properties which may have a contiguous area joining the two parcels.

The parcels are located at Mallory Square and are known as the Cable Hut and as the Hospitality House. The parcels are zoned Historic Public Service. There are existing non-conforming uses for the Cable House parcel that may be continued. A listing of the existing and allowable uses is available upon request.

At a minimum, proposals should address the proposed use of the property which must comply with all regulatory and statutory requirements governing the use of the properties, any proposed improvements and the proposed income to the City of Key West. A mandatory pre-proposal meeting and walk-through of the properties will be held on January 29, 2010 at 9:00AM, additional property specific information will be distributed at that time. Sealed proposals shall be clearly identified as a proposal on the exterior of the envelope and delivered to the office of the City Clerk, City of Key West, 525 Angela Street, Key West, FL 33040 and must be received no later than March 2, 2010 at 3:00 PM. All proposals must contain a non-collusive affidavit and a public entity crimes form sworn and executed by the offeror and acknowledged before a notary public with the notary seal affixed to the document.

All proposals will be opened by the City Clerk at 525 Angela on March 3, 2010 3:00PM. City management will analyze and summarize proposals for presentation to the City Commission.

For additional information, interested parties should contact Marilyn Wilbarger, 305-809-3794, Fax: 305-809-3806, E-mail: mwilbarg@keywestcity.com

Published, January 24, 2010

Proposal from
Tropical Soup Corporation

Tropical Soup Corporation

509 1/2 Duval Street

Key West, Florida 33040

305-293-2876

March 1, 2010

PROPOSAL

To: The City of Key West
Address: 525 Angela Street, P.O. Box 1409
Key West, Florida 33041

Project Title: **Mallory Square Cable House and Hospitality House**
Project Date: Published on January 24, 2010

Bidder's person to contact for additional information on this Proposal:

Name: Joseph Walsh
Telephone: 305 293-2876

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this Proposal are those named herein, that this Proposal is, in all respects, fair and without fraud, that it is made without collusion with any official of the Owner, and that the Proposal is made without any connection or collusion with any person submitting another Proposal on this Contract.

This bid includes: the Public notice offered by the City on January 24, 2010, The Survey of parcels 1 through 5 by Island Surveyors Inc. dated January 28, 2010, bidder's public entities statement, bidder's anti collusion affidavit, bidder's conceptual drawings titled Mallory Square by Florida Building Consultants dated February 1, 2010 and bidder's narrative summary.

The Bidder further declares that he has carefully examined the Contract Documents, that he has attended the mandatory pre-bid conference meeting and walk-through held on January 29, 2010, has personally inspected the Project, that he has satisfied himself as to the work involved.

The Bidder is experienced in restaurant ownership and management. Principals of the bidder are majority owners of Caroline's Cafe, Fogarty's Restaurant, Jack Flats, Redfish Bluefish and Mangoes Restaurant in Key West, and Fogarty's Grill in Coral Springs, Florida. Combined these restaurants have approximately 350 employees. The bidder has been able to turn unprofitable restaurant locations into successful ones.

The bidder has adequate financial resources to undertake this project, and will provide bonds or letters of credit to guarantee the construction, and as security for the leasehold. The bidder will seek no loans, nor is financing of the proposed construction a contingency of this proposal.

Copy

This proposal is in response to the notice by the City of Key West on January 24, 2010 seeking a lease proposal for Mallory Square Cable House Property Parcel ID #0072082-001100, Hospitality House Property Parcel ID #00072082-001400 and shown on the survey drawn by Island Surveying Inc. Number 10-108 on January 28, 2010.

Tropical Soup Corporation, a Florida corporation offers to lease the 4 parcels as described in the City's offer of January 24, 2010, and shown on the survey done by Island Surveying Inc drawing number 10-108 on January 28, 2010. The bidder, would build a new structure to house a full service restaurant and would offer outside cafe style seating with umbrellas. The bidder anticipates a small retail component along with the restaurant. The bidder would replace the damaged dock area. The bidder would create a park and green space and would offer an ADA accessible attraction and museum featuring an interactive historical perspective on Mallory Square and the Key West waterfront. The bidder would strive to create a destination restaurant as well as recreational and cultural elements that could stand alone, or become an additional positive point of interest in an integrated waterfront promenade.

The bidder believes that the interests of the City have been poorly served by the benign neglect of Mallory Square. The construction of black "prison style" bars around buildings, the location of OMI equipment and electrical transformers in public view, the lack of resources dedicated to the City's only public restrooms as well as the underutilization of high profile locations are all massive areas of opportunity for Key West to become more friendly and inviting for tourists as well as residents. The sporadic use of Mallory Square by city residents, typically when out of town guests are visiting, or for special events is a shame. The revitalization of this waterfront park (ing lot) should be a focal point in making the City a more desirable place to live and visit.

The bidder has included conceptual architectural renderings with this proposal, and anticipates ongoing discussions with the City concerning design and landscape elements. The bidder anticipates the need to create some form of landscaping, fountain, or fencing elements to block off parcel five from Mallory Square. the bidder anticipates meetings with City Staff in the planning, building, landscaping and Harc offices as well as the boards for all of those organizations. The bidder is cognizant of some of the concerns regarding this area and would work to address any issues while retaining a need to be able to pay its rental obligations. The bidder would attempt to retain as much landscaping as possible and would work with the city on park design ideas be they a fountain, bronze statuary, or landscaping and park seating. The bidder may seek rent credits to offset some of the preservation and construction costs of this project. The bidder has discussed the historic character of Mallory Square with city staff and believes that it can complete its plan within HARC guidelines. The Hospitality House, occupying a portion of Parcel 4 would be repaired and made ADA compliant. The frame construction on parcel 2 would be removed, and further discussions would be held regarding the use of the concrete structure on Parcel 2. This building is not included in the Sanborn maps of 1948, and is not included in the Key West Historic Resources Survey.

The area is zoned, Historic Public and Semipublic Services District (HPS) Compared to the City's other commercial zoning districts, this has relatively limited permitted uses. As such, the existing restaurants, food service vendors, animal acts, retail stores, retail stands and other uses offering goods for sale are all non-conforming. Many of the special events that Mallory Square is used for are also non-conforming uses. The City asserts that there is an existing non-conforming use for the proposed lease space. Bidder

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anticipates the continuation of the non-conformity, but hopes that the City addresses the obvious discrepancies in this zoning district.

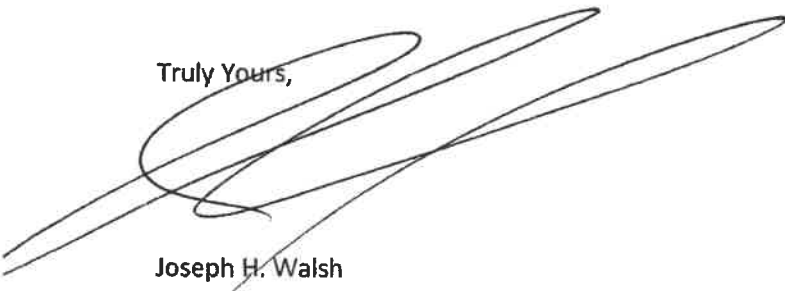
The Bidder has read the most recent examples of leases that the city has executed with some of its other tenants and is generally comfortable with the form and language. In the event that the initial lease is valued at market, however, the bidder has serious reservations about large annual increases in rent not tied to the bidder's sales.

The bidder offers \$303,000.00 in annual rent for the combined parcels. Bidder further believes that it could offer more in annual rent if the inappropriate zoning were addressed. Bidder believes that in both gross dollars, and per square foot that this offer is considerably higher than the City receives from its other tenants at Mallory Square. The bidder would expect the lease term to be 10 years. The bidder further offers additional rent determined by 7 percent of sales above a reasonable break point. Bidder is aware of no City leases offering this level of participation on the upside of its leases. The percentage rent offer anticipates the possibility of revisiting the zoning issues and allows for the City to participate in the event that modified zoning allows bidder to maximize its potential sales.

There appears to be inadequate licensed seating to operate a full service restaurant on these parcels. The bidder anticipates working with the city to an equitable solution to secure adequate seating to operate the business profitably, but that would remain an asset of the property owner. Bidder further anticipates reasonable accommodations from both bidder and the City with regard to easements, ingress and egress as well as setbacks. There are several likely ongoing areas of cooperation including: access to parcel 5, homeland security issues related to cruise ship or port traffic, Mallory square special events be they bidder's or another vendor, utility access, drainage issues for Mallory Square, foot bridge and dock access, restroom access and maintenance. Bidder is interested in exploring parking validation or other options like the City has with some of its other tenants.

Bidder will be pleased to provide any additional information that the City would deem helpful in evaluating its bid. Please direct any inquiries to Joseph Walsh at 305-293-2876. Email: tropicalsoup1@gmail.com

Truly Yours,



Joseph H. Walsh

President

Tropical Soup Corporation

Copy

PUBLIC NOTICE

**AVAILABLE FOR LEASE
MALLORY SQUARE**

**CABLE HOUSE PROPERTY PARCEL ID # 00072082-001100
HOSPITALITY HOUSE PROPERTY PARCEL ID # 00072082-001400**

Pursuant to City Ordinance Section 2-941, notice is hereby given that the City of Key West, Florida is seeking proposals to conform with section 2-941(c) for the market rate, highest and best use, lease of either one or both properties which may have a contiguous area joining the two parcels.

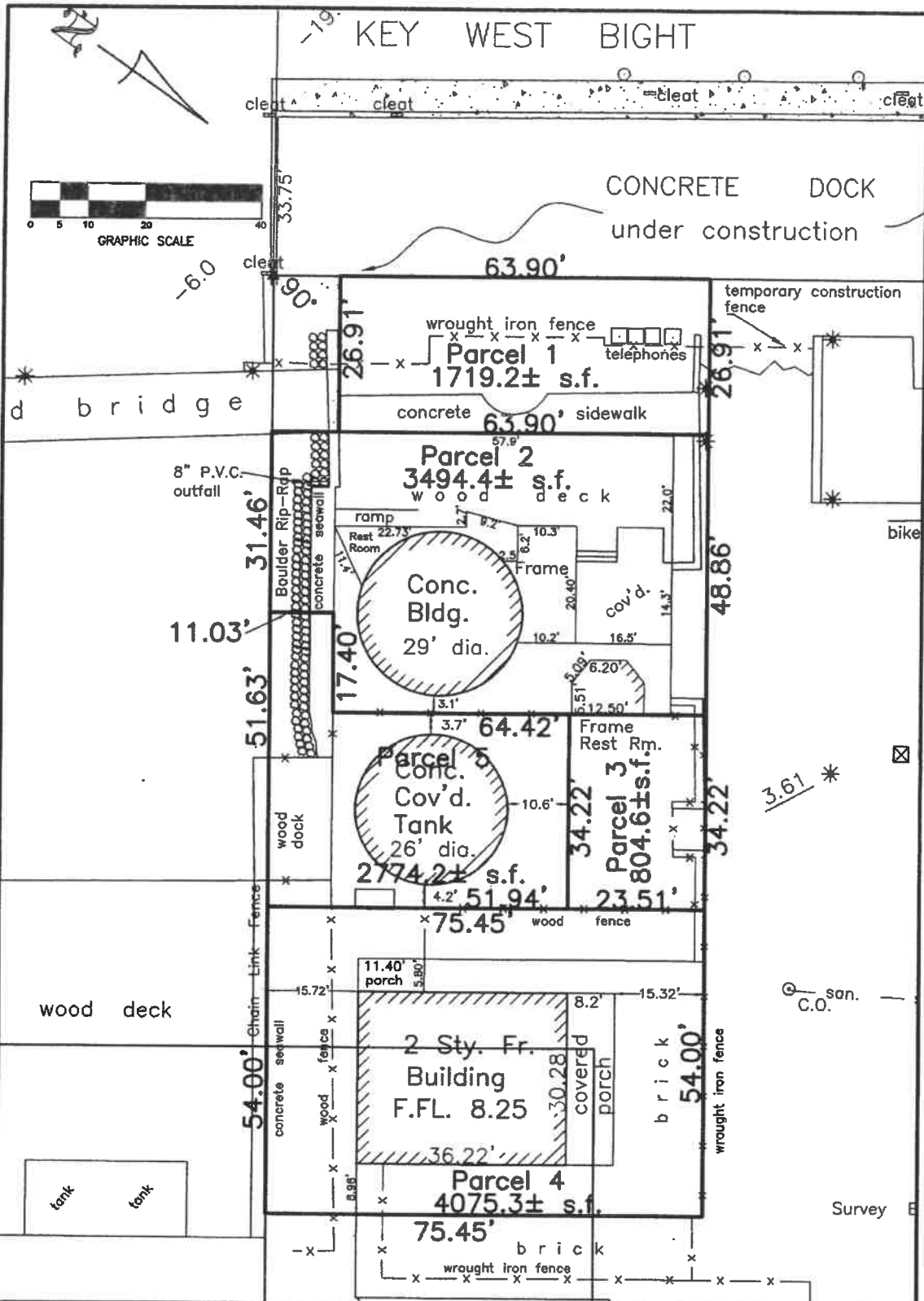
The parcels are located at Mallory Square and are known as the Cable Hut and as the Hospitality House. The parcels are zoned Historic Public Service. There are existing non-conforming uses for the Cable House parcel that may be continued. A listing of the existing and allowable uses is available upon request.

At a minimum, proposals should address the proposed use of the property which must comply with all regulatory and statutory requirements governing the use of the properties, any proposed improvements and the proposed income to the City of Key West. A mandatory pre-proposal meeting and walk-through of the properties will be held on January 29, 2010 at 9:00AM, additional property specific information will be distributed at that time. Sealed proposals shall be clearly identified as a proposal on the exterior of the envelope and delivered to the office of the City Clerk, City of Key West, 525 Angela Street, Key West, FL 33040 and must be received no later than March 2, 2010 at 3:00 PM. All proposals must contain a non-collusive affidavit and a public entity crimes form sworn and executed by the offeror and acknowledged before a notary public with the notary seal affixed to the document.

All proposals will be opened by the City Clerk at 525 Angela on March 3, 2010 3:00PM. City management will analyze and summarize proposals for presentation to the City Commission.

For additional information, interested parties should contact Marilyn Wilbarger, 305-809-3794, Fax: 305-809-3806, E-mail: mwilbarg@keywestcity.com

Published, January 24, 2010



City of Key West
Mallory Square

Lease Areas Dwn No.:
10-108

Scale: 1"=20'	Ref. file	Flood panel No. 1516K	Dwn. By: F.H.H.
Date: 1/28/10		Flood Zone:	Flood Elev.

REVISIONS AND/OR ADDITIONS	

ISLAND SURVEYING INC.
ENGINEERS PLANNERS SURVEYORS

3152 Northside Drive
Suite 2101
Key West, Fl. 33040
(305) 293-0466
Fax. (305) 293-0237
fhldeb1@bellsouth.net

COPY

**SWORN STATEMENT UNDER SECTION 287.133(3)(a)
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

**PROJECT REQUEST FOR LEASE PROPOSALS FOR MALLORY SQUARE
PARCELS 1,2,3,4 CABLE HOUSE, HOSPITALITY HOUSE and MALLORY
SQUARE NOTICE DATED JANUARY 24, 2010**

**THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC
OR OTHER OFFICE AUTHORIZED TO ADMINISTER OATHS.**

1. This sworn statement is submitted with an accompanying Proposal, in response to the City of Key West's request dated January 24, 2010, to Lease a portion of MALLORY consisting 4 parcels.
2. This sworn statement is submitted by Tropical Soup Corporation, whose business address is 509 Duval Street Key West Florida 33040 and its Federal Employer Identification Number (FEIN) is 27-1952267.
3. My name is Joseph Walsh, and I am the President of Tropical Soup Corporation
4. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including but not limited to, any Proposal or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, material misrepresentation.
5. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
6. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means
 1. A predecessor or successor of a person convicted of a public entity crime: or
 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint

COPY

venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

7. I understand that a "person" as defined in Paragraph 287.133(1)(8), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which Proposals or applies to Proposal on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

8. Based on information and belief, the following statement is true in relation to the entity submitting this sworn statement:

Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity have either been charged with, or convicted of a public entity crime.

(Signature)

(Date)

[Handwritten Signature]

MARCH 2, 2010

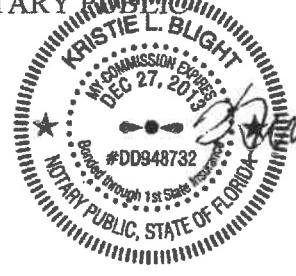
STATE OF Florida
COUNTY OF Monroe

Joseph Walsh PERSONALLY APPEARED
BEFORE ME, the undersigned authority, who, after first being sworn by me, affixed his/her signature in the

space provided above on this day of March 2, 2010.

My commission expires: December 27, 2013

NOTARY PUBLIC



Kristie L Blight

Copy

ANTI-KICKBACK AFFIDAVIT

PROJECT: REQUEST FOR LEASE PROPOSAL at Mallory Square Cable House and Hospitality House, parcels 1 to 4 Key West, Florida
Project dated: JANUARY 24, 2010:

STATE OF FLORIDA)

COUNTY OF MONROE)

I, the undersigned hereby duly sworn, depose and say that no portion of the sum herein Proposal will be paid to any employees of the City of Key West as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

By: _____

Joseph H. Walsh (President)

STATE OF Florida

COUNTY OF Monroe

Joseph Walsh PERSONALLY APPEARED BEFORE ME, the undersigned authority, who, after first being sworn by me, affixed his/her signature in the space provided above, on this 2nd day of ~~February~~ March, 2010.

March
RIB



Kristie L. Blight
NOTARY PUBLIC, State of Florida at Large

Commission Expires: December 27, 2013

RESOLUTION NO. 10-167

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, ACCEPTING THE PROPOSAL OF TROPICAL SOUP CORPORATION FOR PARCELS 1, 2, 3 AND 4 AT MALLORY SQUARE (CABLE HUT, HOSPITALITY HOUSE AND MALLORY SQUARE); AUTHORIZING THE CITY MANAGER TO ENTER INTO NEGOTIATIONS FOR THE LEASE OF THOSE PARCELS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on March 3, 2010, the City received two responses to a Request for Proposal for lease of four parcels of land in the Mallory Square vicinity; and

WHEREAS, staff recommends acceptance of the Tropical Soup Corporation proposal, and authorization for the City Manager to enter into lease negotiations based upon the terms proposed, with the negotiated lease to be brought to the City Commission for final approval.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA AS FOLLOWS:

Section 1: That the proposal submitted by Tropical Soup Corporation is hereby accepted.

Section 2: That the City Manager is hereby authorized to enter into negotiations for a lease of parcels 1, 2, 3 and 4 at Mallory Square.

Section 3: That the negotiated lease shall be presented to the City Commission for approval.

Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 18 day of May, 2010.


Authenticated by the Presiding Officer and Clerk of the Commission on 19 day of May, 2010.

Filed with the Clerk on May 19, 2010



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK

STONES & CARDENAS
ATTORNEYS AT LAW

221 SIMONTON STREET, KEY WEST, FL 33040
TELEPHONE (305) 294-0252 FAX (305) 292-5442

ADELE VIRGINIA STONES, P.A.

SUSAN M. CARDENAS, P.A.

January 14, 2011

Owen Trepanier
Trepanier & Associates
402 Appelrouth Lane
Key West, FL 33040

Re: Mallory Square Major Development & Variance Application


Dear Mr. Trepanier:

I wanted to thank you and your client for taking the extra time and effort to meet with my clients, the owners of the Westin Resort & Marina ("Westin Owner") last month to discuss the proposed bar-restaurant at Mallory Square. As you are aware, my client's objection to the bar-restaurant use is premised on the extent of the expansion from the former ground level thirty (30) seat food and beverage operation to a two story, 5000+ square feet, one hundred fifty-six (156) seat full service bar and restaurant.

The significant enlargement of the non-conforming use and the potential impact of visual obstruction, noise, and odor generations cannot be adequately mitigated by compromise on the requested variances for height, side setback and/or v-zone setback. Without a specific proposal for redesign, the Westin Owners cannot support this major development or the variances required by the size and location of the structure.

Please feel free to contact me or my client directly if you have any questions regarding the Westin position on this matter.

Sincerely,


Adele V. Stones
AVS/cms

c. Planning Director
Planning Board Chair and Members

Historic Architectural Review Commission

Agenda Packet

September 28, 2010 – 3:00 p.m.
City Commission Chamber
Old City Hall, 510 Greene Street



Item 5.

Request for demolition of non historic structures, construction of new two story building, improvements to the Hospitality House and site improvements- **Mallory Square- Applicant William P. Horn Architect (H10-01-355).**

Staff Report

5. Request for demolition of non historic structures and new construction-
Mallory Square- Applicant William P. Horn Architect (H10-01-355)

Add handicap ramp to hospitality house, re paint exterior, new paving and landscaping. Demolition of all non historic additions and decks to cable hut structure. Add new two story restaurant building.

This is a new application that incorporates in the interior of the new proposed building the existing historic cable hut tank. The application also includes a request for demolition of **non historic** frame structures that are attached and surrounds the historic cable hut. The submitted plans propose a new two story restaurant as well as some site design and improvements to the existing Hospitality House.

Staff understands that the Code of Ordinances as well as the Historic Architectural Guidelines should be reviewed for this application. The Code, under Sec. 102-218, establishes the criteria for demolitions to be used by the Historic Architectural Review Commission when reviewing a Certificate of Appropriateness. According to the Code Sec. 102-218 establishes the following;

(a) The historic architectural review commission shall issue a certificate of appropriateness for an application for demolition:

(1) If the subject of the application is a contributing or historic building or structure, then it should not be demolished unless its condition is irrevocably compromised by extreme deterioration or it does not meet any of the criteria of section 102-125(1) through (9).

(2) For a contributing historic or noncontributing building or structure, a complete construction plan for the site is approved by the historic architectural review commission.

(b) The historic architectural review commission shall not issue permits that would result in:

(1) Removing buildings or structures that are important in defining the overall historic character of a district or neighborhood so that the character is diminished;

(2) Removing historic buildings or structures and thus destroying the historic relationship between buildings or structures and open space; and

(3) Removing an historic building or structure in a complex; or removing a building facade; or removing a significant later addition that is important in defining the historic character of a site or the surrounding district or neighborhood.

(4) Removing buildings or structures that would otherwise qualify as contributing, as set forth in section 102-62(3).

(c) Nothing in this section is intended to alter the authority of the Building Official to condemn for demolition dangerous buildings, as provided in chapter 14 of the Code of Ordinances.

(Ord. No. 97-10, § 1(3-10.3(E)(2)(c)), 7-3-1997; Ord. No. 06-14, § 12, 8-1-2006)

The Code also establishes, under Sec. 102-1, Definitions, that a historic building or structure is:

any building or structure which, in whole or in any structural part, was built 50 or more years prior to the current date, and which is located in the historic zoning districts of the city or has been designated as a historic building and/or structure.

It is staff understanding that the proposed demolition of the structures that are attached to the tank, as well as the wood deck can be considered by this commission since these structures are not historic and are not significant elements to the historic resource or to the urban context.

Design Review

The applicant has been working very close with staff during the past three months. Preliminary drawings were presented for review. As mentioned before, the plans integrate the existing historic cable hut as part of the interior experience. The new plan for the site includes a two story structure for restaurant use. The proposed structure is rectangular in shape 48'-10" wide by 65'-3" depth and will have a maximum height of 34'-8 ½" from ridge to crown of the road.

The plans also include the restoration of the Hospitality House and the addition of a ramp to comply with ADA requirements. Landscape design is also integrated in the plans as well as site improvements.

The Historic Architectural Guidelines can be apply to review the proposed new design, particularly guidelines for Additions, Alterations and New Construction (pages 36-38):

Key West's historic district's tightly spaced blocks contain a wide variety of architectural styles, which relate well to each other. The relationships between the buildings create much of the character of the district. Their height, detailing, mass roof forms, and landscaping all contribute to its visual harmony. It is important that new construction harmonize with the existing historical building stock and streetscapes.

For this particular site it is important to remember that, although still in the historic district, this new design is proposed for Mallory Square which is an open space and a waterfront site. Commercial use is allowed and promoted for this particular area.

1. **Siting** – *New construction must conform to all current city easement, setback and building requirements. No existing building shall be relocated and no new structure shall be placed closer to the*

sidewalk, street or visible alley, than the distance of pre-existing historic structures. Areas reserved for parks or open space must be retained.

The proposed new design will require a height variance. The zoning requirements for this particular historic district HPS are;

Front yard- 20 ft
Street side- 10 ft
Side- 5 ft
Rear- 20 ft
Maximum height- 25 ft

2. ***Elevation of finished floor above grade*** - Applications for buildings with the first finished floor above the minimum height necessary to comply with federal flood regulations will not be approved unless the applicant demonstrates that such elevation does not interfere with the essential form and integrity of properties in the neighborhood. In situations wherein parking is proposed below the first finished floor, HARC shall consider how visible the parking is from the public right-of-way; whether the parking area is enclosed or otherwise concealed by walls, louvers, lattice, landscaping or other features; and whether fill and/or berms are used to minimize the gap between the first finished floor and the crown of the nearest road.

This will not be the case. Interesting, due to the location of the site, on a costal zone, FEMA requirements are very specific regarding what is allowed to be installed on a new structure in the first 12 feet over the crown of the road. This is the reason of why the structure needs to be two story.

3. ***Height*** - must not exceed two and a half stories. There must be a sympathetic relationship of height between new buildings and existing adjacent structures of the neighborhood. New buildings must be compatible with historic floor elevations. The height of all new construction shall be based upon the height of existing structures within the vicinity.

The proposed building will be a two story structure. The structure will be approximately six feet taller than the Hospitality House.

4. ***Proportion, scale and mass*** - massing, scale and proportion shall be similar to that of existing historical buildings in the historical zone. No new construction shall be enlarged so that its proportions are out of scale with its surroundings. No new construction shall be

more than two and a half stories. No structure shall outsize the majority of structures in the streetscape or historic zone.

The scale and massing of the proposed building has been lowered by the use of mixed rooflines and by the incorporation of similar proportions from the Hospitality House to the new design. Although the new building reads as a commercial building the front façade, facing Mallory Square, shows architectural forms that resemble the old house, while keeping its commercial appearance. The use of intercepting gables reduces the scale of the two story building.

The main façade incorporates transparent elements close to the existing contributing cable hut. This façade also has a horizontal band under the large window that coincides with the lower part of the eaves of the cable hut. In a way this band visually connects the new building with the historic cable hut while gives a more pedestrian scale.

On the west elevation the design incorporates a full façade porch on the second floor that gives another layer to the façade. The use of different façade layers breaks the mass and volume of the structure.

The design strategies incorporated in the new design creates a structure compatible with the mass and scale of surrounding structures. The design incorporates proportions that will be harmonious with the historic Hospitality house.

5. **Compatibility** – *Design must be compatible with Key West architectural characteristics in the historical zones. All new construction must be in keeping with the historic character in terms of size, scale, design, materials, color and texture.*

The proposed design is contemporary while keeping traditional elements found in Old Town. The proposed size and scale are well balanced with the existing Hospitality House and its surroundings. The materials and textures proposed, although contemporary, are harmonious to the historic urban context.

6. **Building Detail** – *All new buildings shall incorporate a level of detail that assures compatibility with the surrounding historic context. New construction shall not precisely mimic the details of historic buildings but should have features that are compatible with the lines of historic architecture.*

The new proposed building features traditional forms, textures and materials compatible to surrounding buildings. Although the design is contemporary it integrates many traditional elements found in the historic district like gable roofs, second floor porches, awnings and rhythm between solids and voids.

7. ***Relationship of materials*** – *Materials used on new construction shall be of similar color, dimension, texture, and appearance as historic fabrics. The predominant exterior finish in historic zones is wood weatherboard, clapboard, drop siding, or board and batten. Exceptions for the use of composite materials may be permissible. Roofing is primarily sheet metal or metal shingles. New construction shall establish a relationship with existing historic structures by utilizing similar finishes and metals.*

The proposed new construction integrates new materials that are appropriate to new construction in Old Town. Proposed textures and overall appearance are in keeping with the historic urban context as well as with commercial buildings within the surrounding area.

It is staffs believe that the proposed new restaurant is consistent with the guidelines. The proposed contemporary design will create a harmonious balance with the existing urban fabric. The proposed improvements to the Hospitality house as well as new landscape and site design will enhance this part of Mallory Square that is in need of rehabilitation and re use. The incorporation of the cable hut to the interior space as a backdrop to the bar will bring a new experience to patrons and new life to the secluded historic resource.

**Previously submitted elevations
Rendering plans**

WILLIAM P. HORN
ARCHITECT, P.A.

516 EASTON ST.
KEY WEST,
FLORIDA
32940

TEL: (305) 854-4200
FAX: (305) 854-1351
LIC# 000000
S.I. 000000

SeasidePine
ARCHITECTS, P.C.
801 CRANE BOULEVARD
SUITE 100
ANNAPOLIS, MD 21403
ANNAPOLIS, MD, U.S.A.

MALLORY
SQUARE
RESTAURANT
KEY WEST, FLORIDA

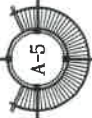
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DATE
06-20-10 HARC
06-30-10 HARC REV.

REVISIONS _____

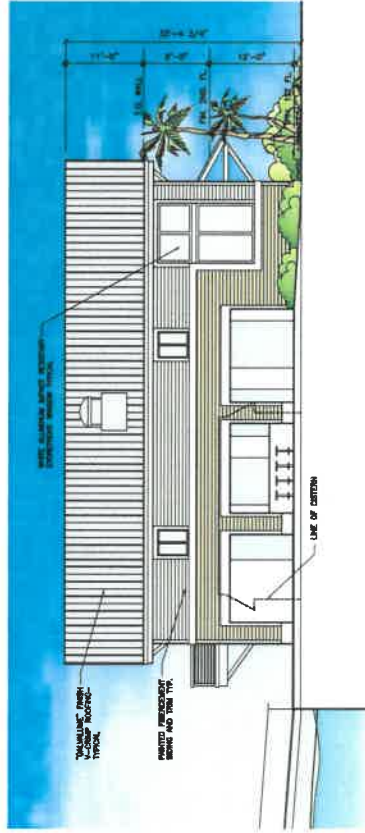
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PROJECT
NUMBER
1006



PROPOSED SOUTH ELEVATION

SCALE: 1/8"=1'-0"



PROPOSED EAST ELEVATION

SCALE: 1/8"=1'-0"

MALLORY SQUARE RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA

**Revised Site Plans
Elevation with 6-12 roof**

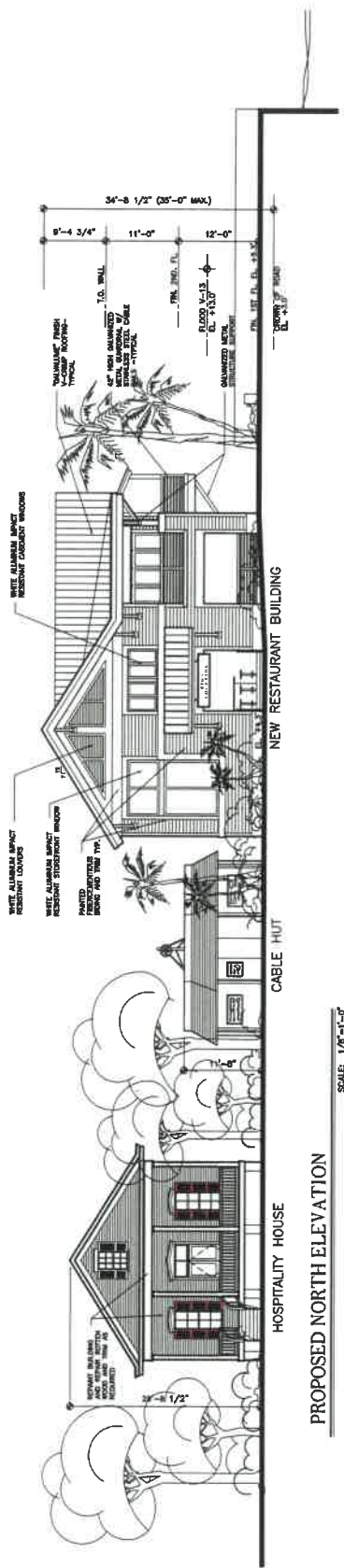
WILLIAM P. HORN
ARCHITECT, P.A.

515 EASTON ST.
KEY WEST,
FLORIDA
32940

TEL: 305-296-2122
FAX: 305-296-2122
LICENSE NO.
LA 180096

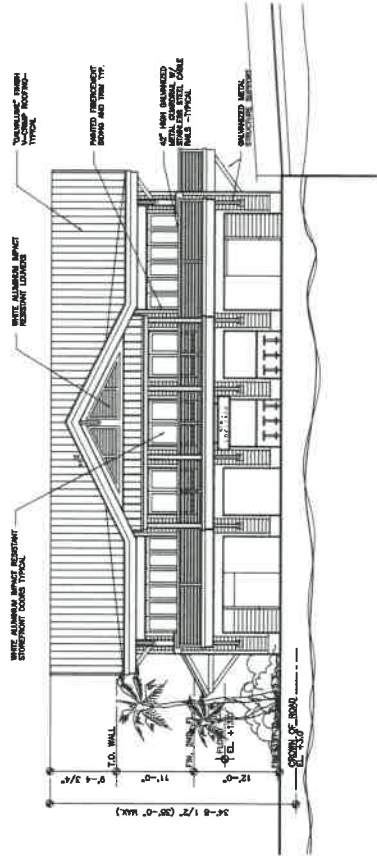


MALLORY
SQUARE
RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA



PROPOSED NORTH ELEVATION

SCALE: 1/8"=1'-0"



PROPOSED WEST ELEVATION

SCALE: 1/8"=1'-0"

DATE
08-03-10
08-09-10 JARC
08-07-10 HIRCHREY

REVISIONS

DRAWN BY
EMA

PROJECT
NUMBER
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MALLORY SQUARE RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA

**Revised Site Plans
Elevation with 5-12 roof**

**Revised Site Plans
Elevation with 6-12- all roofs**

WILLIAM P. HORN
ARCHITECT, P.A.

PREPARED BY:
KEY WEST,
FLORIDA
3944

TEL: 305-854-6444
FAX: 305-261-1903

LICENSE NO.
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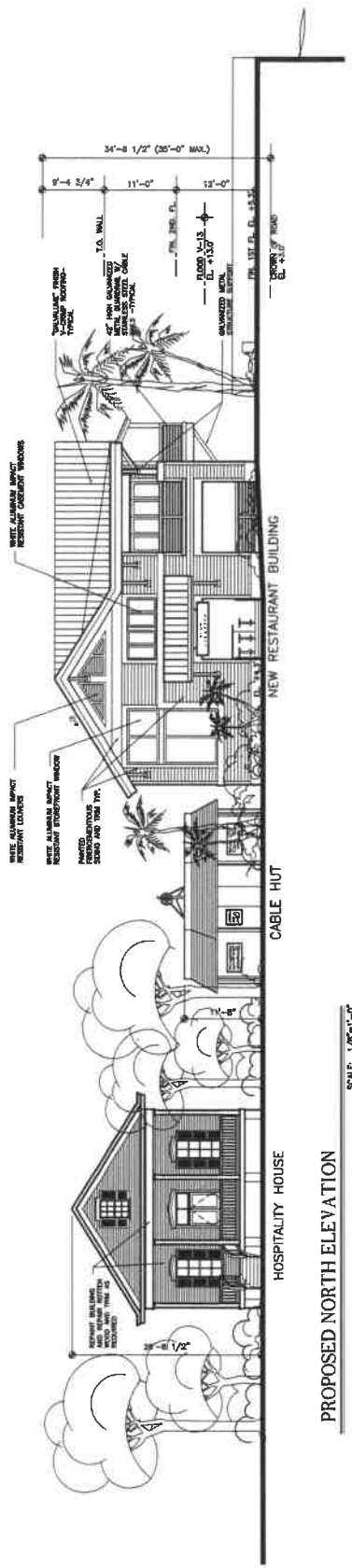
Setback.com
ARCHITECTS, P.L.L.C.
800 CHAMBERS ROAD, SUITE 100
BOCA RATON, FLORIDA
33433

MALLOTT
SQUARE
RESTAURANT
KEY WEST, FLORIDA

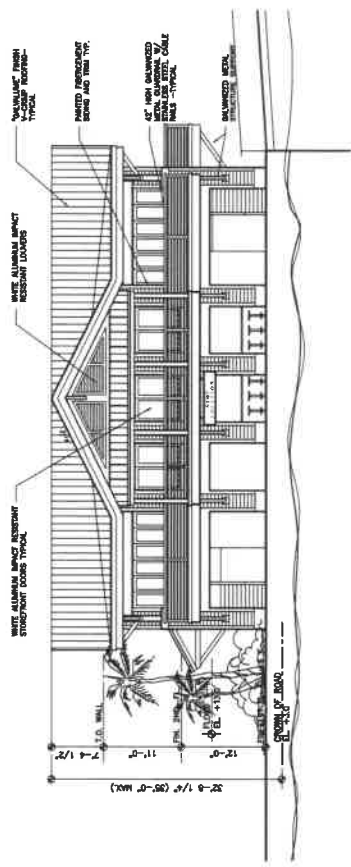
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DRAWN BY
08-31-10 HMC/REV.
REVISIONS

DESIGNED BY
EWA
PROJECT
NUMBER
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PROPOSED NORTH ELEVATION
SCALE: 1/8"=1'-0"

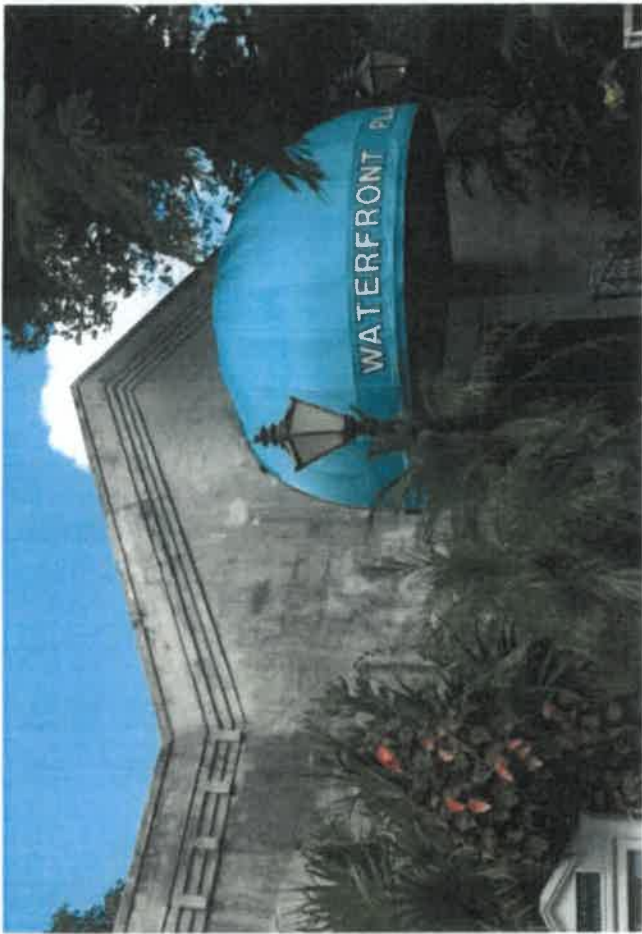


PROPOSED WEST ELEVATION
SCALE: 1/8"=1'-0"

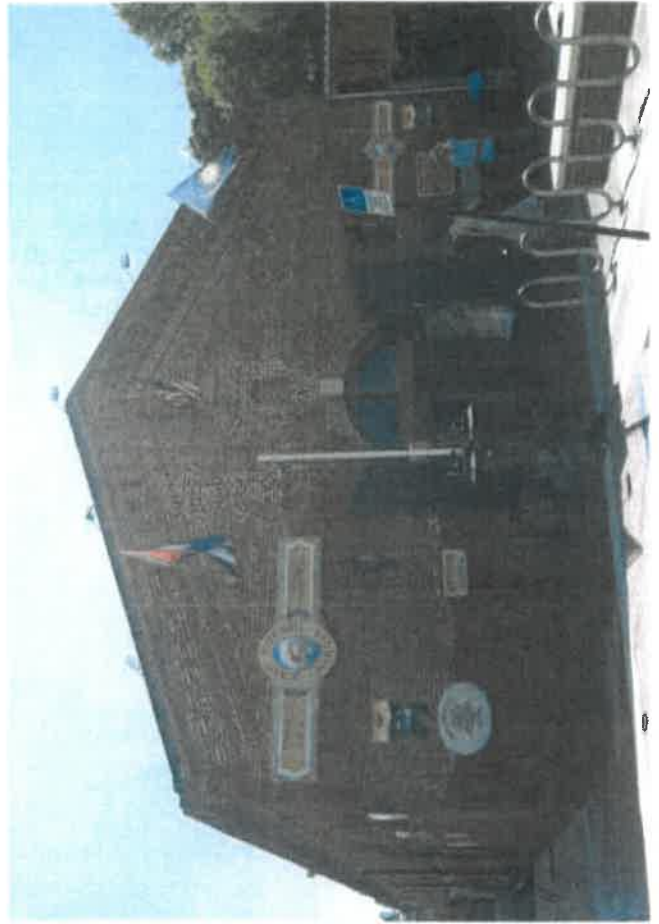
MALLOTT SQUARE RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA

**Additional Photos
of surrounding buildings
and their roofline**





SEP 23 2010
MONROE
LA





DEPT.
SEP 23 2010
KEY





Application



CITY OF KEY WEST Fax 809-3978
BUILDING DEPARTMENT

CERTIFICATE of APPROPRIATENESS

APPLICATION # 10-010355

OWNER NAME: TROPICAL SOUP COMP.

DATE: 7/31/10

OWNERS ADDRESS: 509 DUKAL ST.

PHONE #: 293-1895

APPLICANT'S NAME: WILLIAM P. HOAN ARCHITECT, P.A.

PHONE #: 296-8302

APPLICANT'S ADDRESS: 915 ETON ST.

ADDRESS OF CONSTRUCTION: MALLOM SQUARE # OF UNITS: 2

THERE WILL BE A FINAL INSPECTION REQUIRED UNDER THIS PERMIT

DETAILED DESCRIPTION OF WORK:

ADD HANDICAP RAMP TO HOSPITALITY HOUSE, ALL PAINT EXTENSION, NEW PAVING + LANDSCAPING, DEMOLITION OF ALL NON-HISTORIC ADDITIONS, DECKS TO CABLE HUT STRUCTURE, ADD NEW-2 STORY RESTAURANT BUILDING - SEE PLANS

Chapter 837.06 F.S.- False Official Statements- Whoever knowingly makes a false statement in writing with the intent to assist a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree punishable as provided for in s. 775.082 or s. 775.083

***** SEP 1 2010 *****

This application for Certificate of Appropriateness must precede applications for building permits, variances and development review approvals. Applications must meet or exceed the requirements outlined by the Secretary of the Interior's Standards for Rehabilitation and Key West's Historic Architectural Guidelines.

Once completed, the application shall be reviewed by staff for completeness and either approved or scheduled for presentation to the Historic Architectural Review Commission at the next available meeting. The applicant must be present at this meeting. The filing of this application does not ensure approval as submitted.

Applications that do not possess the required submittals will be considered incomplete and will not be reviewed for approval.

Date: 7/31/10
 Applicant Signature: _____

REQUIRED SUBMITTALS

<input checked="" type="checkbox"/>	TWO SETS OF SCALED DRAWINGS OF FLOOR PLAN, SITE PLAN AND EXTERIOR ELEVATIONS (for new buildings and additions)
<input type="checkbox"/>	TREE REMOVAL PERMIT (if applicable)
<input checked="" type="checkbox"/>	PHOTOGRAPHS OF EXISTING BUILDING (repairs, repairs, or expansions)
<input checked="" type="checkbox"/>	PHOTOGRAPHS OF ADJACENT BUILDINGS (new buildings or additions)
<input type="checkbox"/>	ILLUSTRATIONS OF MANUFACTURED PRODUCTS TO BE USED SUCH AS SHUTTERS, DOORS, WINDOWS, PAINT COLOR CHIPS, AND AWNING FABRIC SAMPLES

Staff Use Only

Date: _____

Staff Approval: _____

Fee Due: \$ _____

HISTORIC ARCHITECTURAL REVIEW APPLICATION

HISTORIC ARCHITECTURAL REVIEW COMMISSION USE ONLY

Approved _____

Denied _____

Deferred _____

Reason for Deferral or Denial:

HARC Comments:

*Not listed as contributing but cable not in historic
Ordinance for demolition Sec. 102-218
Guidelines for additions alterations and
new construction (pages 34-38).*

Limit of Work Approved, Conditions of Approval and/or Suggested
Changes:

Date: _____

Signature: _____

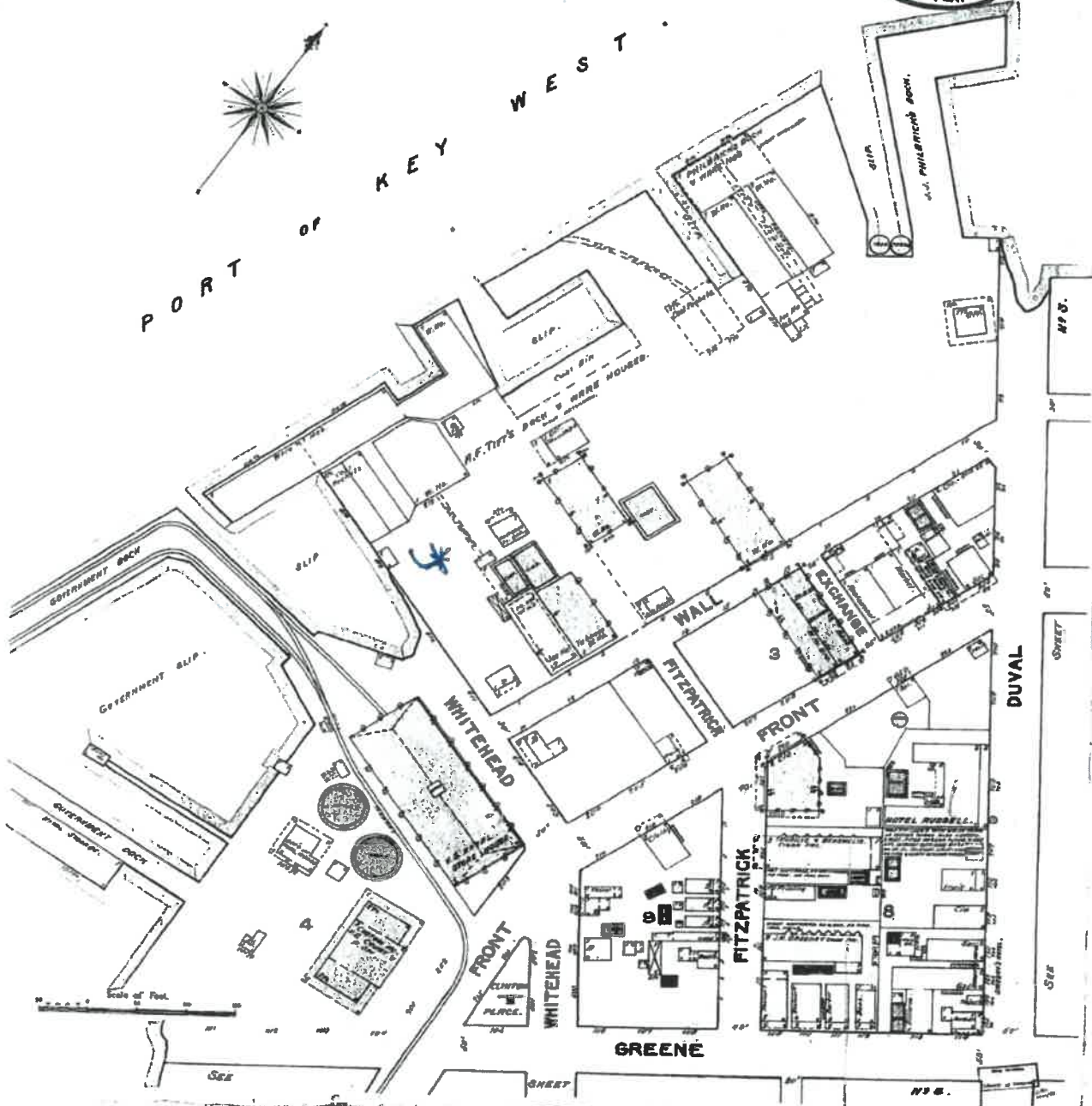
Historic Architectural
Review Commission

Sanborn Maps

APRIL 1892
KEY WEST
FLA.

2

PORT OF KEY WEST

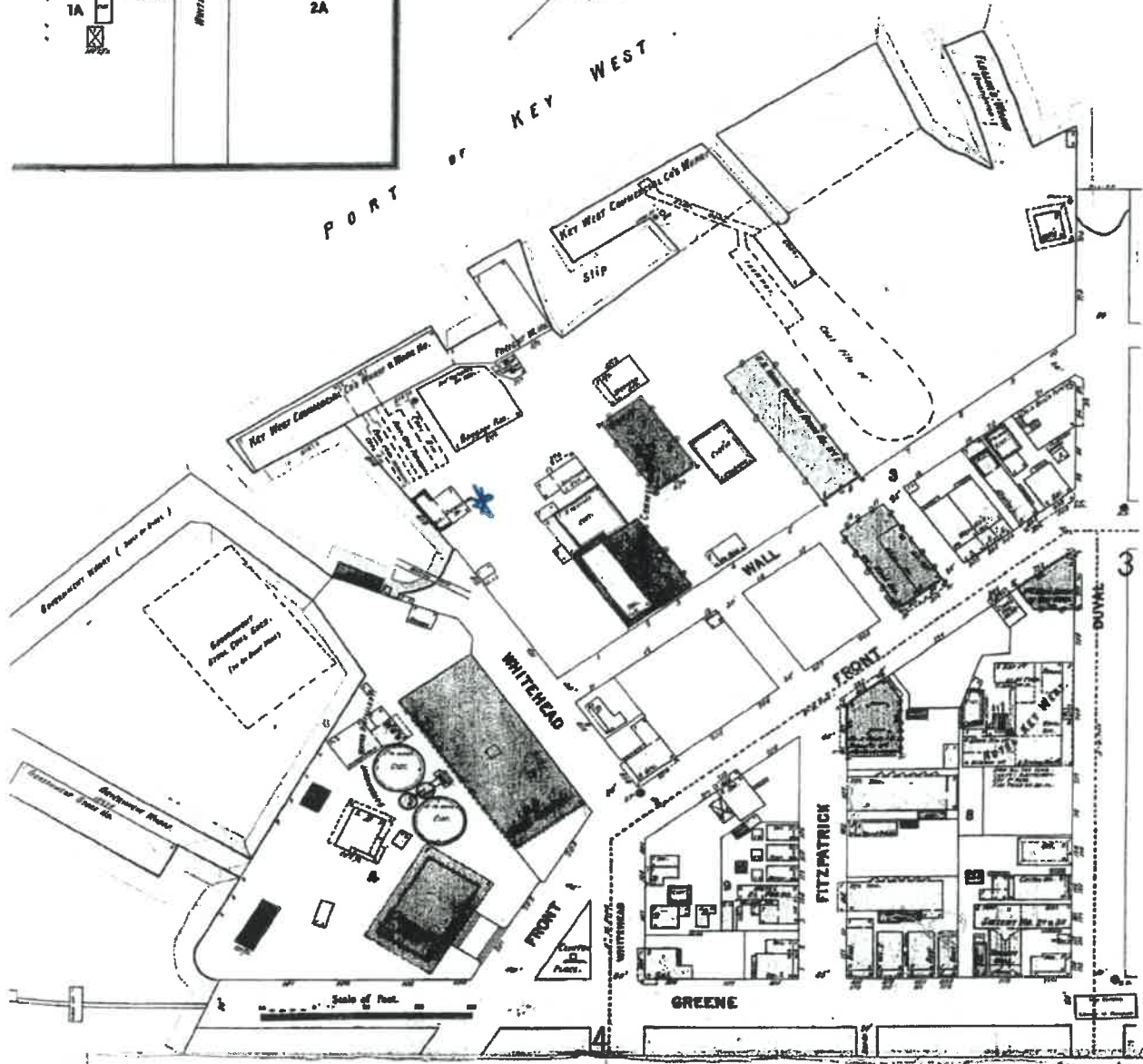
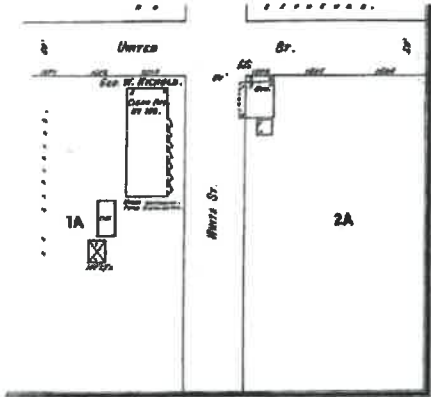


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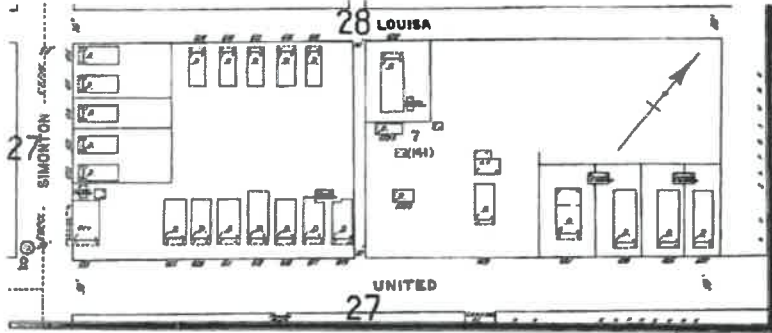


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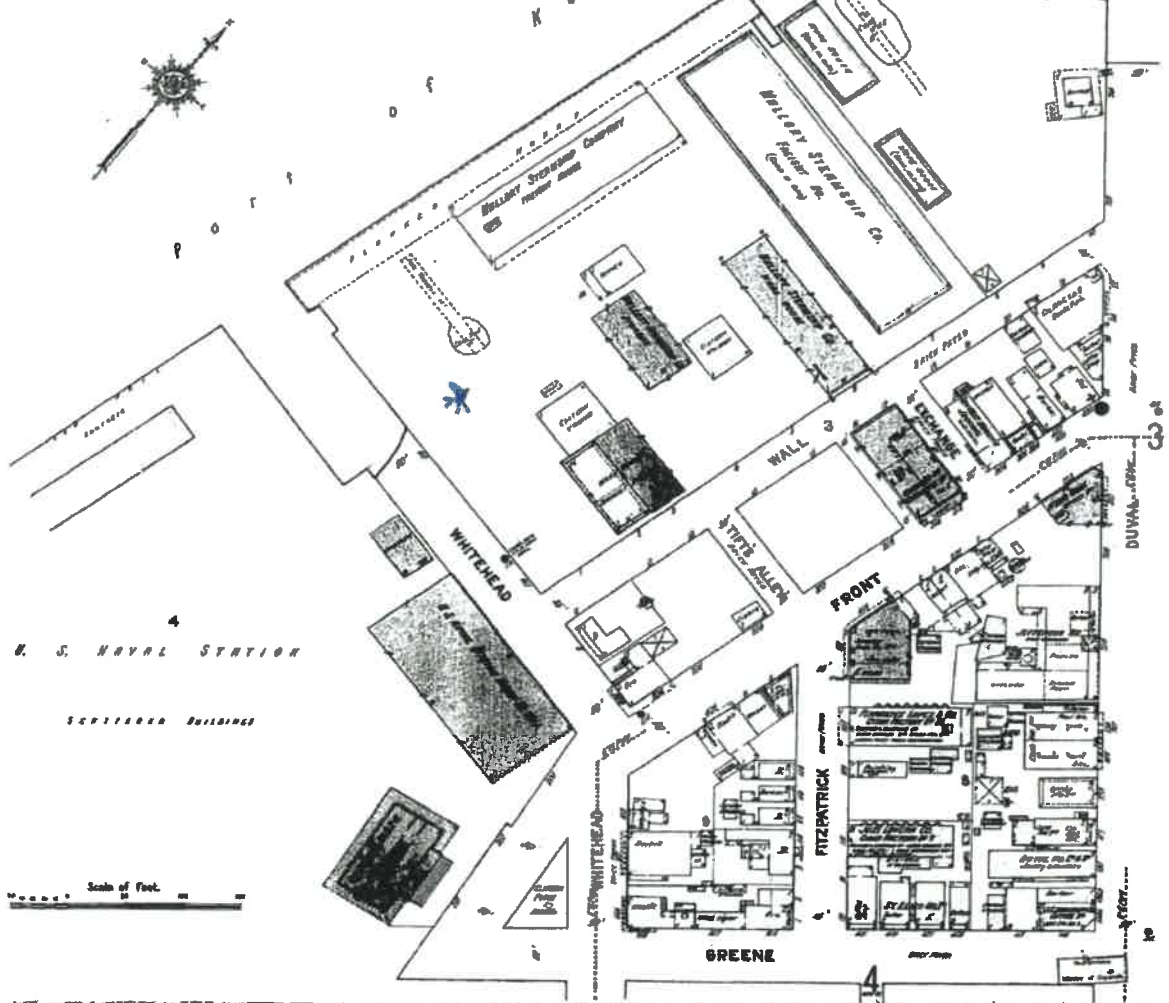
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APR 22.
KEY WEST
FLA.

2



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 1:24,000 Scale

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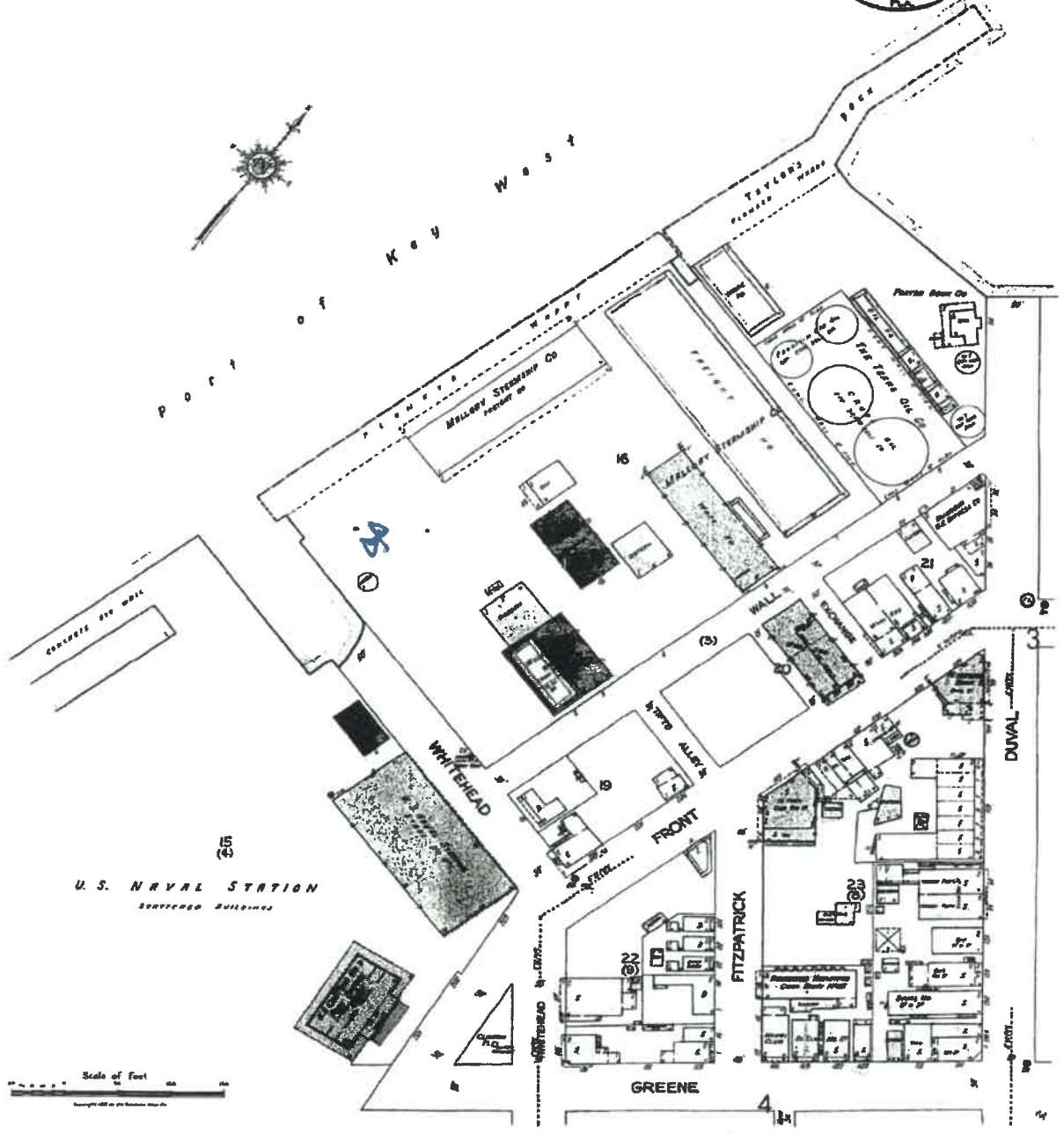
22

KEY WEST
FLA.

21



Port of Key West



U.S. NAVAL STATION
STEVEDORE BUILDINGS

Scale of Feet
0 100 200



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2

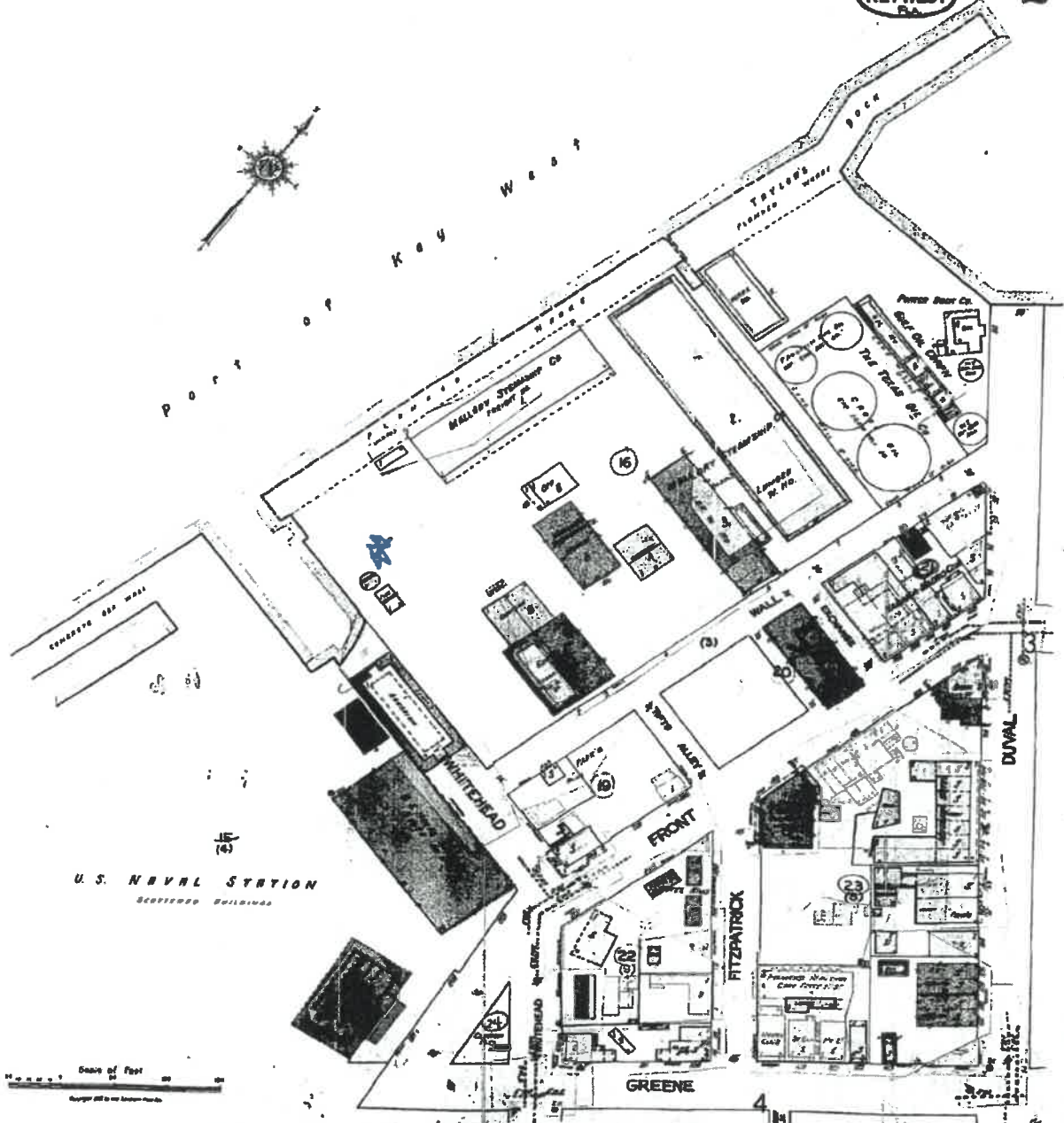
PLA - 505

FRANKS KEY WEST Fla.

2



PORT OF KEY WEST



U.S. NAVAL STATION
SCOTT'S BUILDINGS

Scale of Feet
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Project Photos



EXISTING DECK



EXISTING ENTRY



VIEW FROM MALCOLM SQUARE



EXISTING RESTAURANT BUILDING



VIEWS OF OPEN DECK
+ WALKWAY TOWARDS
WATER





EXISTING CISTERNS

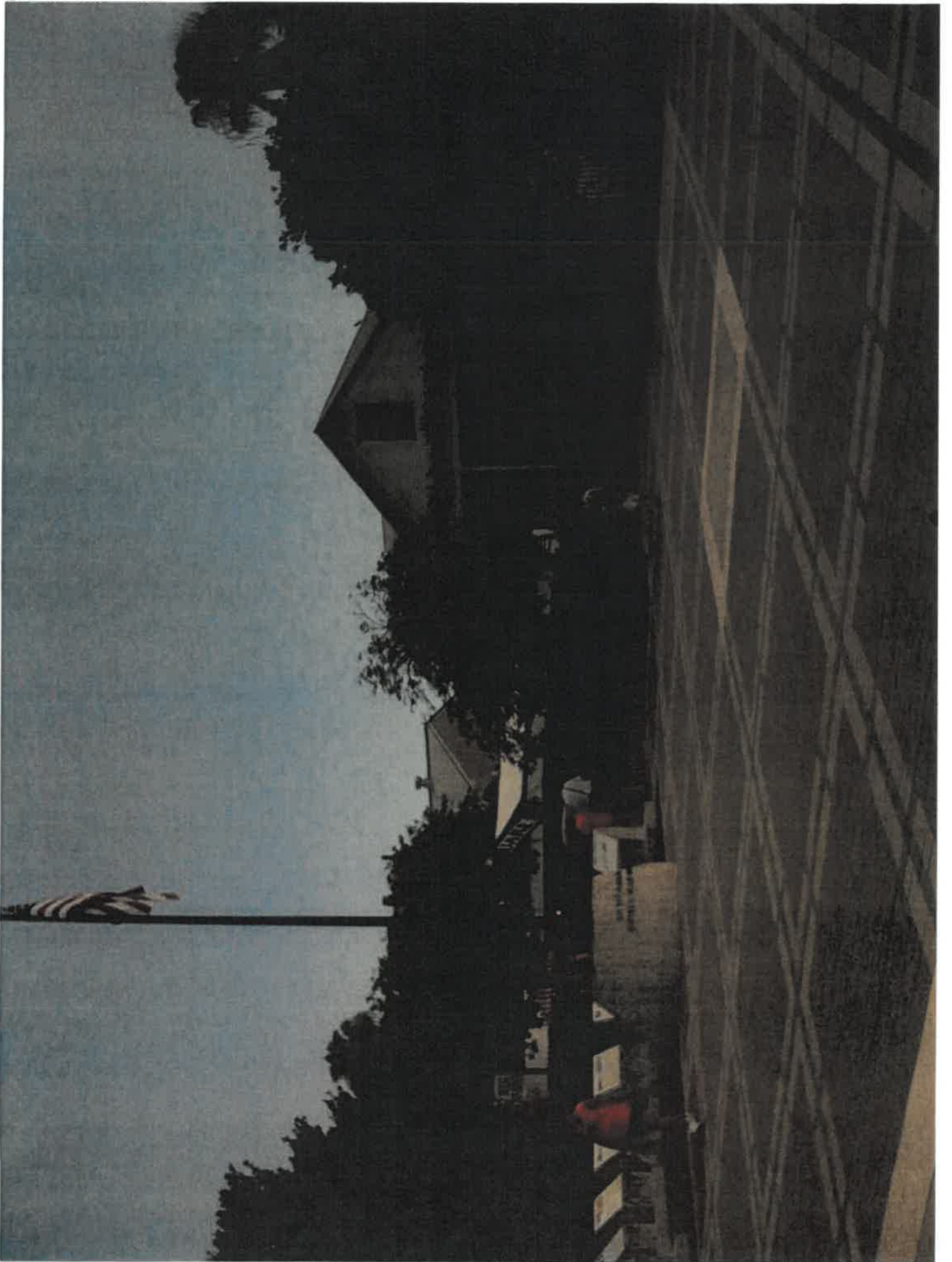


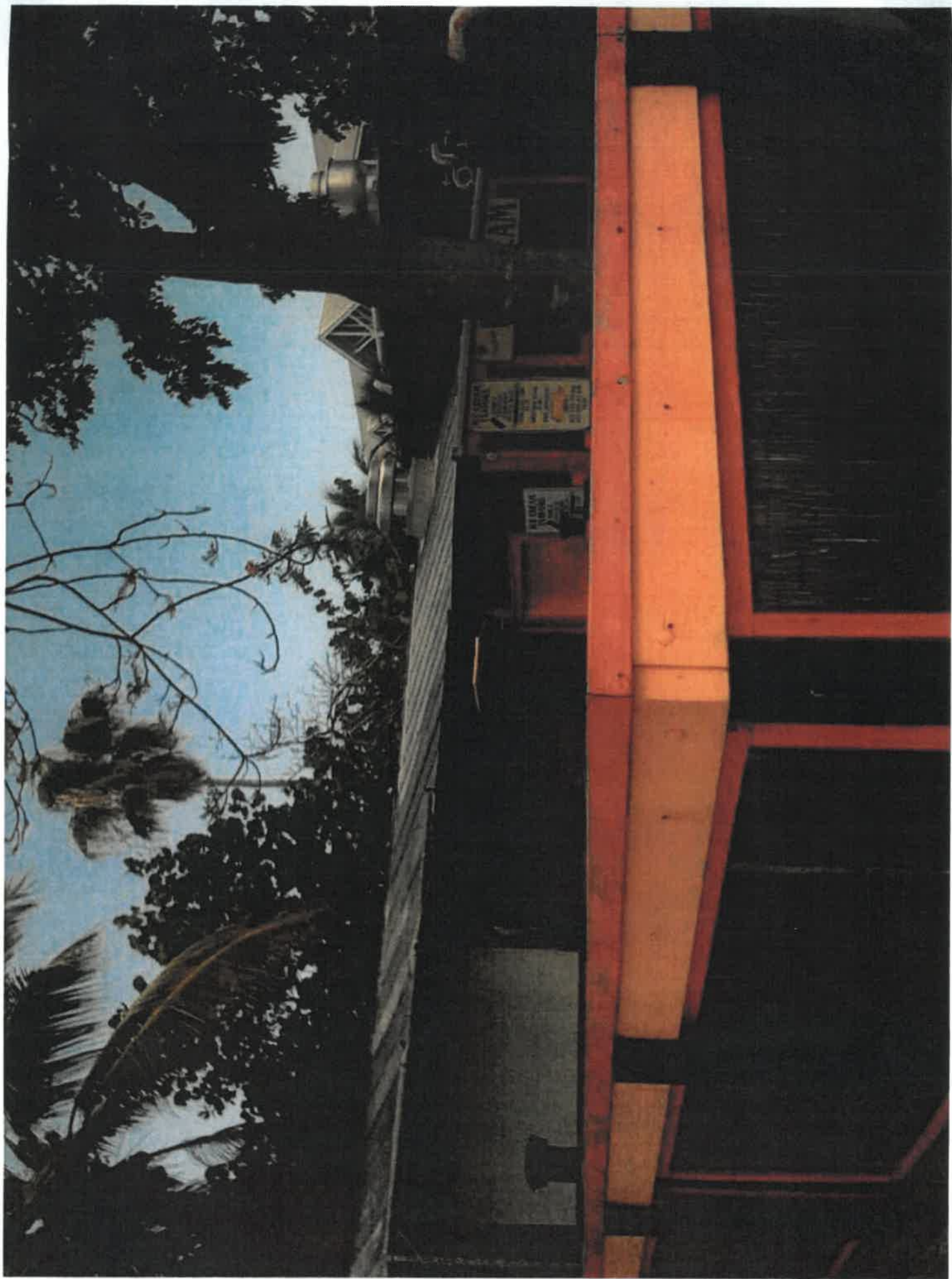


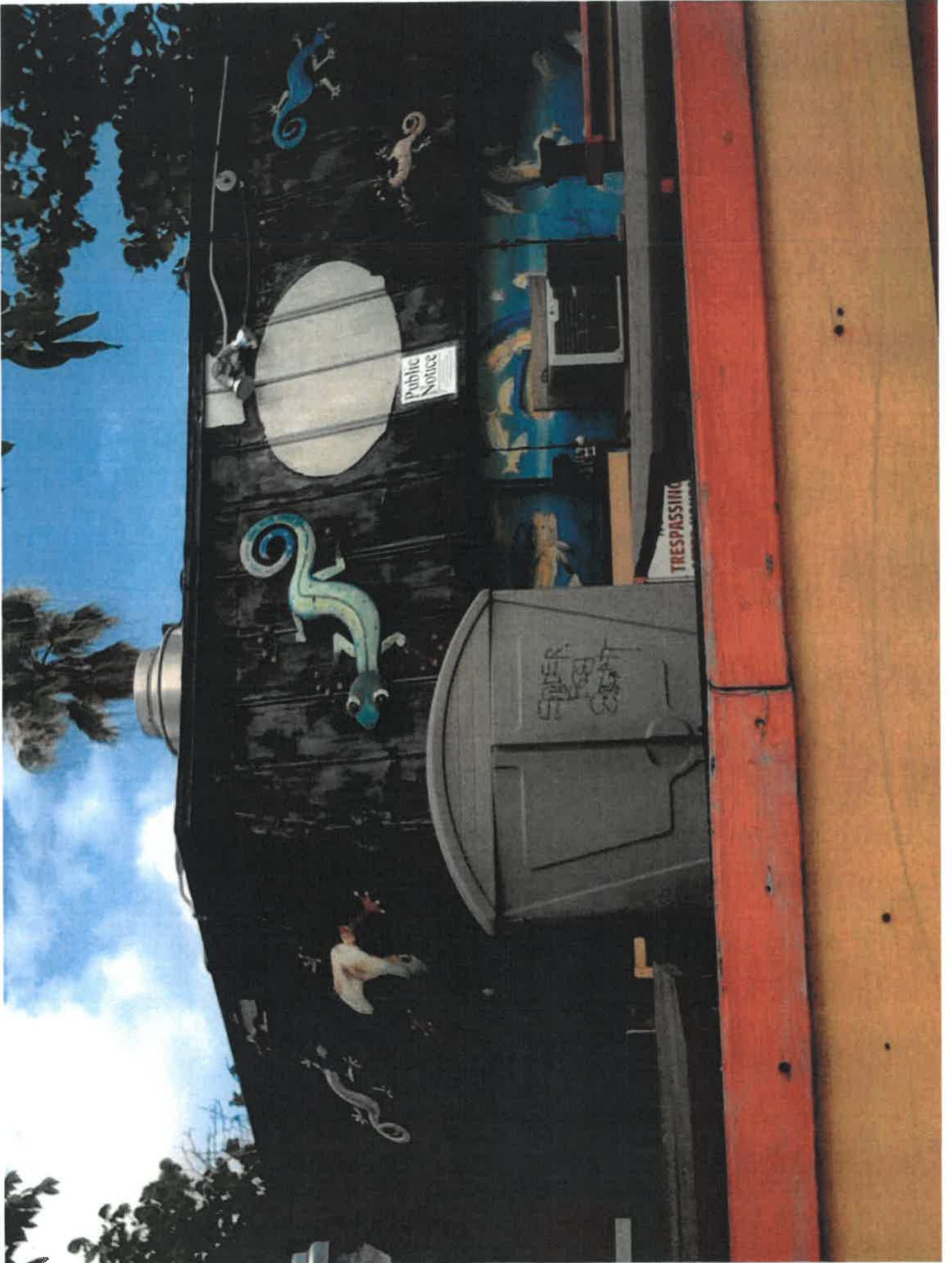
EXISTING BROKEN/ROTTED DECK BEHIND CISTERN













Public
Notice



FROZEN DRINKS

RESTROOMS

Public Notice

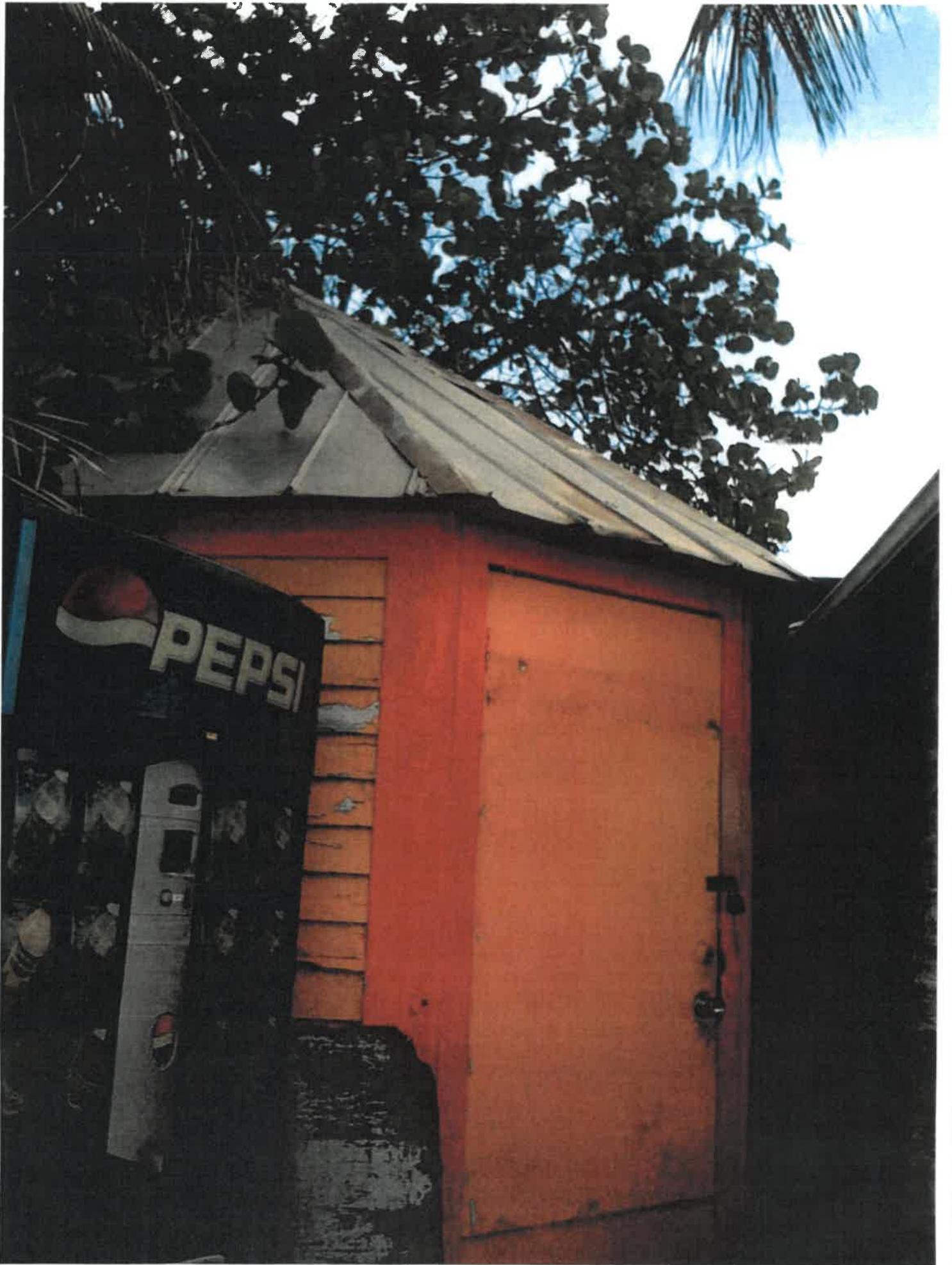
CAUTION. WATCH YOUR STEP.

1. ICE CREAM
2. FRESHLY BAKED
3. NATURAL MACARONS
4. SPANISH BREAD
5. FRESH FRUIT

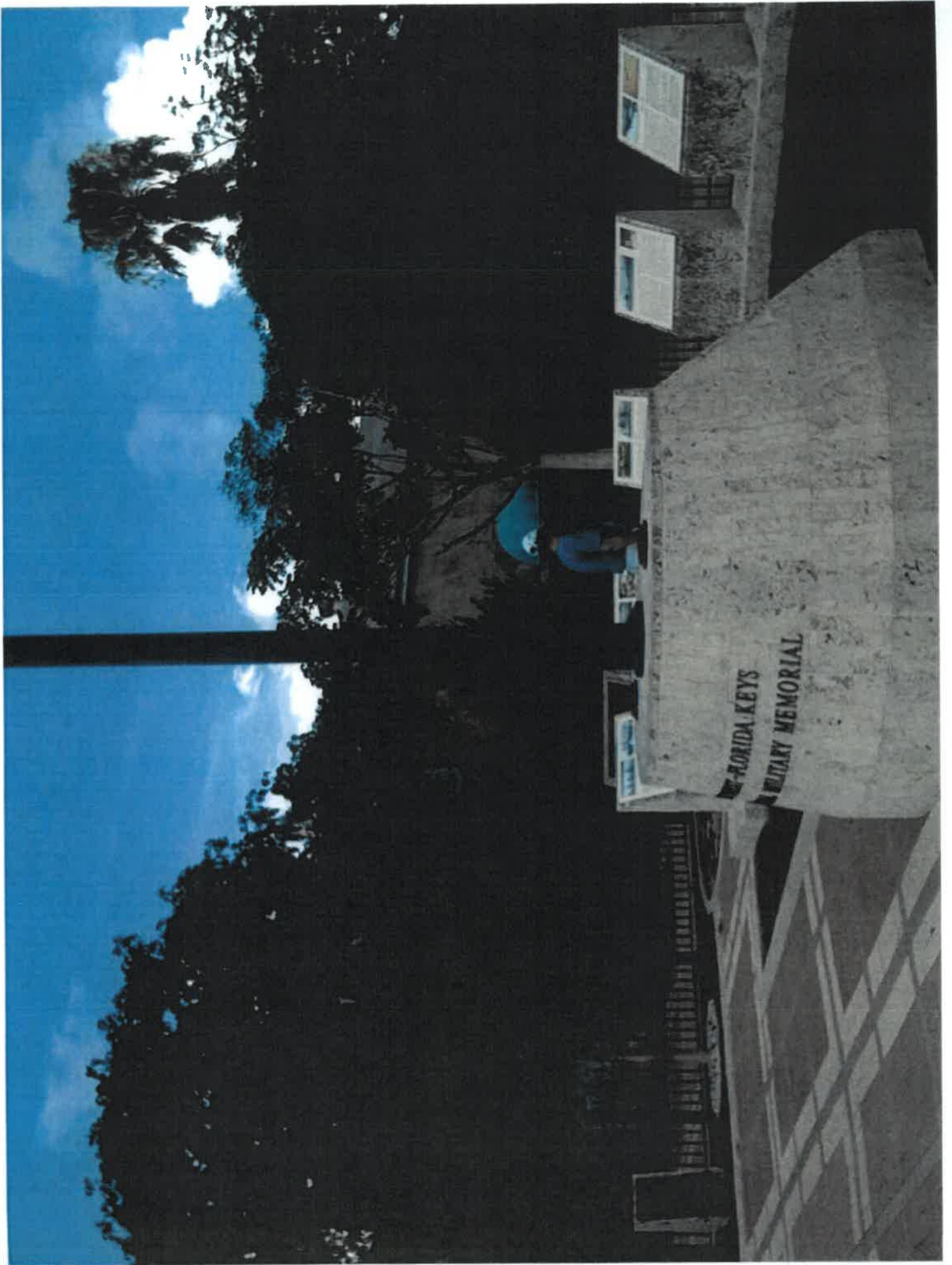


DO NOT
LIFT





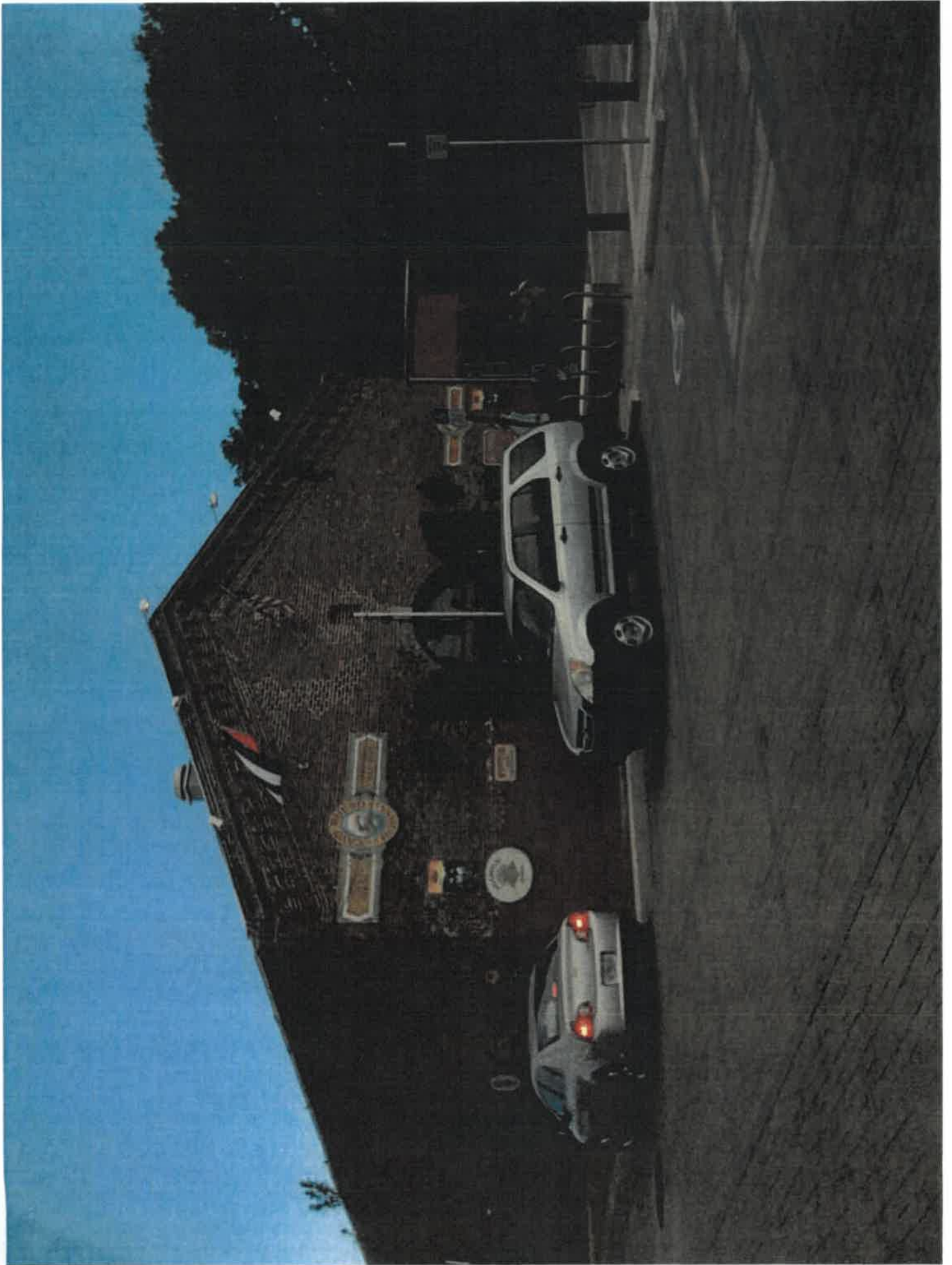




NEW FLORIDA KEYS
MILITARY MEMORIAL







Site Plans

WILLIAM F. HORN
ARCHITECT, P.A.

110 EASTERN ST.
KEY WEST,
FLORIDA
32044

TED ANDERSON
P.L.L.C.
P.O. BOX 206-0303
MIAMI, FLORIDA
33101

LICENSE NO.
AA 108284

Southwest
FLORIDA REGISTERED P.E.

180 CANINE BOLI PAVO
MALLORY WEST, FLORIDA
32044
C.A. 108284

MALLORY
SQUARE
RESTAURANT
KEY WEST, FLORIDA

SCALE

DATE
08-08-10
08-08-10
08-08-10
08-08-10

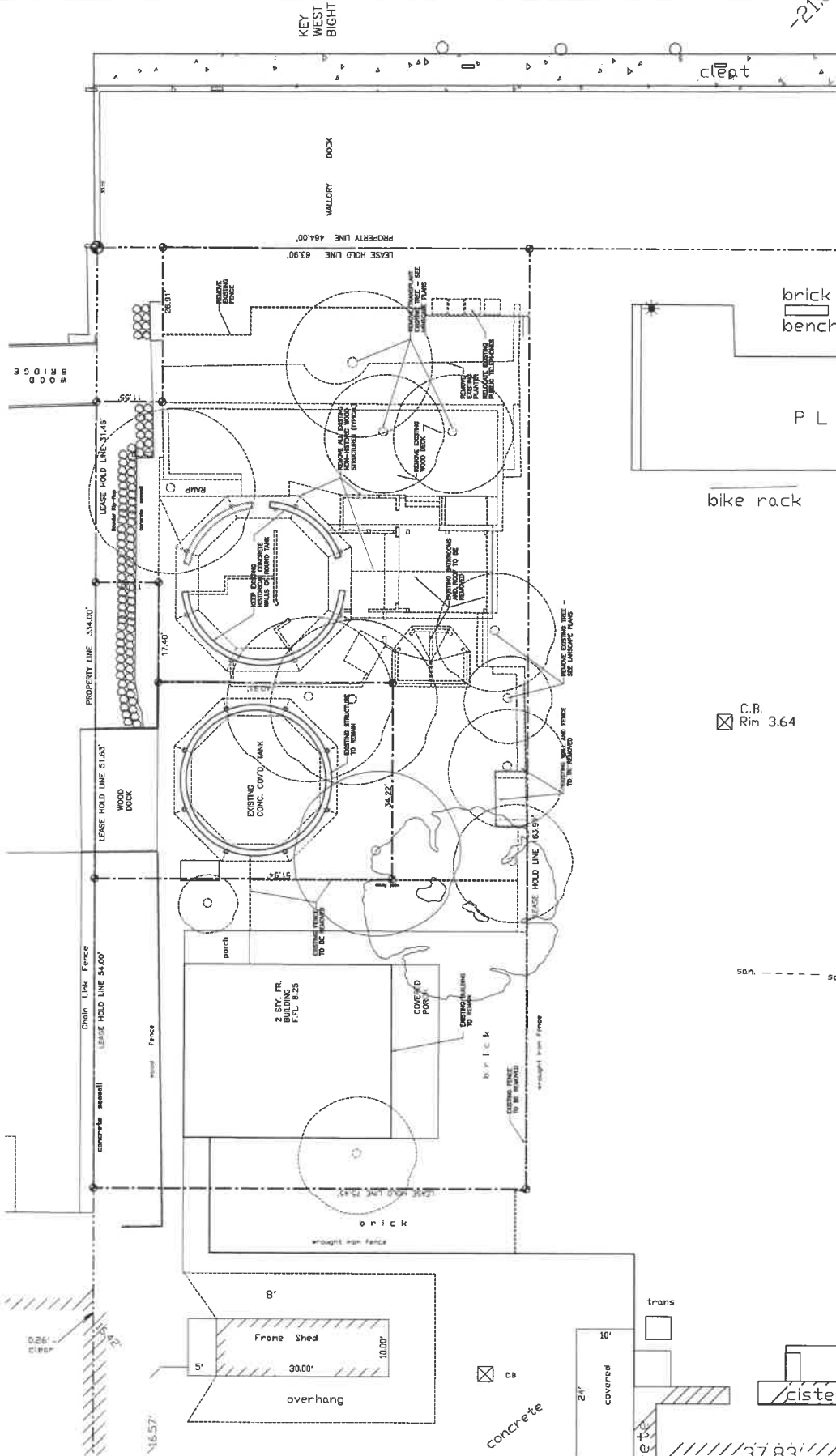
DATE
08-08-10
08-08-10
08-08-10
08-08-10

REVISIONS

DRAWN BY
LMA

PROJECT
NUMBER
1006

D-1



⊗ C.B.
R/S 3.64

50' --- 50'

SCALE: 1/8"=1'-0"

DEMOLITION PLAN



MALLORY SQUARE RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA

WILLIAM P. HORN
ARCHITECT, P.A.

REGISTRATION:
KEY WEST
FLORIDA
2004

TEL: 305-296-0022
FAX: 305-296-0021
LICENSE NO.
A-1100000

Seibelman
PAUL E. SEIBELMAN, P.E.
11000 N.W. 11TH AVENUE
SUITE 200
MIAMI, FLORIDA 33150
REGISTERED PROFESSIONAL ENGINEER
STATE OF FLORIDA
E.C. 12000

MALLORY
SQUARE
RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA

SEAL

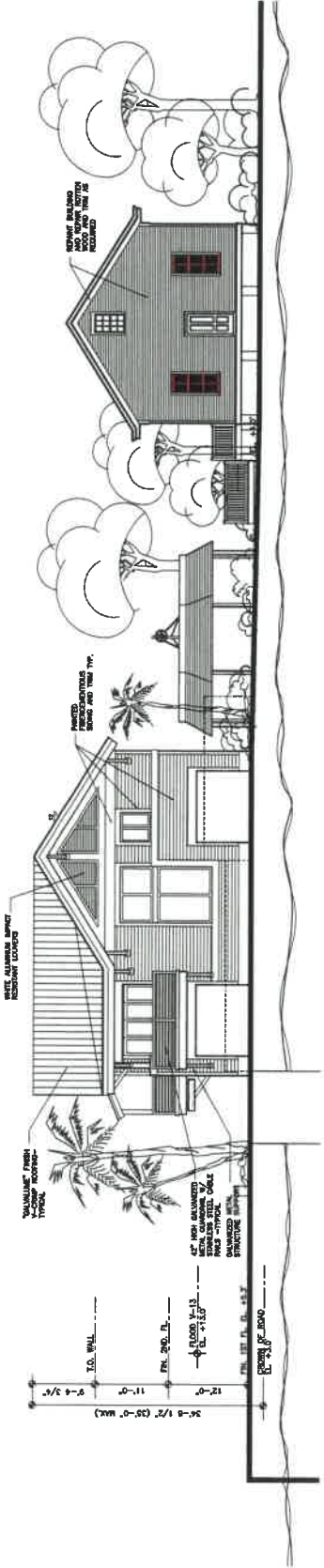
DATE:
06-03-10
08-05-10
09-03-10

HARC
HARC REV.
HARC REV.

REVISIONS

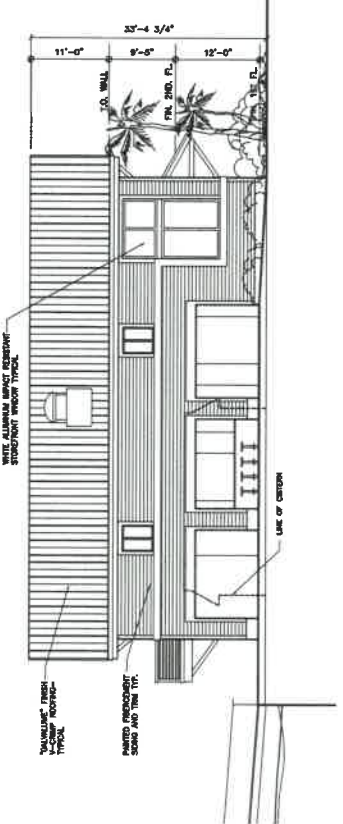
DRAWN BY:
EMA

PROJECT
NUMBER:
1006



PROPOSED SOUTH ELEVATION

SCALE: 1/8"=1'-0"



PROPOSED EAST ELEVATION

SCALE: 1/8"=1'-0"

MALLORY SQUARE RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA

WILLIAM P. HORN
ARCHITECT, P.A.

185 EASTON ST.
KEY WEST,
FLORIDA
32090

TEL: 305-236-2467
FAX: 305-236-1030

LICENSURE NO.
A-14028-04

Seal

PAUL R. BERNER, P.E.
PAUL R. BERNER, P.E.
REGISTERED PROFESSIONAL ENGINEER
REGISTERED IN THE STATE OF FLORIDA
CLASS. NO. 35000
EXP. 12/31/2008

MALLORY
SQUARE
RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA

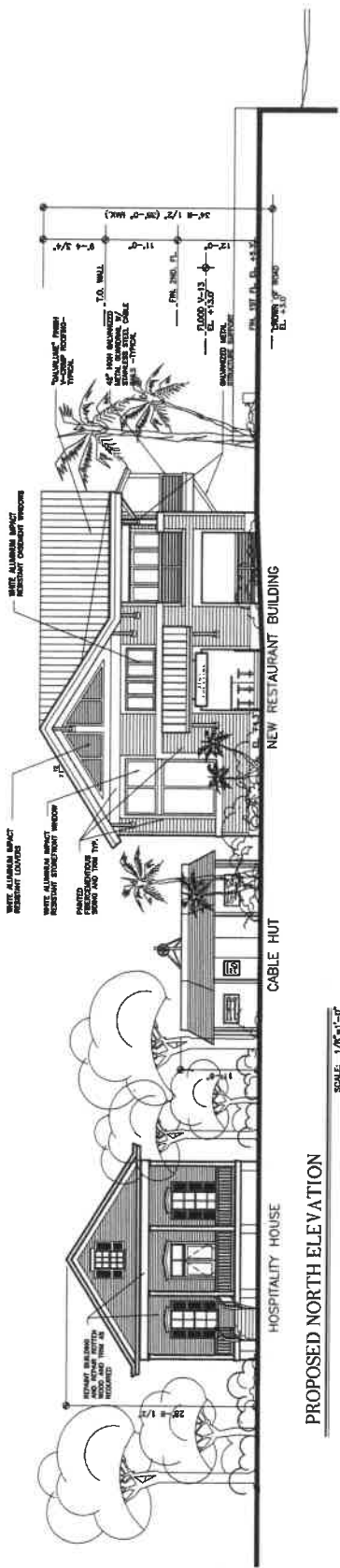
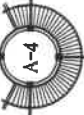
SEAL

DATE:
06-03-10
08-09-10 HARC
08-01-10 TARC REV.

REVISIONS

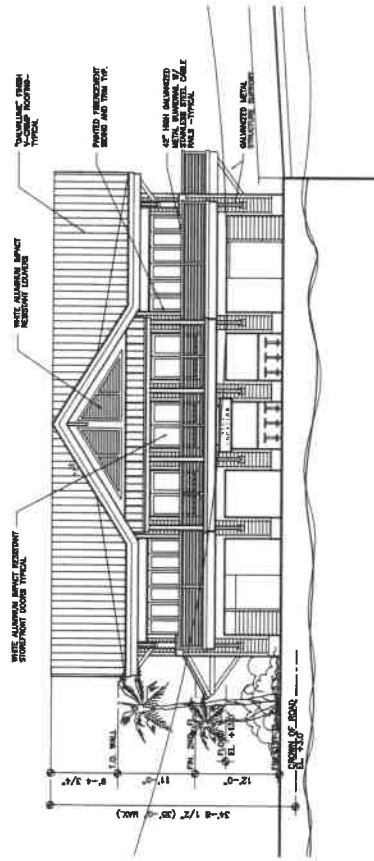
DRAWN BY:
EMA

PROJECT
NUMBER:
1006



PROPOSED NORTH ELEVATION

SCALE: 1/8"=1'-0"



PROPOSED WEST ELEVATION

SCALE: 1/8"=1'-0"

MALLORY SQUARE RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA

WILLIAM P. HORN
ARCHITECT, P.A.

156 EASTERN ST.
KEY WEST,
FLORIDA
3090

TEL: 305-236-6092
FAX: 305-236-6151

LICENSE NO.
A4 18029-00



PAUL L. BRINNER, P.E.
100 CHANCE BOULEVARD,
MIRAGE PALM, FLORIDA
33558
LGA 172584

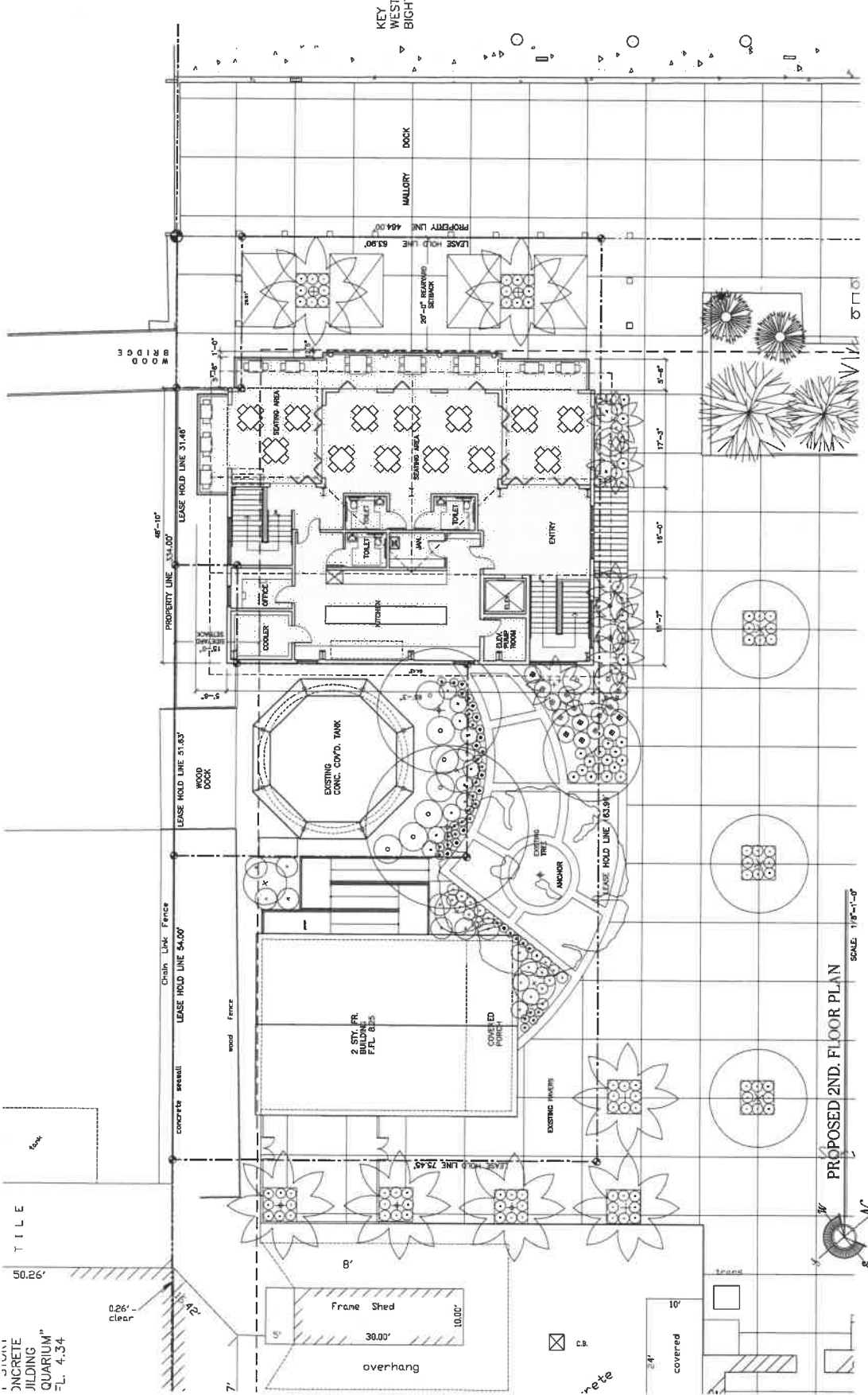
MALLORY
SQUARE
RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA

SCALE

DATE
06-03-10
08-09-10 MARC
09-09-10 THIRCIENY

REVISIONS

DRAWN BY
LMA
PROJECT
NUMBER
1006



PROPOSED 2ND FLOOR PLAN
SCALE: 1/8"=1'-0"

MALLORY SQUARE RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA

CONCRETE
BUILDING
QUARUM"
FL. 4.34

TITLE
50.26'

0.26'
clear

Frame Shed
30.00' x 10.00'

concrete

covered



WILLIAM P. HORN
ARCHITECT, P.A.

105 EASTON ST.
KEY WEST,
FLORIDA
34904

TEL: 305-246-4444
FAX: 305-246-1000

LICENSE NO.
A 1 000300



MALLORY
SQUARE
RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA.

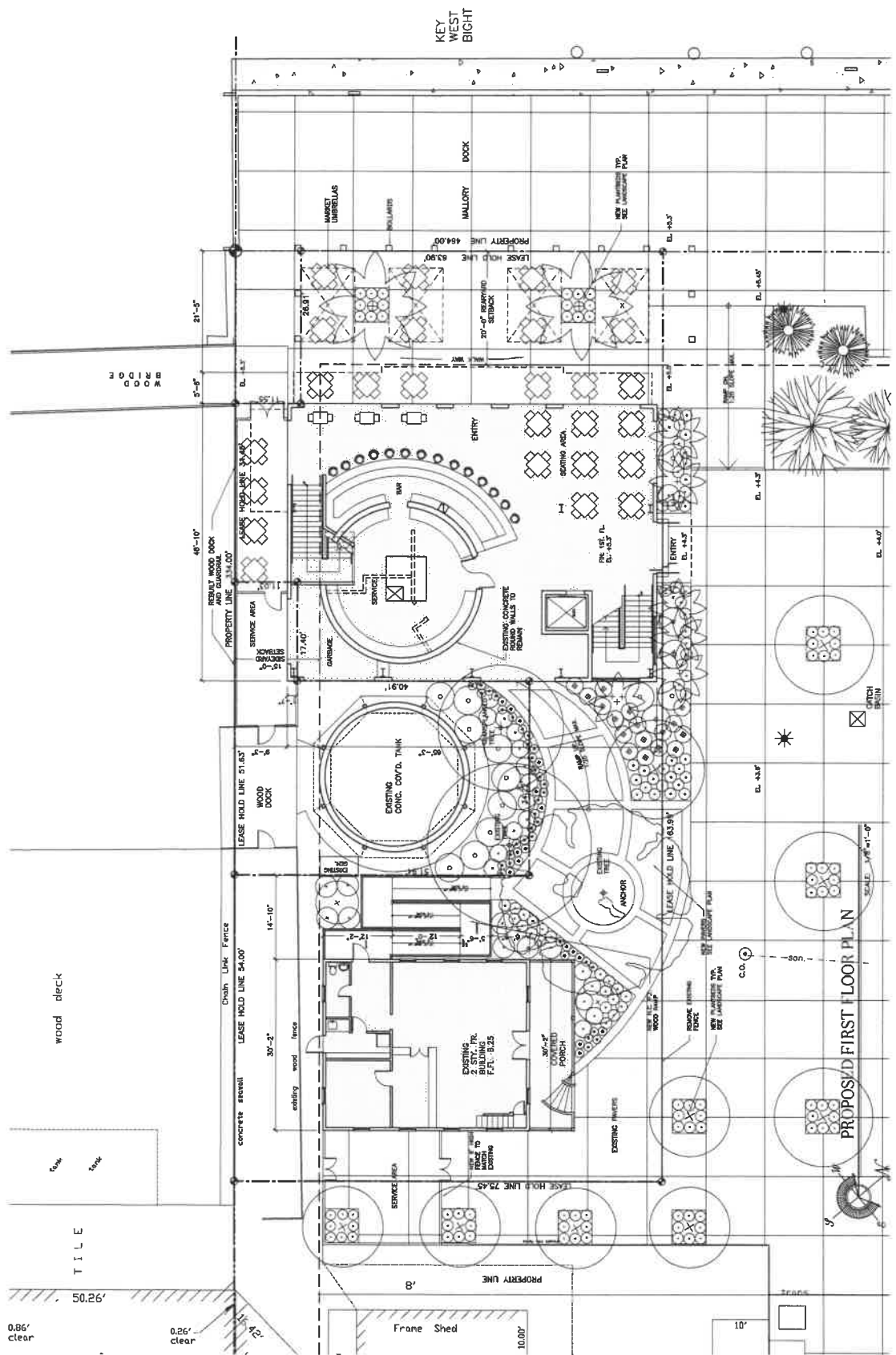
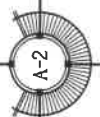
SCALE

DATE
06-05-10
06-05-10 HMC
06-01-10 HMC REV.

REVISIONS

DRAWN BY
EMA

PROJECT
NUMBER
1006



MALLORY SQUARE RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA

WILLIAM P. HORN
ARCHITECT, P.A.

16 EAST OAK ST.
KEY WEST,
FLORIDA
3096

THE HORN GROUP
P.L.L.C. 2000
FAYATTOURDESIGN
ARCHITECTS

Seaboard
INCORPORATED
P.A.
1000 S. PALM BLVD.
MIAMI BEACH, FLORIDA
33139
REGISTERED PROFESSIONAL ENGINEER
STATE OF FLORIDA
NO. 12404

MALLORY SQUARE
RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA

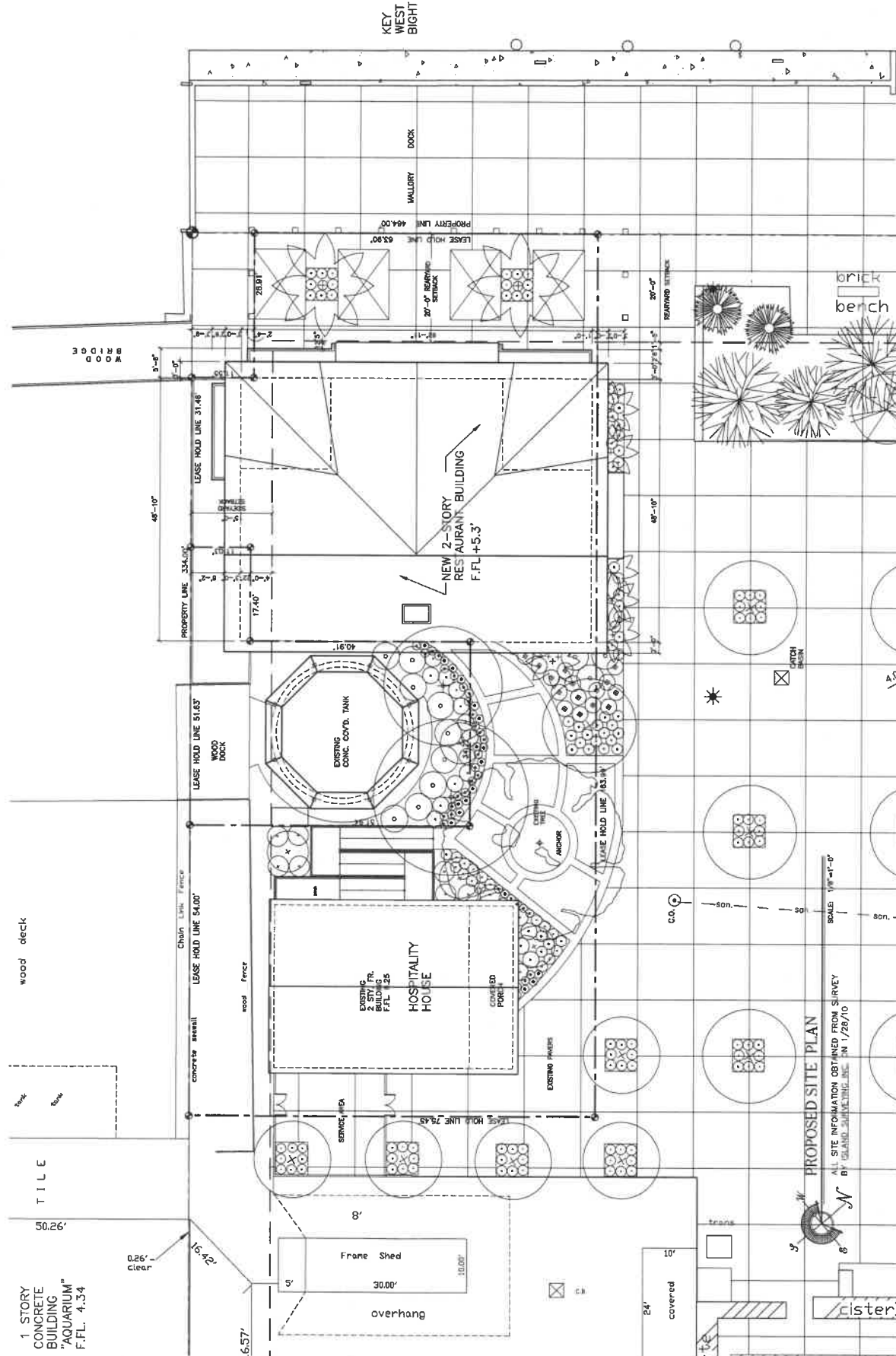
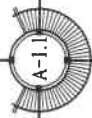
SCALE

DATE
06-08-10
06-08-10
06-08-10
06-08-10

REVISIONS

DRAWN BY
LMA

PROJECT
NUMBER
1006



PROPOSED SITE PLAN
ALL SITE INFORMATION OBTAINED FROM SURVEY
BY QUINN SURVEILLING, INC. ON 1/26/10
SCALE: 1/8"=1'-0"

MALLORY SQUARE RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA

A-1.1

WILLIAM P. HORY
ARCHITECT, P.A.

REGISTRAR
KEY WEST,
FLORIDA
33400

TEL: 888-266-7893
FAX: 888-266-0283

LICENSE NO.
A119890



STATE BOARD OF PROFESSIONAL ENGINEERS AND ARCHITECTS
FLORIDA
190 CHAMBERLAIN BLVD.
TALLAHASSEE, FLORIDA 32310

MALLORY
SQUARE
RESTAURANT
KEY WEST, FLORIDA

SCALE

DATE
06-20-10
08-21-10
08-31-10
HARC
HARC REV.
HARC REV.

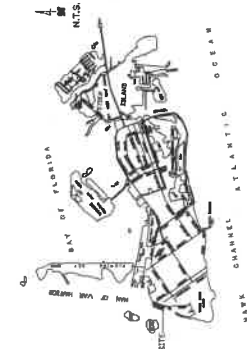
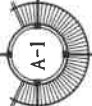
REVISIONS

DRAWN BY

EMA

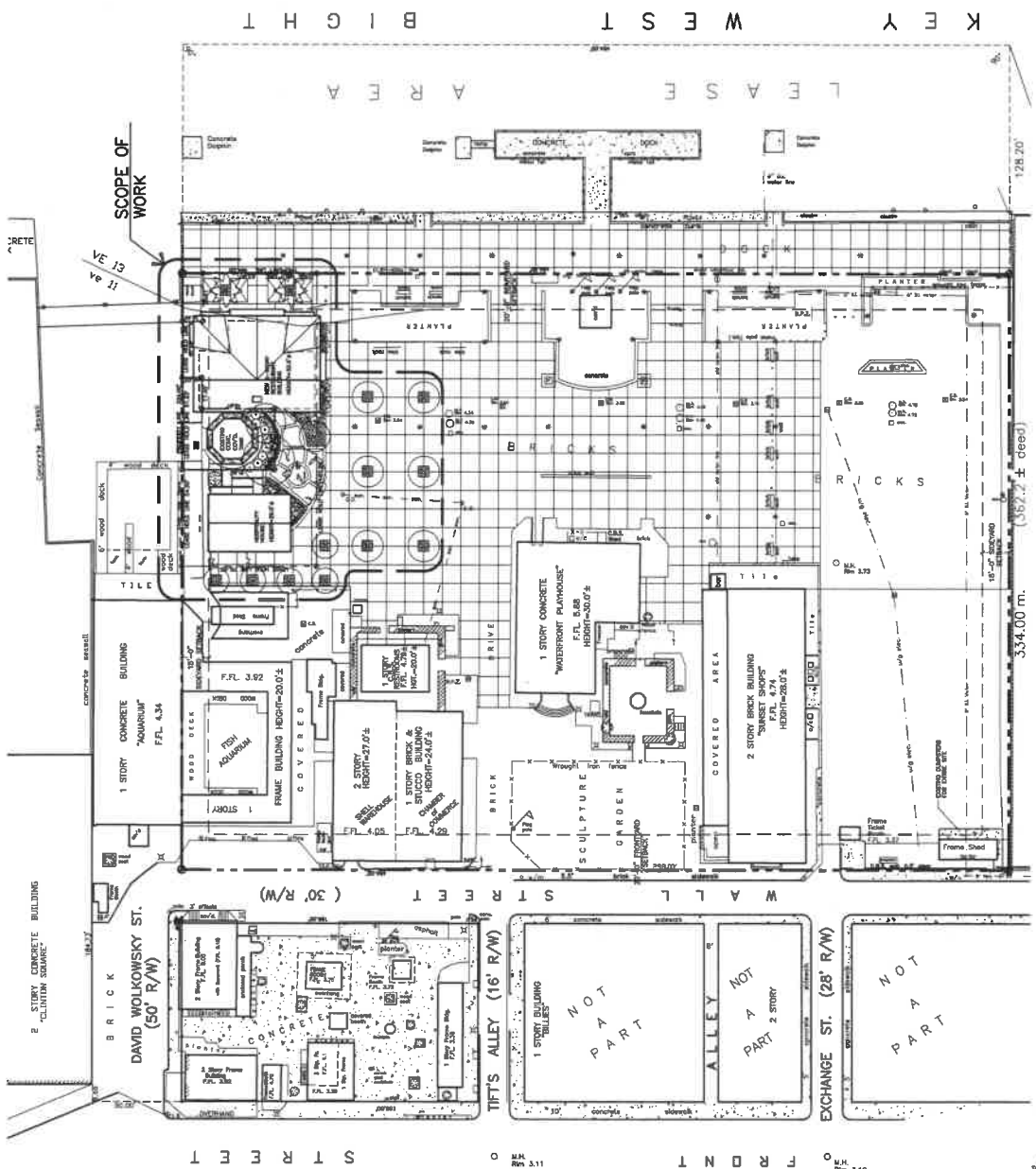
PROJECT NUMBER

1006



LOCATION MAP
City of Key West &
Stack Island

SITE DATA
SITE AREA: 154,000 S.F. (3.58 ACRES)
LAND USES: RES. (PUBLIC SERVICES INC. RECREATION & OPEN SPACE)
FLOOD ZONE: V-1 / V-1S
SETBACKS:
FRONT = 20.0'
REAR = 20.0'
COASTAL SETBACKLINE = 50.0'



PROPOSED SITE PLAN
ALL SITE INFORMATION OBTAINED FROM SURVEY
BY ISLAND SURVEYING, INC. ON 1/28/10
SCALE: 1"=50'-0"

MALLORY SQUARE RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA

A-1

Noticing

Public Notice

The Key West Historic Architectural Review Commission will hold a public hearing at **3:00 p.m., September 14, 2010, at City Commission Chamber, Old City Hall, 510 Greene Street, Key West, Florida.**

The purpose of the hearing will be to consider a request for

MAJOR DEVELOPMENT PLAN

ADD HANDICAP RAMP TO HOSPITALITY HOUSE, REPAINT EXTERIOR, NEW PAVEMENT AND LANDSCAPING. REMOVAL OF EXISTING NON HISTORIC FRAME ADDITIONS AT EXISTING RESTAURANT. ADD NEW TWO STORY RESTAURANT BUILDING.

Applicant: Architect William P. Horn

If you wish to see the application or have any questions, you may visit the Planning Department, Historic Preservation Division, during regular office hours at 3140 Flagler Avenue, call 809-3973 or visit our website at www.keywestcity.com.



HISTORICAL STRUCTURE FORM

Electronic Version 1.1.0

Site # MO03426

Recorder # _____

Field Date _____

Form Date _____

Form No 200402

Form No = Field Date (YYYYMM)

First Site Form Recorded for this Site? NO

GENERAL INFORMATION

Site Name (address if none) CABLE TANK Multiple Listing (DHR only) _____

Other Names _____ >> _____

Survey or Project Name Key West Historic Resources Survey Survey# _____

National Register Category Building(s)

LOCATION & IDENTIFICATION

Address

Street No.	Direction	Street Name	Street Type	Direction Suffix
<u>UNSPECIFIED</u>		<u>MALLORY</u>	<u>Square</u>	<u>Unknown direction</u>

Cross Streets (nearest/ between) MALLORY SQUARE

City/Town (within 3 miles) KEY WEST In Current City Limits? YES

County MONROE Tax Parcel #(s) UNKNOWN

Subdivision Name _____ Block _____ Lot _____

Ownership Public-unspecified

Name of Public Tract (e.g., park) _____

Route to (especially if no street address) SOUTH SIDE OF MALLORY SQUARE NEXT TO HOSPITALITY HOUSE

USGS 7.5' Map Name _____ Publication Date KEY WEST, 1971

Township: _____ Range: _____ Section: _____ 1/4 section: 67S ; 25E ; 34 ; UNBP

Irregular Section Name: UNSPECIFIED

Landgrant _____

UTM: Zone 0 Easting 0 Northing 0

Plat or Other Map (map's name, location) _____

DESCRIPTION

Style Masonry Vernacular Other Style _____

Exterior Plan Other Other Exterior Plan ROUND

Number of Stories 1

Structural System(s) Masonry - General

Other Structural System(s) _____

Foundation Type(s) Slab

Other Foundation Types _____

Foundation Material(s) Other

Other Foundation Material(s) CONCRETE

Exterior Fabric(s) Stucco

Other Exterior Fabric(s) _____

Roof Type(s) Unspecified

Other Roof Type(s) _____

Roof Material(s) Unspecified

Other Roof Material(s) _____

Roof Secondary Structure(s) (dormers etc) Not applicable

Other Roof Secondary Structure(s) _____

Number of Chimneys 0

Chimney Material Not applicable

Other Chimney Material(s) _____

Chimney Location(s) NOT APPLICABLE

HISTORICAL STRUCTURE FORM

8W003426

DESCRIPTION (continued)

Window Descriptions N/A

Main Entrance Description (stylistic details)

Porches: #open _____ #closed _____ #inclosed _____ Location(s) _____

Porch Roof Types(s)

Exterior Ornament

Interior Plan Unspecified

Other Interior Plan

Condition Good

Structure Surroundings

Commercial: Unspecified by surveyor Residential: Unspecified by surveyor

Institutional: Unspecified by surveyor Undeveloped: Unspecified by surveyor

Ancillary Features (Number / type of outbuildings, major landscape features)

Archaeological Remains (describe): NONE OBSERVED

If archaeological remains are present, was an Archaeological Site Form completed? NO

Narrative Description (optional) A SECOND TANK NEXT TO THIS TANK WAS ERECTED IN 1930 AND HAS BEEN CONVERTED INTO OFFICE SPACE

HISTORY

Construction year 1921

Architect (last name first): UNKNOWN

Builder (last name first): AMERICAN TELEPHONE & TELEGRAPH

Changes in Locations or Conditions

Type of Change	Year of Change	Date Change Noted	Description of Changes
----------------	----------------	-------------------	------------------------

>> Unspecified, ; ;

Structure Use History

Use _____ Year Use Started _____ Year Use Ended _____ >> Other; ;

Other Structure Uses CABLE TANK

Ownership History (especially original owner, dates, profession, etc.)

RESEARCH METHODS

Research Methods

>> Examine local tax records

Other research methods Sanborn Maps

SURVEYOR'S EVALUATION OF SITE

Potentially Eligible for a Local Register? YES

Name of Local Register if Eligible Key West Historic District

Individually Eligible for National Register? NO

Potential Contributor to NR District? YES

Area(s) of historical significance

>> Architecture

Other Historical Associations

Explanation of Evaluation (required) This is a contributing resource in the Key West Historic District, listed in the National Register

HISTORICAL STRUCTURE FORM

8MO03426

DOCUMENTATION (Photos, Plans, etc.)

Photographs, Negatives or Other Collection Not Filed with FMSF

Document type: _____ Maintaining Organization: _____
File or Accession #: _____ Descriptive Information: _____

>> Photographs (Archived)

RECORDER INFORMATION

Recorder Name (Last, First) Geoff Henry, Shelby Spillers, Heather Yost

Recorder Address/Phone 200 Orchard Ridge Dr, Suite 101, Gaithersburg, MD 20878 (301)258-9780

Recorder Affiliation Other Other Affiliation URS Corporation

Is a Text-Only Supplement File Attached (Surveyor Only)? NO

INTERVIEW INFORMATION

General Resource Type: SR
Specialized Resource Code: SR

SHAG's Evaluation of Resource

Date _____

Form Status Code: SCAT

Supplement Information Status: NO SUPPLEMENT
Supplement File Status: NO SUPPLEMENT FILE

FMSF Staffer: RECORDERS SMARTFORM
Computer Entry Date: 12/3/2004

Form Comments: _____

REQUIRED PAPER ATTACHMENTS

- (1) USGS 7.5" MAP WITH STRUCTURE PINPOINTED IN RED
- (2) LARGE SCALE STREET OR PLAT MAP
- (3) PHOTO OF MAIN FACADE, B&W, AT LEAST 3"X5"

MO03426-200402

Supplementary Printout

- > **[Other name(s)]:**

- > **USGS map name/year of publication or revision:**
KEY WEST;1971

- > **Township/Range/Section/Qtr:**
67S ;25E ;34;UNSP

- > **Foundation types:**
Slab

- > **Foundation materials:**
Other

- > **Exterior fabrics:**
Stucco

- > **Roof types:**
Unspecified

- > **Roof materials:**
Unspecified

- > **Roof secondary structures (dormers etc):**
Not applicable

- > **Change status/year changed/date noted/nature:**
Unspecified::

- > **Original, Intermediate, present uses/year started/year ended:**
Other::
Unspecified::
Other;1921;

- > **Research methods:**
Examine local tax records

- > **Area(s) of historical significance:**
Architecture

- > **Repositories: Collection/Housed/Accession#/Describe**
:::Photographs (Archived)

- > **Structural system(s):**
Masonry - General

PAGE 1
Original x
Update 8-15-98

HISTORICAL STRUCTURES FORM
FLORIDA MASTER SITE FILE

SITE Mo3426
Recorder JD

SITE NAME: Cable Tank
HISTORIC CONTEXTS: Boom Times
NAT. REGISTER CATEGORY: Site
OTHER NAMES OR MSF NOS:

COUNTY: Monroe OWNERSHIP TYPE: government
PROJECT NAME: Key West Historic Sites Survey

DHR NO: 5508

LOCATION:

ADDRESS: Mallory Square CITY: Key West
VICINITY OF/ROUTE TO: south side of Mallory Square next to Hospitality
House

SUBDIVISION: BLOCK NO: LOT NO:
PLAT OR OTHER MAP: TAX PARCEL NUMBER RE-unknown
TOWNSHIP: RANGE: SECTION: 1/4: 1/4-1/4:
IRREGULAR SEC? LAND GRANT:
USGS 7.5' MAP: Key West Quadrangle, 1971
UTM: ZONE: EASTING: NORTHING:
COORDINATES: LATITUDE: LONGITUDE:

HISTORY

ARCHITECT: unknown
BUILDER: American Telephone & Telegraph
CONST DATE: 1921 CIRCA: RESTORATION DATE (S):
MODIFICATION DATE (S):
MOVE: DATE: ORIG LOCATION:
ORIGINAL USE (S): cable tank
PRESENT USE (S): cable tank

DESCRIPTION

STYLE: Masonry Vernacular
PLAN: EXTERIOR: round
INTERIOR:
NO: STORIES: 1 OUTBUILDINGS: PORCHES: DORMERS:
STRUCTURAL SYSTEM (S): masonry
EXTERIOR FABRIC (S): stucco
FOUNDATION: TYPE: slab MATLS: concrete
INFILL:
PORCHES:
ROOF: TYPE: SURFACING:
SECONDARY STRUCT.:
CHIMNEY: NO: MATLS: LOCNS:
WINDOWS:

EXTERIOR ORNAMENT:
CONDITION: good SURROUNDINGS: waterfront
NARRATIVE: A second tank next to this tank was erected in 1930 and has
been converted into office space.

ARCHAEOLOGICAL REMAINS AT THE SITE

FMSF ARCHAEOLOGICAL FORM COMPLETED? Y x N (IF Y, ATTACH)

ARTIFACTS OR OTHER REMAINS none observed

RECORDER'S EVALUATION OF SITE

AREAS OF SIGNIFICANCE: architecture

ELEGIBLE FOR NAT. REGISTER?	Y	N	LIKELY, NEED INFO x	INSF	INF
SIGNF. AS PART OF DISTRICT?	x Y	N	LIKELY, NEED INFO	INSF	INF
SIGNIFICANT AT LOCAL LEVEL?	x Y	N	LIKELY, NEED INFO	INSF	INF

SUMMARY ON SIGNIFICANCE

This is one of two round tanks built to store cables used to repair underwater telephone lines connecting Key West to Cuba.

* * *DHR USE ONLY * * * * * DHR USE O*

* DATE LISTED ON NR _____ *

* KEEPER DETERMINATION OF ELIG. (DATE): -YES _____ -NO _____ *

* SHPO EVALUATION OF ELIGIBILITY (DATE): -YES _____ -NO _____ *

* LOCAL DETERMINATION OF ELIG. (DATE): -YES _____ -NO _____ *

* OFFICE _____ *

* * * * DHR USE ONLY* * * * * DHR USE ONLY* * *

RECORDER INFORMATION: NAME F Jane M S L Day
DATE: MO 2 YR 98 AFFILIATION Research Atlantica, Boca Raton, Florida

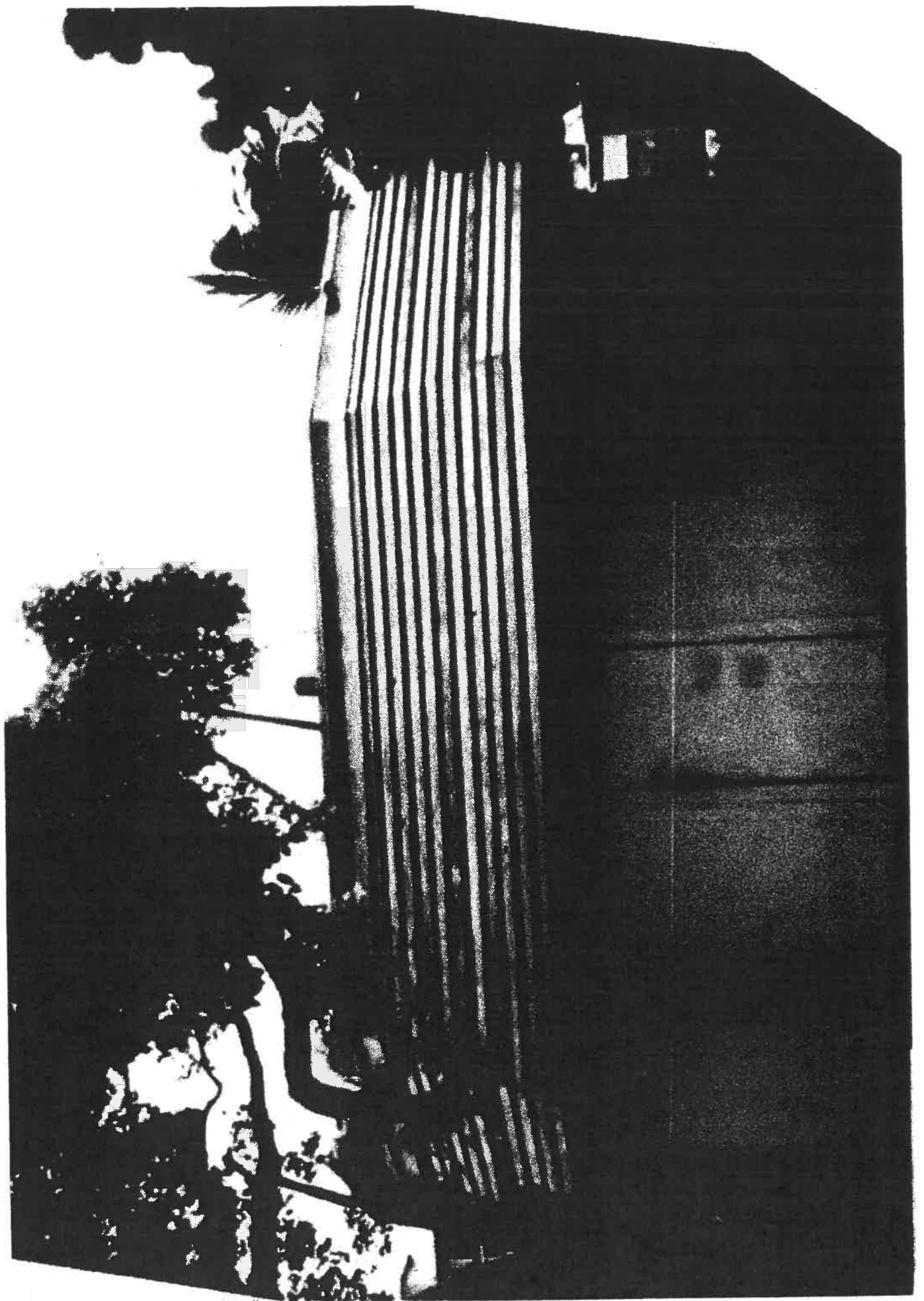
PHOTOGRAPHS

LOCATION OF NEGATIVES

NEGATIVE NUMBERS roll #92, neg. #

PHOTOGRAPH

MAP



- Original
- Update



HISTORICAL STRUCTURE FORM

FLORIDA MASTER SITE FILE

Version 4.0 1/07

Site # MO05458
 Field Date 10-20-2011
 Form Date 8-31-2012
 Recorder # _____

Shaded Fields represent the minimum acceptable level of documentation.
 Consult the *Guide to Historical Structure Forms* for detailed instructions.

Site Name(s) (address if none) Cable Tank Multiple Listing (DHR only) _____
 Survey Project Name Key West Historic Resources Survey Survey # (DHR only) _____
 National Register Category (please check one) building structure district site object
 Ownership: private-profit private-nonprofit private-individual private-nonspecific city county state federal Native American foreign unknown

LOCATION & MAPPING

Street Number _____ Direction _____ Street Name _____ Street Type _____ Suffix Direction _____
 Address: Part of Mallory Square
 Cross Streets (nearest / between) _____
 USGS 7.5 Map Name KEY WEST USGS Date 1971 Plat or Other Map _____
 City / Town (within 3 miles) Key West In City Limits? yes no unknown County Monroe
 Township 68S Range 25E Section 6 1/4 section: NW SW SE NE Irregular-name: _____
 Tax Parcel # 00072082-003700 Landgrant _____
 Subdivision Name _____ Block _____ Lot _____
 UTM Coordinates: Zone 16 17 Easting Northing
 Other Coordinates: X: _____ Y: _____ Coordinate System & Datum _____
 Name of Public Tract (e.g., park) _____

HISTORY

Construction Year: 1938 approximately year listed or earlier year listed or later
 Original Use Communications-related From (year): 1938 To (year): 2011
 Current Use _____ From (year): _____ To (year): _____
 Other Use _____ From (year): _____ To (year): _____
 Moves: yes no unknown Date: _____ Original address _____
 Alterations: yes no unknown Date: _____ Nature _____
 Additions: yes no unknown Date: _____ Nature _____
 Architect (last name first): _____ Builder (last name first): _____
 Ownership History (especially original owner, dates, profession, etc.) Cuban-American Telephone & Telegraph Company (1930)

Is the Resource Affected by a Local Preservation Ordinance? yes no unknown Describe HARC Review

DESCRIPTION

Style Commercial Exterior Plan Circular Number of Stories 1
 Exterior Fabric(s) 1. Unspecified 2. _____ 3. _____
 Roof Type(s) 1. Flat 2. _____ 3. _____
 Roof Material(s) 1. Unspecified 2. _____ 3. _____
 Roof secondary strucs. (dormers etc.) 1. _____ 2. _____
 Windows (types, materials, etc.) none

Distinguishing Architectural Features (exterior or interior ornaments) round cable tank 2/wood pent- part of commercial property

Ancillary Features / Outbuildings (record outbuildings, major landscape features; use continuation sheet if needed.) vacant bar/restaurant, mallory square

DHR USE ONLY		OFFICIAL EVALUATION		DHR USE ONLY	
NR List Date	SHPO - Appears to meet criteria for NR listing: <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> insufficient info	Date	Init.		
<input type="checkbox"/> Owner Objection	KEEPER - Determined eligible: <input type="checkbox"/> yes <input type="checkbox"/> no	Date			
	NR Criteria for Evaluation: <input type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d (see <i>National Register Bulletin 15</i> , p. 2)				

DESCRIPTION (continued)

Chimney: No. _____ Chimney Material(s): 1. _____ 2. _____
Structural System(s): 1. _____ 2. _____ 3. _____
Foundation Type(s): 1. _____ 2. _____
Foundation Material(s): 1. _____ 2. _____
Main Entrance (stylistic details) _____

Porch Descriptions (types, locations, roof types, etc.) _____

Condition (overall resource condition): excellent good fair deteriorated ruinous
Narrative Description of Resource _____

Archaeological Remains _____ Check if Archaeological Form Completed

RESEARCH METHODS (check all that apply)

- FMSF record search (sites/surveys) library research building permits Sanborn maps
 FL State Archives/photo collection city directory occupant/owner interview plat maps
 property appraiser / tax records newspaper files neighbor interview Public Lands Survey (DEP)
 cultural resource survey (CRAS) historic photos interior inspection HABS/HAER record search
 other methods (describe) Google Earth

Bibliographic References (give FMSF manuscript # if relevant, use continuation sheet if needed) _____

OPINION OF RESOURCE SIGNIFICANCE

Appears to meet the criteria for National Register listing individually? yes no insufficient information
Appears to meet the criteria for National Register listing as part of a district? yes no insufficient information
Explanation of Evaluation (required, whether significant or not; use separate sheet if needed) Contributing resource to the Key West Historic District.

Area(s) of Historical Significance (see National Register Bulletin 15, p. 8 for categories: e.g. "architecture", "ethnic heritage", "community planning & development", etc.)

- 1. Community planning & development 3. _____ 5. _____
2. _____ 4. _____ 6. _____

DOCUMENTATION

Accessible Documentation Not Filed with the Site File - including field notes, analysis notes, photos, plans and other important documents

- 1) Document type _____ Maintaining organization _____
Document description _____ File or accession #'s _____
2) Document type _____ Maintaining organization _____
Document description _____ File or accession #'s _____

RECORDER INFORMATION

Recorder Name Stacey Griffin and Christine Longiaru Affiliation PanAmerican Consultants, Inc.
Recorder Contact Information 2619 University Blvd, Tuscaloosa, AL 35401, 205-556-3096/205-556-1144, sgriffin@pana
(address / phone / fax / e-mail)

Required Attachments

- 1 USGS 7.5' MAP WITH STRUCTURE LOCATION PINPOINTED IN RED
2 LARGE SCALE STREET, PLAT OR PARCEL MAP (available from most property appraiser web sites)
3 PHOTO OF MAIN FACADE, ARCHIVAL B&W PRINT OR DIGITAL IMAGE FILE
If submitting an image file, it must be included on disk or CD AND in hard copy format (plain paper is acceptable).
Digital image must be at least 1600 x 1200 pixels, 24-bit color, jpeg or tiff.

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA IN AND FOR MONROE COUNTY

APPELLATE DIVISION

CASE NO: 2011-CA-807-K

TANNEX DEVELOPMENT L.C.,
d/b/a THE WESTIN KEY WEST
RESORT & MARINA,

Petitioner

vs.

PLANNING BOARD OF THE CITY OF
KEY WEST,

Respondent

And

TROPICAL SOUP, INC.,

Intervenor.

RECEIVED
FEB 13 2012
City Attorney's Office

ORDER DENYING CERTIORARI

PER CURIAM:

Petitioner TANNEX DEVELOPMENT LC d/b/a THE WESTIN KEY WEST RESORT & MARINA, seeks review by certiorari, of the approval by the KEY WEST PLANNING BOARD of variances granted to Intervenor TROPICAL SOUP, INC., (the "Applicant" or "Intervenor") to facilitate construction of a restaurant building on leasehold land within Mallory Square, located on property located in and owned by the City of Key West, Florida, and leased to TROPICAL SOUP, INC.

PROCEDURAL HISTORY

As set forth in the variance application constituting part of the record herein, Mallory Square is publicly owned property adjacent to Key West Harbor, and constitutes a unique public square in the historic heart of the Key West's maritime industry. According to the record, the PLANNING BOARD considered variances associated with redevelopment of four city-owned lease areas on Mallory Square, to include a new structure with a restaurant, using established legally non-conforming consumption area, public plazas and open space, and the use of an existing historic structure. Specific variances sought by Petitioner included a variance for impervious surface, open space, side yard setbacks and the coastal construction control line. Public hearings were held before the PLANNING BOARD on January 20, April 21 and June 16, 2011. In conjunction with these hearings, and after the January 20 hearing, discussions were held between Petitioner TANNEX DEVELOPMENT, L.C., d/b/a THE WESTIN KEY WEST RESORT & MARINA, and Intervenor, regarding any impact on Petitioner's hotel, which is adjacent to Mallory Square.

As a consequence of the postponement and negotiations, the Intervenor revised the request to the PLANNING BOARD by reducing the size of the building and relocating the structure a greater distance from Petitioner's property. After lengthy discussion at the April 21 hearing, the BOARD again allowed a postponement of the matter to allow further revisions to the configuration of the property regarding issues raised during the discussion on April 21. A further reduction in the length of the building by 8' was effected, eliminating the need for a side yard setback which had been part of the original

request. Finally, on June 16, after further discussion of the merits of the request, the PLANNING BOARD unanimously passed the resolution allowing variances, as to which the instant action has been brought.

CITY CODE VARIANCE REQUIREMENTS.

The City of Key West Code of Ordinances, Section 90-395(a) contains seven standards required for variance. Petitioner has apparently conceded that the last two standards are not material to the issues before the Court (“not injurious to the public welfare” and “existing non-conforming uses of other property not the basis for approval”). The procedural history in the record further shows that the Applicant has also met requirements set forth in Key West City Code Subsection 90-395(b)(2), requiring that an applicant demonstrate a “good neighbor policy” by contacting all noticed property owners who have objected to the variance applications and attempting to address the objections expressed by the neighbors. Accordingly, in reviewing the PLANNING BOARD’S decision, only the five remaining standards considered by the BOARD are pertinent. The standards include:

- (1) Existence of special conditions or circumstances,
- (2) that conditions were not created by the applicant,
- (3) that special privileges are not conferred,
- (4) that hardship conditions exist,
- (5) that only the minimum variance is granted.

See Key West City Code Section 90-395(a).

The PLANNING BOARD, by Resolution 2011-025, made certain factual findings, as set forth in the Resolution. The findings are that:

(1) "special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other land, structures or buildings in the same district;

(2) that the special conditions do not result from the action or negligence of the applicant;

(3) that granting the variance requested will not confer upon the applicant any special privileges denied by the Land Development Regulations to other lands, buildings or structures in the same zoning district;

(4) that the literal interpretation of the provisions of the Land Development Regulations would deprive the applicant of rights commonly enjoyed by other properties in this same zoning district and would work unnecessary and undue hardship on the applicant;

(5) that the variance granted is the minimum variance which will make possible the reasonable use of the land, building or structure;

(6) that the granting of the variance will be in harmony with the general intent and purpose of the Land Development Regulations and that the variance will not be injurious to the area involved or otherwise detrimental to the public interest or welfare;

(7) that no non-conforming use of the neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of any variance; and

(8) that the applicant has demonstrated a “good neighbor policy” by contacting or making a reasonable attempt to contact all noticed property owners who have objected to the variance application, and by addressing the objections expressed by those neighbors;”

(See Resolution 2011-025 at pp. 2-3).

The Resolution itself, supporting exhibits, the testimony taken by the PLANNING BOARD, and the application itself, all of which were considered by the PLANNING BOARD regarding the variance application, have been carefully considered by the Court in reaching the conclusions set forth below.

ANALYSIS

Petitioner challenges the sufficiency of the factual findings above, and suggests that the failure of the Board of Adjustment to make detailed “findings of fact” with regard to its grant of variances, constitutes a departure from the essential requirements of law. However, as previously ruled by this court (Horan v. Board of Adjustment, 2008-CA-2020-K (16TH Cir. App. 2009)), and consistent with other established and controlling appellate authority, no formal findings of fact are required in these circumstances. In fact, the Florida Supreme Court has held that while “useful,” no formal findings are required, so long as the record contains competent, substantial evidence that supports the administrative ruling. See Board of County Commissioners v. Snyder, 627 So.2d 469, 476 (Fla. 1993).

Petitioner further asserts that the Board of Adjustment’s action in granting the variances requested is not supported by “competent, substantial evidence” as required by law. The role of the court is simply to determine whether the Board’s decision is

supported by competent, substantial evidence, and not to consider whether the decision was opposed by competent, substantial evidence and then re-weigh the evidence. See Dusseau v. Metropolitan Dade County, 794 So.2d 1270, 1275 (Fla. 2001). "Evidence contrary to the agency's decision is outside the scope of the inquiry at this point, for the reviewing court above all cannot re-weigh the 'pros and cons' of conflicting evidence. While contrary evidence may be relevant to the wisdom of the decision, it is irrelevant to the lawfulness of the decision. As long as the record contains competent, substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended." Id. at p. 1276.

Notable within the evidence considered by the Board was the testimony of the applicant's representative, Owen Trepanier. In the April 21, 2011 hearing, Trepanier testified regarding "peculiar issues" about Mallory Square. Trepanier's testimony noted that Mallory Square is almost 100% impervious and that while the project will, in fact, reduce some of the impervious surface by creating more landscaping, it would not bring Mallory Square into full compliance with the code requirement, because to do so would require tearing up approximately 20% of Mallory Square. Trepanier testified that the impervious surface at Mallory is a "non-complying structure," but that the portion of value of Mallory Square involved did not reach the threshold required such that the code would necessitate a substantial modification to the impervious surface, to bring Mallory Square into compliance with current code requirements.

Trepanier's testimony detailed the place of Mallory Square in Key West's maritime history, and discussed the maritime activity and historical structures on the water's edge, that are integral to the area's history and special status in the City of Key West.

Trepanier testified that the existing old restaurant on the leasehold property is unsafe and "needs to be condemned and taken out." Trepanier further testified to the existence of significant hardship that would be suffered by the property owner, the City of Key West, in terms of realizing a reasonable economic return, for the taxpayers who ultimately own the property, unless these variances are allowed. Additionally, Trepanier testified that because of the special historic nature of Mallory Square, to build a building that meets the code as it exists today would cause damage and hardship to the Key West Historic District. With regard to the issue of minimum variance necessary, Trepanier testified that the proposal would not expand the existing non-conforming use, but rather would create a building in which an existing non-conforming use may be restructured and used in a way that meets modern need. He testified that no additional consumption area would be created by the variance, but would simply be restructured as set forth above.

Based upon the entirety of the record, and specifically upon Trepanier's testimony, the Planning Commission made the factual findings set forth above. After careful review of the record, with particular focus on the testimony of Owen Trapanier, the court finds that the factual findings of the Board set forth above are supported by competent, substantial evidence, from which the Board could reasonably have made the factual findings above.

Petitioner suggests that because the applicant entered into a leasehold with the city with full knowledge of the peculiar characteristics of Mallory Square, any hardship was "self-created" and therefore no variance should be granted.

However, the record is replete with evidence that the hardship involved here “arose from circumstances peculiar to the realty alone, unrelated to the conduct or to the self-originated expectations of any of its owners or buyers.” See City of Coral Gables v. Geary, 383 So.2d 1127 (Fla. 3rd DCA 1980). The record, and the testimony, establish that record evidence exists to show that the hardship was not “self-created” and that literal interpretation of the current land development regulations would make Mallory Square either generally unusable, or require an inappropriate architectural design to be approved in an important part of the Key West historic district. Trepanier’s testimony was that “if we’re forced to retain this stuff (i.e., the existing cable hut and dilapidated restaurant building), that we are left with obstructions in the velocity flood zone and put at risk adjacent historic structures and the adjacent property owners.” He also stated: that if no variance was available, and “. . .we ignore the historic spatial relationships of buildings and we build a building out there that just meets our Code as it is today, then the Historic District as a whole experiences a hardship because we end up with a structure out there that is not integrated and it’s not sympathetic to the Historic District.”

Similarly, as to the suggestion that the variances constitute an improper expansion of the non-conforming use in violation of the code, the evidence and testimony in the record and set forth above were a sufficient basis for the Board’s finding that the variances constituted a restructuring of an existing non-conforming use, not an expansion thereof.

Finally, with regard to Petitioner’s suggestion that the PLANNING BOARD failed to meet the essential requirements of law with regard to application of the coastal construction control line established in Section 161.053(3), Florida Statutes, the court

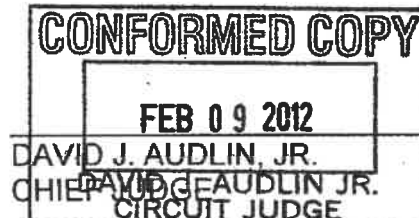
finds that Section 161 of Florida Statutes has no application to this matter. Section 161.053(1)(a) sets forth that the coastal construction control line legislation is designed to protect beaches and coastal barrier dunes adjacent to beaches. The testimony before the Board was that the subject property is bordered by sheet pile hardened shoreline with a concrete pier that extends some distance out over the water, previously permitted by both DEP and the Army Corps of Engineers, and that there is no natural shoreline, beach or dune system. Furthermore, the record contains no evidence of the existence of a coastal construction control line established by DEP pursuant to Chapter 161 of Florida Statutes, applicable to this property.¹ Accordingly, no prior DEP approval of this variance is legally required.

WHEREFORE, for the reasons set forth above, it is hereby

ORDERED as follows:

1. The Petition for Writ of Certiorari is DENIED, and this action is thereupon DISMISSED.

DONE and ORDERED at Key West, Monroe County, Florida, this 9th day of February, 2012.



cc: Adele V. Stones, Esq.
Richard G. Rumrell, Esq.
Larry R. Erskine, Esq.

⌘

¹ A coastal construction control line was established by the City, not DEP, in Section 122-1148 of the City Code.

WILLIAM P. HORN
ARCHITECT, P.A.

315 EAST 97TH
KEY WEST,
FLORIDA
33906

TEL: 305-294-1439
FAX: 305-294-1433

LIKESIDE RD
A, MIAMI



PAUL S. BISHOP, P.E.
P.L. 04112
400 CANAL BOULEVARD
SUITE 200, WEST PALM BEACH,
FLORIDA
33411-4200
CA 08781

MALLORY
SQUARE
RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA

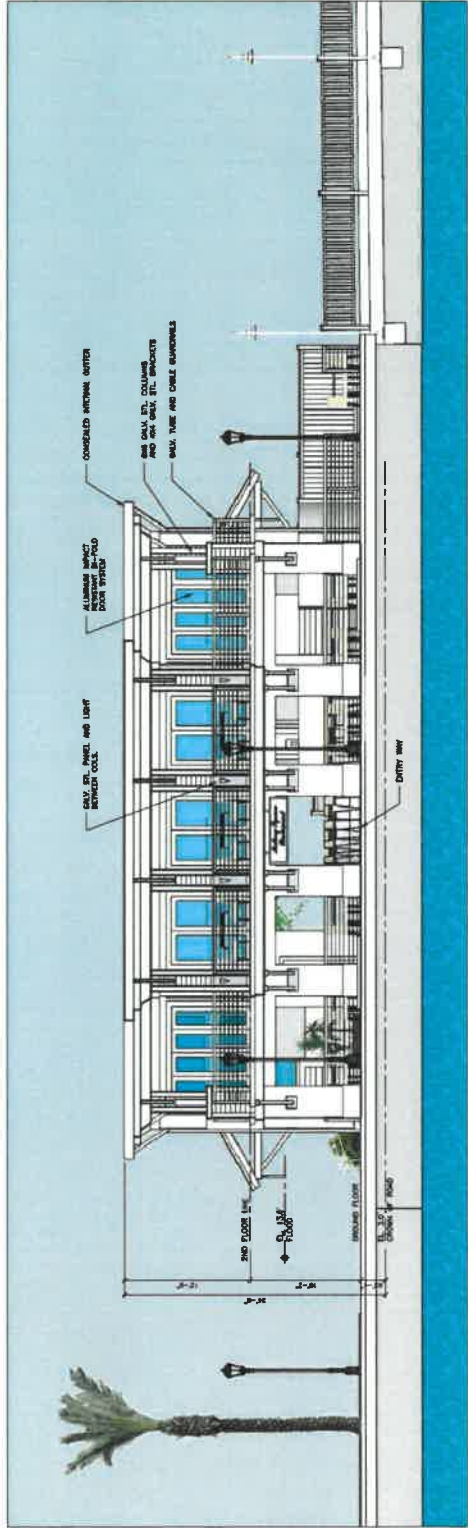
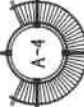
SEAL

DATE:
06-05-10 HARC
05-31-10 HARC REV.
10-01-10 DRC
11-05-10 PL BD
04-25-12 HARC REV.

REVISIONS:
03-11-11 HARC REV.
2 PL BD REV.
05-20-11 PL BD REV.
05-20-11 PL BD REV.

DRAWN BY: EMA

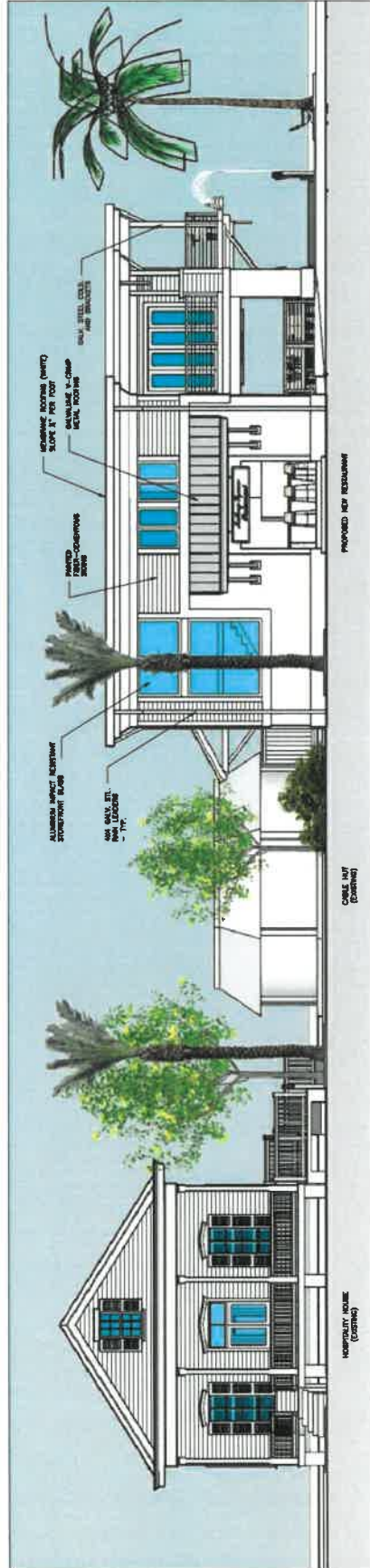
PROJECT
NUMBER:
106



1 PROPOSED WEST ELEVATION

SCALE: 3/16"=1'-0"

A-4



2 PROPOSED NORTH ELEVATION

SCALE: 3/16"=1'-0"

A-4

MALLORY SQUARE RESTAURANT
MALLORY DOCK
KEY WEST, FLORIDA



Federal Emergency Management Agency

Washington, D.C. 20472

February 27, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IN REPLY REFER TO:

Case No.: 14-04-7227P

The Honorable Craig Cates
Mayor, City of Key West
3126 Flagler Avenue
Key West, FL 33040

Community Name: City Of Key West, FL
Community No.: 120168
FIRM Panel Affected: 12087C1516K

#62200

116

Dear Mayor Cates:

In a Letter of Map Revision (LOMR) dated October 15, 2014, you were notified of proposed flood hazard determinations affecting the Flood Insurance Rate Map (FIRM) and Flood Insurance Study (FIS) report for the City Of Key West, Monroe County, FL. These determinations were for Key West Harbor (Gulf of Mexico) - an area approximately 500 feet south and 330 feet west of the intersection of Wall Street and Duval Street to approximately 670 feet south and 330 feet west of the intersection. The 90-day appeal period that was initiated on October 29, 2014, when the Department of Homeland Security's Federal Emergency Management Agency (FEMA) published a notice of proposed Flood Hazard Determinations in *The Key West Citizen* has elapsed.

FEMA received no valid requests for changes to the modified flood hazard information. Therefore, the modified flood hazard information for your community that became effective on February 26, 2015, remains valid and revises the FIRM and FIS report that were in effect prior to that date.

The modifications are pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Public Law 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, Public Law 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65. The community number(s) and suffix code(s) are unaffected by this revision. The community number and appropriate suffix code as shown above will be used by the National Flood Insurance Program (NFIP) for all flood insurance policies and renewals issued for your community.

FEMA has developed criteria for floodplain management as required under the above-mentioned Acts of 1968 and 1973. To continue participation in the NFIP, your community must use the modified flood hazard information to carry out the floodplain management regulations for the NFIP. The modified flood hazard information will also be used to calculate the appropriate flood insurance premium rates for all new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

If you have any questions regarding the necessary floodplain management measures for your community or the NFIP in general, please contact the Mitigation Division Director, FEMA Region IV, in Atlanta, Georgia either by telephone at (770) 220-5200, or in writing at 3003 Chamblee Tucker Road, Atlanta, Georgia, 30341.

If you have any questions regarding the LOMR, the proposed flood hazard determinations, or mapping issues in general, please call the FEMA Map Information eXchange, toll free, at (877) 336-2627 (877-FEMA MAP).

Sincerely,



Luis Rodriguez, P.E., Chief
Engineering Management Branch
Federal Insurance and Mitigation Administration

cc: The Honorable Sylvia Murphy
Mayor, Monroe County

Mr. Scott Fraser
FEMA Coordinator
City of Key West

Paul Lin, PhD, P.E.
Paul Lin & Associates

**APPELLATE REVIEW OF HISTORIC ARCHITECTURAL REVIEW
COMMISSION DECISION BEFORE THE SPECIAL MAGISTRATE FOR THE
CITY OF KEY WEST**

TROPICAL SOUP CORPORATION, a Florida
Corporation; JOSEPH H. WALSH; and PIKE
ARCHITECTS, INC., a Florida corporation,
Appellants,

v.
CITY OF KEY WEST,
FLORIDA, A municipal corporation,
Appellee,

Case Number SMA-17-02

_____ /


**ORDER AFFIRMING THE SPECIAL MAGISTRATE'S
ORDER OF OCTOBER 18, 2017
H17-03-0008**

This matter came before the Special Magistrate for the City of Key West on February 28, 2018, at 1:30 p.m. as a request for clarification of the Order Reversing the HARC denial of Application H17-03-0008.

Having heard arguments and review of the hearing held on August 30, 2017, and being otherwise advised in the premises;

IT IS ADJUDGED; the Order dated October 18, 2017 is **AFFIRMED**. That the adopted order was compliant with the announced findings. Before adoption of said order, it was agreed upon by all parties. There was no request made to remand the issue to HARC. There is a mandate, a Certificate of Appropriateness be issued.

SO ORDERED this 5th day of March, 2018.


DONALD E YATES
SPECIAL MAGISTRATE FOR
THE CITY OF KEY WEST

cc City of Key West
Van D Fischer. Esq.

James K. Scholl
1300 White Street
Key West Florida 33040
October 10, 2018

Dear Jim,

The City of Key West and my Company, Tropical Soup, have been collaborating on the revitalization of Mallory Square for over eight years. Not long after the neighboring hotel objected to the City's RFP, and filed suit to stop it, a senior City Staff member expressed concern to me that I might not be a steadfast partner in defending the lawsuit and following through on the project in the face of the commercial opposition. I don't know how I can show more commitment to this project and our mutual interests. This partnership has become rather one sided and pushing the proposal to conclusion has recently lost focus.

On August 30, 2017 the City's Special Magistrate ruled that HARC erred in its denial of the current design, and that the project as proposed met the guidelines. This ruling left only the Tree Commission (received March 2018), and the final development plan approval from the City Commission, as well as memorializing the agreement in a lease to conclude the pre-construction process.

It is frustrating that my collaborative partner is now refusing to conduct a final review of the lease agreement, and is pursuing an appeal of its Special Magistrate. I have redesigned the project multiple times at various City employee requests, making it smaller and preserving the historic structures. If this appeal succeeds it will prevent the City and my Company from revitalizing the Square and cause damage the City. Effectively the City (my partner who has asked me to redevelop its property) is litigating to stop the project. There is no way to restore (not the same as rehabilitate) the tank or to reduce the size of the pavilion further and still comply with the RFP agreement. The HARC board's decision (May 2017) was ruled in error by the City's Special Magistrate. What principle is the City now litigating? This appeal without productive purpose has dragged on over a year, preventing the City and my company from finishing our collaboration on Mallory Square and costing both the City and me a lot of money.

My design teams and attorneys have addressed every reasonable concern expressed by any staff or board member of the City. Since the approval of the RFP, at various points in the process the City has declared: the structure unsafe and condemned it, and later declared the structure a contributing historic resource. The City has demolished part of the structure, built new fencing and foundations around it, mused about the ease of securing historic preservation grants, cried about how important an historic resource the structure is, but made no effort to repair spalling, termite damage, water intrusion, hurricane Irma damage or repair the damage that its own demolition crews inflicted on the building. The City has litigated on the same side as me to defend approvals by the Planning Board, then litigated against me regarding denials by HARC.

I urge you to inject some much needed logic, reason, and accountability into the process. Please instruct staff to drop this counter-productive appeal and to review the lease. Then let's put this on the City Commission agenda for the lease approval and final development plan approval, and get going on fixing the City's asset. We expect to be able to pursue the construction of the pavilion and rehabilitation of the Cable Tank and Hospitality House in the same time window as the City will be working on the adjacent seawall, minimizing impacts to the City's other tenants and licensees.

Regards,


Joseph Walsh

Tropical Soup Corporation

**City of Key West
Planning Department**



Authorization Form
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, James K. Scholl as City Manager of the City of Key West, FL hereby authorize

Tropical Soup Corporation and their professional team:

- o Trepanier & Associates, Inc.
- o Pike Architects, Inc.
- o Little John Engineering Associates, Inc.
- o Perez Engineering, Inc.

to be the representative for this application and act on my/our behalf before the City of Key West.

J. Scholl
Signature of person with authority to execute documents on behalf on entity owner

Subscribed and sworn to (or affirmed) before me on this 1, May, 2015 Date

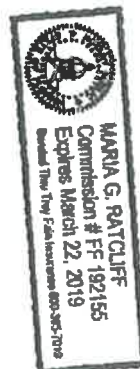
by Jim Scholl
Name of person with authority to execute documents on behalf on entity owner

He/She is personally known to me or has presented _____ as identification.

Maria G. Ratcliff
Notary's Signature and Seal

Maria G. Ratcliff
Name of Acknowledger typed, printed or stamped

March 22, 2019
Commission Number, if any





Disclaimer

The Monroe County Property Appraiser's office maintains data on property within the County solely for the purpose of fulfilling its responsibility to secure a just valuation for ad valorem tax purposes of all property within the County. The Monroe County Property Appraiser's office cannot guarantee its accuracy for any other purpose. Likewise, data provided regarding one tax year may not be applicable in prior or subsequent years. By requesting such data, you hereby understand and agree that the data is intended for ad valorem tax purposes only and should not be relied on for any other purpose.

By continuing into this site you assert that you have read and agree to the above statement.

Summary

Parcel ID 00072082-001100
 Account# 8757778
 Property ID 8757778
 Millage Group 10KW
 Location Address WALL St, KEY WEST
 Legal Description (F/K/A ISLAND ADVENTURES OF KEY WEST LEASE) EXPIRED 1/31/95 G64-274/275
(Note: Not to be used on legal documents.)
 Neighborhood 32010
 Property Class MUNICIPAL (8900)
 Subdivision
 Sec/Twp/Rng 06/68/25
 Affordable Housing No

Owner

CITY OF KEY WEST
 PO BOX 1409
 KEY WEST FL 33041

Valuation

	2018	2017	2016	2015
+ Market Improvement Value	\$85,890	\$85,890	\$85,890	\$85,890
+ Market Misc Value	\$32,967	\$32,967	\$32,967	\$28,644
+ Market Land Value	\$1,753,318	\$1,753,318	\$1,753,318	\$1,753,318
= Just Market Value	\$1,872,175	\$1,872,175	\$1,872,175	\$1,867,852
= Total Assessed Value	\$1,872,175	\$1,872,175	\$1,872,175	\$1,867,852
- School Exempt Value	(\$1,872,175)	(\$1,872,175)	(\$1,872,175)	(\$1,867,852)
= School Taxable Value	\$0	\$0	\$0	\$0

Land

Land Use	Number of Units	Unit Type	Frontage	Depth
COMMERCIAL WATERFRON (100W)	2,992.00	Square Foot	47	58

Yard Items

Description	Year Built	Roll Year	Quantity	Units	Grade
SEAWALL	1979	1980	1	448 SF	4
WOOD DOCKS	1985	1986	1	672 SF	1
WOOD DECK	1987	1988	1	1688 SF	2
WOOD DECK	1987	1988	1	625 SF	3

Permits

Number	Date Issued	Date Completed	Amount	Permit Type	Notes
04-3668	11/29/2004		\$23,995		FENCE, GATES
04-3507	11/10/2004		\$2,000		DEDUCT METER
9800138	1/14/1998	12/21/1999	\$5,000		ELECTRICAL
9704298	12/22/1997	12/21/1999	\$1,000		GUTTERS

View Tax Info

[View Taxes for this Parcel](#)

Sketches (click to enlarge)



Overview



Legend

-  Centerline
-  Easements
-  Hooks
-  Lot Lines
-  Road Center
-  Rights of Way
-  Shoreline
-  Condo Building
-  Key Names
-  Subdivisions
-  Parcels

Parcel ID	00072082-001100	Alternate ID	8757778	Owner Address	CITY OF KEY WEST
Sec/Twp/Rng	06/68/25	Class	MUNICIPAL		PO BOX 1409
Property Address	WALL St				KEY WEST, FL 33041
	KEY WEST				
District	PT of Key West				
Brief Tax Description	(F/K/A ISLAND ADVENTURES OF KEY WEST LEASE) EXPIRED 1/31/95 G64-274/275				
	(Note: Not to be used on legal documents)				

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RUMRELL, MCLEOD & BROCK, PLLC
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

With Additional Offices In:

Jacksonville
Ft. Lauderdale



Mailing address:
P.O. Box 3865
St. Augustine, FL 32085-3865

Our office address is:
134 Riberia Street
Suite 102
St. Augustine, FL 32084

TELEPHONE: 904-829-3300
FACSIMILE: 904-825-0287
WEBSITE: www.rumrelllaw.com
EMAIL: rumrell@rumrelllaw.com

May 1, 2017

Richard G. Rumrell

Board Certified in:

Business Litigation
and Civil Trial

Richard G. Rumrell, P.A.



Please reply to St. Augustine

Mayor Craig Cates,
Vice Mayor Clayton Lopez,
Commissioner Sam Kaufman
Commissioner Richard Payne
Commissioner Margaret Romero
Commissioner Billy Wardlow
Commissioner Jimmy Weekley

By E-Mail: sdsmith@cityofkeywest-fl.gov and
Facsimile: (305) 809-3771

C/O Shawn Smith, City Attorney
City Hall
1300 White St
Key West, FL 33040

Mr. Mayor, Vice Mayor and Commissioners:

We are writing you regarding a Resolution that is on the City Commission agenda for May 2, 2017. The resolution directs the City Manager "to cease negotiations with Tropical Soup Corporation for parcels 1, 2, 3 and 4 at Mallory Square (as originally directed in Resolution No. 10-167)." On May 18, 2010, the City of Key West awarded the Request for Proposal for the Cable House and the Hospitality House to Tropical Soup in Resolution 10-167.

Tropical Soup obtained all necessary governmental approvals; successfully defended a law suit against the City's approvals brought by a neighboring waterfront hotel; hired design professionals who closely worked with City officials to design a project consistent with the RFP, and invested substantial moneys to develop and improve the blighted Mallory Square project. Nevertheless, on February 20, 2013, the City Commission denied Tropical Soup's major development plan application based on arbitrary architectural design concerns. This denial was done despite Tropical Soup's approved design that mirrored the City's proposed design in the RFP.

May 1, 2017

Page 2

The denial of the major plan development application required Tropical Soup to begin anew. This time, again with the City's closely involved direction and actions, Tropical Soup redesigned the project to satisfy the Commission's single story design that was not in the RFP; obtained a letter of approval from FEMA to have a structure built on ground level; obtained the signed necessary forms from the City; obtained Planning Board approval; attended numerous meetings with City staff and City Boards; and proceeded to obtain the approval of the City's revised major development plan to begin the renewal of Mallory Square.

During the second attempt to gain Commission approval of the City imposed design change, Tropical Soup had many meetings with City officials and sought to obtain a lease. The deal points of the lease were proposed, approved, and agreed to by both parties long ago. Execution of the lease has been waiting for the specifics of the structure to be leased, the City's responsibilities, and commencement date determinations. These details are entirely within the control of the City. Nevertheless, Tropical Soup continued to seek final approval of its major development plan. As late as last week Tropical Soup met with City staff regarding a HARC meeting currently scheduled on the upcoming May agenda.

Tropical Soup Corporation continued to work at the direction and assistance of the City to develop the property notwithstanding the roadblocks by private interests and the arbitrary action of the City Commission in denying the major development plan it recommended in the original RFP.

While Tropical Soup moved forward on the City directed revised major development plan, it had numerous meetings with various City officials including the City Manager. There was never any suggestion or comment the City was dissatisfied with Tropical Soup's continued substantial and expensive efforts to improve the blighted Mallory Square. At no time did any person - City Manager, City Attorney, City staff, or anyone else- tell Tropical Soup, orally or in writing, there was any dissatisfaction with the progress of the development. But for a call from a reporter with the Key West Citizen late Friday afternoon, Tropical Soup would not have been aware the City Manager and City Attorney were placing a draconian resolution before the City Commission on Tuesday, to cease all further negotiations with Tropical Soup.

It appears the nefarious decision by the City Manager and City Attorney will likely result in the proposed wrongful action, taking with it Tropical Soup's intellectual property and ideas. It is hopeful reasonable persons will halt this wrongful action and taking. The proposed City action will result in Tropical Soup suffering loss of its reasonable investment backed expectations including its anticipated profits of millions of dollars.

Rumrell, McLeod & Brock, PLLC



Richard G. Rumrell

RGR/mas

c: Tropical Soup Corporation

MONROE COUNTY HEALTH DEPARTMENT

Food Service Establishment Information

To: Carlynn Walker Official's Name Pat Castro
 City Occupational License County Occupational License
 Establishment Name: The Reach on Mallory Square Address: #1 Tifts Alley
 Owner: Mallory Square Enterprises Inc Address: Box 243 Key West
 Type of Establishment: RESTAURANT
 Formerly Known As: SAME
 Services Provided: Seating / TAKE-OUT No. of Seats: 80
 Circle All Applicable:
 New Change of Owner Out of Business Change in Services Other
 Date: 5/1/87 Sanitarian: Pat Williams

CODE OF ORDINANCES City of KEY WEST, FLORIDA Codified through Ordinance No. 19-09,
enacted March 20, 2019. (Supp. No. 73)

Sec. 86-9. - Definition of terms.

Floor area ratio means the total floor area of the buildings on any lot, parcel or site divided by the area of the lot, parcel or site.

Intensity means the floor area ratio as defined in this section.

Kitchen means any food preparation facility larger than a wetbar. Plumbing stub outs for more than a wetbar shall be considered a kitchen.

Restaurant, excluding drive-through, means any establishment, which is not a drive-through service establishment, where the principal business is the sale of food, desserts and beverages to the customer in a ready-to-consume state. This includes service within the building as well as takeout or carryout service. For the purpose of this subpart B and impact fee assessments, a takeout or carryout restaurant shall be limited to no more than five chairs or bench seats without tables or counter tops.

Doc# 1870372 02/14/2012 4:28PM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA IN AND FOR MONROE COUNTY

APPELLATE DIVISION

CASE NO: 2011-CA-807-K

TANNEX DEVELOPMENT L.C.,
d/b/a THE WESTIN KEY WEST
RESORT & MARINA,

Doc# 1870372
Bk# 2555 Pg# 1351

Petitioner

vs.

PLANNING BOARD OF THE CITY OF
KEY WEST,

Respondent

And

TROPICAL SOUP, INC.,

Intervenor.

FILED FOR RECORDS
2012 FEB -9 PM 4:49
DANNY L. KOLHAGE
CLERK CIR. CT.
MONROE COUNTY, FLA.

ORDER DENYING CERTIORARI

PER CURIAM:

Petitioner TANNEX DEVELOPMENT LC d/b/a THE WESTIN KEY WEST RESORT & MARINA, seeks review by certiorari, of the approval by the KEY WEST PLANNING BOARD of variances granted to Intervenor TROPICAL SOUP, INC., (the "Applicant" or "Intervenor") to facilitate construction of a restaurant building on leasehold land within Mallory Square, located on property located in and owned by the City of Key West, Florida, and leased to TROPICAL SOUP, INC.

PROCEDURAL HISTORY

As set forth in the variance application constituting part of the record herein, Mallory Square is publicly owned property adjacent to Key West Harbor, and constitutes a unique public square in the historic heart of the Key West's maritime industry. According to the record, the PLANNING BOARD considered variances associated with redevelopment of four city-owned lease areas on Mallory Square, to include a new structure with a restaurant, using established legally non-conforming consumption area, public plazas and open space, and the use of an existing historic structure. Specific variances sought by Petitioner included a variance for impervious surface, open space, side yard setbacks and the coastal construction control line. Public hearings were held before the PLANNING BOARD on January 20, April 21 and June 16, 2011. In conjunction with these hearings, and after the January 20 hearing, discussions were held between Petitioner TANNEX DEVELOPMENT, L.C., d/b/a THE WESTIN KEY WEST RESORT & MARINA, and Intervenor, regarding any impact on Petitioner's hotel, which is adjacent to Mallory Square.

As a consequence of the postponement and negotiations, the Intervenor revised the request to the PLANNING BOARD by reducing the size of the building and relocating the structure a greater distance from Petitioner's property. After lengthy discussion at the April 21 hearing, the BOARD again allowed a postponement of the matter to allow further revisions to the configuration of the property regarding issues raised during the discussion on April 21. A further reduction in the length of the building by 8' was effected, eliminating the need for a side yard setback which had been part of the original

request. Finally, on June 16, after further discussion of the merits of the request, the PLANNING BOARD unanimously passed the resolution allowing variances, as to which the instant action has been brought.

CITY CODE VARIANCE REQUIREMENTS.

The City of Key West Code of Ordinances, Section 90-395(a) contains seven standards required for variance. Petitioner has apparently conceded that the last two standards are not material to the issues before the Court (“not injurious to the public welfare” and “existing non-conforming uses of other property not the basis for approval”). The procedural history in the record further shows that the Applicant has also met requirements set forth in Key West City Code Subsection 90-395(b)(2), requiring that an applicant demonstrate a “good neighbor policy” by contacting all noticed property owners who have objected to the variance applications and attempting to address the objections expressed by the neighbors. Accordingly, in reviewing the PLANNING BOARD’S decision, only the five remaining standards considered by the BOARD are pertinent. The standards include:

- (1) Existence of special conditions or circumstances,
- (2) that conditions were not created by the applicant,
- (3) that special privileges are not conferred,
- (4) that hardship conditions exist,
- (5) that only the minimum variance is granted.

See Key West City Code Section 90-395(a).

The PLANNING BOARD, by Resolution 2011-025, made certain factual findings, as set forth in the Resolution. The findings are that:

(1) "special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other land, structures or buildings in the same district;

(2) that the special conditions do not result from the action or negligence of the applicant;

(3) that granting the variance requested will not confer upon the applicant any special privileges denied by the Land Development Regulations to other lands, buildings or structures in the same zoning district;

(4) that the literal interpretation of the provisions of the Land Development Regulations would deprive the applicant of rights commonly enjoyed by other properties in this same zoning district and would work unnecessary and undue hardship on the applicant;

(5) that the variance granted is the minimum variance which will make possible the reasonable use of the land, building or structure;

(6) that the granting of the variance will be in harmony with the general intent and purpose of the Land Development Regulations and that the variance will not be injurious to the area involved or otherwise detrimental to the public interest or welfare;

(7) that no non-conforming use of the neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of any variance; and

(8) that the applicant has demonstrated a "good neighbor policy" by contacting or making a reasonable attempt to contact all noticed property owners who have objected to the variance application, and by addressing the objections expressed by those neighbors;"

(See Resolution 2011-025 at pp. 2-3).

The Resolution itself, supporting exhibits, the testimony taken by the PLANNING BOARD, and the application itself, all of which were considered by the PLANNING BOARD regarding the variance application, have been carefully considered by the Court in reaching the conclusions set forth below.

ANALYSIS

Petitioner challenges the sufficiency of the factual findings above, and suggests that the failure of the Board of Adjustment to make detailed "findings of fact" with regard to its grant of variances, constitutes a departure from the essential requirements of law. However, as previously ruled by this court (Horan v. Board of Adjustment, 2008-CA-2020-K (16TH Cir. App. 2009)), and consistent with other established and controlling appellate authority, no formal findings of fact are required in these circumstances. In fact, the Florida Supreme Court has held that while "useful," no formal findings are required, so long as the record contains competent, substantial evidence that supports the administrative ruling. See Board of County Commissioners v. Snyder, 627 So.2d 469, 476 (Fla. 1993).

Petitioner further asserts that the Board of Adjustment's action in granting the variances requested is not supported by "competent, substantial evidence" as required by law. The role of the court is simply to determine whether the Board's decision is

supported by competent, substantial evidence, and not to consider whether the decision was opposed by competent, substantial evidence and then re-weigh the evidence. See Dusseau v. Metropolitan Dade County, 794 So.2d 1270, 1275 (Fla. 2001). "Evidence contrary to the agency's decision is outside the scope of the inquiry at this point, for the reviewing court above all cannot re-weigh the 'pros and cons' of conflicting evidence. While contrary evidence may be relevant to the wisdom of the decision, it is irrelevant to the lawfulness of the decision. As long as the record contains competent, substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended." Id. at p. 1276.

Notable within the evidence considered by the Board was the testimony of the applicant's representative, Owen Trepanier. In the April 21, 2011 hearing, Trepanier testified regarding "peculiar issues" about Mallory Square. Trepanier's testimony noted that Mallory Square is almost 100% impervious and that while the project will, in fact, reduce some of the impervious surface by creating more landscaping, it would not bring Mallory Square into full compliance with the code requirement, because to do so would require tearing up approximately 20% of Mallory Square. Trepanier testified that the impervious surface at Mallory is a "non-complying structure," but that the portion of value of Mallory Square involved did not reach the threshold required such that the code would necessitate a substantial modification to the impervious surface, to bring Mallory Square into compliance with current code requirements.

Trepanier's testimony detailed the place of Mallory Square in Key West's maritime history, and discussed the maritime activity and historical structures on the water's edge, that are integral to the area's history and special status in the City of Key West.

Trepanier testified that the existing old restaurant on the leasehold property is unsafe and "needs to be condemned and taken out." Trepanier further testified to the existence of significant hardship that would be suffered by the property owner, the City of Key West, in terms of realizing a reasonable economic return, for the taxpayers who ultimately own the property, unless these variances are allowed. Additionally, Trepanier testified that because of the special historic nature of Mallory Square, to build a building that meets the code as it exists today would cause damage and hardship to the Key West Historic District. With regard to the issue of minimum variance necessary, Trepanier testified that the proposal would not expand the existing non-conforming use, but rather would create a building in which an existing non-conforming use may be restructured and used in a way that meets modern need. He testified that no additional consumption area would be created by the variance, but would simply be restructured as set forth above.

Based upon the entirety of the record, and specifically upon Trepanier's testimony, the Planning Commission made the factual findings set forth above. After careful review of the record, with particular focus on the testimony of Owen Trapanier, the court finds that the factual findings of the Board set forth above are supported by competent, substantial evidence, from which the Board could reasonably have made the factual findings above.

Petitioner suggests that because the applicant entered into a leasehold with the city with full knowledge of the peculiar characteristics of Mallory Square, any hardship was "self-created" and therefore no variance should be granted.

However, the record is replete with evidence that the hardship involved here “arose from circumstances peculiar to the realty alone, unrelated to the conduct or to the self-originated expectations of any of its owners or buyers.” See City of Coral Gables v. Geary, 383 So.2d 1127 (Fla. 3rd DCA 1980). The record, and the testimony, establish that record evidence exists to show that the hardship was not “self-created” and that literal interpretation of the current land development regulations would make Mallory Square either generally unusable, or require an inappropriate architectural design to be approved in an important part of the Key West historic district. Trepanier’s testimony was that “if we’re forced to retain this stuff (i.e., the existing cable hut and dilapidated restaurant building), that we are left with obstructions in the velocity flood zone and put at risk adjacent historic structures and the adjacent property owners.” He also stated: that if no variance was available, and “. . .we ignore the historic spatial relationships of buildings and we build a building out there that just meets our Code as it is today, then the Historic District as a whole experiences a hardship because we end up with a structure out there that is not integrated and it’s not sympathetic to the Historic District.”

Similarly, as to the suggestion that the variances constitute an improper expansion of the non-conforming use in violation of the code, the evidence and testimony in the record and set forth above were a sufficient basis for the Board’s finding that the variances constituted a restructuring of an existing non-conforming use, not an expansion thereof.

Finally, with regard to Petitioner’s suggestion that the PLANNING BOARD failed to meet the essential requirements of law with regard to application of the coastal construction control line established in Section 161.053(3), Florida Statutes, the court


finds that Section 161 of Florida Statutes has no application to this matter. Section 161.053(1)(a) sets forth that the coastal construction control line legislation is designed to protect beaches and coastal barrier dunes adjacent to beaches. The testimony before the Board was that the subject property is bordered by sheet pile hardened shoreline with a concrete pier that extends some distance out over the water, previously permitted by both DEP and the Army Corps of Engineers, and that there is no natural shoreline, beach or dune system. Furthermore, the record contains no evidence of the existence of a coastal construction control line established by DEP pursuant to Chapter 161 of Florida Statutes, applicable to this property.¹ Accordingly, no prior DEP approval of this variance is legally required.

WHEREFORE, for the reasons set forth above, it is hereby

ORDERED as follows:

1. The Petition for Writ of Certiorari is DENIED, and this action is thereupon DISMISSED.

DONE and ORDERED at Key West, Monroe County, Florida, this 9th day of February, 2012.



DAVID J. AUDLIN, JR.
CHIEF JUDGE

cc: Adele V. Stones, Esq.
Richard G. Rumrell, Esq.
Larry R. Erskine, Esq.

Doc# 1870372
Bk# 2555 Pg# 1359

¹ A coastal construction control line was established by the City, not DEP, in Section 122-1148 of the City Code.