JANSSEN, SIRACUSA & KEEGAN PLLC
Counselors at Law
19 West Flagler Street, Suite 618
Miami, FL 33130
(305) 428-2776

Via Electronic Mail to (katie.halloran@cityofkeywest-fl.gov ; gveliz@cityofkeywest-fl.gov) and by Hand Delivery to City Clerk, Cheri Smith

Katie P. Halloran, Planning Director
City of Key West Planning Department
1300 White Street
Key West, Florida 33040

Greg Veliz, City Manager
City of Key West
1300 White Street
Key West, FL 33040

Cheri Smith, City Clerk
City of Key West
1300 White Street
Key West, FL 33040

Re: William R. Grosscup's Notice of Appeal to City Commission Sitting as Board of Adjustment; and Request for Public Hearing.
Subject Property: 13 Hilton Haven Dr., Key West, Florida

Dear Ms. Halloran, Ms. Smith and Mr. Veliz,

Our law firm represents WILLIAM R. GROSSCUP ("GROSSCUP") with respect to the above-referenced matter. We are in receipt of Planning Director, Katie Halloran's, letter to Owen Trepanier dated July 2, 2020, which was served on him *via* U.S. Mail.[1] GROSSCUP contends Ms. Halloran's July 2, 2020 letter is a "*final* administrative and/or enforcement decision" concerning the use of the upland portion of his legal lot of record, which is located within a residential zoning district.[2] Ms. Halloran's letter provides in relevant part, as follows:

> We have reviewed your application for variances for property located at 13 Hilton Haven Drive, dated January 6, 2020. The application requests variances to the minimum front yard setback, Coastal Construction Control Line, impervious surface ratio and Wetland Buffer Zone within the medium Density Residential

[1] Section 90-431c provides "[w]hen the order or other administrative action has been mailed to the party, the party may add three (3) days to the prescribed time period for appeal." The Planning Director's July 2, 2020 letter was mailed to Trepanier's office. Therefore, the instant Notice of Appeal is timely being filed on or before July 15, 2020.

[2] Interestingly, the upland portion of GROSSCUP's parcel at 13 Hilton is within a residential zoning district. The bay bottom portion of his parcel is within a conservation district.

> (MDR) zoning district. The proposed construction would also conflict with rear yard setbacks for his zoning district.
>
> **The request for a variance to the Coastal Construction Control Line** (Section 122-1148, City of Key West Code of Ordinances) **is inconsistent with the City's Comprehensive Plan.** Please see Comprehensive Plan Policy 5-1.3.1: Shoreline Setback and Policy 5-1.3.2: Natural Shoreline and Beach/ Dune Stabilization.
>
> * * *
>
> Although Hilton Haven was historically created by fill, the shoreline at 13 Hilton Haven is a natural shoreline and not a hardened shoreline, which suggests state and local shoreline legislation would be applicable. The property remains available for beneficial uses, however **a single-family structure would not be feasible given the legal non-conforming small size of the lot**. The [variance] request as proposed cannot move forward to the Planning Board.

(Emphasis added). The City Planner's *final* decision is therefore directly appealable to the City Commission sitting as the Board of Adjustment. Pursuant to Sections 90-426, 90-430 and 90-431 *City of Key West, Florida, Municipal Code* and any other applicable procedural rules, we hereby submit GROSSCUP's Notice of Appeal to the City Commission Sitting as the Board of Adjustment; and Request for a Public Hearing. GROSSCUP is an aggrieved or adversely affected party, as defined by Section 163.3215(2), *Florida Statutes.* He has the right to request a quasi-judicial hearing before the local government for which this application is made.

As an initial matter, the City is bound to follow its own rules/ regulations and denies due process when it fails to do so. *Fruman v. City of Detroit*, 1 F.Supp. 2d 665, 672 (E.D. Mich. 1998); *Superior Savings Assn. v. Cleveland*, 501 F.Supp. 1244, 1249 (N.D. Ohio 1980), *quoting Service v. Dulles*, 354 U.S. 363 (1957). The City's Municipal Code requires the issuance of a variance based upon specific criteria, which GROSSCUP contends he has met. In *Rinker Materials Corp. v. City of North Miami,* 286 So.2d 552, 553 (Fla. 1973), the Florida Supreme Court held that

> (a) In statutory construction, statutes must be given their plain and obvious meaning and it must be assumed that the legislative body knew the plain language and ordinary meaning of their words.
>
> (b) Statutes or ordinances should be given their plain and obvious meaning and it must be assumed that the legislative body know the plain language and ordinary meaning of the words.
>
> (c). Since zoning regulations are in derogation of private rights of ownership, words used in a zoning ordinance should be given their broadest meaning when there is no definition of clear intent to the contrary and the ordinance should be interpreted in favor of the

> property owner. The principles of statutory construction apply to municipal ordinances.

Id. at 553. Municipal ordinances are subject to the same rules of construction as state statutes. *Id.* At a minimum, GROSSCUP is entitled to a hearing before the Board of Adjustment.

Section 122-31 allows a single-family home and customary accessory buildings to be constructed on *any legal nonconforming single* lot that is in existence on January 1, 1994:

> **In any district in which single-family dwellings are allowed, a single-family dwelling** and customary accessory buildings **may be erected on any legal nonconforming single lot that is in existence on January 1, 1994,** and that is in different ownership from the adjoining property.

(Emphasis added). The Planning Department does not dispute the fact that 13 Hilton Haven Drive is a legal lot of record in existence on January 1, 1994. GROSSCUP therefore should have the right to erect a single-family home and customary accessory buildings on his parcel despite the fact his parcel does not meet the requirements for building site width, depth and area. GROSSCUP's property located at 13 Hilton Haven Drive is located in a district in which single-family residential dwellings are allowed. The property was a legal lot of record in existence on January 1, 1994 and consists of dimensions that make it non-conforming because the upland portion of the parcel is smaller than the required size. Accordingly, the lot is within the contemplated exception carved out by Section 122-31, since it is a legal nonconforming lot that existed prior to January 1, 1994. In addition to Section 122-31, multiple Comprehensive Plan Policies and Land Development Regulations demonstrate the intent of City regulations to not eliminate beneficial use of land based on nonconforming size, including:

> Comp. Plan Sec. II. Glossary of Terms.
>
> Beneficial Use – **Property rights associated with existing vacant lots of record** that meet specific criteria identified in the Land Development Regulations.
>
> * * *
>
> Comp. Plan Policy 8-1.1.3. Principles and Guidelines to be used in Coordination of Development and Growth Management Issues.
>
> 16. … **The City shall amend its comprehensive plan to include policies** related to permanent and nonpermanent residential allocations, and other policies such as land acquisition or other measures necessary **to avoid a taking of private rights without just compensation.**
>
> * * *

> LDR Sec. 108-999. – Procedures for ensuring beneficial use of private property.
>
> **It is the policy of the city that neither** provisions of **the comprehensive plan nor the land development regulations shall deprive a property owner of all reasonable economic use of a parcel or real property which is a lot or parcel of record as to the date of adoption of the comprehensive plan.** [August 10, 1993]
>
> * * *
>
> LDR Sec. 122-1079. – Lots of record of less than minimum size.
>
> **Any legally platted lot of record, which conformed** with the regulations and procedures governing subdivision of lots, **at the time of the adoption of the ordinance from which this section derives which contains less lot area or width than required in the district in which it is located may be used for a use permitted in such district.**
>
> * * *
>
> LDR Sec. 122-1142. – Density and intensity of land use.
>
> d. … **This section shall not prevent**, as a minimum, **a single-family home from being built on a legal lot of record** where state and federal agencies having jurisdiction approve such development.

(Emphasis added). Had the City intended Section 122-31 to import a more specific or limited meaning, then it could have chosen words to express any limitations it wished to impose. *See gen.*, *American Bankers Life Assurance Co. v. Williams*, 212 So. 2d 777, 778 (Fla. 1st DCA 1968).

Trepanier & Associates, Inc., as GROSSCUP's authorized representative, submitted an application to the Planning Department on January 6, 2020 requesting variances in connection with his proposed construction of a residential single-family dwelling on the upland portion of his parcel, which is within a residential zoning district. To date, the Planning Director has not caused GROSSCUP's request for variances to be placed on the agenda for consideration by the planning board, despite several requests by Mr. Trepanier's office for her to do so. Instead, nearly seven months after receiving GROSSCUP's application, the Planning Director issued her July 2, 2020 final decision concluding that "a single-family structure would not be feasible given the legal non-conforming small size of the lot." Her final decision focuses on a brief and unsupported discussion of Section 122-1148 (Coastal Construction Control Line), Comprehensive Plan Policy 5-1.3.1 (Shoreline Setback) and Comprehensive Plan Policy 5-1.3.2 ("Natural Shoreline and Beach/ Dune

Stabilization").[3] In particular, the Planning Director's final decision is premised on her purported belief the shoreline at 13 Hilton Haven Drive is somehow a "natural shoreline, which suggests that State and local protection legislation would be applicable."

In view of the foregoing and for the reasons discussed further *infra*, the Planning Director's assumptions are incorrect. The Board of Adjustment should grant GROSSCUP's requested variance.

Section 122-1148, provides in pertinent part, as follows:

> Sec. 122-1148 – Coastal construction control line.
>
> (a) No building or other structure shall be constructed:
>
> (1) Within 50 feet of the mean high water along the Atlantic Ocean, **southwest from the Cow Key Channel Bridge to the southeast corner of the Truman Annex property, inclusive of the Fort Taylor State Park, which fronts on the Atlantic Ocean**; or
>
> (2) Within 30 feet of the mean high water along the main ship channel, Key West Harbor, Garrison Bight, and the Bay of Florida, **which shoreline is generally described as running north and east from the southeast corner of Truman Annex property, inclusive of the Fort Taylor State Park property which fronts the Bay of Florida, to the north end of the Cow Key Channel Bridge and also extending along the outer limits of North Stock Island**.

(Emphasis added).

Mr. Grosscup's parcel is *not* within the *described* language contained in Section 122-1148. A review of the Florida Department of Environmental Protection's Interactive Coastal Construction Control Line map shows there is no coastal construction control line along the North side of Hilton Haven Drive.[4] In view of this, Section 122-1148 should not be applied to

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[3] The Planning Director's final determination concerning GROSSCUP's request for a variance does not appear to have been lawfully authorized. In particular, Section 90-398 limits the Planning Director's authority to the granting of administrative variances to: front, rear yard and *non-shoreline* set back requirements by no more than 20 percent; reduction in all street and landscape buffer yard width requirements in Chapter 108, Article VI by no more than ten percent; and reduction in the total area of landscaping required for off street parking and loading in Chapter 108, Article VII, Subsection II, by no more than ten percent. The subject request for variance involves *shoreline* set back requirements. As such, the Planning Director's authority should have been limited to recommendations to the planning board to grant or deny the requested variance, coordinating a public hearing and compliance with notice. Nonetheless, the Planning Director's July 2, 2020 letter is a "*final* decision, order, interpretation and/or enforcement" of land development regulations against GROSSCUP - which is directly appealable the Board of Adjustment pursuant to Section 90-426, 90-431, and subject to the procedures set forth in Section 90-431, *et seq*. The Planning Director's seven-month long delay in making her final decision and her final decision respecting GROSSCUP's property rights, constitute violations of his due process.

[4] *See* https://ca.dep.state.fl.us/mapdirect/?webmap=a8c9e92fbad5446d987a8dd4ee5dc5cc. The Florida Department of Environmental Protection's interactive CCCL map allows a user to zoom down and enlarge any property located

GROSSCUP's property. Even assuming *arguendo*, Section 122-1148 was somehow broad enough to include GROSSCUP's parcel, there is no rational basis for its application. Section 161.053(2)(a), *Florida Statutes*, provides that coastal construction control lines shall be established by the Florida Department of Environmental Protection - only after it has been determined from a comprehensive engineering study and topographic survey that the establishment of such control lines is necessary for the protection of the upland properties and the control of beach erosion. The Florida Department of Environmental Protection has determined following its comprehensive engineering and topographic surveys of Key West *not* to establish a coastal construction control line along the North side of Hilton Haven Drive. There are no beaches or coastal barrier dunes anywhere along the North side of Hilton Haven Drive to protect or preserve. Accordingly. the absence of any State of Florida established coastal construction line along GROSSCUP's property factors *in favor* of granting his request for a variance.

It should also be noted the City of Key West, the Florida Department of Environmental Protection and the Florida Department of Community Affairs previously entered into a settlement agreement with GROSSCUP in which the City expressly agreed to "cause the issuance of any additional approvals, waivers, *variances*, special exceptions, permits and/or extensions that may be required" to complete the construction of Mr. Grosscup's concrete pile supported accessory storage building on the same property. *See* Resolution No. 10-236, a copy of which is included in the record on appeal. The proposed single-family home will be located upland of his existing accessory building. In view of this, the Planning Director's denial is inconsistent with the City's prior settlement agreement because the City through its settlement has already effectively granted a variance to 13 Hilton Haven Drive for coastal set back requirements.[5]

Comprehensive Plan Policy 5-1.3.2 provides:

> Natural Shoreline and Beach/ Dune
>
> To protect **natural rock outcrops** which form most of the City's shoreline as well as the limited beach, shoreline development and access shall continue to be restricted in order to preserve the shoreline and the limited beach. Rigid shore protection structures are not permitted, except when used as part of a comprehensive plan for beach restorations and when non-structural alternatives are not acceptable. When **beach nourishment** projects are needed, the **dune system** should be restored as necessary, utilizing natural indigenous vegetation. The shoreline setback from **natural shorelines** shall be 30 to 50 feet dependent upon the particular shoreline characteristic identified in the Development Regulations.

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in the State of Florida to determine whether it is impacted by the CCCL. A screen shot taken from the map showing 13 Hilton Haven Drive is included in the record on appeal. *See* record on appeal.

[5] Following the 2010 settlement between the City and GROSSCUP, he constructed his pile supported concrete accessory storage building, which is located on the bay bottom portion of his property within the conservation district. It would make no sense for the City, which has effectively granted a variance for the accessory building to subsequently deny his request to build a single-family dwelling on the upland portion of the same lot, which is zoned for residential use.

Comprehensive Plan Policy 5-1.3.1 provides:

> Shoreline Setback
>
> The City shall require minimum coastal setbacks of ten to 20 feet from the mean high tide line of man-made water bodies **and/or lawfully altered shorelines** of natural water bodies, dependent on the shoreline characteristics.

The Planning Director correctly acknowledges that Hilton Haven was historically created by fill. What she has failed to acknowledge however, is that the privately-owned bay bottom portion of GROSSCUP's property at 13 Hilton Haven was historically dredged out and used as fill for Henry Flagler's Railway. A review of aerial photos of Key West *circa* 1920 show the subject privately owned bay bottom was at one time a shallow bank. *See* Record on Appeal. Harry DeLashmutt who is a biologist has found "the shoreline at 13 Hilton Haven Drive has been altered not only by historic fill placement, but also "by historic legal dredging immediately off-shore of this Lot." *See* letter from Harry DeLashmutt to Owen Trepanier dated July 13, 2020. Therefore, there are no "*natural* rock outcrops" at 13 Hilton Haven. Nor are there any *beach* or *dunes* at this property to nourish or preserve. The subject shoreline at 13 Hilton Haven is therefore *not* a "natural shoreline." As such, Comprehensive Plan Policy 5-1.3.2 is not applicable.

The subject property's shoreline was *lawfully altered* by Flagler. However, the 5-1.3 policy the Planning Director references is couched in "*OBJECTIVE 5-1.3: - LAND USE CONTROLS AND CONSTRUCTION STANDARDS FOR PROTECTING THE NATURAL SHORELINE AND THE VERY LIMITED BEACH/ DUNE SYSTEM.*" Clearly Hilton Haven is not a natural shoreline with a beach or a dune system. The Planning Director should not be applying setbacks, which are intended to protect "natural shorelines and dune systems" to a property that consists of a *lawfully altered* shoreline and privately-owned bay bottom, with little to no environmental significance. To the extent Comprehensive Plan Policy 5-1.3.1 may somehow apply to the instant request for a variance, GROSSCUP's has nonetheless met the standards for the issuance of a variance:

(1) Special conditions or 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 zoning district. GROSSCUP's parcel is a single legal lot of record existing on January 1, 1994. Therefore, he has a right to construct a single-family dwelling. *See* Section 122-31. The parcel however is unique or *peculiar* because the upland portion of his parcel is 2,300 square feet. Therefore, the strict application of the coastal set back requirements make it practically impossible for GROSSCUP to construct a single-family residential dwelling on his parcel or record. The first factor is therefore met.

(2) Conditions are not created by applicant – *i..e*, that the special conditions and circumstances do not result from the action or negligence of the applicant. The upland portion of GROSSCUP's parcel was lawfully and historically created by fill *prior* to the City's adoption of Section 122-1148 (Coastal Construction Control Line), Comprehensive Plan Policy 5-1.3.1

(Shoreline Setback) and Comprehensive Plan Policy 5-1.3.2 ("Natural Shoreline and Beach/ Dune Stabilization"). Hilton Haven was platted in 1950. GROSSCUP did not create the hardship. The second factor is therefore met.

(3) Special privileges not conferred - *i.e.*, that granting of 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. The granting of a variance will not confer upon GROSSCUP any special privileges denied by the land development regulations to other lands, buildings or structures in the same zoning district. Upon information and belief, there is at least one other property owner within the same zoning district who has received a coastal set back variance. The third factor is therefore met.

(4) Hardship conditions exist - *i.e.*, that literal interpretation of the provisions of the land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the ordinance and would work unnecessary and undue hardship on the applicant. "It is well-recognized that the irregular shape or other peculiar physical characteristic of a particular parcel constitutes 'classic hardship' unique to an individual owner which justifies, and in some cases requires the granting of a variance." *City of Coral Gables v. Geary*, 383 So.2d 1127, 1128 (3rd DCA 1980) (affirming trial court's order requiring city to grant a variance to owner of unusual triangular shape property, which rendered it practically impossible for it to be developed in accordance with existing regulations; also rejecting city's argument that hardship was somehow "self-created" by owner's purchase of property in its present configuration with knowledge of the already imposed building restrictions). Similarly, it is practically impossible for GROSSCUP to construct a single-family dwelling on his property in accordance with the existing land development regulations given the nonconforming size of his upland. GROSSCUP's parcel - a legal lot of record - is rectangular in shape and measures 83.5 feet in width and averages 435 feet in length. *See* Property Appraiser' map for GROSSCUP's property.[6] While the total parcel is approximately 35,887 square feet (82.5 x 435 = 35,887.5), the upland portion of the parcel is approximately 2,300 square feet. The peculiar physical characteristic of the instant parcel constitutes a classic "hardship" unique to GROSSCUP, which not only justifies, but requires the granting of a variance. Moreover, there are numerous other property owners on Hilton Haven who have been permitted to construct and who are currently constructing, new single-family residential dwellings on their legal lots of record and otherwise enjoying their property rights and Florida homestead protections, within the same zoning district. The fourth factor is therefore met.

(5) Only minimum variance granted - *i.e.*, that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure. Mr. Grosscup is only seeking the minimum variance necessary to construct a single-family residential dwelling on his property – a legal lot of record in existence on January 1, 1994. The fifth factor is therefore met.

(6) Not injurious to the public welfare - *i.e.*, that the grant of the variance will be in harmony with the general intent and purpose of the land development regulations and that

[6] https://qpublic.schneidercorp.com/Application.aspx?AppID=605&LayerID=9946&PageTypeID=4&PageID=7635&Q=2064267731&KeyValue=00001870-000000

such variance will not be injurious to the area involved or otherwise detrimental to the public interest or welfare. In view of the numerous single-family homes recently constructed on Hilton Haven, which is within the approved use for the instant district, the proposed construction of a single-family residence at 13 Hilton Haven Drive is not injurious to the public welfare. Indeed, the public policy of the State of Florida, as expressed by the Florida Legislature through its enactment of Section 70.001, *Florida Statutes*, ("Bert J Harris, Jr. Private Property Rights Protection Act") is that there is an important State interest in protecting the rights of private property owners from such inordinate regulatory burdens that unfairly affect their real property. Therefore, the requested variance is in the interest of the public welfare. The sixth factor is therefore met.

(7) Existing nonconforming uses of other property not the basis for approval. No nonconforming use of neighboring lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance. There is currently no nonconforming use of other properties that is the basis for the variance sought here.

WHEREFORE, on behalf of WIILIAM R. GROSSCUP, we respectfully request:

(a) a public hearing to be noticed and held before the Board of Adjustment at the next regularly scheduled meeting, unless the parties mutually agree to another date;

(b) disapprove the final decision of the Planning Director rendered on July 2, 2020;

(c) grant the relief sought by GROSSCUP by concluding he is entitled to the requested variances allowing the construction of his proposed single-family dwelling at 13 Hilton Haven Drive; and

(d) grant any other and further relief the Board deems just and proper.

Respectfully submitted,

JANSSEN, SIRACUSA & KEEGAN PLLC
Counsel for WILLIAM R. GROSSCUP
19 W. Flagler Street, Suite 618
Miami, FL 33130
Telephone (305) 428-2776
Facsimile (561) 420-0576
Email: jsiracusa@jasilaw.com

By: ***s/ John M. Siracusa***
JOHN M. SIRACUSA
Florida Bar No. 159670

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 15, 2020, the original and one true and correct copy of the foregoing Notice of Appeal, together with all documents, plans, papers and other materials constituting the record upon which the action appealed from was taken has been filed with City Clerk, Cheri Smith, 1300 White Street, Key West, Florida; and via electronic mail to the parties on the attached service list.

By: ***s/ John M. Siracusa***
JOHN M. SIRACUSA
Florida Bar No. 159670

SERVICE LIST:

Katie P. Halloran, Planning Director
City of Key West Planning Department
1300 White Street
Key West, Florida 33040
Katiehalloran@cityofkeywest-fl.gov

Greg Veliz, City Manager
City of Key West
1300 White Street
Key West, FL 33040
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Katie P. Halloran
Planning Director

THE CITY OF KEY WEST
PLANNING DEPARTMENT
P.O. BOX 1409
KEY WEST, FL 33041-1409
www.cityofkeywest-fl.gov

1300 White Street
Key West, FL 33040
(305) 809-3746
katie.halloran@cityofkeywest-fl.gov

July 2, 2020

Owen Trepanier
Trepanier & Associates, Inc.
1421 First Street #101
Key West, FL 33040

RE: Application for Variance for 13 Hilton Haven Dr.

Good afternoon Mr. Trepanier,

We have reviewed your application for variances for property located at 13 Hilton Haven Drive, dated January 6, 2020. The application requests variances to the minimum front yard setback, Coastal Construction Control Line, impervious surface ratio, and Wetland Buffer Zone within the Medium Density Residential (MDR) zoning district. The proposed construction would also conflict with rear yard setbacks for this zoning district.

The request for a variance to the Coastal Construction Control Line (Section 122-1148, City of Key West Code of Ordinances) is inconsistent with the City's Comprehensive Plan. Please see Comprehensive Plan Policy 5-1.3.1: Shoreline Setback and Policy 5-1.3.2: Natural Shoreline and Beach / Dune Stabilization.

> *Comprehensive Plan Policy 5-1.3.1: Shoreline Setback. The City shall require minimum coastal setbacks of ten to 20 feet from the mean high tide line of man-made water bodies and/or lawfully altered shorelines of natural water bodies, dependent on the particular shoreline characteristic.*
>
> *Comprehensive Plan Policy 5-1.3.2: Natural Shoreline and Beach / Dune Stabilization. To protect natural rock outcrops which form most of the City's shoreline as well as the limited beach, shoreline development and access shall continue to be restricted in order to preserve the shoreline and the limited beach. Rigid shore protection structures are not permitted, except when used as part of a comprehensive plan for beach restoration and when non-structural alternatives are not acceptable. When beach nourishment projects are needed, the dune system should be restored, as necessary, utilizing natural, indigenous vegetation. The shoreline setback from natural shorelines shall be 30 to 50 feet dependent upon the particular shoreline characteristic identified in the Land Development Regulations.*

Although Hilton Haven was historically created by fill, the shoreline at 13 Hilton Haven is a natural shoreline and is not a hardened shoreline, which suggests state and local shoreline protection legislation would be applicable. This property remains available for beneficial uses, however a single-family structure would not be feasible given the legal non-conforming small size of the lot. The request as proposed cannot move forward to the Planning Board. Please contact me at 305-809-3746 if you have additional questions.

Thank you,

Katie P. Halloran
Planning Director

CC: George Wallace
Melissa Paul-Leto
Scott Fraser

Owen Trepanier

From: Owen Trepanier
Sent: Wednesday, June 24, 2020 3:29 PM
To: Katie P. Halloran; Melissa Paul-Leto
Cc: John Siracusa; Donna Phillips; Lauren Mongelli
Subject: RE: 13 Hilton Haven

Hi Katie,
May I discuss the issue with you at your earliest convenience.
Thanks.

Owen

Trepanier & Associates, Inc.
Land Planners & Development Consultants
305-293-8983

From: Owen Trepanier
Sent: Wednesday, June 17, 2020 5:15 PM
To: Katie P. Halloran <katie.halloran@cityofkeywest-fl.gov>; Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>
Cc: John Siracusa <jsiracusa@jasilaw.com>; Donna Phillips <donna.phillips@cityofkeywest-fl.gov>; Lauren Mongelli <lauren@owentrepanier.com>; Lauren Mongelli <lauren@owentrepanier.com>
Subject: RE: 13 Hilton Haven

Thanks.
Do you have an anticipated timeframe?
May we help with the question you have?

Owen

Trepanier & Associates, Inc.
Land Planners & Development Consultants
305-293-8983

From: Katie P. Halloran <katie.halloran@cityofkeywest-fl.gov>
Sent: Wednesday, June 17, 2020 5:12 PM
To: Owen Trepanier <owen@owentrepanier.com>; Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>
Cc: John Siracusa <jsiracusa@jasilaw.com>; Donna Phillips <donna.phillips@cityofkeywest-fl.gov>; Lauren Mongelli <lauren@owentrepanier.com>
Subject: RE: 13 Hilton Haven

Hello Owen,
I have an outstanding question I'd like legal to address before we get you on an agenda.

From: Owen Trepanier <owen@owentrepanier.com>
Sent: Wednesday, June 17, 2020 4:14 PM
To: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>
Cc: John Siracusa <jsiracusa@jasilaw.com>; Donna Phillips <donna.phillips@cityofkeywest-fl.gov>; Katie P. Halloran <katie.halloran@cityofkeywest-fl.gov>; Lauren Mongelli <lauren@owentrepanier.com>
Subject: RE: 13 Hilton Haven

Hi Melissa,
It turns out the 3rd DCA never issued an opinion, they rejected the appellant's request for a hearing and simply upheld the Circuit Court's decision.
Do you expect we will be on the July PB?
Thanks.
Owen

Trepanier & Associates, Inc.
Land Planners & Development Consultants
305-293-8983

From: Owen Trepanier
Sent: Wednesday, June 10, 2020 11:03 AM
To: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>
Cc: John Siracusa <jsiracusa@jasilaw.com>; Donna Phillips <donna.phillips@cityofkeywest-fl.gov>; Katie P. Halloran <katie.halloran@cityofkeywest-fl.gov>; Lauren Mongelli <lauren@owentrepanier.com>
Subject: RE: 13 Hilton Haven

Melissa,
The Tannex v KWPB appeal went to Circuit Court and then to the 3rd DCA. I do not have a copy of the DCA opinion in my files, but I am attaching the Circuit Court's decision.

It just occurred to me that you guys might be thinking that the Coastal Construction Control Line is the State established CCCL. If that's the case, there is a misunderstanding. The CCCL in key West is not the State legislated CCCL. The line here was created in KW by KW to protect beach berms here. The state line doesn't come into the keys because we don't have enough natural beach to qualify for the Statutorily designated CCCL.

Owen

Trepanier & Associates, Inc.
Land Planners & Development Consultants
305-293-8983

From: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>
Sent: Tuesday, June 9, 2020 4:49 PM
To: Owen Trepanier <owen@owentrepanier.com>
Subject: 13 Hilton Haven

Good afternoon Owen,
Katie took a look at the documents today that I had collected for her to review for 13 Hilton Haven's variance requests.
I have a question for you.
Do you have a copy of the appeal to DEA for the shoreline variance issued? Or was it never issued?

Sincerely,
Melissa Paul-Leto
Planner I
City of Key West
Planning Department at Josephine Parker City Hall
1300 White Street
(305)809-3724
mleto@cityofkeywest-fl.gov
www.cityofkeywest-fl.gov

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.
_____/

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.

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

Owen Trepanier

From: Owen Trepanier
Sent: Thursday, May 14, 2020 11:02 AM
To: Melissa Paul-Leto; Donna Phillips
Cc: Lauren Mongelli
Subject: RE: 13 Hilton Haven
Attachments: Extracted pages from Amys_April_11_2008_Memo_to_Shawn_and_Larry.pdf

Hi Melissa,
This memo from the past city planner Amy Kimball-Murley to Larry Erskine and Shawn Smith may be helpful; the analysis includes the direction for the property owner to obtain a variance to the CCCL from the Planning Board (pg 5).

Anyway, I don't know what the current interpretation is today, but since the Planning Board took over the granting of variances from the BOA (about 15 years ago), they have always been the responsible body for granting variance to the CCCL.

Owen

Trepanier & Associates, Inc.
Land Planners & Development Consultants
305-293-8983

From: Owen Trepanier
Sent: Wednesday, May 13, 2020 1:25 PM
To: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>; Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Cc: Lauren Mongelli <lauren@owentrepanier.com>
Subject: RE: 13 Hilton Haven

Hi Melissa,
Thanks for the email.

Coastal Construction Control Line - I am attaching the last CCCL variance granted by the Planning Board as an example. The variance was granted, appealed and ultimately upheld by the 3rd DCA. I'm afraid I can't find the Reso, but I am attaching the staff report ("Mallory – Variance Staff Report").

Wetland – I think I screwed up the wetland issue, because the property is currently nonconforming with no wetland buffer, we intend to implement a buffer protection plan created by BioSurveys (attached), so we would be improving a nonconformity, which doesn't (at least in the past) require variances; if you agree, we can drop that request.

Landscaping – This is a definitional issue, which we may also be able to drop. The definition of landscaping is "Landscape area means an area containing trees, barriers, ground cover and/or other plant material as required by this article." By definition, "landscaping" excludes all the seagrass, sponges, corals, etc. and treats the water the same as an asphalt parking lot. Notwithstanding, we may be able to drop this request as well, if you agree. My rationale is that if we deal with just the upland area, we will meet the 20% (see the site data for just the MDR zoned portion below). If the landscape code recognized submerged land and its vegetation, then we would have a landscape percentage near 99%. So, if we agree to look at just the upland, then we can drop the landscape request.

Thanks for working with us on this.

13 Hilton Haven Dr.

Site Data	Required/ Allowed		Existing	Proposed	Comments	Required/ Allowed		Existing	Pr
Zoning	**Combined**					**MDR**			
FEMA	NA		AE-8 & AE-9	No Change	*Complies*	NA		AE-8	No
Site Size	457,380.0		36,366.0	No Change	*Complies*	21,780.0		3,380.5	No
Building Coverage	Varies	2,832.5	1323.0	2,823.0	*Complies*	35%	1,183.2	0.0	
Front Setback	Varies	23.4	23.4	12.5	***Variance***	23.4		23.4	
Side Setback	Varies	7.0	7.0	No Change	*Complies*	7.0		7.0	No
Rear Setback	Varies	20.0	+20.0	No Change	*Complies*	20.0		NA	No
Shoreline Setback	Varies	30.0	0.0	No Change	*Complies*	30.0		0.0	No
FAR	Varies	329.9	0.0	No Change	*Complies*	0.0		0.0	No
Density	Varies	1.24	1	No Change	*Complies*	16	1.24	1	No
Building Height	Varies		Varies	Varies	*Complies*	30.0		<30.0	
Impervious Ratio	Varies	3,677.6	35,040.5	35,465.5	***Variance***	60%	2,028.3	61%	
Landscape	21%	7,636.86	1.4%	1.9%	***Variance***	20%	676.1	15%	
Open Space	20%	7,273.20	1.4%	1.9%	***Variance***	35%	1,183.2	15%	

Owen

Trepanier & Associates, Inc.
Land Planners & Development Consultants
305-293-8983

From: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>
Sent: Tuesday, May 12, 2020 12:23 PM
To: Owen Trepanier <owen@owentrepanier.com>; Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Cc: Lauren Mongelli <lauren@owentrepanier.com>
Subject: RE: 13 Hilton Haven

Good afternoon Owen,
I am getting back with you in regards to the 13 Hilton Haven variance requests.
The planning and legal department are in sync with transferring the floating home in lieu of a on land home at 13 Hilton Haven. The some of the variance requests are an issue as the Planning Board does not grant variances to the Coastal Construction Control Line and Wetland Buffer Zone.
The Landscaping Sec.108-412(a) would be part of a landscape waiver for a development plan requirement.
Karen Demaria would be the person that is certified to measure where the wetland buffer begins. She would have to measure it. However, there is no mechanism to not meet the requirements to the coastal construction line and to the wetland buffer zone that I and legal can find. Please let me know if you are seeing something different.

Sincerely,
Melissa Paul-Leto
Planner I
City of Key West
Planning Department at Josephine Parker City Hall
1300 White Street
(305)809-3724
mleto@cityofkeywest-fl.gov
www.cityofkeywest-fl.gov

From: Owen Trepanier <owen@owentrepanier.com>
Sent: Wednesday, May 6, 2020 4:41 PM
To: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>; Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Cc: Lauren Mongelli <lauren@owentrepanier.com>
Subject: RE: 13 Hilton Haven

Hi Melissa,
Just following up to verify you received this email. We're hopeful we can proceed to Planning Board as soon as possible.
Thanks a lot.
Owen

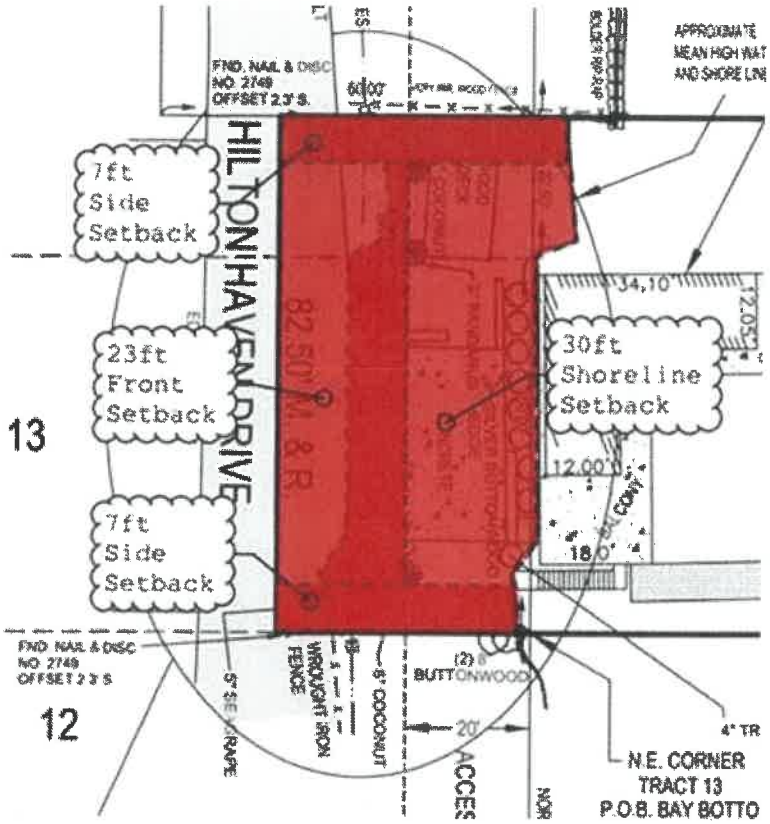
Trepanier & Associates, Inc.
Land Planners & Development Consultants
305-293-8983

From: Owen Trepanier
Sent: Monday, April 27, 2020 2:18 PM
To: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>; Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Cc: Lauren Mongelli <lauren@owentrepanier.com>
Subject: 13 Hilton Haven

Hi Melissa,
There may be a misunderstanding. The Settlement Agreement for this property recognized a "Floating Home", not a "liveaboard vessel" (Exhibit A). Floating Homes as defined by Sec. 14-181 include BPAS. The Planning Department analysis of preexisting rights also recognizes the property as containing "an existing floating home which was not affected by the Building Permit Allocation System and, therefore, **no new unit allocation** (also known as a "ROGO" unit) is required" [emphasis added] (Exhibit B). These documents demonstrate that the property contains one BPAS-exempt ROGO unit in its bundle of property rights. To build this house, we intend to utilize that unit.

We ran the Site Data as you requested. It revealed that we needed two additional variances. I revised the written request and attached it hereto.

I am also including a depiction of the buildable area of Capt. Grosscup's property. The setbacks are depicted in Red and the buildable area would be depicted in Green, except, as you can see, there is no buildable area, based on a literal interpretation of the code.



Owen

Trepanier & Associates, Inc.
Land Planners & Development Consultants
305-293-8983

From: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>
Sent: Wednesday, March 18, 2020 10:26 AM
To: Lauren Mongelli <lauren@owentrepanier.com>; Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Cc: Owen Trepanier <owen@owentrepanier.com>; Thomas Francis-Siburg <thomas@owentrepanier.com>
Subject: RE: 13 Hilton Haven

Good morning,
The result of the internal meeting confirmed that the property owner is required to apply for a BPAS unit in order to build a home on land. I attached the section that applies to liveaboard vessels which are not subject to the City's BPAS ordinance. I spoke with Owen during our meeting at the Fire Department regarding the site data table reflecting only buildable land. Our BPAS application opens up July 1, 2020.
Please feel free to contact me with any further questions.

Best,

Melissa Paul-Leto
PLANNER I

City of Key West – Planning Department
Josephine Parker City Hall
1300 White Street
Key West, Florida 33040

Direct: (305) 809-3724
mleto@cityofkeywest-fl.gov
http://www.cityofkeywest-fl.gov

From: Lauren Mongelli <lauren@owentrepanier.com>
Sent: Tuesday, March 17, 2020 3:11 PM
To: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>; Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Cc: Owen Trepanier <owen@owentrepanier.com>; Thomas Francis-Siburg <thomas@owentrepanier.com>
Subject: RE: 13 Hilton Haven

Hi Melissa,
Do you have an update on the internal meeting you had regarding this project?

Thank you.

Lauren Mongelli

Trepanier & Associates, Inc.
Land Planners & Development Consultants
1421 First Street, P.O. Box 2155
Key West, FL 33045-2155
Ph. 305-293-8983 / Fx. 305-293-8748
www.owentrepanier.com

From: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>
Sent: Wednesday, March 04, 2020 3:34 PM
To: Lauren Mongelli <lauren@owentrepanier.com>; Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Subject: RE: 13 Hilton Haven

Good afternoon,
13 Hilton Haven is being reviewed internally and is not ready for the March 19th Planning Board.
I met with Owen and the Fire Department this morning. He knows there are revisions to the site data table that are needed for the buildable land. I will email Owen with any comments regarding the internal meeting we will be having tomorrow morning regarding this variance request.

Best,

Melissa Paul-Leto
PLANNER I

City of Key West – Planning Department
Josephine Parker City Hall

1300 White Street
Key West, Florida 33040

Direct: (305) 809-3724
mleto@cityofkeywest-fl.gov
http://www.cityofkeywest-fl.gov

From: Lauren Mongelli <lauren@owentrepanier.com>
Sent: Wednesday, March 4, 2020 2:58 PM
To: Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Cc: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>
Subject: RE: 13 Hilton Haven

Thank you!

Lauren Mongelli

Trepanier & Associates, Inc.
Land Planners & Development Consultants
1421 First Street, P.O. Box 2155
Key West, FL 33045-2155
Ph. 305-293-8983 / Fx. 305-293-8748
www.owentrepanier.com

From: Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Sent: Wednesday, March 04, 2020 2:56 PM
To: Lauren Mongelli <lauren@owentrepanier.com>
Cc: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>
Subject: RE: 13 Hilton Haven

Hi Lauren –

This is not scheduled for the March 19, 2020 Planning Board. I have included Melissa on this response so she can provide further information.

Regards,

Donna Phillips
Administrative Specialist
City of Key West
Planning Department at
Josephine Parker City Hall
1300 White Street
(305) 809-3764
donna.phillips@cityofkeywest-fl.gov
www.cityofkeywest-fl.gov

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. F.S. 668.6076.

From: Lauren Mongelli <lauren@owentrepanier.com>
Sent: Wednesday, March 4, 2020 2:27 PM
To: Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Subject: 13 Hilton Haven
Importance: High

Hi Donna,
Do you have this scheduled to go before this month's planning board? If not, please let me know if you have anything tentative.

Thanks!

Lauren Mongelli

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THE CITY OF KEY WEST
POST OFFICE BOX 1409
604 Simonton Street
KEY WEST, FLORIDA 33041-1409

PLANNING DEPARTMENT
(305) 809-3722

TO: Shawn Smith, City Attorney
Larry Erskine, Chief Assistant City Attorney

FROM: Amy Kimball-Murley, Interim Planning Director

DATE: April 11, 2008

RE: 13 Hilton Haven
Captain Grosscup Proposed Residence

The purpose of this memo is to summarize the Planning Department's findings regarding the required development review procedure for a proposed residential structure at 13 Hilton Haven Drive. This memo is based on available information provided by the applicant, which has been supplemented by background information from City of Key West files. Key code provisions are provided at the end of the memo narrative.

The property owner, Captain Bill Grosscup, is in litigation with the State Department of Community Affairs and a Settlement Agreement between Capt. Grosscup and the state (including the Florida Department of Environmental Protection) is being negotiated. The City's code requires that environmental permits from applicable state and federal agencies be issued prior to approval of applications within the Conservation District. Therefore, it is important that the state issue their environmental permit (which is also required for federal permit issuance) prior to our consideration of the project. Hopefully the clarification of this process, along with information on the expected settlement and permitting process from the state, will result in a clear path for the applicant.

Summary: The property owner has substantiated the former existence of a floating home and a pile-supported accessory storage structure on the site; these structures were destroyed by a fire in 2005. The property owner proposes to construct a new residential structure in the form of a pile-supported single family home on the shoreline; construction includes filling and hardening of submerged lands beneath a portion of the structure. This analysis addresses the property owner's as-of-right development opportunities, as well as the process for approval and relevant code provisions applicable to the proposed new development. Each is summarized below:

- **As-of-Right Development:** The property owner appears to have the right to redevelop the site with a new floating home which complies with floating home provisions in Chapter 14. Further, it appears that the new unit would replace an existing floating home which was not affected by the Building Permit Allocation System and, therefore, no new unit allocation (also known as a "ROGO" unit) is required for a replacement floating home. The owner may be able to replace the accessory storage structure as an existing

6

CASE # 44.2008-CP-1813-K
PLAINTIFF / PETITIONER
ID _____ DATE _____
EXHIBIT 6 DATE 10-9-09

PLAINTIFF'S EXHIBIT 10

non-conforming structure and use if a variance is granted by the Board of Adjustment, as required by code.

- **Proposed Development**: The proposed development appears to require a Major Development Plan approval and a Conditional Use Approval, as well as variances to coastal setbacks, yard requirements, impervious surface, building coverage and height restrictions. In addition, the project appears to require a Development Agreement per the provisions of the Conservation District. The proposed construction will require extensive review under Chapter 110, Resource Protection, of the Land Development Regulations, due to proposed uses and impacts within submerged lands and the coastal construction control area of the City.

Property: The property consists of an approximately 2,254 square foot upland area adjacent to Hilton Haven Drive (a private road located in part on the property) and approximately .67 acres of submerged lands (property figures are derived from the Monroe County Property Appraisers Office).

As-of-Right Development: The City of Key West has specific regulations pertaining to the replacement of non-conforming uses, structures and densities which are involuntarily destroyed. A key consideration in allowing the replacement of destroyed structures, uses or densities, is that such structures, uses or densities were lawfully established at the time the structure or use was put in place.

In 2005, a fire destroyed existing development at 13 Hilton Haven Drive. A survey prepared after the fire by Fredrick H. Hildebrandt on 6/09/05 shows a "burned out houseboat" and a "two-story burned out frame building" (see attached). Review of numerous documents, including aerial photographs and drawings from the City's Building Permit files, confirms that the survey appears generally accurate and that a floating home and a pile-supported, two-story storage area existed on the property at the time of the fire. The floating home appears to have existed on the property since the 1960's and to be used continuously as a permanent residence. Chapter 14, Article V of the City's Code of Ordinances defines and regulates floating homes, and includes requirements for permanent floating homes, including issuance of a certificate of occupancy and a determination of eligibility under the Rate of Growth Ordinance ("ROGO") which is the commonly used synonym for the City's Building Permit Allocation System. The City does not have any record of issuing the floating home a certificate of occupancy. Further, the City does not have any record of allocating a Building Permit Allocation System unit for the floating home; however, information provided by the property owner, including aerial photographs, a utility bill and meter reading receipt, and numerous affidavits (see attached) demonstrate that the residential use was likely in place on or about April 1, 1990. Residential units that existed as of that time are presumed not to be affected by the requirement for a building permit allocation and have typically been deemed "lawfully established" by the City as an administrative function of the Planning Department. When such uses have not been lawfully certified though the City's Building Department (as is often the case with upland residential units), applicable back fees are typically paid by the applicant as part of the recognition process. Therefore, it appears that a single residential unit located in a floating home could be replaced at the site without any required allocation under the Building Permit Allocation System. However, the owner may be subject to back fees and other requirements, and must meet all applicable portions of the City's

Code of Ordinances, including all other specific provisions for floating homes under Chapter 14, Article V.

The Land Development Regulations do not specify where floating homes are permitted uses. However, the intent of the floating home regulations is to "bring floating homes within the scope of the regulatory scheme applicable to landbased dwellings, making modifications necessary to accommodate the unique features of floating homes" (Section 14-182). All tidal waters in the City extending 600' waterward of the mean high water line are zoned Conservation – Outstanding Waters". The Conservation district only allows water-dependent facilities below the mean high water line and therefore residential development is not allowed in this area. However, a floating home must be on the water, and so therefore is generally considered-water dependent. Although the code is unclear as to whether a new floating home could be located on the property, the Section 122.28(b) appears to support the replacement of the floating home as an existing non-conforming use and/or structure which was involuntarily destroyed.

The first floor of the storage area, which appeared to consist of a covered dock with two enclosed closets (one served as a utility room for a washer and dryer and the second for a workshop area), existed since at least 1990 as well. It appears that a portion of the storage structure was located on the uplands and a portion over submerged lands. In 2004, a second story was added to the storage structure; building permits issued for the second story clearly identify the structure for "storage only". Therefore, it appears that a property had a pile-supported storage area on the site at the time of the fire; enclosed storage consisted of 500 square feet on the second floor, and two closet areas of undetermined size on the first floor. The remainder of the first floor was open. Please note that several documents in the file indicate that the upper storage area may have been used as a residential dwelling unit. However, in my meeting with the property owner no such claim was made and in fact he substantiated that it was used for storage and occasional magic shows. Any use of the storage facility as a dwelling unit would have been contrary to the stated use in the building permit as well as other provisions in the code, and, therefore, unlawful (see Section 122-32(b)).

A storage area is considered a permitted accessory use for residential dwellings. The storage area therefore appears to have functioned as an accessory use to the floating home. However, as a structure and use, the storage area was located over water and would need to demonstrate compliance with Chapter 110, Resource Protection, which limits development of non-water dependent and non-water related uses in the coastal construction control area. The storage area is not water-dependent or water-related, and therefore may not be developed as of right without reliance on non-conforming structure and use exemptions. Section 122.28 (b) states that "All noncomplying accessory structures to the principal building or structure (e.g., a shed, pool, fence, etc., but not including a condominium clubhouse) shall also require a variance in order to be reconstructed or replaced, either voluntarily or involuntarily." Further, Section 122.28 (g) reads "with respect to subsections (a) through (f) of this section, the development review committee and the board of adjustment, in evaluating petitions for variance, shall balance the need to protect life and property with the need to preserve the economic base of the community. Under no circumstances shall a voluntarily or involuntarily destroyed nonconforming use or noncomplying building or structure be replaced to a degree or level that increases or expands the prior existing nonconforming use or noncomplying building or structure." Therefore, the

replacement of the storage area without expansion appears to be possible if a variance is granted by the Board of Adjustment.

In summary, it appears that the floating home can be reconstructed as of right but that the storage area, as a non-complying accessory use to the floating home and a non-complying structure, requires a variance to be reconstructed or replaced.

Proposed Development: The proposed development is shown on a set of drawings prepared by G.M. Selby and dated 12/18/07 (see attached). The plans show a dome-shaped, pile-supported two-story single family structure approximately 3,017 square feet in size and 33' 10" vertically above mean high water (MHW). It is not clear to what extent submerged lands will be altered or filled by the proposed project. One cross-section shows a berm underneath the proposed structure; a second cross-section shows concrete fill and toe protection and a calculation of 1142 square feet of fill. For the purposes of this analysis, it is assumed that some fill below the MHW line will be proposed and that the fill may constitute hardening of the shoreline. It does not appear that any wetland vegetation or jurisdictional wetlands have been identified on the property; however, a biological assessment will be required as part of the site development process to confirm the absence or presence of protected vegetation.

Chapter 110 of the Land Development Regulations includes a series of provisions intended to protect natural resources in the City. Provisions applicable to the proposed development appear to include:

- Section 110-181, which requires a plan to demonstrate that the development will not adversely impact shoreline resources;
- Section 110-182 (c), which prohibits shoreline hardening unless erosion constitutes a critical peril to upland property and the use of vegetation has failed to stabilize the shoreline. The "erosion control" element of the proposed development appears to include construction of concrete shore hardening and toe protection; therefore, this provision appears applicable;
- Section 110-183, which requires development along the coastal shoreline or within an area extending 600 feet into the tidal water adjacent to the corporate city limits to prepare a development plan to demonstrate that the project avoids adverse impacts of development on benthic communities within tidal waters. A Major Development Plan, per Section 108.91(B)(2)(d) is required, and must be reviewed by the Planning Board and approved by the City Commission;
- Section 110-184(c), which prohibits non-water dependent uses on submerged lands or wetlands. Residences are not considered water-dependent or water-related structures per the definitions in Chapter 86;
- Section 110-185, which prohibits development with impacts on tidal flushing and circulation;
- Section 110-186, which regulates marinas and docks and prohibits "dredging and filling of wetlands or open water in order to accommodate uses which are not water dependent" unless excepted by state law;
- Section 110-189, which prohibits construction in the coastal construction control line, which per Section 122-148, is within 30' of the MHW line, except for water dependent uses; and,

- Section 110-190, which requires the City Planner to coordinate with state and federal agencies with jurisdiction over coastal impacts and prohibits the issuance of a development order or building permit until required state and federal permits are issued.

The proposed structure is located in part in the Conservation district. The Conservation district does not allow residential structures below the mean high water line. However, it does allow residential structures above the mean high water line as a Conditional Use, if a Development Agreement is provided. The proposed development appears to involve fill beneath the residential structure to relocate the mean high water line and allow the residential use to be developed.

Density requirements for residential structures in the Conservation district are one unit per ten acres and 16 units an acre in the MDR district. The small parcel size will not support the proposed density. However, Section 122-31 allows a single family home to be constructed on a legal lot of record. It appears that the parcel is a legal lot of record and therefore the owner appears to have the right to build a single family home on the parcel even though the lot is not large enough to support the required density.

The maximum height allowed in the Conservation district is 25 feet; maximum height in the MDR district is 35'. The proposed structure appears to be at 33'10" above MHW, and information on the plans shows that the height correlated to the crown of road is at 30'. This is in excess of the height restrictions in the Conservation District. A height variance may be granted by the BOA; however, a variance for habitable space would require ratification by voters per Section 1.05 of the City Charter. Site plan information also suggests that the project exceeds the impervious coverage, building coverage, and front and side yard requirements of the Conservation District. Therefore, the proposed development appears to require variances from the Board of Adjustment for construction in the coastal control line area, impervious surface, building coverage, front and side yard requirements and height limitations.

Variances are authorized only for height, area, size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited is not allowed by variance. Therefore, it does not appear that some of the requirements of the land development regulations, particularly those relating to shoreline hardening and construction of non-water dependent or water-related structures on the shoreline, can be eased by variances.

Process: The Department typically schedules Major Development Plan, Conditional Use and variances on a simultaneous track. It appears that the Development Agreement can also be processed along the same track, with one key exception: the code requires the City Commission take preliminary action regarding their interest in considering a Development Agreement prior to negotiation and approval of the agreement. Therefore, one of the first steps in the process will be the City Council's preliminary consideration of the development agreement.

Several provisions in the code state that development cannot be approved until required state and federal environmental permits are issued. Although applications for the project can be submitted to the City prior to issuance of the state and federal permits, I believe that the permits should be issued prior to Planning Board, City Commission and Board of Adjustment hearings on the project in order to meet the intent of the code.

Therefore, the Department anticipates the following sequence of events:

1. Pre-Application Meeting with the Department to discuss application requirements and code provisions relevant to the project;
2. Submittal of letter requesting City Commission consideration of a Development Agreement (the request will be scheduled on the next available agenda for hearing);
3. Submittal of an Application for a Major Development Plan / Conditional Use Approval and draft Development Agreement;
4. Development Review Committee meeting;
5. Provision of state and federal permit approvals;
6. Planning Board hearing; and,
7. City Commission hearings.

A development order issued in the City is subject to Department of Community Affairs review under the Area of Critical State Concern Principles for Guiding Development. The DCA has already issued an opinion, dated August 23, 2006, raising a number of concerns regarding the proposed development. The City has requested that the DCA reach a settlement agreement with the applicant prior to City approval of the project to enable state and federal permitting processes to move forward, as required by City code. However, it appears that the DCA will maintain the right to review development approvals issued for the project independent of the settlement agreement.

Xc: Jim Scholl, City Manager
Richard Shine, Florida Department of Community Affairs
Geo File, 13 Hilton Haven

Shoreline & Near-shore Waters Protection Plan

of a Proposed Single-Family Residence Construction
on
Parcel – 13 Hilton Haven Drive, N Side - Hilton Haven Sub-division
Key West - RE# 00001870-000000; Sec 32 Twn 67 Rng 25

Provided by
Biosurveys, Inc.
P.O. Box 500043 Marathon, Florida 33050

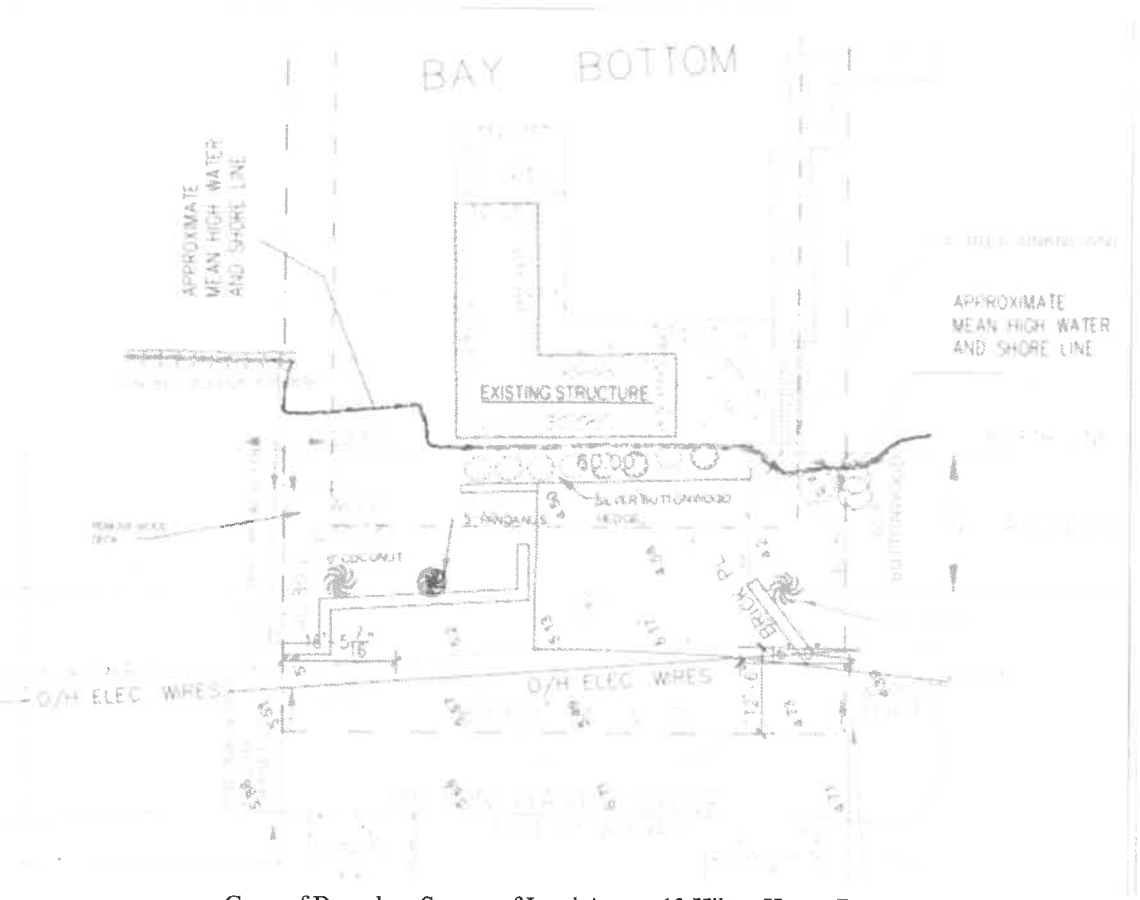
February 25, 2020

Introduction:
The property owner – Mr. (Capt.) William Grosscup plans to build a single-family residence on his Lot located at 13 Hilton Haven Drive in Key West. The Lot includes a significant amount of riparian bay bottom on the north end beyond the shoreline. A stilt concrete storage facility with a surrounding deck is located immediately off-shore of the upland portion of the Lot. This structure is waterward of the approximate MHW line along the north end of the property. A concrete parking area or drive measuring 40 feet by 24 feet in size is located approximately centered landward of the MHW line on the Lot. Land area with light vegetation is found on the two sides abutting the property boundary lines to the east and west. The project as proposed will add a stilt structure covering the concrete parking / drive and a portion of land on the west side of the Lot. The ground level condition is not to be affected significantly and will afford parking / storage access under the new residence structure.

This protection plan is presented to comply with the Key West building permit policy to assure that the building application includes an analysis of existing environmental conditions, any potential impacts to natural resources, any pollution points, proposed design criteria for mitigating any impacts, and short term near-shore waters protection during the construction phase of the planned project.

Existing Conditions:
The current shoreline area of the Lot consists of small boulder and cobble covered slope with a low angle of entry to the MHW line. The cobble banks are barren of significant ground vegetation with a row planting of Silver Buttonwood (*Conocarpus erectus var serica*) parallel to the shore for 53 feet. The Buttonwood shrubs are an average 8 feet in height. A 23 ft. section of the upland shoreline has a thick hedge of the invasive exotic – Beach Naupaka (*Scaevola taccada*). This is a State listed Class I pest plant and it should be eradicated and the area replanted with Mangroves in its place. Another pest plant is located near the shore on the northeast corner of the proposed structure. This tree is a Sea Hibiscus and classified as a Class II invasive exotic tree by the State. It is recommended that this tree also be removed for the development of a stormwater swale in its location.

Two Green Buttonwood Trees and a Sea Grape shrub are native plants found in this northeast corner of the upland area of the Lot. A large Gumbo Limbo tree with a trunk DBH of eight (8) inches is adjacent to a brick planter on the southwest corner of the Lot frontage. Also, immediately behind the planter and more centered is a nine (9) ft. high Pony Tail Palm (*Beaucarnea recurvata*) that will need to be removed for the planned SFR construction. This exotic plant could be transplanted elsewhere if the owner wishes. The existing brick planter contains various exotic landscape plants. These plants will remain with the planned construction. A row of hedge trimmed Silver Buttonwood will remain with the planned construction. A single Coconut Palm in the frontage is to remain.



Copy of Boundary Survey of Land Area – 13 Hilton Haven Dr.

The near-shore waters riparian ecosystem was evaluated and found to be in fair health. The water is clear to 3 feet in depth and without noticeable micro algae, turbidity, visible pollutants, or floating debris. The bay bottom from the MHW to deeper depth drop-off (approximately 25 feet waterward) is relatively barren of aquatic vegetation cover probably due to the high amount of shade that is generated from the existing high stilted structure. Small macro alga plant species are rare and widely scattered. They are found sessile on rock and rubble on the bay bottom. A comprehensive coral assessment was conducted and found no coral resources on hard surfaces or pile surfaces in the underwater riparian area of the property. No sea grass species were found on the bay

bottom. The following aquatic macro algae plants were identified on hard surfaces within the near-shore bay bottom area:

Macro Algae Vegetation Plant Species Identified on Bay Bottom

Green Algae

Acetbularia calyculus
Arrainvillea elliotii
Batophora oerstedii
Caulerpa sertularioides
Halimeda incrassata
Penicillus capitatus

Brown Algae

Dictyota divaricata

Red Algae

Chondria littoralis
Laurencia poitei
Spyridia hypnoides

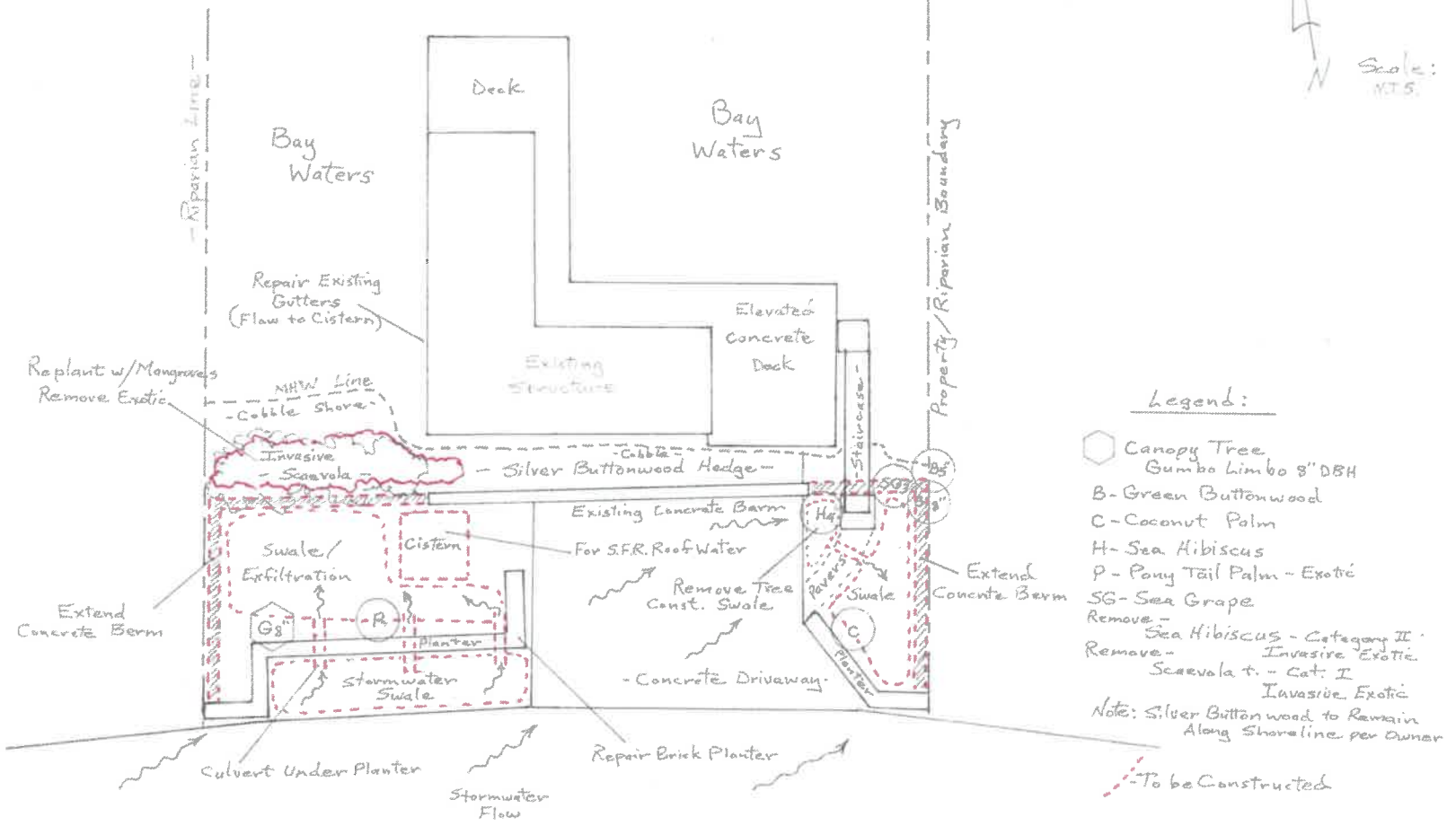
This inventory of underwater plants indicates a suitable level of dissolved oxygen and low levels of turbidity in the water. Bay bottom siltation appears low and there is no indication of severe erosion along the shoreline of the Lot. Indicators of surface water flow channels running into the bay water were not present or observed on this Lot during the assessment.

An existing eight (8) inch high by eight (8) wide concrete berm is located at the extend of the north end of the concrete parking / drive area of the Lot. This berm with a strong and wide base foundation currently acts to contain and slow stormwater as it sheets toward the shoreline of the Lot. The structure is probably responsible for partial protection of the Lot shoreline from non-point pollutants or turbidity running off of the street and drive. The row of Silver Buttonwood shrubs is located waterward between this berm and the MHW line. A continuation of this berm is recommended from lot-line to lot-line for long term retention and direction of stormwater on the Lot. A discussion of this key structure and the role it plays follows later in the assessment.

The southeast side of the property contains a staircase pad with an entrance gate and a brick planter along the frontage of the Lot – ending at the east property line. This planter forms a diversion for stormwater onto the concrete parking area and into ground area near the staircase pad. A Coconut Palm tree (*Cocos* nucifera) is located waterward of the planter. Numerous landscape plants are found in the open ground area and planter. This side of the property is over a foot lower than the west lot side. The street elevation is higher than that of the Lot. Sheet stormwater flows from the street into the subject Lot and toward this lower east side. Protection strategy must detain, retain, and treat this surface flow on the upland areas of the Lot. See diagram of treatment recommended.

Near-shore Water/Shoreline Protection

13 Hilton Haven Dr. - Key West, Proposed Project



N

Scale: N.T.S.

Legend:

- Canopy Tree Gumbo Limbo 8" DBH
- B - Green Buttonwood
- C - Coconut Palm
- H - Sea Hibiscus
- P - Pony Tail Palm - Exotic
- SG - Sea Grape

Remove - Sea Hibiscus - Category II Invasive Exotic.

Remove - Scaevola t. - Cat. I Invasive Exotic

Note: Silver Buttonwood to Remain Along Shoreline per Owner

- To be Constructed

2/25/20

BioSurveys, Inc.

Protection Plan of Action for Lot Shoreline and Near-shore Water:

The above Lot diagram using the land survey as a base, presents the recommended bay water quality treatment for the proposed building project. A comprehensive assessment identified the BMP means to provide swales or berms to detain and retain surface stormwater from migrating into the shoreline area ultimately reaching the bay waters. These structures would be easily constructed along with soil holding plant cover to prevent shoreline soil erosion. This will reach the objective of reasonable assurance that adverse water-resource related impacts will not originate from this property both pre and post construction. The proposed building project would provide water quality treatment volume based on the surface water flow during rain events. The amount of impervious structures will be off-set by the proposed upland swales and berms. Major actions recommended are:

1. Continue the concrete berm across the Lot and turning it toward the frontage to continue up each side property line. This action would detain stormwater from crossing the Lot at all points and divert it to treatment sites shown in dashed red on the above diagram.

2. Form relative low grade elevation swales to hold and treat stormwater in ground areas of the Lot.

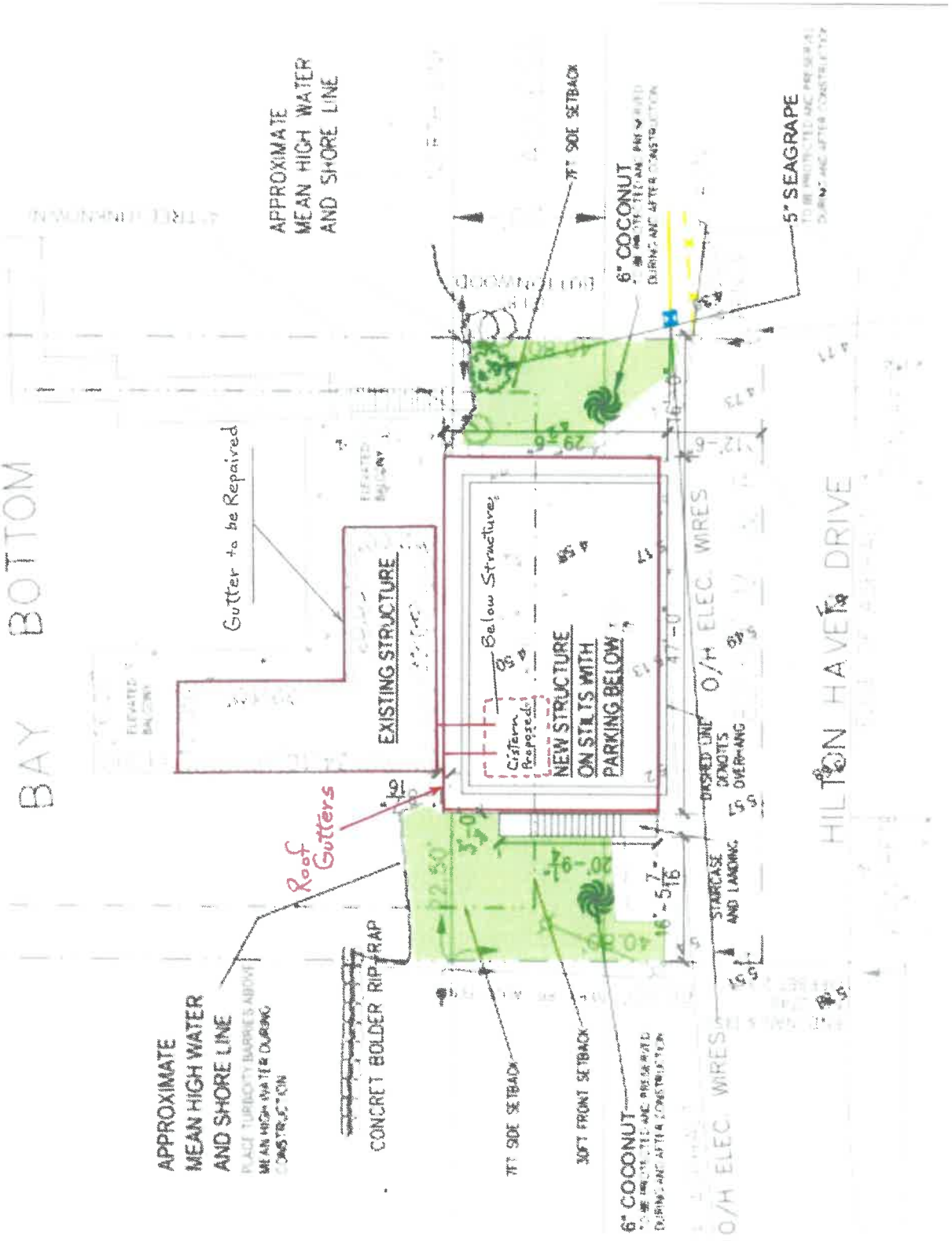
3. Install flow culverts or pipes under the west side brick planter & the east paver walkway (to be constructed) to connect & balance water flow treatment in the separated swales.

4. Remove the invasive Sea Hibiscus tree identified on the above diagram to aid in swale development.

5. Remove the pest plant – Beach Naupaka located on the west shoreline and replace it with nursery grown Mangroves. Red Mangroves planted along the MHW line and Black Mangroves landward on the shoreline NTE eight feet in planted width. 3 gal. pots should be used and planted on 3 foot centers. Ground cover planting is to hold soils in place until Mangrove establishment.

6. Install or construct an appropriate cistern under the proposed structure to receive roof water through a gutter system designed to move rainwater off of both the existing storage structure and the new proposed SFR. (see below site plan with red markup of a roof gutter cistern system).

7. Upgrade roof line gutter system on the existing storage facility for implementing a cistern collection system for rainwater.



Recommended Roof Rainwater Collection and Cistern System for Irrigation Needs

Construction Measures for Shoreline / Water Quality:
Silt screens and synthetic absorption bales or other sediment control products shall be used during all construction action on the Lot site. Properly anchored along the upland shoreline, this control will assure retention and treatment of turbidity from freshly disturbed soils and ground cover. It is to be placed parallel to the MHW line. This measure needs to be installed prior to commencement of any clearing or construction and remain in place until all construction ceases and the CO granted. Replanting should immediately follow construction to prevent erosion along the shoreline. Swales should be planted with appropriate ground cover such as grasses and low shrubs to hold soils.

Recommended Planting Table

Planting Inventory – for Shoreline Pest Plant Replacement
& Swale Soils Cover

Scientific Name	Common Name	Form	Count	Units
Avicennia germinans	Black Mangrove	Canopy	20	3g. Pots
Laguncularia racemosa	White Mangrove	Canopy	5	"
Rhizophora mangle	Red Mangrove	Canopy	32	"
Borrichia spp.	Sea Daisy/Oxeye	Ground Cover	15.	1g. Pots
Distichlis spicata	Seashore Saltgrass	Grass	45	Pods*
Sporobolus virginicus	Seashore Dropseed	Grass	40.	Pods
Spartina patens	Saltmeadow Cordgrass	Grass	50	Pods

*20 oz.Containers

Post Planting Care and Maintenance:
Following the replanting action of this Plan, the Lot owner is responsible for necessary irrigation, exotic weed control, pest insect or disease monitoring, and any storm event damage. Any irrigation needs would be temporary to make certain the plants become well established. The goal is to ensure that the mangroves and ground cover plants are maintained to perpetuate natural habitat in optimal conditions and to prevent any impacts from occurring to the new vegetation. This will involve long term vigilance to prevent encroachment of the plants by invasive exotic vegetation, fire hazard, any use as material storage, non-use of herbicides, or other adverse activity that could jeopardize the new habitat health.

Lot Photos – Existing Conditions

Lot View frm. Hilton Haven Dr. – Conc. Drive.

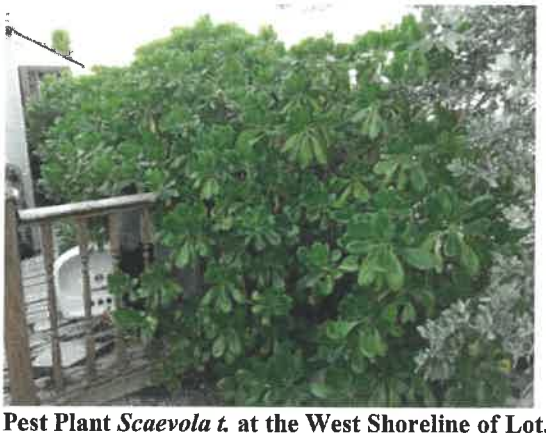
West Frontage Brick Planter & Proposed Swale Area in the Front. Street Edge Visible.

East Side – Brick Planter & Swale Area Behind. Sea Hibiscus Tree to left in Photo.

View Unfinished Conc. Berm at Rear of Drive Pad

Silver Buttonwood & Berm Below – Rear of Drive.

Shoreline & Base of Silver Buttonwood Hedge



Pest Plant *Scaevola t.* at the West Shoreline of Lot. (State Listed Class I Invasive Exotic Plant).

Shoreline Area at Base of the Invasive Plant. On SW Side of Lot.

Typical Shoreline Condition & Replanting Area. *Scaevola t.* is to the Right in Photo.

Water & Shoreline at Gang Ramp of Balcony

Staircase Base on Shoreline & Ramp to Right.

Sea Hibiscus Tree to be Removed for Swale Const. (Tree is a Class II State Invasive Exotic)

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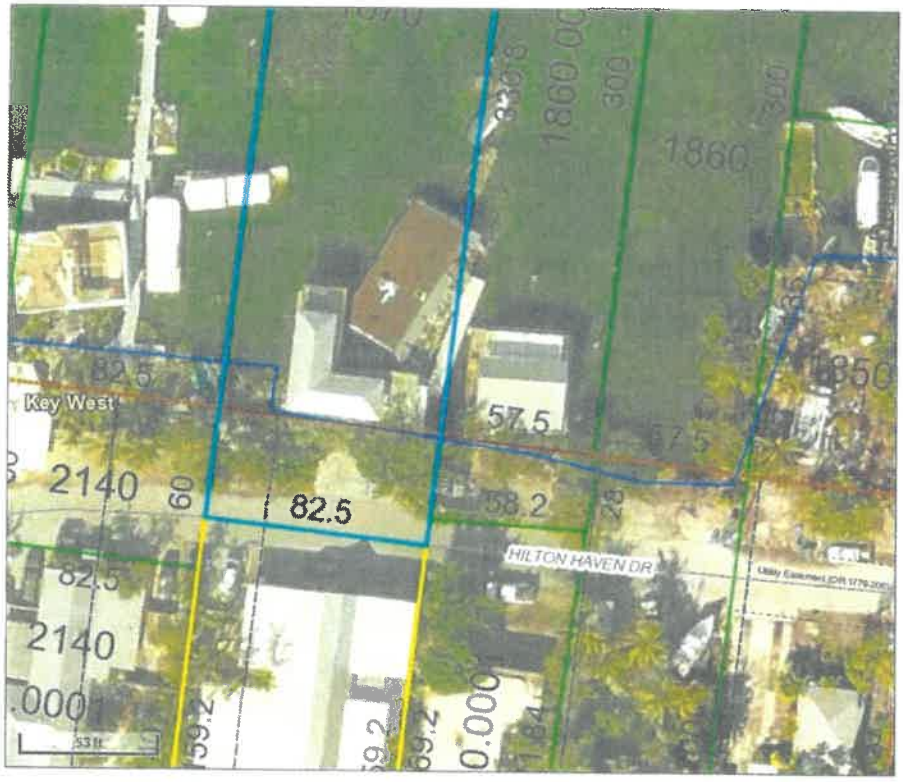
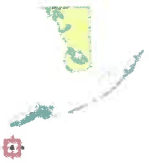


Overview



Legend

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

Parcel ID	00001870-000000	Alternate ID	1001970	Owner Address	GROSSCUP WILLIAM R REV TR
Sec/Twp/Rng	32/67/25	Class	VACANT RES		13 Hilton Haven Rd
Property Address	13 HILTON HAVEN Dr KEY WEST				Key West, FL 33040
District	10KW				

Brief Tax Description KW PT SEC 32 TWP 67S RGE 25E N SIDE OF HILTON HAVEN SUB PB2-138 N 40.8FT TR 13 & N 40.8FT OF EAST 22FT 6IN TR 14 & FILLED BAY BOTTOM OR204-475(II DEED NO 22677) OR400-409/410 OR673-465/467 OR815-1693/1695 OR871-1671Q/C OR1332-1287/1303-E(RES NO 94-484)OR1437-2393Q/C OR1437-2394(BILL OF SALE) OR1442-2436Q/C
(Note: Not to be used on legal documents)

Date created: 2/26/2020
Last Data Uploaded: 2/26/2020 2:11:14 AM

Developed by Schneider GEOSPATIAL

(305) 942-9221 Fax (305) 743-7649 hdelashmutt@comcast.net

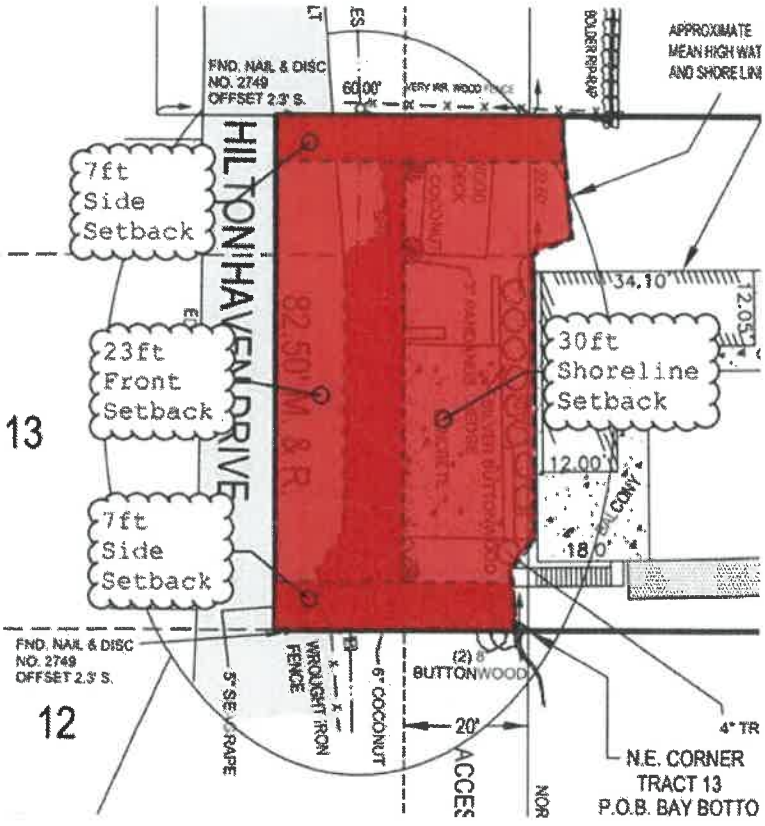
Owen Trepanier

From: Owen Trepanier
Sent: Monday, April 27, 2020 2:17 PM
To: 'Melissa Paul-Leto'; Donna Phillips
Cc: Lauren Mongelli
Subject: 13 Hilton Haven
Attachments: Exhibit B.pdf; Exhibit A - Resolution_10-236_Grosscup_v_City_Settlement.pdf; Revised application pages 04-27-20.pdf

Hi Melissa,
There may be a misunderstanding. The Settlement Agreement for this property recognized a "Floating Home", not a "liveaboard vessel" (Exhibit A). Floating Homes as defined by Sec. 14-181 include BPAS. The Planning Department analysis of preexisting rights also recognizes the property as containing "an existing floating home which was not affected by the Building Permit Allocation System and, therefore, **no new unit allocation** (also known as a "ROGO" unit) is required" [emphasis added] (Exhibit B). These documents demonstrate that the property contains one BPAS-exempt ROGO unit in its bundle of property rights. To build this house, we intend to utilize that unit.

We ran the Site Data as you requested. It revealed that we needed two additional variances. I revised the written request and attached it hereto.

I am also including a depiction of the buildable area of Capt. Grosscup's property. The setbacks are depicted in Red and the buildable area would be depicted in Green, except, as you can see, there is no buildable area, based on a literal interpretation of the code.



Owen

Trepanier & Associates, Inc.
Land Planners & Development Consultants
305-293-8983

From: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>
Sent: Wednesday, March 18, 2020 10:26 AM
To: Lauren Mongelli <lauren@owentrepanier.com>; Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Cc: Owen Trepanier <owen@owentrepanier.com>; Thomas Francis-Siburg <thomas@owentrepanier.com>
Subject: RE: 13 Hilton Haven

Good morning,
The result of the internal meeting confirmed that the property owner is required to apply for a BPAS unit in order to build a home on land. I attached the section that applies to liveaboard vessels which are not subject to the City's BPAS ordinance. I spoke with Owen during our meeting at the Fire Department regarding the site data table reflecting only buildable land. Our BPAS application opens up July 1, 2020.
Please feel free to contact me with any further questions.

Best,

Melissa Paul-Leto
PLANNER I

City of Key West – Planning Department
Josephine Parker City Hall
1300 White Street
Key West, Florida 33040

Direct: (305) 809-3724
mleto@cityofkeywest-fl.gov
http://www.cityofkeywest-fl.gov

From: Lauren Mongelli <lauren@owentrepanier.com>
Sent: Tuesday, March 17, 2020 3:11 PM
To: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>; Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Cc: Owen Trepanier <owen@owentrepanier.com>; Thomas Francis-Siburg <thomas@owentrepanier.com>
Subject: RE: 13 Hilton Haven

Hi Melissa,
Do you have an update on the internal meeting you had regarding this project?

Thank you.

Lauren Mongelli

Trepanier & Associates, Inc.
Land Planners & Development Consultants

1421 First Street, P.O. Box 2155
Key West, FL 33045-2155
Ph. 305-293-8983 / Fx. 305-293-8748
www.owentrepanier.com

From: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>
Sent: Wednesday, March 04, 2020 3:34 PM
To: Lauren Mongelli <lauren@owentrepanier.com>; Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Subject: RE: 13 Hilton Haven

Good afternoon,
13 Hilton Haven is being reviewed internally and is not ready for the March 19th Planning Board.
I met with Owen and the Fire Department this morning. He knows there are revisions to the site data table that are needed for the buildable land. I will email Owen with any comments regarding the internal meeting we will be having tomorrow morning regarding this variance request.

Best,

Melissa Paul-Leto
PLANNER I

City of Key West – Planning Department
Josephine Parker City Hall
1300 White Street
Key West, Florida 33040

Direct: (305) 809-3724
mleto@cityofkeywest-fl.gov
http://www.cityofkeywest-fl.gov

From: Lauren Mongelli <lauren@owentrepanier.com>
Sent: Wednesday, March 4, 2020 2:58 PM
To: Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Cc: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>
Subject: RE: 13 Hilton Haven

Thank you!

Lauren Mongelli

Trepanier & Associates, Inc.
Land Planners & Development Consultants
1421 First Street, P.O. Box 2155
Key West, FL 33045-2155
Ph. 305-293-8983 / Fx. 305-293-8748
www.owentrepanier.com

From: Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Sent: Wednesday, March 04, 2020 2:56 PM
To: Lauren Mongelli <lauren@owentrepanier.com>
Cc: Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>
Subject: RE: 13 Hilton Haven

Hi Lauren –

This is not scheduled for the March 19, 2020 Planning Board. I have included Melissa on this response so she can provide further information.

Regards,

Donna Phillips
Administrative Specialist
City of Key West
Planning Department at
Josephine Parker City Hall
1300 White Street
(305) 809-3764
donna.phillips@cityofkeywest-fl.gov
www.cityofkeywest-fl.gov

From: Lauren Mongelli <lauren@owentrepanier.com>
Sent: Wednesday, March 4, 2020 2:27 PM
To: Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Subject: 13 Hilton Haven
Importance: High

Hi Donna,
Do you have this scheduled to go before this month's planning board? If not, please let me know if you have anything tentative.

Thanks!

Lauren Mongelli

Trepanier & Associates, Inc.
Land Planners & Development Consultants
1421 First Street, P.O. Box 2155
Key West, FL 33045-2155
Ph. 305-293-8983 / Fx. 305-293-8748
www.owentrepanier.com

RESOLUTION NO. 10-236

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE SETTLEMENT IN THE CASE OF WILLIAM R. GROSSCUP V. CITY OF KEY WEST; PROVIDING FOR AN EFFECTIVE DATE

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

Section 1: That the settlement of the circuit court case of William R. Grosscup v. City of Key West in accordance with the terms in the attached Settlement Agreement is hereby approved.

Section 2: 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 3rd day of August, 2010.

Authenticated by the presiding officer and Clerk of the Commission on August 4, 2010.

Filed with the Clerk August 4, 2010.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

Executive Summary

To: James K. Scholl, City Manager

From: Larry R. Erskine, Chief Assistant City Attorney

Date: July 19, 2010

Subject: Approval of Settlement Agreement in Bert Harris Act claim
13 Hilton Haven Drive/William Grosscup

Action Statement:
This is a request for the City Manager and Commission to consider and approve the attached Settlement Agreement in the matter referenced above.

Background:
In April of 2005, the improvements located on William R. Grosscup's property at 13 Hilton Haven Drive were destroyed by fire. City records, as well as aerial photographs, indicate that a floating home and a pile-supported, two-story structure existed on the property at the time of the fire. In July of 2005, the Florida Department of Environmental Protection (DEP) approved the replacement of the pilings located on the bay bottom adjacent to the property. Sometime prior to February of 2006, Mr. Grosscup began construction of a single family dwelling approximately 3,200 square feet in size on concrete support pilings located partially over the bay bottom. On February 8, 2006, the City's Code Compliance Department issued a stop work order based on Mr. Grosscup's failure to obtain a building permit from the City.

In March of 2006, Mr. Grosscup applied to DEP for a permit to construct the dwelling which was the subject of the stop work order on pilings located partially over the bay bottom. The Florida Department of Community Affairs (DCA) objected to the permit, which DEP later denied. In November of 2006, Mr. Grosscup provided notice to DEP and DCA of his intention to file a claim pursuant to Section 70.001, Florida Statutes, more commonly known as the Bert Harris Act. Mr. Grosscup alleged that the actions of DEP and DCA caused an inordinate burden to him. At that time, the City was not made a party to the claim. The provisions contained in the Bert Harris Act require government entities to make good faith settlement offers in response to claims. DCA offered a settlement which called for Mr. Grosscup to rebuild the original dock structure with a second story facility used exclusively for storage and to allow the replacement of the floating home, both in the original footprint. In its response, DEP indicated that it needed additional information in order to properly analyze the proposed project. On May 22, 2007, Mr. Grosscup rejected the settlement proposed by DCA and DEP, and filed suit in circuit court. The City was not a party to the litigation at that time.

In April of 2008, Mr. Grosscup presented the City Planner a proposal to construct the dwelling which was the subject of the stop work order. On April 16, 2008, the City Planner provided Mr. Grosscup with a memorandum outlining the City Planning Department's analysis of the proposed development which outlined the steps necessary to permit the structure which was the subject of the stop work

order. That same day, Mr. Grosscup requested to move forward as outlined in the memorandum. On May 20, 2008, the City Commission passed Resolution No. 08-157, granting permission to initiate a development agreement for the proposed project. However, on May 28, 2008, Mr. Grosscup forwarded the City Planner an email objecting to a number of the issues discussed in her memorandum. The City Planner responded to that email, which Mr. Grosscup attempted to appeal to the City Commission as an administrative interpretation. It was the position of City staff that the City Planner's response was not appealable. However, Mr. Grosscup obtained an order from the Circuit Court directing the City Commission to consider his appeal of the City Planner's determination. After a public hearing on the matter, the Commission upheld the City Planner's interpretation.

On October 24, 2008, Mr. Grosscup provided the City his notice of intention to file a claim pursuant to the Bert Harris Act. In his claim, Mr. Grosscup alleged that the City's failure to recognize his build-back rights constituted a denial of his vested rights, a denial of his right to due process, and also caused an inordinate burden to him and his property. The Bert Harris Act defines "inordinate burden" or "inordinately burdened" as a governmental action which "has directly restricted or limited the use of the real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large."

Pursuant to the provisions of the Bert Harris Act, after receipt of the notice of Mr. Grosscup's claim, the Commission approved a settlement offer which called for Mr. Grosscup to replace the preexisting pilings as well as the floating structure. The offer also called for him to replace the preexisting storage structure without expansion.

On May 28, 2009, Mr. Grosscup rejected the City's settlement offer and filed his circuit court action against the City. Thereafter, Mr. Grosscup's lawsuit against DCA and DEP was consolidated with his cause of action against the City. In addition, earlier this year, Mr. Grosscup filed suit in federal court against, DCA, DEP, the City, and the Army Corp of Engineers based on the same allegations present in the circuit court action.

From the beginning, the parties have acknowledged that Mr. Grosscup has the right to build back the improvements which existed prior to the 2005 fire. However, DCA, DEP, and the City did not initially agree with Mr. Grosscup's position regarding the size of the demolished storage structure. Mr. Grosscup's initial offer to settle the lawsuits called for him to rebuild a storage structure which DCA, DEP, and the City believed to be larger than the original structure. Further, the proposed structure was to be located almost entirely over water. However, as the litigation progressed, Mr. Grosscup reduced the size of the proposed storage structure several times. DCA, DEP, and City staff believe that the storage structure depicted in Mr. Grosscup's last revision is approximately the same size as the original structure.

The proposed settlement agreement provides that Mr. Grosscup may construct a pile supported concrete deck structure with a total footprint not to exceed 1250 square feet with a non-habitable storage enclosure on the deck with a footprint not to exceed 650 square feet. In addition, he may rebuild his dock and replace the houseboat which previously existed. The agreement calls for Mr.

Grosscup to execute a deed restriction in perpetuity in favor of the City, preventing use of the storage space for living, sleeping, or cooking. Further, he would be required to dismiss with prejudice his state and federal lawsuits against DCA, DEP, and the City, with each party liable for its costs and attorneys' fees. DCA and DEP have agreed to the proposed settlement.

Recommendation:
Approve the attached Settlement Agreement.

WILLIAM R. GROSSCUP,

Plaintiffs,

v.

FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION and CITY OF KEY WEST,

Defendants.
_____/

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

CASE NO. 2007-CA-680-K

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF AGREED ORDER APPROVING SETTLEMENT AGREEMENT

Plaintiff, WILLIAM R. GROSSCUP ("GROSSCUP"), and Defendants, FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS ("DCA"), FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION ("DEP") and CITY OF KEY WEST ("KEY WEST"), by and through their undersigned representatives, hereby submit their Settlement Agreement and Stipulation for Entry of Agreed Order Approving Settlement Agreement, and state:

RECITALS

Whereas, on or about May 22, 2007, GROSSCUP brought this action against DCA and DEP for declaratory judgment and damages pursuant to Section 70.001, *Florida Statutes*.

Whereas, on or about May 28, 2009, GROSSCUP brought a related action against KEY WEST for declaratory judgment and damages pursuant to Section 70.001, *Florida Statutes*. On September 17, 2009, Plaintiff's cases against DCA, DEP, and KEY WEST were consolidated.

Whereas, the parties now desire to amicably resolve their litigation.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. All of the above-contained recitals are true and correct and are incorporated herein by reference.

2. The parties have agreed to settle, fully and finally, all differences and disputes arising out of the consolidated cases styled, *Grosscup v. Florida Department of Community Affairs and Florida Department of Environmental Protection*, Case No. 2007-CA-680-K and *Grosscup v. City of Key West*, Case No. 2009-CA-925-K. Therefore, the parties hereby stipulate that all matters raised by the pleadings, or which could have been raised, between the parties in the consolidated cases have been amicably settled.

3. In full and final settlement of the consolidated cases, the parties agree as follows:

(a) The DCA, DEP and KEY WEST agree that GROSSCUP shall be entitled to construct on his property a pile supported concrete deck structure (total footprint not to exceed 1250') with non-habitable storage enclosure on deck (not to exceed 650'); and permanently moor his floating home (habitable) to the pile supported deck structure in accordance with the engineering plans/drawings attached as ***Composite Exhibit "A"*** (hereafter the "Project").

(b) DCA shall withdraw its objection to the Environmental Resource Permit and DEP shall cause within thirty days of the Court's approval of this Settlement

Agreement, the issuance of permits from DEP authorizing GROSSCUP to construct the Project.

(c) Key West shall cause within fifteen days of issuance of permits from both DEP and Army Corps of Engineers for the Project, the issuance of permits from KEY WEST authorizing GROSSCUP to construct the Project.

(d) DCA shall withdraw its objection to the Environmental Resource Permit and DEP and KEY WEST shall cause the issuance of any additional approvals, waivers, variances, special exceptions, permits and/or extensions that may be required to complete the Project and that are within their control to grant. The DCA will write a letter indicating that no appeal will be taken during the 45 day period identified in Rule 9J-1, F.A.C.

(e) GROSSCUP acknowledges that he may not begin construction of the Project until he obtains a permit from the United States Army Corps of Engineers ("USACE"). DCA, DEP and KEY WEST agree they will cooperate with GROSSCUP and will not interfere with his efforts to obtain a permit from USACE.

(f) Prior to the final inspection of the Project and issuance of certificate of occupancy, GROSSCUP expressly agrees herein to execute a restrictive covenant in perpetuity in favor or KEY WEST in a form acceptable to the City Attorney, preventing use of the storage space as habitable space as that term is defined in the residential section of the Florida Building Code. Specifically, GROSSCUP shall be prohibited from utilizing the storage area for living, sleeping, eating or cooking.

(g) To the extent GROSSCUP may be required by other agencies to obtain consents, approvals, waivers, variances, special exceptions, permits and/or

extensions to complete the Project, DCA, DEP and KEY WEST agree they will cooperate with GROSSCUP and will not interfere with his efforts to obtain them.

4. Upon the Court's approval of this Settlement Agreement and GROSSCUP's receipt of permits for the Project from DEP and KEY WEST, the parties agree to exchange the General Releases attached as ***Composite Exhibit "B."*** Further, upon the Court's approval of this Settlement Agreement, GROSSCUP expressly agrees herein to dismiss with prejudice its claims against DCA, DEP and KEY WEST in the matter styled, *Grosscup v. Colonel Alfred Pantano, Jr., District Commander for the Army Corps of Engineers, Jacksonville District, United States Army Corps of Engineers, Florida Department of Community Affairs, Florida Department of Environmental Protection, City of Key West and United States*, Case No. 10-10015-CIV-MARTINEZ/ BROWN in the United States District Court for the Southern District of Florida, with each party to bear their own costs, expenses and attorney's fees.

5. The parties herein expressly agree that this Settlement Agreement is contingent upon Court approval. In the event the Settlement Agreement is not approved by the Court for any reason whatsoever, this Settlement Agreement and the provisions herein shall be void and of no further force and effect.

6. The parties hereby submit themselves to the jurisdiction of the Sixteenth Judicial Circuit Court in and for Monroe County, Florida for all purposes relating to this Agreement, including, but not limited to, its enforcement.

7. This Agreement is binding upon the parties and their respective successors, heirs and assigns and relates solely to the approved engineering plans/ drawings attached as ***Composite Exhibit "A."*** Plaintiff will cure any material

deviations from the approved plans within 30 days notice from KEY WEST or DCA or DEP. The Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of this Agreement. Each party shall bear its own attorney's fees and costs.

8. The parties agree that in the event any case or controversy arises in connection with this Agreement or the settlement of this Action, they consent to venue and jurisdiction in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida.

9. The parties stipulate that the Court may enter the proposed Agreed Order Approving Settlement Agreement, which is attached as ***Exhibit "C."***

IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement and Stipulation for Entry of Agreed Order Approving Settlement to be executed on this 5th day of August, 2010.

By: _____
WILLIAM R. GROSSCUP

STATE OF FLORIDA)
)SS
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this 5th day of August, 2010, by WILLIAM R. GROSSCUP, who is personally known to me or who has produced _____ as identification.

_____
Notary Public
Commission No.
_____
[Name of Notary typed, Printed or stamped]

My Commission Expires: 3-8-12

SEAL

SHERRY L. TARR
MY COMMISSION EXPIRES
March 8, 2012
#DD 750189
Bonded thru Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS

By Thomas D. Pelham its Secretary

STATE OF FLORIDA)
)SS
COUNTY OF Leon)

The foregoing instrument was acknowledged before me this 23rd day of August, 2010, by Thomas D. Pelham who is personally known to me or who has produced N/A as identification.

Paula P. Ford
Notary Public
Commission No.

PAULA P. FORD
MY COMMISSION # DD 818056
EXPIRES: October 13, 2012
Bonded Thru Notary Public Underwriters

[Name of Notary typed, Printed or stamped]

My Commission Expires:

SEAL

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By _____
Jon M. Iglehart its Director of District Mgmt

STATE OF FLORIDA)
)SS
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 31st day of August, 2010, by Jon M. Iglehart, who is personally known to me or who has produced _____ as identification.

_____
Notary Public
Commission No.

Denise M. Scarpuzzi
[Name of Notary typed,
Printed or stamped]

My Commission
Expires: 10-8-2012

SEAL

DENISE M. SCARPUZZI
Commission DD 829281
Expires October 8, 2012
Bonded Thru Troy Fain Insurance 800-385-7019

DENISE M. SCARPUZZI
Commission DD 829281
Expires October 8, 2012
Bonded Thru Troy Fain Insurance 800-385-7019

CITY OF KEY WEST

By J.K. Scholl
JIM SCHOLL its CITY MANAGER

STATE OF FLORIDA)
)SS
COUNTY OF Monroe)

The foregoing instrument was acknowledged before me this 9 day of August, 2010, by Jim Scholl, who is personally known to me or who has produced _____ as identification.

Maria G. Ratcliff
Notary Public
Commission No.

Maria G. Ratcliff
[Name of Notary typed,
Printed or stamped]

My Commission
Expires:

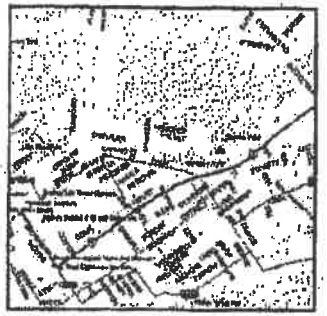
SEAL

1301721

COMPOSITE EXHIBIT A

PROJECT NAME: CAPT. BILL GROSSCUP

PROJECT ADDRESS: 13 HILTON HAVEN ROAD,
KEY WEST, FLORIDA 33040



LOCATION MAP

SHEET NO.	DESCRIPTION	REVISIONS

SHEET INDEX

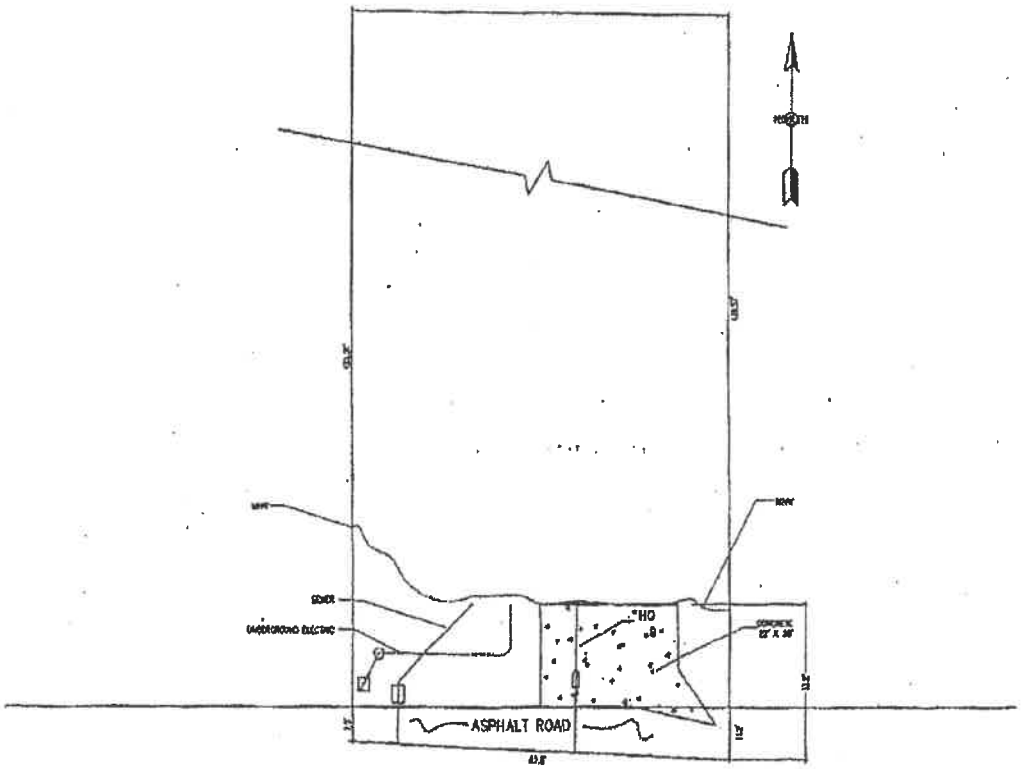
G.M. SELBY, Inc.

HILTON HAVEN HOUSING

SHEET TITLE: COVER SHEET

SHEET NO: T-1

\\GMS-SERVER\GMS Res\ 2007\ MISCEL PROJECTS\ MISC270560 - HILTON HAVEN\ DRAWINGS\ REV 06-06-2010



G.M. SELBY, Inc.

HILTON HAVEN HOUSING

PROPERTY DIMENSIONS

C-1

\\GMS-SERVER\GMS Files\ 2007\ MISCEL PROJECTS\ MISC2705080 - HILTON HAVEN\ DRAWINGS\ REV 08-05-2010

SITE DATA 17 HILTON HAVEN ROAD - FLOATING HOME

ZONING	MDR / C-OV
FLOOD ZONE	AE8
FINISHED FLOOR HEIGHT	8' ABOVE MSL (NGVD)
LOT SIZE	82.5 X 423.31 FT
ROAD CROWN (AVERAGE)	4.8 FT.
DENSITY	16 DU/ACRE , 1.2 DU/ACRE

EXISTING/PROPOSED SITE

	REQUIRED	PROPOSED
IMPERVIOUS SURFACE RATIO	50% / 5%	4.8%
IMPERVIOUS SURFACE AREA(FT)	2963	2449
MAX BUILDING COVERAGE	35% / 5%	4.9%
BUILDING COVERAGE (SQ FT)		2,499
MAX HEIGHT ABOVE ROAD (30' /25' MAX)		18
ENTIRE COVERED AREA ABOVE THE WATER (SQ FT)		[illegible]
POLYDOCK AREA ABOVE WATER (SQ FT)		[illegible]
AREA ABOVE THE LAND (SQ FT)		63
CONCRETE DECK AREA (SQ FT)		1,241

SETBACKS

	REQUIRED	PROPOSED
FRONT (FT)	30/*	4'-8"
EAST (FT)	7/*	7'-9"
WEST (FT)	7/8	25'-9"
REAR (FT)	20/*	56'-7"

* CHAPTER 122-89

STORMWATER

NOTE: NO NET INCREASE IN IMPERVIOUS SURFACE AREA FROM EXISTING & STRUCTURES DESTROYED BY FIRE

PLANTING AREA (ALL SALT TOLERANT NATIVE SPECIES TO BE DETERMINED BY LANDSCAPE COMPANY AND OWNER)

REMOVE EXISTING WOOD DOCK UNUSED AND PILINGS COMPLETELY AND DISPOSE IT IN A CORRECT MANNER PER CITY OF KEY WEST ORDINANCES

FLOATING DOCK SYSTEM NOTES:

1- THE CONTRACTOR SHALL FURNISH ALL TOOLS, EQUIPMENT, MATERIALS AND SUPPLIES AND SHALL PERFORM ALL LABOR, FABRICATION ASSEMBLY AND INSTALLATION OF THE COMPLETE FLOAT SYSTEM.

2- THE CONTRACTOR SHALL EXAMINE THE JOB SITE BEFORE PREPARING HIS SHOP DRAWINGS TO VERIFY ALL PHYSICAL CONDITIONS AND SURROUNDINGS.

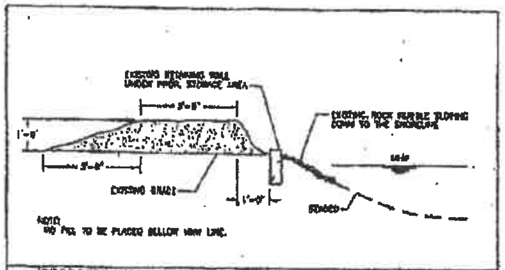
3- FLOAT MODULES SHALL BE STRUCTURALLY CONNECTED BY A ALUMINUM WALER SYSTEM THAT WILL ALLOW REPLACEMENT WITHOUT AFFECTING THE FLOAT MODULES. CONNECTION METHODS THAT CREATES STRUCTURAL FAILURE OF THE FLOAT MODULE WHEN OVER-STRESSED WILL NOT BE ALLOWED.

4- WALKING SURFACE OF CONCRETE FLOATS SHALL BE LEVEL AND FLUSH WITH RESPECT TO THE ADJACENT FLOATS.

5- PILES GUIDES SHOWN ON DRAWINGS CORRESPOND ONLY TO ONE OF THE INTERNAL PILE GUIDE OF THE WATER DOCK. CONTRACTOR SHALL VERIFY THE SPACING FOR THE ANOTHER INTERNAL PILE GUIDE.

CONSTRUCTION METHODS

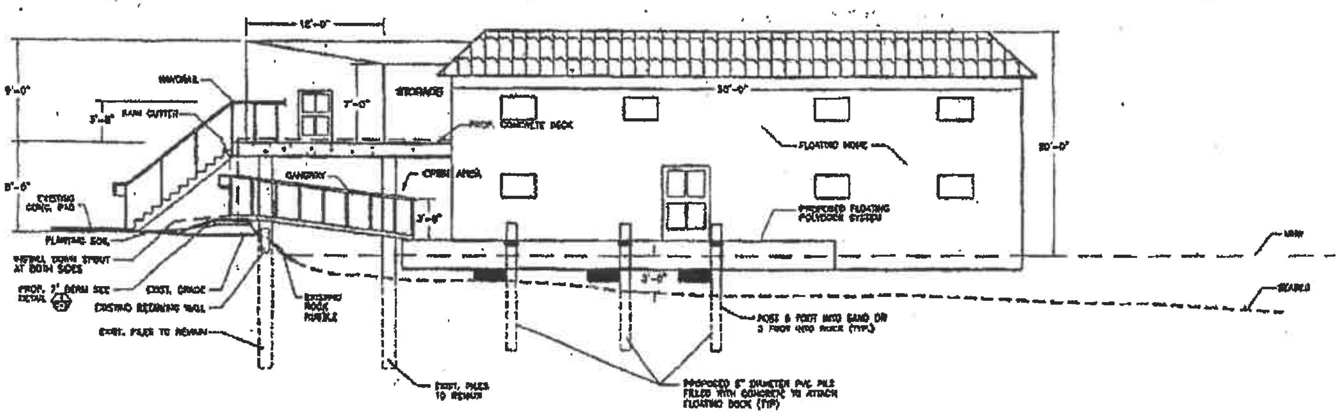
1. ENSURE ALL RUNOFF IS MAINTAINED ON SITE.
2. USE TURBIDITY BARRIERS FOR THE DURATION OF CONSTRUCTION.
3. ENSURE PLANTER HAS ADEQUATE BERM PROTECTION AND SEPARATION FROM ADJACENT FRESH WATER.
4. MAINTAIN LOCAL EASEMENTS AND SETBACKS.



1 PROPOSED 7ft BERM DETAIL
SCALE: N.T.S.

NOTES:

1. HANDRAIL TO BE PLACE ALL AROUND CONCRETE DECK.
2. STORAGE ROOF SLOPE 3:12



CROSS SECTION A-A

G.M. SELBY, Inc.

HILTON HAVEN HOUSING

SHEET TITLE: LAYOUT SURVEY/SITE PLAN

SHEET NO: C-2

REVISIONS

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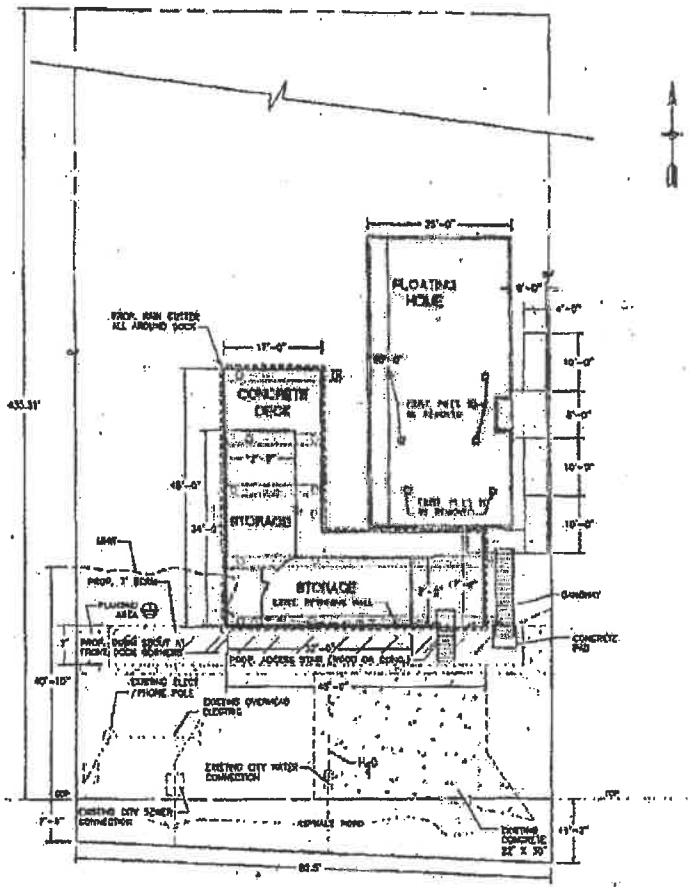


LAYOUT PLAN

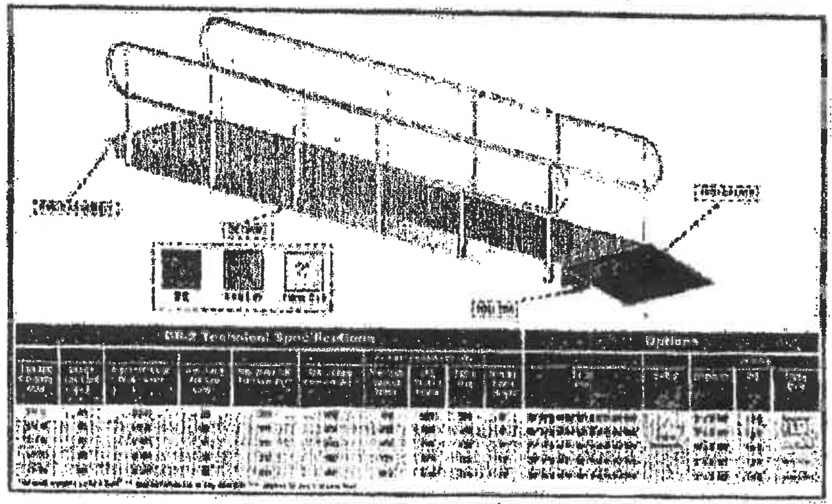
G.M. SELBY, Inc.

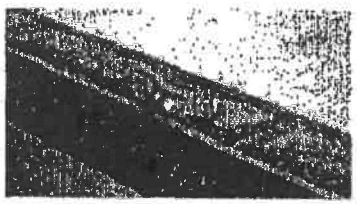
HILTON HAVEN HOUSING

SHEET TITLE:
LAYOUT PLAN

SHEET NO:
C-3

\\DJS-SERVER\DAS Files\ 2007\ MISCEL PROJECTS\ JA#07270980 - HILTON HAVEN\ DRAWINGS\ REV 06-08-2010





FLOATING DOCKS SECTION AND DETAILS

Technical Specifications

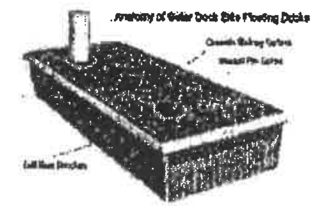
Total Flotation Capacity (lb/ft²)	90
Total weight (lb/ft²)	34
Freeboard (in)	17.5
Draft (in)	6.5
Vertical Stability Index (in/psf)	7.7

Standard Section Dimensions (ft)

[illegible]	4x10	4x12	4x14	4x15	4x16	4x18	
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	10x10	10x12	10x14	[illegible]	10x16	10x18	10x20

Materials

Structural Members	Marine Grade Aluminum [illegible] series
Flotation	Closed Cell Polyurethane
Concrete	[illegible] psi-[illegible] reinforced



NOTE: GATORDOCK ELITE OR SIMILAR AS APPROVED BY ENGINEER.

[illegible]	[illegible]	[illegible]
Pile Guides	[illegible]	[illegible]
[illegible]	12" [illegible]	[illegible]

FLOATING DOCKS SPECIFICATIONS

G.M. SELBY, Inc.

HILTON HAVEN HOUSING

SHEET TITLE: FLOATING DOCK DETAILS

SHEET NO. C-4

\\GMS-SERVER\GMS Files\ 2007\ MISCEL PROJECTS\ MISC270590 - HILTON HAVEN\ DRAWINGS\ REV 08-06-2010

GENERAL NOTES

SPECIFICATIONS FOR FLOATING DOCKS

GENERAL

[illegible]

1. [illegible]
2. [illegible]
3. Typical sections or details of the following:
   - Fixed piers, including pile connections.
   - Floating docks, including flotation.
   - Finger deck or pier, including connection to main walkway.
   - Gangways, including connections to bulkhead or fixed pier, handrails and handicap ramps.
   - Anchorage system.
   - Utility hanger and chase system.
   - Decking material and connection details.
   - Cleat location and connection details.

TECHNICAL [illegible]

MATERIALS

[illegible]

DESIGN REQUIREMENTS - ACCESSORIES

[illegible]

DESIGN REQUIREMENTS - STRUCTURES

[illegible]

FABRICATION REQUIREMENTS - ACCESSORIES

[illegible]

FABRICATION REQUIREMENTS - STRUCTURES

[illegible]

CONSTRUCTION REQUIREMENTS - STRUCTURES

[illegible]

G.M. SELBY, Inc.

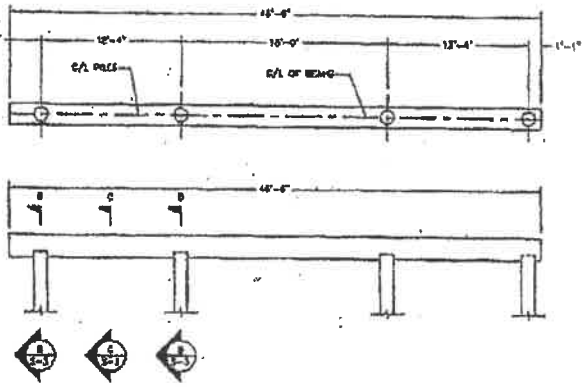
REVISIONS

HILTON HAVEN HOUSING

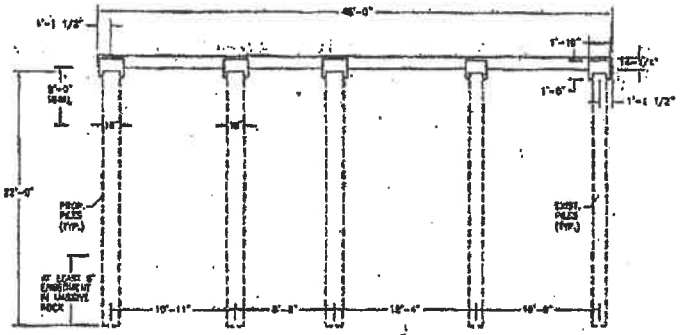
SHEET TITLE: GENERAL NOTES

SHEET NO: C-5

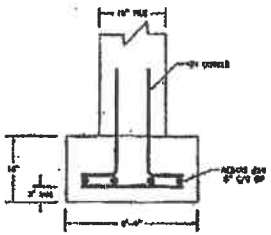
\\GMS-SERVER\GMS Files\ 2007\ MISCEL PROJECTS\ MMSC270560 - HILTON HAVEN\ DRAWINGS\ REV 06-08-2010



NORTH ELEVATION



EAST ELEVATION



SPREAD FOOTER DETAIL

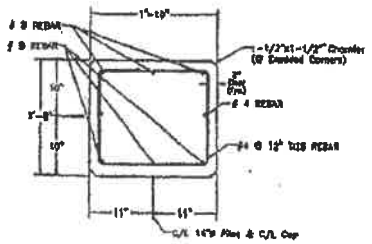
G.M. SELBY, Inc.

HILTON HAVEN HOUSING

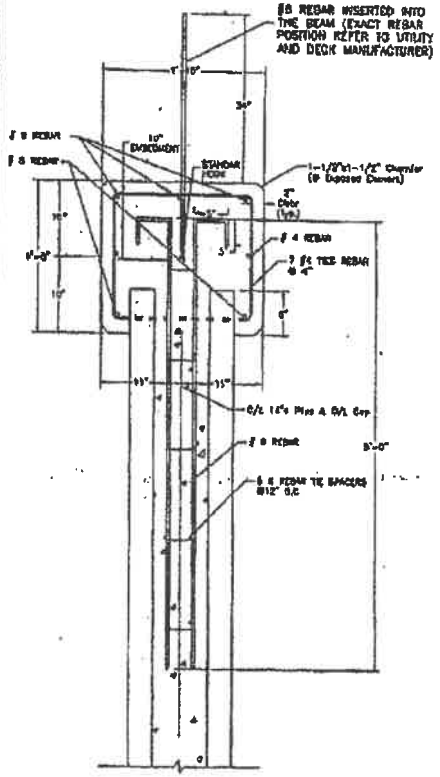
SHEET TITLE:
FOUNDATION PLAN AND GRADE BEAMS

SHEET NO:
S-1

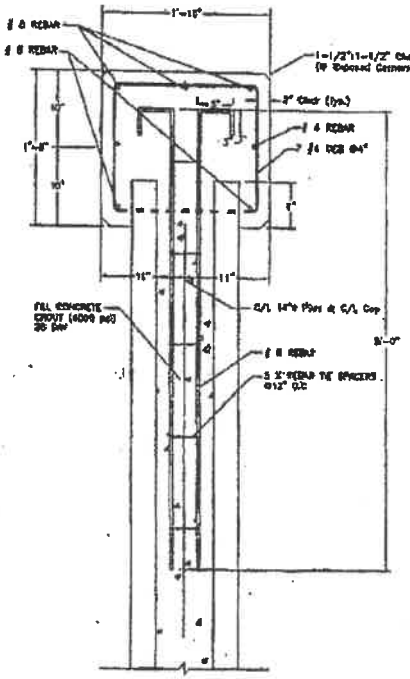
\\GMS-SERVER\GMS Files\ 2017\ MISCEL PROJECTS\ MISC#170580 - HILTON HAVEN\ DRAWINGS\ REV 06-08-2018



BEAM DETAIL
SECTION C-C



UTILITY AND DECK ANCHOR AND BEAM DETAIL
SECTION B-B



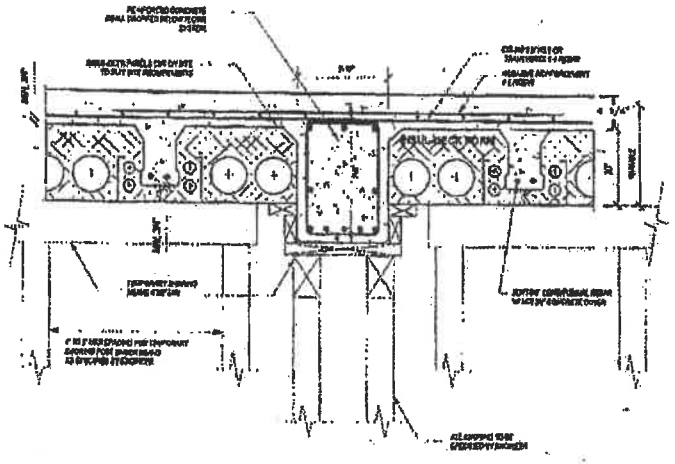
FLUSH CONCRETE BEAM WITH PILE
SECTION D-D

G.M. SELBY, Inc.

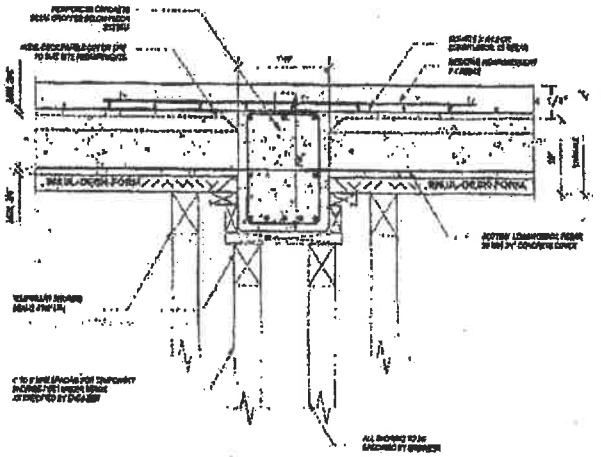
HILTON HAVEN HOUSING

CONNECTION DETAILS

S-2



TRANSVERSE SECTION @ DROPPED CONCRETE BEAM



LONGITUDINAL SECTION @ DROPPED CONCRETE BEAM

G.M. SELBY, Inc.

HILTON HAVEN HOUSING

SHEET TITLE:
DROPPED CONCRETE BEAM DETAIL

SHEET NO.
S-3

\\DNS-SERVER\CAD Files\ 2007\ MISCEL PROJECTS\ MISC07080 - HILTON HAVEN\ DRAWINGS\ REV 06-05-2010

COMPOSITE EXHIBIT B

GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That **WILLIAM R. GROSSCUP** ("**first party**"), for and consideration of good and valuable consideration, received from, or on behalf of **FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS** and **CITY OF KEY WEST, a municipal corporation** ("**second party**"), the receipt of which is herby acknowledged:

HEREBY irrevocably remises, releases, acquits, satisfies, and forever discharges the said **second party**, as well as all past and present agents, servants, attorneys, employees, directors, officers, successors, heirs, executors, administrators, and all other persons, firms, corporations, associations or partnerships, or any other entity associated therewith, of and from any and all claims, defenses, actions, causes of actions, demands, obligations, liens, rights, damages, costs, loss or service, expense and/or compensation, of any nature whatsoever, which the **first party** has or could have against **second party**, including, but not limited to, the claims that were raised and/or could have been raised in the cases styled, *Grosscup v. Florida Department of Community Affairs and Florida Department of Environmental Protection*, Case No. 2007-CA-680-K in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida; *Grosscup v. City of Key West*, Case No. 2009-CA-925-K in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida; and *Grosscup v. Colonel Alfred A. Pantano, Jr., District Commander for the Army Corps and Engineers, Jacksonville District, United States Army Corps of Engineers, Florida Department of Community Affairs, Florida Department of Environmental Protection and United States*, Case No. 10-10015-CIV-MARTINEZ/BROWN in the United States District Court for the Southern District of Florida. This Release does not release any claims **first party** may have against the Federal Defendants in Case No. 10-10015-CIV-MARTINEZ/BROWN.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 2010.

By_____
WILLIAM R. GROSSCUP

(Notary Certification follows)

STATE OF FLORIDA)
)SS
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010 by **WILLIAM R. GROSSCUP**, who is personally known to me or who has produced _____ as identification.

_____
Notary Public
Commission No.

_____
[Name of Notary typed,
Printed or stamped]

My Commission
Expires:

SEAL

GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That **FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION** ("**first party**"), for and consideration of good and valuable consideration, received from, or on behalf of **WILLIAM GROSSCUP** ("**second party**"), the receipt of which is herby acknowledged:

HEREBY irrevocably remises, releases, acquits, satisfies, and forever discharges the said **second party**, as well as all past and present agents, servants, attorneys, employees, directors, officers, successors, heirs, executors, administrators, and all other persons, firms, corporations, associations or partnerships, or any other entity associated therewith, of and from any and all claims, defenses, actions, causes of actions, demands, obligations, liens, rights, damages, costs, loss or service, expense and/or compensation, of any nature whatsoever, which the **first party** has or could have against **second party**, including, but not limited to, the claims that were raised and/or could have been raised in the cases styled, *Grosscup v. Florida Department of Community Affairs and Florida Department of Environmental Protection*, Case No. 2007-CA-680-K in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida; *Grosscup v. City of Key West*, Case No. 2009-CA-925-K in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida; and *Grosscup v. Colonel Alfred A. Pantano, Jr., District Commander for the Army Corps and Engineers, Jacksonville District, United States Army Corps of Engineers, Florida Department of Community Affairs, Florida Department of Environmental Protection and United States*, Case No. 10-10015-CIV-MARTINEZ/BROWN in the United States District Court for the Southern District of Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 31ST day of AUGUST, 2010.

FLORIDA DEPARTMENT OF ENVIRONMENT PROTECTION

By _____

Jim Tallman its Director District Mgmt

(Notary Certification follows)

STATE OF FLORIDA)
)SS
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 31st day of August, 2010 by **FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**, who is personally known to me or who has produced _____ as identification.

Denise M. Scarpuzzi
Notary Public
Commission No.

DENISE M. SCARPUZZI
[Name of Notary typed,
Printed or stamped]

My Commission
Expires: 10-8-2012

SEAL

DENISE M. SCARPUZZI
Commission DD 829281
Expires October 8, 2012
Bonded Thru Troy Fain Insurance 800-385-7019

GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That **FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS** ("**first party**"), for good and valuable consideration, received from, or on behalf of **WILLIAM GROSSCUP** ("**second party**"), the receipt of which is herby acknowledged:

HEREBY irrevocably remises, releases, acquits, satisfies, and forever discharges the said **second party**, as well as all past and present agents, servants, attorneys, employees, directors, officers, successors, heirs, executors, administrators, and all other persons, firms, corporations, associations or partnerships, or any other entity associated therewith, of and from any and all claims, defenses, actions, causes of actions, demands, obligations, liens, rights, damages, costs, loss or service, expense and/or compensation, of any nature whatsoever, which the **first party** has or could have against **second party**, including, but not limited to, the claims that were raised and/or could have been raised in the cases styled, *Grosscup v. Florida Department of Community Affairs and Florida Department of Environmental Protection*, Case No. 2007-CA-680-K in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida; *Grosscup v. City of Key West*, Case No. 2009-CA-925-K in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida; and *Grosscup v. Colonel Alfred A. Pantano, Jr., District Commander for the Army Corps and Engineers, Jacksonville District, United States Army Corps of Engineers, Florida Department of Community Affairs, Florida Department of Environmental Protection and United States*, Case No. 10-10015-CIV-MARTINEZ/BROWN in the United States District Court for the Southern District of Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of August, 2010.

FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS

By Thomas D. Pelham
its Secretary

(Notary Certification follows)

STATE OF FLORIDA)
)SS
COUNTY OF Leon)

The foregoing instrument was acknowledged before me this 23rd day of August, 2010 by **FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS**, who is personally known to me or who has produced N/A as identification.

Paula P. Ford
Notary Public
Commission No.

PAULA P. FORD
MY COMMISSION # DD 818056
EXPIRES: October 15, 2012
Bonded Thru Notary Public Underwriters

[Name of Notary typed,
Printed or stamped]

My Commission
Expires:

SEAL

GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That **CITY OF KEY WEST, a municipal corporation** ("**first party**"), for good and valuable consideration, received from, or on behalf of **WILLIAM GROSSCUP** ("**second party**"), the receipt of which is herby acknowledged:

HEREBY irrevocably remises, releases, acquits, satisfies, and forever discharges the said **second party**, as well as all past and present agents, servants, attorneys, employees, directors, officers, successors, heirs, executors, administrators, and all other persons, firms, corporations, associations or partnerships, or any other entity associated therewith, of and from any and all claims, defenses, actions, causes of actions, demands, obligations, liens, rights, damages, costs, loss or service, expense and/or compensation, of any nature whatsoever, which the **first party** has or could have against **second party**, including, but not limited to, the claims that were raised and/or could have been raised in the cases styled, *Grosscup v. Florida Department of Community Affairs and Florida Department of Environmental Protection*, Case No. 2007-CA-680-K in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida; *Grosscup v. City of Key West*, Case No. 2009-CA-925-K in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida; and *Grosscup v. Colonel Alfred A. Pantano, Jr., District Commander for the Army Corps and Engineers, Jacksonville District, United States Army Corps of Engineers, Florida Department of Community Affairs, Florida Department of Environmental Protection and United States*, Case No. 10-10015-CIV-MARTINEZ/BROWN in the United States District Court for the Southern District of Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 2010.

CITY OF KEY WEST

By_____

_____its_____

(Notary Certification follows)

STATE OF FLORIDA)
)SS
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010 by **CITY OF KEY WEST**, a municipal corporation, who is personally known to me or who has produced _____ as identification.

_____
Notary Public
Commission No.

_____
[Name of Notary typed,
Printed or stamped]

My Commission
Expires:

SEAL

1301522

EXHIBIT C

WILLIAM R. GROSSCUP,

Plaintiffs,

v.

FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION and CITY OF KEY WEST,

Defendants.
_____/

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

CASE NO. 2007-CA-680-K

AGREED ORDER APPROVING SETTLEMENT AGREEMENT

THIS CAUSE having come before the Court upon the parties' Settlement Agreement and Stipulation for Entry of Agreed Order Approving Settlement Agreement, and the Court having reviewed the Settlement Agreement and Stipulation of the parties and being otherwise fully advised in the premises, it is hereby:

ORDERED and ADJUDGED: The Settlement Agreement is approved and the parties are ordered to comply with its terms. Further, Defendant City of Key West shall not be required to comply with the regulatory procedures provided for in the Code of Ordinances of the City of Key West prior to the issuance of the approvals, waivers, variances, special exceptions, permits and/or exceptions referenced in the Settlement Agreement. To the extent that the relief provided to the Plaintiff has the effect of a modification, variance, or a special exception to the application of a rule, regulation, or ordinance as it would otherwise apply to the Plaintiff's property, the Court finds that the relief provided for in the Settlement Agreement protects the public interest being served by the regulations at issue and otherwise complies with Section 70.001, *Florida Statutes*. The relief being given is also appropriate to prevent the governmental

regulatory effort from inordinately burdening the subject real property. Each party shall bear its own attorney's fees and costs. The Court retains jurisdiction for the limited purpose of enforcing the Settlement Agreement. The Clerk shall close this case.

DONE and ORDERED in chambers in Key West, Monroe County, Florida on this _____ day of _____, 2010.

_____
MARK JONES
Circuit Court Judge

Copies furnished to:

John M. Siracusa, Esquire
Rosenbaum, Mollengarden, Janssen,
& Siracusa, PLLC
250 Australian Avenue South, 5th floor
West Palm Beach, FL 33401
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Attorney for Defendant, City of Key West

Jonathan A. Glogau, Esquire
Office of Attorney General
Chief, Complex Litigation
PL-01, The Capitol
Tallahassee, FL 32399-1050
Telephone: 850-414-3300, ext. 4817
Facsimile: 850-414-9650
Jon.glogau@myfloridalegal.com

Attorney for Defendants, Florida Department of Community Affairs and
Florida Department of Environmental Protection

130167302

THE CITY OF KEY WEST
POST OFFICE BOX 1409
604 Simonton Street
KEY WEST, FLORIDA 33041-1409

PLANNING DEPARTMENT
(305) 809-3722

TO: Shawn Smith, City Attorney
Larry Erskine, Chief Assistant City Attorney

FROM: Amy Kimball-Murley, Interim Planning Director

DATE: April 11, 2008

RE: 13 Hilton Haven
Captain Grosscup Proposed Residence

The purpose of this memo is to summarize the Planning Department's findings regarding the required development review procedure for a proposed residential structure at 13 Hilton Haven Drive. This memo is based on available information provided by the applicant, which has been supplemented by background information from City of Key West files. Key code provisions are provided at the end of the memo narrative.

The property owner, Captain Bill Grosscup, is in litigation with the State Department of Community Affairs and a Settlement Agreement between Capt. Grosscup and the state (including the Florida Department of Environmental Protection) is being negotiated. The City's code requires that environmental permits from applicable state and federal agencies be issued prior to approval of applications within the Conservation District. Therefore, it is important that the state issue their environmental permit (which is also required for federal permit issuance) prior to our consideration of the project. Hopefully the clarification of this process, along with information on the expected settlement and permitting process from the state, will result in a clear path for the applicant.

Summary: The property owner has substantiated the former existence of a floating home and a pile-supported accessory storage structure on the site; these structures were destroyed by a fire in 2005. The property owner proposes to construct a new residential structure in the form of a pile-supported single family home on the shoreline; construction includes filling and hardening of submerged lands beneath a portion of the structure. This analysis addresses the property owner's as-of-right development opportunities, as well as the process for approval and relevant code provisions applicable to the proposed new development. Each is summarized below:

- **As-of-Right Development:** The property owner appears to have the right to redevelop the site with a new floating home which complies with floating home provisions in Chapter 14. Further, it appears that the new unit would replace an existing floating home which was not affected by the Building Permit Allocation System and, therefore, no new unit allocation (also known as a "ROGO" unit) is required for a replacement floating home. The owner may be able to replace the accessory storage structure as an existing

non-conforming structure and use if a variance is granted by the Board of Adjustment, as required by code.

- **Proposed Development**: The proposed development appears to require a Major Development Plan approval and a Conditional Use Approval, as well as variances to coastal setbacks, yard requirements, impervious surface, building coverage and height restrictions. In addition, the project appears to require a Development Agreement per the provisions of the Conservation District. The proposed construction will require extensive review under Chapter 110, Resource Protection, of the Land Development Regulations, due to proposed uses and impacts within submerged lands and the coastal construction control area of the City.

Property: The property consists of an approximately 2,254 square foot upland area adjacent to Hilton Haven Drive (a private road located in part on the property) and approximately .67 acres of submerged lands (property figures are derived from the Monroe County Property Appraisers Office).

As-of-Right Development: The City of Key West has specific regulations pertaining to the replacement of non-conforming uses, structures and densities which are involuntarily destroyed. A key consideration in allowing the replacement of destroyed structures, uses or densities, is that such structures, uses or densities were lawfully established at the time the structure or use was put in place.

In 2005, a fire destroyed existing development at 13 Hilton Haven Drive. A survey prepared after the fire by Fredrick H. Hildebrandt on 6/09/05 shows a "burned out houseboat" and a "two-story burned out frame building" (see attached). Review of numerous documents, including aerial photographs and drawings from the City's Building Permit files, confirms that the survey appears generally accurate and that a floating home and a pile-supported, two-story storage area existed on the property at the time of the fire. The floating home appears to have existed on the property since the 1960's and to be used continuously as a permanent residence. Chapter 14, Article V of the City's Code of Ordinances defines and regulates floating homes, and includes requirements for permanent floating homes, including issuance of a certificate of occupancy and a determination of eligibility under the Rate of Growth Ordinance ("ROGO") which is the commonly used synonym for the City's Building Permit Allocation System. The City does not have any record of issuing the floating home a certificate of occupancy. Further, the City does not have any record of allocating a Building Permit Allocation System unit for the floating home; however, information provided by the property owner, including aerial photographs, a utility bill and meter reading receipt, and numerous affidavits (see attached) demonstrate that the residential use was likely in place on or about April 1, 1990. Residential units that existed as of that time are presumed not to be affected by the requirement for a building permit allocation and have typically been deemed "lawfully established" by the City as an administrative function of the Planning Department. When such uses have not been lawfully certified though the City's Building Department (as is often the case with upland residential units), applicable back fees are typically paid by the applicant as part of the recognition process. Therefore, it appears that a single residential unit located in a floating home could be replaced at the site without any required allocation under the Building Permit Allocation System. However, the owner may be subject to back fees and other requirements, and must meet all applicable portions of the City's

Code of Ordinances, including all other specific provisions for floating homes under Chapter 14, Article V.

The Land Development Regulations do not specify where floating homes are permitted uses. However, the intent of the floating home regulations is to "bring floating homes within the scope of the regulatory scheme applicable to landbased dwellings, making modifications necessary to accommodate the unique features of floating homes" (Section 14-182). All tidal waters in the City extending 600' waterward of the mean high water line are zoned Conservation – Outstanding Waters". The Conservation district only allows water-dependent facilities below the mean high water line and therefore residential development is not allowed in this area. However, a floating home must be on the water, and so therefore is generally considered-water dependent. Although the code is unclear as to whether a new floating home could be located on the property, the Section 122.28(b) appears to support the replacement of the floating home as an existing non-conforming use and/or structure which was involuntarily destroyed.

The first floor of the storage area, which appeared to consist of a covered dock with two enclosed closets (one served as a utility room for a washer and dryer and the second for a workshop area), existed since at least 1990 as well. It appears that a portion of the storage structure was located on the uplands and a portion over submerged lands. In 2004, a second story was added to the storage structure; building permits issued for the second story clearly identify the structure for "storage only". Therefore, it appears that a property had a pile-supported storage area on the site at the time of the fire; enclosed storage consisted of 500 square feet on the second floor, and two closet areas of undetermined size on the first floor. The remainder of the first floor was open. Please note that several documents in the file indicate that the upper storage area may have been used as a residential dwelling unit. However, in my meeting with the property owner no such claim was made and in fact he substantiated that it was used for storage and occasional magic shows. Any use of the storage facility as a dwelling unit would have been contrary to the stated use in the building permit as well as other provisions in the code, and, therefore, unlawful (see Section 122-32(b)).

A storage area is considered a permitted accessory use for residential dwellings. The storage area therefore appears to have functioned as an accessory use to the floating home. However, as a structure and use, the storage area was located over water and would need to demonstrate compliance with Chapter 110, Resource Protection, which limits development of non-water dependent and non-water related uses in the coastal construction control area. The storage area is not water-dependent or water-related, and therefore may not be developed as of right without reliance on non-conforming structure and use exemptions. Section 122.28 (b) states that "All noncomplying accessory structures to the principal building or structure (e.g., a shed, pool, fence, etc., but not including a condominium clubhouse) shall also require a variance in order to be reconstructed or replaced, either voluntarily or involuntarily." Further, Section 122.28 (g) reads "with respect to subsections (a) through (f) of this section, the development review committee and the board of adjustment, in evaluating petitions for variance, shall balance the need to protect life and property with the need to preserve the economic base of the community. Under no circumstances shall a voluntarily or involuntarily destroyed nonconforming use or noncomplying building or structure be replaced to a degree or level that increases or expands the prior existing nonconforming use or noncomplying building or structure." Therefore, the

replacement of the storage area without expansion appears to be possible if a variance is granted by the Board of Adjustment.

In summary, it appears that the floating home can be reconstructed as of right but that the storage area, as a non-complying accessory use to the floating home and a non-complying structure, requires a variance to be reconstructed or replaced.

Proposed Development: The proposed development is shown on a set of drawings prepared by G.M. Selby and dated 12/18/07 (see attached). The plans show a dome-shaped, pile-supported two-story single family structure approximately 3,017 square feet in size and 33' 10" vertically above mean high water (MHW). It is not clear to what extent submerged lands will be altered or filled by the proposed project. One cross-section shows a berm underneath the proposed structure; a second cross-section shows concrete fill and toe protection and a calculation of 1142 square feet of fill. For the purposes of this analysis, it is assumed that some fill below the MHW line will be proposed and that the fill may constitute hardening of the shoreline. It does not appear that any wetland vegetation or jurisdictional wetlands have been identified on the property; however, a biological assessment will be required as part of the site development process to confirm the absence or presence of protected vegetation.

Chapter 110 of the Land Development Regulations includes a series of provisions intended to protect natural resources in the City. Provisions applicable to the proposed development appear to include:

- Section 110-181, which requires a plan to demonstrate that the development will not adversely impact shoreline resources;
- Section 110-182 (c), which prohibits shoreline hardening unless erosion constitutes a critical peril to upland property and the use of vegetation has failed to stabilize the shoreline. The "erosion control" element of the proposed development appears to include construction of concrete shore hardening and toe protection; therefore, this provision appears applicable;
- Section 110-183, which requires development along the coastal shoreline or within an area extending 600 feet into the tidal water adjacent to the corporate city limits to prepare a development plan to demonstrate that the project avoids adverse impacts of development on benthic communities within tidal waters. A Major Development Plan, per Section 108.91(B)(2)(d) is required, and must be reviewed by the Planning Board and approved by the City Commission;
- Section 110-184(c), which prohibits non-water dependent uses on submerged lands or wetlands. Residences are not considered water-dependent or water-related structures per the definitions in Chapter 86;
- Section 110-185, which prohibits development with impacts on tidal flushing and circulation;
- Section 110-186, which regulates marinas and docks and prohibits "dredging and filling of wetlands or open water in order to accommodate uses which are not water dependent" unless excepted by state law;
- Section 110-189, which prohibits construction in the coastal construction control line, which per Section 122-148, is within 30' of the MHW line, except for water dependent uses; and,

- Section 110-190, which requires the City Planner to coordinate with state and federal agencies with jurisdiction over coastal impacts and prohibits the issuance of a development order or building permit until required state and federal permits are issued.

The proposed structure is located in part in the Conservation district. The Conservation district does not allow residential structures below the mean high water line. However, it does allow residential structures above the mean high water line as a Conditional Use, if a Development Agreement is provided. The proposed development appears to involve fill beneath the residential structure to relocate the mean high water line and allow the residential use to be developed.

Density requirements for residential structures in the Conservation district are one unit per ten acres and 16 units an acre in the MDR district. The small parcel size will not support the proposed density. However, Section 122-31 allows a single family home to be constructed on a legal lot of record. It appears that the parcel is a legal lot of record and therefore the owner appears to have the right to build a single family home on the parcel even though the lot is not large enough to support the required density.

The maximum height allowed in the Conservation district is 25 feet; maximum height in the MDR district is 35'. The proposed structure appears to be at 33'10" above MHW, and information on the plans shows that the height correlated to the crown of road is at 30'. This is in excess of the height restrictions in the Conservation District. A height variance may be granted by the BOA; however, a variance for habitable space would require ratification by voters per Section 1.05 of the City Charter. Site plan information also suggests that the project exceeds the impervious coverage, building coverage, and front and side yard requirements of the Conservation District. Therefore, the proposed development appears to require variances from the Board of Adjustment for construction in the coastal control line area, impervious surface, building coverage, front and side yard requirements and height limitations.

Variances are authorized only for height, area, size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited is not allowed by variance. Therefore, it does not appear that some of the requirements of the land development regulations, particularly those relating to shoreline hardening and construction of non-water dependent or water-related structures on the shoreline, can be eased by variances.

Process: The Department typically schedules Major Development Plan, Conditional Use and variances on a simultaneous track. It appears that the Development Agreement can also be processed along the same track, with one key exception: the code requires the City Commission take preliminary action regarding their interest in considering a Development Agreement prior to negotiation and approval of the agreement. Therefore, one of the first steps in the process will be the City Council's preliminary consideration of the development agreement.

Several provisions in the code state that development cannot be approved until required state and federal environmental permits are issued. Although applications for the project can be submitted to the City prior to issuance of the state and federal permits, I believe that the permits should be issued prior to Planning Board, City Commission and Board of Adjustment hearings on the project in order to meet the intent of the code.

Therefore, the Department anticipates the following sequence of events:

1. Pre-Application Meeting with the Department to discuss application requirements and code provisions relevant to the project;
2. Submittal of letter requesting City Commission consideration of a Development Agreement (the request will be scheduled on the next available agenda for hearing);
3. Submittal of an Application for a Major Development Plan / Conditional Use Approval and draft Development Agreement;
4. Development Review Committee meeting;
5. Provision of state and federal permit approvals;
6. Planning Board hearing; and,
7. City Commission hearings.

A development order issued in the City is subject to Department of Community Affairs review under the Area of Critical State Concern Principles for Guiding Development. The DCA has already issued an opinion, dated August 23, 2006, raising a number of concerns regarding the proposed development. The City has requested that the DCA reach a settlement agreement with the applicant prior to City approval of the project to enable state and federal permitting processes to move forward, as required by City code. However, it appears that the DCA will maintain the right to review development approvals issued for the project independent of the settlement agreement.

Xc: Jim Scholl, City Manager
Richard Shine, Florida Department of Community Affairs
Geo File, 13 Hilton Haven

EXCERPTS FROM KEY WEST CODE OF ORDINANCES

ARTICLE II. NONCONFORMITIES*

Sec. 122-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Dwelling unit. See section 86-9.

Noncomplying building or structure means any building or other structure, for which the use is lawful (permitted or nonconforming), but the building or other structure does not comply with all applicable sections of the land development regulations, including but not limited to size and dimension regulations, off-street parking requirements, landscape requirements, nuisance abatement standards, or height requirements, either on the effective date of the ordinance from which this section derives or as a result of any subsequent amendment.

Nonconforming density means the number of dwelling or living units per acre greater than the number allowed by the land development regulations, which were legally established or licensed prior to the effective date of the ordinance from which this section derives.

Nonconforming use means a use of a building or structure or a tract of land which does not, on the effective date of the ordinance from which this section derives or amendment thereto, conform to any one of the current permitted uses of the zoning district in which it is located, but which was legally established in accordance with the zoning in effect at the time of its inception or which use predates all zoning codes and which use has not changed or been abandoned. This definition shall not operate to make legal an unlicensed transient rental accommodation located in a residential structure.
(Ord. No. 00-10, § 3, 6-6-2000)

Cross references: Definitions generally, § 1-2.

Sec. 122-27. Intent.

The intent of this article is to permit a nonconforming use and a noncomplying structure or building to be continued, to be reconstructed or replaced, or to be repaired or maintained under certain conditions, but not to encourage their expansion. Nonconforming densities may also be continued, reconstructed, replaced, repaired or maintained, although a distinction is made for reconstruction or replacement purposes between transient and permanent residential densities.
(Ord. No. 00-10, § 4, 6-6-2000)

Sec. 122-28. Replacement or reconstruction.

(a) *Applicability.* This section applies both to voluntary reconstruction or replacement of dwelling units and involuntary reconstruction or replacement of dwelling units. Nothing in this section is intended to supersede applicable Federal Emergency Management Agency requirements for elevation in flood zones.

(b) *Dwelling units (residential).* Residential dwelling units may be replaced at their existing nonconforming density. Except as provided in subsection (f) of this section, dwelling units involuntarily destroyed do not require variances to be reconstructed or replaced. If a voluntary reconstruction or replacement occurs, if the dwelling units exist or existed in a noncomplying building or structure, the reconstruction or replacement that exceeds 66 percent of the assessed or appraised value of the building or structure shall require a variance granted by the board of adjustment. In a voluntary reconstruction of a structure on a corner lot, the property owner must apply to the board of adjustment for all necessary setback variances. All noncomplying accessory structures to the principal building or structure (e.g., a shed, pool, fence, etc., but not including a condominium clubhouse) shall also require a variance in order to be reconstructed or replaced, either voluntarily or involuntarily. If a proposed reconstruction or replacement would nototherwise require a variance but would add a new building or structure to the site to accommodate density, a variance shall be required for the additional building or structure. A residential

building in which one or more units hold a residential transient use business tax receipt shall be deemed residential for the purposes of this section.
(c) *Dwelling units (transient).* Transient dwelling units may be replaced at their existing nonconforming density so long as the reconstruction or replacement complies with all zoning district regulations, review procedures and performance criteria contained in the land development regulations. No variances shall be granted to accommodate such reconstruction or replacement; provided, however, that a variance may be granted to setbacks only if existing setback regulations would create undue hardship.
(d) *Properties without dwelling units.* For a proposed reconstruction or replacement of a property without dwelling units, where that property is either a nonconforming use or a noncomplying building or structure, (i) if the property is involuntarily destroyed, reconstruction or replacement does not require a variance; and (ii) if voluntarily destroyed to the extent that reconstruction or replacement would exceed 50 percent of the property's appraised or assessed value, the applicant must apply to the board of adjustment for a variance.
(e) *Mixed use properties.* If a property contains both a dwelling unit and a commercial use, its reconstruction or replacement shall be governed, separately, under each applicable subsection set forth in this section.
(f) *Historic district.* Notwithstanding any other subsection contained in this section, if a noncomplying building or structure is a contributing building or structure according to the historic architectural review commission (HARC) and it is involuntarily destroyed, such building or structure may be reconstructed or replaced without a variance so long as it is to be rebuilt in the three-dimensional footprint of the original building and built in the historic vernacular as approved by the historic architectural review commission.
(g) *Miscellaneous.* With respect to subsections (a) through (f) of this section, the development review committee and the board of adjustment, in evaluating petitions for variance, shall balance the need to protect life and property with the need to preserve the economic base of the community. Under no circumstances shall a voluntarily or involuntarily destroyed nonconforming use or noncomplying building or structure be replaced to a degree or level that increases or expands the prior existing nonconforming use or noncomplying building or structure.
(Ord. No. 00-10, § 5, 6-6-2000; Res. No. 06-292, § 1, 9-6-2006)

Sec. 122-29. Repairs and maintenance.
(a) *Generally.* Any building or structure devoted in whole or in part to a nonconforming density or nonconforming use may be repaired and maintained as provided in this section. If repair or maintenance shall exceed the criteria set forth in this section, renovation of the building or structure shall be governed by section 122-28.
(b) *Residential or transient dwelling units.* For residential or transient dwelling units, work may be done in any period of 12 consecutive months for repairs and maintenance to an extent not exceeding 66 percent of the current assessed or appraised value.
(c) *Property without dwelling units or mixed use (commercial).* For property without dwelling units or mixed use (commercial), work may be done in any period for 12 consecutive months on ordinary repairs and maintenance to an extent not exceeding 50 percent of the current assessed or appraised value.
(Ord. No. 00-10, § 6, 6-6-2000)

Sec. 122-30. Abandonment of nonconforming use.

If a nonconforming use ceases, except when government action impedes access to the premises, any and every future use of the building or structure and/or premises shall be in conformity with the use sections of the land development regulations. All material and equipment associated with the abandoned nonconforming use shall be completely removed from the premises by its owner. No new structure or addition that does not conform to the requirements of this article shall be erected in connection with such nonconforming use. A nonconforming use shall be considered abandoned when such use has ceased for a period of 24 months. If a dispute occurs with the city about whether a use has been abandoned, the owner shall be entitled to a hearing before the board of adjustment.

(Ord. No. 00-10, § 7, 6-6-2000)

Sec. 122-31. Noncomplying lots or building sites of record.

(a) In any district in which single-family dwellings are allowed, a single-family dwelling and customary accessory buildings may be erected on any legal nonconforming single lot that is in existence on January 1, 1994, and that is in different ownership from the adjoining property. This subsection shall apply even though such lot fails to meet the requirements for area, depth or width, provided that all other zoning requirements shall apply.

(b) If two or more adjoining lots or portions of lots in single ownership on January 1, 1994, do not meet the requirements for building site width, depth and area as established by this article, the land involved shall be considered to be an undivided parcel, and no portion of the parcel shall be used or sold that does not meet building site width, depth and area requirements, nor shall any division of the parcel be made that leaves remaining any lot with substandard width, depth, area, parking, open space or stormwater retention. Notwithstanding anything to the contrary in this subsection, two or more adjoining lots or building sites shall not be considered to be an undivided parcel, and may be sold or used for single-family dwellings, if allowed by applicable district regulations, so long as each lot or building site is at least 75 percent of the minimum lot size of the applicable district regulations and is not otherwise required to provide required parking for the adjacent parcel.

(Ord. No. 00-10, § 8, 6-6-2000)

Sec. 122-32. Additional regulations.

(a) A nonconforming use, nonconforming density or a noncomplying building or structure may be continued, subject to this article.

(b) A casual, intermittent, temporary or illegal use of land, building or structure shall not be sufficient to establish the existence of a nonconforming use, nonconforming density or noncomplying building or structure.

(c) Should any noncomplying building or structure be moved for any reason from its location, it shall thereafter conform to the regulations or the zoning district of its new location.

(d) A nonconforming use shall not be extended, expanded, enlarged, or increased in intensity. This prohibition shall include but not be limited to the extension of a nonconforming use within a building or structure or to any other building or structure.

(e) A nonconforming use of a building or structure may be changed to another nonconforming use if the board of adjustment finds that:

(1) The new use is equally or more appropriate to the zoning district; and

(2) The change of use would not intensify the use of the premises by increasing the need for parking facilities; increasing vehicular traffic to the neighborhood; increasing noise, dust, fumes or other environmental hazards; or by having an adverse impact on drainage.

(f) This article shall apply to signs, consistent with chapter 114.

(Ord. No. 00-10, § 9, 6-6-2000)

ARTICLE V. FLOATING HOMES

Sec. 14-181. Definition.
The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
Floating home means any structure designed to be waterborne and which is used primarily as a dwelling, but not including vessels used primarily as mobile waterborne vessels for transportation.
(Code 1986, § 31.051)
Cross references: Definitions generally, § 1-2.

Sec. 14-182. Intent.
The intent of this article is to bring floating homes within the scope of the regulatory scheme applicable to landbased dwellings, making modifications necessary to accommodate the unique features of floating homes.
(Code 1986, § 31.050)

Sec. 14-183. Violation; penalty.
Any violation of this article shall be punishable as provided in section 1-15.
(Code 1986, § 31.062)

Sec. 14-184. Certificate of occupancy.
(a) No floating home shall be occupied as a dwelling unless a certificate of occupancy has been issued by the building official. Cooking and sleeping facilities within a floating home shall be prima facie evidence that it is occupied as a dwelling. The building official shall issue a certificate of occupancy when the following conditions are fulfilled:
(1) Compliance with structural requirements.
(2) Compliance with minimum housing standards.
(3) Compliance with moorage requirements.
(4) Payment of the certificate fee.
However, a certificate of occupancy shall not be granted unless the planning department issues a determination of eligibility under the city's rate of growth ordinance (ROGO).
(b) The initial fee for certification shall be $25.00. The fee for recertification of a floating home moved to another moorage berth shall be $10.00.
(c) Certification shall be valid until revoked and may be revoked by the building official for violation of the terms of this article.
(Code 1986, § 31.052)

Sec. 14-185. Compartmentation and flotation devices.
(a) *Compartmentation of devices.* Watertight pontoons, floats, hulls or other devices used to keep the floating home afloat shall be fitted with transverse or longitudinal watertight bulkheads which provide compartmentation sufficient to keep the fully loaded floating home afloat with positive stability with any one compartment flooded. This subsection may be waived by the building official upon certification by a competent architect or engineer familiar with such devices that design, materials and construction of the hull or other floatation device is such that the possibility of rupture is extremely remote.
(b) *Construction generally.* Flotation devices shall be structurally sound and securely fastened to the floating home superstructure. Flotation devices shall be constructed so that access to each compartment is readily available from the first floor level of the completed floating home. The external surfaces of all flotation devices shall be watertight and thoroughly protected from corrosion from saltwater, solvents and weather.
(c) *Bilge pump.* Where permanent-type flotation such as styrofoam or plastic foam is not provided, an adequate portable bilge pump shall be maintained in proper working order.

(d) *Holding tank.* Flotation and decking shall provide access to the sewage pump.
(e) *Material.* All material, such as decking, siding and subflooring, which is subjected to moisture or water splash shall be of a type not adversely affected by moisture or shall be treated.
(Code 1986, § 31.053)

Sec. 14-186. Electrical wiring and service.
(a) *Scope.* This section covers the electric conductors and equipment installed within or on floating homes and the conductors that connect floating homes to the supply of electricity.
(b) *Branch circuits, feeders and calculations.* Branch circuits, feeders and calculations shall correspond to requirements for a single unit of a multifamily dwelling and shall comply with the building code in effect in this city.
(c) *Services.* Services shall be provided as follows:
(1) Service equipment shall be placed ashore and shall comply with the electrical code and the building code in all applicable respects. The power supply from the dock or shore to a floating home shall be cord type S-SO or ST, installed in compliance with the electrical code with one conductor in the cord for grounding only, in addition to the neutral conductor.
(2) Individual cord overcurrent protection shall not exceed 50 amperes. Not more that two cords may be installed to supply one vessel. Cords shall be fitted with an approved separable connector at the shore end and directly connected at the vessel distribution panel. The cord shall be supported with a corrosion-resistant, mesh-type strain relief device at the vessel end.
(d) *Grounding.* The neutral terminal block of the vessel's distribution panel shall not be grounded to the metal parts of the vessel. The grounding conductor of the supply cord shall be terminated on a grounding bus in the distribution panel. The hull, if metal, and electrical equipment metallic piping, exposed metal structural members, metal railing, ladders, etc., shall be effectively bonded to the ground bus. If the hull is built of material other than metal, a ground electrode of corrosion-resistant metal shall be solocated as to be in contact with the water and shall be connected with no. 6 AWG copper wire to the ground bus. The electrode shall be of bronze or brass and not smaller than one-quarter inch in diameter and 18 inches in length.
(e) *Wiring methods.* Installation in wood frame construction shall be in accordance with the electrical code and the building code.
(Code 1986, § 31.054)
Cross references: Utilities, ch. 74.

Sec. 14-187. Plumbing.
The plumbing of all floating homes shall comply with the requirements of the plumbing code adopted by the city in section 14-356, except as follows: plastic piping, A.B.C. drainage, waste and vent piping and PVC drainage, waste and vent piping conforming to the product and installation standards of the International Association of Plumbing and Mechanical Officials will be permitted as an alternate method of construction when first approved by the building official. Plastic pipe in floating homes or other structures shall be limited to that part within the walls of the floating home or other structure.
(Code 1986, § 31.055)

Sec. 14-188. Inboard sewage device.
An approved sewage receiving tank and ejection device shall be installed aboard every floating home or other floating structure. The device shall consist of an approved tank with a liquid capacity of not less than 30 gallons nor more than 40 gallons and shall be equipped with a 1 1/2-inch or larger discharge line and a one-half-horsepower pump. The inboard sewage device shall be connected to an approved moorage sewage collection system or shall have the capability of being pumped out into a sewage tank truck.
(Code 1986, § 31.056)

Sec. 14-189. Fuel gas piping.

All gas piping installed in a floating home or in any other floating structure shall be installed in accordance with the building code with the following exception: exposed piping. All gas piping installed in a floating home or other floating structure which is exposed to corrosion shall be provided with an approved protective coating or shall be galvanized and painted.
(Code 1986, § 31.057)

Sec. 14-190. Building heights.
The building height of a floating home shall not exceed two stories, and the total height measured from the first deck to the highest point on the roof ridge or gable shall not exceed 22 feet.
(Code 1986, § 31.058)

Sec. 14-191. Exit facilities.
The facilities of all exits of a floating home shall comply with the requirements for dwellings as set forth in the building code except as follows: exterior exits. Stairways or ramps from the floating home to the mooring deck or float shall be at least 36 inches in width and shall be provided with guardrails on both sides.
(Code 1986, § 31.059)

Sec. 14-192. Guardrails.
(a) Guardrails at least 36 inches in height shall be provided in the floating home in the following locations:
(1) Both sides of all exterior stairways and ramps.
(2) All edges of occupied roof areas.
(3) Edges of all decks not encompassed by the exterior walls of the floating home superstructure.
(b) Guardrails shall be designed to withstand a load of 20 pounds per foot applied at the top of the rail. In open-type railings, intermediate members shall not be spaced more than nine inches apart.
(Code 1986, § 31.060)

Sec. 14-193. Moorage standards; parking; density of land site.
(a) Moorage berths for floating homes shall be connected to a public street by land or by walkway not less than four feet wide. Walkways and berths shall be illuminated at an average intensity of two footcandles.
(b) One off-street parking space shall be available for the exclusive use of the occupants of each filled moorage berth.
(c) Floating home moorages shall not cause the density limitation applicable to the land site to which the moorage is connected to be exceeded.
(Code 1986, § 31.061)
Secs. 14-194--14-220. Reserved.

1.02 Police powers and jurisdiction.
The City of Key West is hereby authorized to exercise its police powers and jurisdiction extending six hundred (600) feet into the tidal waters adjacent to its corporate limits as herein established; provided, however, that the exercise of such police powers and jurisdiction beyond the corporate limits of the city shall extend only to the abatement of nuisances, the enforcement of sanitary laws and regulations, the regulation of zoning, and the suppression of crime.

Sec. 110-181. Coastal shoreline impact.
(a) Applicants for development along the Salt Ponds, Riviera Canal, Atlantic Ocean, Gulf of Mexico, or other coastal shorelines shall be required to submit, as part of the permitting process, plans which demonstrate how the development shall incorporate features designed to protect against potential adverse impacts to the following:

(1) Shoreline vegetation and stabilization;
(2) Water quality;
(3) Native habitat, including reef systems, seagrass beds, and coastal nontidal wetland habitats;
(4) Living marine resources; and
(5) Shoreline access.
(b) No shoreline development shall be approved until the applicant has demonstrated that potentially adverse impacts shall be prevented or that compensatory mitigation shall occur. The criteria in this article shall be enforced at plan review.
(Ord. No. 97-10, § 1(3-11.4(A)), 7-3-1997)

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(Ord. No. 97-10, § 1(3-11.4(A)), 7-3-1997)

Sec. 110-182. Shoreline vegetation and stability.
(a) No vegetation shall be removed from a shoreline without a duly authorized permit. No mangroves shall be removed except to the extent necessary to allow for ten-percent disturbance of a conservation designated site. The applicant shall be required to revegetate, stabilize, and enhance damaged shorelines by planting native vegetation, including mangrove and/or appropriate native plant species which:
(1) Contribute to marine productivity and water quality;
(2) Offer protection from erosion and flooding; and
(3) Contribute to the natural soil building process.
(b) Whenever vegetation is removed, the applicant/developer must provide mitigation plan ensuring that revegetation shall occur at a ratio three to ten times the affected habitat. The mitigation plan shall be subject to review by the planning board and by the appropriate federal and/or state agencies having jurisdiction.
(c) Hardening of the shoreline with riprap, bulkheads or other similar devices shall not be allowed unless erosion constitutes a critical peril to upland property and the use of vegetation has failed to stabilize the shoreline. In such case, riprap shall be the first alternative. Such shoreline hardening structures shall generally not be vertical seawalls or bulkheads. The specific location and design of such structures shall:
(1) Comply with the best management principles and practices and be accomplished by use of the least environmentally damaging methods and designs possible;
(2) Avoid a vertical slope which generates erosive tendencies, especially to adjacent unprotected shoreline properties. Pervious interlocking tile systems, filter mats, and similar stabilization methods shall be used in lieu of vertical walls whenever feasible;
(3) Not be located waterward of the mean high water line except when it is shown to be in the public interest;
(4) First be approved by other public agencies having jurisdiction; and

(5) Incorporate a program of shoreline vegetation or revegetation in order to build, enhance, and stabilize a natural shoreline.
(Ord. No. 97-10, § 1(3-11.4(B)), 7-3-1997)

Sec. 110-183. Living marine resources.
(a) Development along the coastal shoreline or within an area extending 600 feet into the tidal water adjacent to the corporate city limits shall avoid adverse impacts of development on benthic communities within tidal waters, including seagrass beds, algal beds, and other live bottom communities, reef systems as well as adverse impacts on the coastal nontidal wetland habitats. Since these areas are sensitive to increased turbidity and other forms of pollution, water runoff and introduction of nutrients, these forms of pollution shall be regulated through effective water quality management criteria. Plans for development impacting marine resources shall be coordinated with state agencies having jurisdiction prior to the city granting development plan approval and/or prior to release of any permit for construction. Compensatory mitigation may be permitted in cases of overriding public benefit where both the city and the state and federal agencies having jurisdiction approve the mitigation measures proposed by the developer. Any such development shall ensure continuance and maintenance of essentially natural conditions in order to further propagation of fish and wildlife as well as public recreation opportunities.
(b) All applicants proposing development activities along the coastal shoreline or within submerged areas shall be required to submit a development plan pursuant to development plan review regulations. Such development plan shall provide information describing marine life potentially impacted by proposed land uses as well as related construction activity. The plan shall stipulate assurances that the proposed project shall not adversely impact marine life or water quality. For instance, water quality control techniques such as the use of weirs for purposes of managing turbidity may be required by the city. In addition, the city shall require surveys of existing conditions, specifications of planned site improvements, and techniques to be used during construction as well as in operating and maintaining the land use in order to prevent damage to living marine organisms.
(c) Any proposed development which may impact known sea turtle nesting areas, such as along the sandy beach at Fort Zachary Taylor, shall include a mitigation plan which avoids the disturbance of nests. Site and building plans for construction of single-family or multifamily dwellings, parking lots, dune walkovers or any other lighted structures within the direct line of sight of such beaches shall incorporate the following:
(1) Low-profile and low-density lighting will be used in parking lots, and such lighting shall be positioned so that the source of light is not visible from the beach.
(2) All lights on balconies will be shielded from the beach.
(3) Floodlights on buildings or adjacent to the beach shall be positioned so that the source of light is not visible from the beach or, if required for safety, positioned in such a manner as to minimize impacts on turtles.
(4) Where lights are used, low-profile and low-intensity shielded lights will be used on dune walkovers.
(d) Any planned beach renourishment project shall protect sea turtle nesting areas by ceasing development activity during the nesting season (May 1 through October 31), or by collecting eggs from the nests, incubating them, and relocating the hatchlings.
(e) Coral reefs shall not be destroyed by development activities. The city shall assist reef relief in distributing educational material concerning the coral reef, including information on boating practices which are harmful to the coral reef. Wastewater system improvements identified in the comprehensive plan capital improvement schedule shall also be carried out to reduce potential adverse impacts on the coral reef.
(Ord. No. 97-10, § 1(3-11.4(C)), 7-3-1997)

Sec. 110-184. Water-related and water-dependent uses.
(a) All water-related uses shall be built on uplands landward of the high velocity hurricane storm surge zone (V zone) and the coastal construction control zone established by the state department of

environmental protection and enacted as the Florida Keys Coastal Management Act of 1974, excepting structures approved by the state department of environmental protection. Within the coastal building zone all construction activities shall be predicated on plans compliant with applicable state and local building codes. Dredging and filling of wetlands or open water in order to accommodate water-related uses shall not be permitted.

(b) Along the coastal, nearshore or estuarine shoreline seaward of the high velocity storm surge zone, no development shall be permitted other than water-dependent structures, native shoreline vegetation, elevated accessways of wood or other material which allow light to pass through and air and/or water to circulate underneath and to support plant life, subject to the approval of the state or federal agencies having jurisdiction. Hardening of the shoreline shall not be permitted unless the upland property is critically imperiled and the use of vegetation has failed to stabilize the shoreline. The design specifications of any shoreline hardening structure shall:

(1) Comply with best management principles and practices consistent with state and federal standards and be accomplished by use of the least environmentally damaging methods and designs possible;

(2) Avoid a vertical slope which generates erosive tendencies, especially to adjacent unprotected shoreline properties. Use natural rock boulders, pervious interlocking tile systems with filter fabric on the landward side, or similar stabilization methods, all of which must be approved by public agencies having jurisdiction;

(3) Not be located waterward of the mean high water line except when it is shown to be in the overriding public interest;

(4) First be approved by other public agencies having jurisdiction; and

(5) Incorporate a program of shoreline vegetation or revegetation in order to build, enhance, and stabilize a restored shoreline.

(c) No non-water-dependent uses shall be permitted on submerged lands or wetlands. Development on uplands adjacent to wetlands shall preserve a buffer measured from the nearest upland/wetland boundary. The buffer area shall be coordinated with South Florida Water Management District permitting guidelines. Within the buffer area all exotic vegetation shall be removed, and native plants shall be planted. The purpose of the buffer area is to protect ambient water quality and to prevent degradation of water qualityfrom pollutants from surface water runoff within coastal waters. Similarly, no structures which constrict water circulation shall be permitted.

(Ord. No. 97-10, § 1(3-11.4(D)), 7-3-1997)

Chapter 86: Water-dependent uses means activities which can be carried out only on, in or immediately adjacent to water areas because the use requires access to the water body for: waterborne transportation, including ports or marinas; recreation; electrical generating facilities; or water supply.

Water-related uses means activities which are not directly dependent upon access to a water body, but which provide goods and services that are directly associated with water-dependent or waterway uses and/or provide supportive services to persons using a duly permitted marina.

Sec. 110-185. Impacts of coastal development on tidal flushing and circulation patterns.

Tidal flushing and circulation patterns generally shall not be altered by development activities. No development shall produce changes in the tidal flushing and circulation patterns unless the applicant for development clearly demonstrates that no adverse environmental impacts shall be occasioned by the proposed changes in tidal flushing and circulation patterns. Additionally, no alteration in tidal flow shall be permitted which causes stagnation or siltation.

(Ord. No. 97-10, § 1(3-11.4(E)), 7-3-1997)

Sec. 110-186. Marinas and dock facilities.

Docks or marina improvements shall not be approved by the city until the applicant demonstrates compliance with all applicable federal and state laws and administrative rules as well as applicable

policies of regional agencies. Development plans shall include an environmental impact component for all docks and marinas which adequately address marina siting criteria cited in this section. These plans must demonstrate to the city's satisfaction that the facilities shall not adversely impact living marine resources, including but not limited to seagrasses, hardbottom communities, nearshore waters, manatees and other living marine organisms. The plans shall comply with the following criteria:

(1) The plan shall indicate location of the site relative to all potentially impacted natural marine resources, including specific location and characteristics. New marinas shall not be allowed in or immediately adjacent to the following sensitive areas:

a. Aquatic preserves;

b. Class II waters approved by the state department of environmental protection for shellfish harvesting;

c. Outstanding Florida waters;

d. Marine sanctuaries;

e. Estuarine sanctuaries; and

f. Areas of essential manatee habitat, as determined by the state department of environmental protection.

(2) Marinas must have sufficient upland area for all non-water-dependent uses. Dredging and filling of wetlands or open water in order to accommodate uses which are not water dependent shall not be allowed. Exceptions may be granted in accordance with state law.

(3) Cumulative effects of several marinas and/or boatramps in one area shall be considered in the review of proposed marina projects.

(4) All new and expanded marinas shall provide a demonstration of compliance with state water quality standards by maintaining a water quality monitoring program approved by the state department of environmental protection.

(5) Grassbeds and other submerged habitat deemed valuable by the state department of environmental protection will be subject to protection regardless of their size. The state department of environmental protection frequently determines its jurisdiction based on size and connection to other wetlands, so this may be contradictory.

(6) In reviewing applications for new or expanded docking facilities, ways to improve, mitigate, or restore adverse environmental impacts caused by previous activities shall be explored. This may include shallowing dredged areas, restoring wetland or submerged vegetation, or marking navigational channels. Such mitigation or restoration may be a condition of approval of new, renewed, or expanded facilities.

(7) Immediate access (ingress and egress) points shall be delineated by channel markers, indicating speed limits, manatee area warnings, and any other applicable regulations.

(8) All new or expanded marinas must provide treatment of stormwater runoff from upland areas to the extent necessary to ensure that state water quality standards are met at the point of discharge to waters of the state. In addition, all requirements of the water management district and the state department of environmental protection shall be met.

(9) Boat maintenance activities in new or expanded marina facilities shall be located as far as possible from open waterbodies in order to reduce contamination of waterbodies by toxic substances common to boat maintenance. Runoff from boat maintenance must be collected and treated prior to discharge.

(10) Open wet slips will be preferred to covered wet slips in marina design to reduce shading of waterbodies which result in lowered biological productivity.

(11) Marina design shall incorporate natural wetland vegetative buffers whenever possible near docking areas and in access areas for erosion and sedimentation control, runoff purification and habitat purposes.

(12) The West Indian manatee shall be afforded protection from boating activities which may have an adverse impact upon the species. The following criteria apply in the implementation of this policy:

a. Marina operators shall undertake the following manatee protection measures in areas where manatees are known to occur:

1. Implement and maintain a manatee public awareness program which will include posting signs to advise boat users that manatees are an endangered specie which frequents the waters of the region's estuaries and lagoon;

2. Declare the waters in and around marinas as "idle speed" zones; and

3. Post phone numbers to report an injured manatee.
b. Local manatee protection plans shall be included as part of the coastal management and conservation elements of the comprehensive plan. The plan should:
1. Assess the occurrence of manatee activity within the jurisdiction;
2. Document the number of manatee accidents and deaths;
3. Identify manatee habitats;
4. Determine the potential for adverse impacts to the manatee population from various activities and identify the level of protection necessary to ensure least possible interference; and
5. Recommend local mitigative actions to be undertaken in support of the regional policy.
(Ord. No. 97-10, § 1(3-11.4(F)), 7-3-1997; Ord. No. 98-14, § 6, 5-5-1998)

Sec. 110-187. Ocean, gulf and nearshore water quality.
In order to protect the water quality of the Atlantic Ocean, the Florida Bay, and the Gulf of Mexico, no new point-source pollution shall be permitted to discharge into these waters or into ditches or canals flowing into these waters. In addition, in order to reduce non-point-source pollutants the city shall require the following:
(1) Surface water management systems shall be consistent with the city's adopted drainage level of service (reference comprehensive plan policy 4-1.1.1) and applicable federal, state, and regional standards.
(2) A vegetated pond with sloping wetland buffers shall be established and maintained as part of the surface water management requirements. Prior to construction of the surface water management system for any phase of a project, the developer shall prepare a design and management plan for the wetland/littoral zone that will be developed as part of these systems. The plan should:
a. Include typical cross sections of the surface water management system showing the average groundwater elevation and the minus three-foot contour (i.e., below average elevation) or a 75-foot distance from the wetland buffer, whichever is greater;
b. Specify how vegetation is to be established within this zone, including the extent, method, type and timing of any planting to be provided;
c. Include the removal of all exotic vegetation; and
d. Provide a description of any management procedures to be followed in order to ensure the continued viability and health of the stormwater management system. The wetlands as established shall consist entirely of native aquatic vegetation and shall be maintained permanently as part of the water management system. As a minimum, ten square feet of vegetated littoral zone per linear foot of wetland shoreline should be established as part of the water management plan. The developer's vegetated/littoral zone management plan shall include a plan acceptable to the city for the longterm management and maintenance of stormwater, aquatic vegetation, and shoreline stabilization. The burden for perpetual maintenance rests with the property owner. If the city establishes a citywide utility district, the city may implement a city management strategy to be funded through an equitable assessment of property owners.
(Ord. No. 97-10, § 1(3-11.4(G)), 7-3-1997)

Sec. 110-188. Restrictions in coastal high hazard area.
(a) The city shall enforce the land use controls within the coastal high hazard area, within the LDR-C and MDR-C districts, including but not limited to enforcing:
(1) Density requirements for development within the Federal Emergency Management Agency (FEMA) floodprone map V zone.
(2) Regulations which mandate that all development and redevelopment within the Federal Emergency Management Agency floodprone area V zone areas comply with the following regulatory techniques for hazard mitigation:
a. State and local regulations establish coastal construction control lines, as well as applicable state and local construction codes regulating construction activity in coastal areas.

b. Surface water management improvements which mitigate against loss of floodplain and comply with adopted surface water management level of service standards for drainage cited in chapter 94 pertaining to concurrency management.
c. No development or redevelopment within the Federal Emergency Management Agency floodprone map V zone shall occur on septic tanks.
d. Publicly funded infrastructure shall not be built within the Federal Emergency Management Agency floodprone map V zone unless the facility is for the protection of public health and safety.
e. Development plans shall comply with wetland and transitional wetland preservation regulations in sections 110-86 through 110-91.
(b) A multiagency development plan review process shall be initiated by the city for all proposed development or redevelopment having potential adverse impacts on water quality, wetlands, shoreline stabilization, natural habitats, fish or wildlife, hurricane evacuation, or other adverse impacts on coastal resources. The development plan review for such developments shall be coordinated with state, county, federal, or regional agencies having jurisdiction. A primary function of this review process shall be to effectively reconcile hazard mitigation issues prior to issuance of any development orders.
(Ord. No. 97-10, § 1(3-11.4(H)), 7-3-1997)

Sec. 110-189. Shoreline access and protection of natural shoreline and limited beach/dune system.
(a) Shoreline access to the Atlantic Ocean and Gulf of Mexico shall be required in order to maintain accessways at approximately one-half mile intervals along the shoreline of the natural and renourished beach in order to enforce the 1985 Coastal Zone Protection Act for beach and shoreline access.
(b) The city shall not allow any construction of manmade structures on the city's beach, excepting beach access structures compliant with construction standards of the state division of beaches and shores. In addition, water-dependent structures such as lifeguard stands or beach renourishment approved by the division may be constructed if such structures meet the construction standards of federal and state agencies having jurisdiction. Any such construction activity must include measures to restore the beach and vegetation pursuant to a plan approved by the federal and/or state agencies having appropriate jurisdiction.
(c) No native vegetation shall be removed unless the revegetation shall occur at a ratio three to ten times the affected vegetated areas. Exotic vegetation shall be replaced by native vegetation. The revegetation ratio plan including the threshold for revegetation shall be subject to review and approval by the city as well as being subject to the federal and/or state agencies having jurisdiction. The city shall require beach and dune system restoration where development is proposed on the adjacent upland and breaches in the adjacent dune system are apparent.
(d) The coastal construction control line (CCCL) established in section 122-1148 shall not be distributed and shall be maintained in its natural state as open space. The city shall coordinate the development review process for projects impacting the coastal construction control line by forwarding all applications for construction seaward of the coastal construction control line to the state department of environmental protection for jurisdictional action. The applicant shall be responsible for receiving permits from all other public agencies having jurisdiction. In addition, such activities shall comply with applicable provisions of the comprehensive plan and land development regulations.
(e) To protect natural rock outcrops which form most of the city's shoreline as well as the limited beach, shoreline development and access shall continue to be restricted in order to preserve the shoreline and the limited beach. Rigid shore protection structures are not permitted, except when used as part of a comprehensive plan for beach restoration and when nonstructural alternatives are not acceptable. When beach renourishment projects are needed, the dune system should be restored, as necessary, utilizing natural, indigenous vegetation.
(f) Motorized vehicles are prohibited upon or over the city's incorporated portion of the beach adjacent to the Atlantic Ocean, excepting mechanical beach cleaning equipment, public safety and emergency vehicles, and vehicles permitted by the state department of environmental protection. Beach cleaners shall be required to obtain a coastal construction control line (CCCL) permit for operations beyond the control

line. The method of operations and equipment shall be approved by the state department of environmental protection and/or the U.S. Army Corps of Engineers as may be applicable as part of the special conditions of the coastal construction control line permit.
(Ord. No. 97-10, § 1(3-11.4(I)), 7-3-1997)

Sec. 122-1148. Coastal construction control line.
(a) No building or other structure shall be constructed:
(1) Within 50 feet of the mean high water along the Atlantic Ocean, southwest from the Cow Key Channel Bridge to the southeast corner of the Truman Annex property, inclusive of the Fort Taylor State Park, which fronts on the Atlantic Ocean; or
(2) Within 30 feet of the mean high water along the main ship channel, Key West Harbor, Garrison Bight, and the Bay of Florida, which shoreline is generally described as running north and east from the southeast corner of Truman Annex property, inclusive of the Fort Taylor State Park property which fronts on the Bay of Florida, to the north end of the Cow Key Channel Bridge and also extending along the entire outer limits of North Stock Island.
(b) Restrictions set forth in subsection (a) of this section shall not be applicable to any pier, dock, seawall, or other water-dependent use, or to any construction on property not within the jurisdiction of the city.
(c) If any portions or applications of subsection (a) of this section are judicially determined to be legally improper or unconstitutional, such holding shall not affect the remaining portions or applications thereof.
(Ord. No. 97-10, § 1(2-5.9(H)), 7-3-1997)

Sec. 110-190. Multiagency review of coastal management issues.

As part of the staff analysis and evaluation of development plans, the city planner shall coordinate with members of a multiagency technical review committee comprised of the following agencies: the U.S. Coast Guard; the U.S. Fish and Wildlife Service; the U.S. Army Corps of Engineers; the state department of environmental protection; the South Florida Water Management District; the South Florida Regional Planning Council; the county; and other federal, state, and regional agencies as may be appropriate inmanaging the following activities:
(1) The city shall coordinate all development and resource conservation measures impacting the waters of the Atlantic Ocean and Florida Bay with such agencies as well as other applicable public agencies. These activities shall include but not be limited to review of proposed development potentially impacting natural resources, including development petitions for docks, shoreline stabilization, dredging, or other alteration of natural resources under federal or state jurisdiction.
(2) All applications for development activity impacting waters of the state as well as tidally influenced salt ponds or other lands under the jurisdiction of the state shall be coordinated with agencies having appropriate jurisdiction.
(3) The city shall coordinate with technical staff within the state department of environmental protection and the South Florida Water Management District in order to ensure implementation of sound principles and practices of coastal resource management during the development review process as well as in the formulation of policies impacting coastal resource management.
(4) The city shall coordinate with the South Florida Water Management District, the state department of environmental protection, as well as other appropriate state agencies in matters surrounding stormwater management, drainage, water quality and quantity, and consumptive use permitting.
(5) The city shall ensure that all issues surrounding development impacts on wetlands or other resources under federal and/or state jurisdiction are managed based on timely coordination, exchange of information, and appropriate followup by the city and all agencies having jurisdiction over the issue. The city shall request jurisdictional determinations from all appropriate agencies prior to the issuance of development orders or building permits for all sites within the city.

(6) The city shall coordinate with the county on issues surrounding hurricane evacuation, stormwater management on county roadways, public access, and other coastal issues of mutual concern.
(Ord. No. 97-10, § 1(3-11.4(J)), 7-3-1997)

Sec. 110-191. Impacts of development on coastal waters.

Development plans shall comply with the following performance criteria:

(1) Surface water management systems shall be consistent with the city's adopted drainage level of service (reference comprehensive plan policy 4-1.1.1) and applicable federal, state, and regional standards.

(2) A vegetated pond with sloping wetland buffers shall be established and maintained as part of the surface water management requirements. Prior to construction of the surface water management system for any phase of a project, the developer shall prepare a design and management plan for the vegetated/littoral zone that will be developed as part of these systems. The plan should:

a. Include typical cross sections of the surface water management system showing the average groundwater elevation and the minus three-foot contour (i.e., below average elevation) or a 75-foot distance from the wetland buffer, whichever is greater;

b. Specify how vegetation is to be established within this zone, including the extent, method, type and timing of any planting to be provided;

c. Include the removal of all exotic vegetation; and

d. Provide a description of any management procedures to be followed in order to ensure the continued viability and health of the stormwater management system. The wetland zone as established shall consist entirely of native aquatic vegetation and should be maintained permanently as part of the water management system. As a minimum, ten square feet of vegetated wetland zone per linear foot of wetland shoreline shall be established as part of the water management plan. The developer's vegetated/littoral zone management plan shall include a plan acceptable to the city for the longterm management and maintenance of stormwater, lake and lakefront shoreline. The burden for perpetual maintenance rests with the property owner. If the city establishes a citywide utility district, the city may implement a city management strategy to be funded through an equitable assessment of property owners. Should it be necessary to establish or replenish shoreline vegetation or littoral zones, the developer should use plants that are highly salt tolerant as part of the aquascape. Aquatic planting that is necessary shall be illustrated on the required landscape plan submittal for development plan review as provided in section 108-243(c) and (d).

(3) Outstanding Florida waters and class III waters shall be protected by incorporating the following into the city's land development regulations:

a. Dredging and filling activities shall be limited to the state department of environmental protection, the U.S. Army Corps of Engineers, and the South Florida Water Management District and any other applicable agency approved dredging.

b. Ensure good water quality by coordinating with the U.S. Fish and Wildlife Services, the state department of environmental protection, and the South Florida Water Management District in monitoring the quality of stormwater runoff and all discharge processes where these agencies have jurisdiction. The city shall notify the appropriate agency with jurisdiction as potential issues or problems are identified by the city. The city's amended land development regulations shall provide performance criteria designed to ensure that new development provides effective and adequate stormwater management improvements concurrent with the impacts of new development. All new development shall comply with drainage level of service criteria.

c. Prohibit the use of these waters for water-dependent activities that are contrary to the public interest and do not satisfy a community need. Upon adoption of the comprehensive plan, all marinas within the city shall be retrofitted with pumpout stations. Use of pumpout facilities shall be mandatory for all vessels and liveaboard units. An implementing regulatory program shall require participation by the state and county since the vessels and liveaboards are located on waters of the state.

d. Prohibit modification of marine grassbeds unless required by an overriding public interest, and the activity is approved by federal, state, and/or regional agencies having jurisdiction.
e. Where modification of grassbeds is permitted by agencies having jurisdiction, the city shall ensure that:
1. A determination of overriding public interest has been demonstrated prior to modification of grassbeds.
2. Project runoff and nutrient introduction shall be controlled to prevent an increase in water turbidity.
3. Projects damaging grassbeds during construction shall incorporate mitigative techniques which reestablish benthic conditions favorable to natural regeneration. Mitigation should only be allowed at a 3:1 or 4:1 ratio as recommended by the marine resources division of the state department of environmental protection.
4. Special attention shall be given to stipulations cited in subsections (3)e.1 through (3)e.3 of this section during the development review process. The city shall coordinate closely with state and federal agencies during the permitting processes to ensure that the intent of these policies is carried out.
f. Protect aquatic and wetland wildlife and vegetative species.
(Ord. No. 97-10, § 1(3-11.4(K)), 7-3-1997)

Sec. 110-192. Exemptions.
(a) The following activities shall be exempt from the coastal resource protection regulations in this article:
(1) Minor maintenance or emergency repair to existing structures or improved areas.
(2) Clearing of shoreline vegetation to create walking trails having no structural components, not to exceed four feet in width. The city reserves the power to restrict the number and design of walking trails.
(3) Timber catwalks, docks, and trail bridges that are less than four feet wide, provided that no filling, flooding, dredging, draining, ditching, tiling or excavation is done, except limited filling and excavating necessary for the installation of pilings.
(4) Recreational fishing and temporary blinds.
(5) Constructing fences where no fill activity is required and where navigational access will not be impaired by construction of the fence.
(b) Notwithstanding, any permitted development shall provide a plan acceptable to the city which ensures maintenance of water quality and coastal resource integrity in perpetuity.
(Ord. No. 97-10, § 1(3-11.4(L)), 7-3-1997)
Secs. 110-193--110-220. Reserved.

Sec. 122-1148. Coastal construction control line.
(a) No building or other structure shall be constructed:
(1) Within 50 feet of the mean high water along the Atlantic Ocean, southwest from the Cow Key Channel Bridge to the southeast corner of the Truman Annex property, inclusive of the Fort Taylor State Park, which fronts on the Atlantic Ocean; or
(2) Within 30 feet of the mean high water along the main ship channel, Key West Harbor, Garrison Bight, and the Bay of Florida, which shoreline is generally described as running north and east from the southeast corner of Truman Annex property, inclusive of the Fort Taylor State Park property which fronts on the Bay of Florida, to the north end of the Cow Key Channel Bridge and also extending along the entire outer limits of North Stock Island.
(b) Restrictions set forth in subsection (a) of this section shall not be applicable to any pier, dock, seawall, or other water-dependent use, or to any construction on property not within the jurisdiction of the city.
(c) If any portions or applications of subsection (a) of this section are judicially determined to be legally improper or unconstitutional, such holding shall not affect the remaining portions or applications thereof.
(Ord. No. 97-10, § 1(2-5.9(H)), 7-3-1997)

Sec. 108-91. Scope; major and minor developments.

The following types of development shall require minor and major development plan approval.

A. *Within the Historic District:*

1. Minor development plan required for:

(a) Permanent residential and transient residential development: addition or reconstruction of three or four units.

(b) Nonresidential floor area: addition or reconstruction of 500 to 2,499 square feet of gross floor area.

(c) Commercial land use: addition of outdoor commercial activity consisting of restaurant seating, outdoor commercial storage, active recreation, outdoor sales area or similar activities of 500 to 2,499 square feet.

2. Major development plan required for:

(a) Permanent residential and transient residential development: addition or reconstruction of five or more units.

(b) Nonresidential floor area: addition or reconstruction of equal to or greater than 2,500 square feet of gross floor area.

(c) Commercial land use: addition of outdoor commercial activity consisting of restaurant seating, outdoor commercial storage, active recreation, outdoor sales area or similar activities equal to or greater than 2,500 square feet.

(d) Any development located within tidal waters extending 600 feet seaward of the corporate city limits.

(e) A port facility expansion proposed in the Truman Waterfront Parcel.

B. *Outside of the Historic District:*

1. Minor development plan required for:

(a) Permanent residential and transient residential development: addition or reconstruction of five to ten more units.

(b) Nonresidential floor area: addition or reconstruction of 1,000 to 4,999 square feet of gross floor area.

(c) Commercial land use: addition of outdoor commercial activity consisting of restaurant seating, outdoor commercial storage, active recreation, outdoor sales area or similar activities of 1,000 to 4,999 square feet.

2. Major development plan required for:

(a) Permanent residential and transient residential development: addition or reconstruction of eleven or more units.

(b) Nonresidential floor area: addition or reconstruction of equal to or greater than 5,000 square feet of gross floor area.

(c) Commercial land use: addition of outdoor commercial activity consisting of restaurant seating, outdoor commercial storage, active recreation, outdoor sales area or similar activities equal to or greater than 5,000 square feet.

(d) Any development located within tidal waters extending 600 feet seaward of the corporate city limits.

Sec. 122-1145. Required yards.

(a) *Purpose, use and maintenance of yards.* The purpose of yards required in the land development regulations is to provide open space around and between structures for health, safety and aesthetic purposes. The purpose is also to prevent the location of structures within dedicated easements. All required yards and landscaped areas shall be planted and maintained in lawn, sod, or landscaping, including flower beds, shrubs, hedges or other generally accepted landscaping material approved by the city. Landscaping material, including trees, shall not obstruct the vision of the motoring public. The landscape requirements of article VI of chapter 108 shall further regulate development within all zoning districts, excepting single-family zoned districts.

(b) *General encroachments into required yards.* Encroachments into required yards shall be in compliance with the following:

(1) *Projections and obstructions.* Every part of every required yard shall be open and unobstructed from the ground to the sky except as follows or as otherwise permitted in divisions 2 through 14 of article IV of this chapter or in division 2 of this article or in this division:

a. Movable awnings may project not over three feet into a required yard, provided that where the yard is less than five feet in width the projection shall not exceed one-half the width of the yard.

b. Awnings, canopies, or marquees outside the historic district may not project over three feet into a required yard. The location of exterior open stairs must be approved by the building department, and such exterior open stairs can be no closer than 30 inches to an adjacent property line.

c. Fences, walls and hedges shall be permitted in required yards subject to the land development regulations.

d. Accessory parking may be located in a required front, rear or side yard.

(2) *Exceptions.* Typical play equipment, wires, lights, mailboxes, ornamental entry columns and gates, and outdoor furniture are not considered as encroachments.

(c) *Yards.* A yard shall be defined as an open space at grade between a building and the adjoining lot lines, unoccupied, open to the sky and unobstructed by any portion of a structure from the ground upward, except as otherwise provided in the land development regulations. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or the depth of a rear yard, the minimum horizontal distance between the lot line and the structure shall be used (a driveway or off-street parking area may be a portion of a "yard").

(1) *Front yard.* Front yards shall be defined as the yard abutting a street (i.e., street frontage lot). The depth of required front yards shall be measured in such a manner that the yard established is a strip of at least the minimum width required by district regulations with its inner edge parallel with the front lot line. Such yard shall be measured from the nearest point of the building, including the roof, to the front (street frontage) property line. The front yard regulations shall apply to all lots fronting on a street.

(2) *Rear yard.* A rear yard is a yard extending across the rear of a lot between the side lot lines and which is the minimum horizontal distance between the rear of the main building or any projections thereof other than projections or encroachments specifically provided for in the land development regulations. For all corner lots, the rear yard shall be as indicated in subsection (c)(4) of this section for corner lots. The depth of required rear yards shall be measured in such a manner that the yard established is a strip of at least the minimum width required by district regulations with its inner edge parallel with the rear lot line. Such yard shall be measured from the nearest point of the building, including the roof, to the rear property line.

(3) *Side yard.* A side yard is a yard between the main building and the sideline of the lot and extending from the front lot line to the rear yard, which is the minimum horizontal distance between a side lot line and the side of the main building or any projections thereof. For all corner lots, the side yard shall be as indicated in subsection (c)(4) of this section. The width of required side yards shall be measured in such a manner that the yard established is a strip of at least the minimum width required by district regulations with its inner edge parallel with the side lot line. Such yard shall be measured from the nearest point of the building, including the roof, to the side property line.

(4) *Determining yards on corner lot.* On corner lots abutting two intersecting streets, the setbacks shall be measured as described in subsections (c)(1) through (3) of this section with the front, side and rear lot lines being determined as follows:

a. One street frontage shall be declared a front yard.

b. The other street frontage shall be a street side yard.

c. The rear yard shall be the yard opposite the declared front yard.

d. The remaining yard shall be the interior side yard.

(Ord. No. 97-10, § 1(2-5.9(E)), 7-3-1997)

Chapter 86: Variance means a relaxation of the terms of the land development regulations where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property

and not the result of the actions of the applicant, a literal enforcement of the land development regulations would result in unnecessary and undue hardship. As used in the land development regulations a variance is authorized only for height, area, size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.

DIVISION 3. VARIANCES

Sec. 90-391. Variances.

An owner or his authorized agent may request a variance from the land development regulations as provided for in this division. The board of adjustment shall have the quasi-judicial power necessary to grant such variances that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the land development regulations would result in unnecessary hardship. A variance from the terms of the land development regulations shall not be granted by the board of adjustment unless and until the requirements of this division are met.
(Ord. No. 97-10, § 1(1-2.6), 7-3-1997)

Sec. 90-392. Application.

(a) All applications for variances from the land development regulations shall be in the form required and provided by the city planner. Such application shall be submitted to the city planning office together with the fee established by resolution of the city commission. A completed application shall include the application form, the fee and all required supplemental information necessary to render determinations related to the variance request.

(b) Upon receipt of an application for a variance, the board of adjustment shall hold a public hearing upon the application in accordance with the procedures cited in section 90-393 and shall render an order granting or denying such application. In granting such application the board of adjustment must make specific affirmative findings respecting each of the matters specified in section 90-394 and may prescribe appropriate conditions and safeguards, including requirements in excess of those otherwise required by these land development regulations, which shall become a part of the terms under which a development order may be issued.
(Ord. No. 97-10, § 1(1-2.6(A)), 7-3-1997)

Sec. 90-393. Notice and hearing procedure.

In considering and acting upon applications for a variance from the land development regulations, the following procedures shall be observed:

(1) *Date of hearing.* The hearing shall be held by the board of adjustment at a date and time fixed by the chairperson of the board of adjustment.

(2) *Notice.* The city clerk shall provide notice as provided in division 2 of article VIII of this chapter.

(3) *Appearance and presentation.* At any hearing upon any matter subject to this division, the applicant or his authorized representative seeking action by the board of adjustment and any other party desiring to be heard upon the application may appear in person, by agent or by attorney. The applicant shall be entitled to make an initial presentation respecting the application and, at the conclusion of presentations or statements by all other parties, shall be entitled to offer a statement in rebuttal to such presentations if the applicant so desires. The chairperson of the board of adjustment may, at the commencement of the hearing upon each application or at any time during such hearing, require that parties desiring to make a presentation identify themselves and may specify the time to be allowed each such party within which to make such presentation.
(Ord. No. 97-10, § 1(1-2.6(B)), 7-3-1997; Ord. No. 00-04, § 3, 2-1-2000)

Sec. 90-394. Action.

Action by the board of adjustment upon any matter subject to the provisions of this division shall be announced by the chairperson of the board immediately following the vote determining such action and shall thereafter be embodied in a written order prepared by the city clerk and executed by the chairperson of the board of adjustment and the city clerk. Such written order shall be incorporated into the minutes of the meeting at which such action occurred. The board shall enter its order denying such application, specifying the reasons therefore, or granting such application, in whole or in part, under such terms and conditions as the board shall determine appropriate.

The board of adjustment shall not grant a variance to permit a use not permitted by right or as a conditional use in the zoning district involved or any use expressly or by implication prohibited by the terms of the ordinance in the zoning district. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and no permitted use of lands, structures, or buildings in other zoning districts shall be considered grounds for the authorization of a variance. No variance shall be granted that increases or has the effect of increasing density or intensity of a use beyond that permitted by the comprehensive plan or these LDRs.

(Ord. No. 97-10, § 1(1-2.6(C)), 7-3-1997; Ord. No. 02-01, § 1, 1-2-2002)

Sec. 90-395. Standards, findings.

(a) Standards for considering variances. Before any variance may be granted, the board of adjustment must find all of the following:

(1) Existence of special conditions or circumstances. That 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 zoning district.

(2) Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.

(3) Special privileges not conferred. 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) Hardship conditions exist. That 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 under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.

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

(6) Not injurious to the public welfare. That the grant of the variance will be in harmony with the general intent and purpose of the land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public interest or welfare.

(7) Existing nonconforming uses of other property not the basis for approval. No nonconforming use of 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 a variance.

(b) The board of adjustment shall make factual findings regarding the following:

(1) That the standards established in subsection (a) have been met by the applicant for a variance.

(2) That the applicant has demonstrated a "good neighbor policy" by contacting or attempting to contact all noticed property owners who have objected to the variance application, and by addressing the objections expressed by these neighbors.

An order permitting a variance may prescribe appropriate conditions and safeguards, including visual screening, and may also prescribe a reasonable time limit within which construction or occupancy of the premises for the proposed use shall have begun or have been completed or both. Upon entry of an order granting a variance, the administrative official shall not issue any development order for the subject property unless and until all of the conditions and requirements of the order granting the variance are met. Violation of those conditions and safeguards, when made a part of the terms under which the variance is

granted, shall be deemed a violation of the land development regulations and shall render the variances revoked.
(Ord. No. 97-10, § 1(1-2.6(D)), 7-3-1997; Ord. No. 02-01, § 1, 1-2-2002; Ord. No. 03-09, § 1, 3-4-2003)

Sec. 90-396. Effect and limitation.

An order granting a variance from the land development regulations shall be deemed applicable to the parcel for which it is granted and not to the individual applicant, provided that no order granting a variance shall be deemed valid with respect to any use of the premises other than the use specified in the application for a variance.
(Ord. No. 97-10, § 1(1-2.6(E)), 7-3-1997)

Sec. 90-397. Reapplication.

Reapplication for the same or similar piece of property requesting the same or similar variance from the land development regulations cannot be made within two years from the date the application was originally denied by the board of adjustment. An applicant may, however, submit a substantially different application or reapply based on changed conditions and/or the advent of new information which have a substantial impact on material issues.
(Ord. No. 97-10, § 1(1-2.6(G)), 7-3-1997; Ord. No. 03-09, § 2, 3-4-2003)
Secs. 90-398--90-425. Reserved.

DIVISION 2. CONSERVATION DISTRICT (C)

Sec. 122-126. Intent.

(a) The purpose of this division is to implement the comprehensive plan policies for preserving areas designated "conservation" on the comprehensive plan future land use map. These conservation district areas primarily consist of environmentally sensitive natural resources and systems, including but not limited to the Salt Ponds, tidal wetlands, mangroves, freshwater wetlands, transitional wetlands, upland hammocks, and waters of the state including an area extending 600 feet into the tidal water adjacent to the corporate city limits. The intent of this district is to provide for the longterm preservation of environmentally sensitive natural resources systems designated "conservation" on the comprehensive plan future land use map.

(b) No development shall be permitted within the conservation district and/or within waters below mean high water, wetlands, upland habitats or yellow heart hammocks unless the applicant for such development provides proof of permits or proof of exemptions from all applicable state or federal agencies having jurisdiction. Where the city determines that development should be allowed to occur for purposes of avoiding a taking, the density in no case shall exceed one unit per ten acres, and site alteration shall be limited to ten percent of the entire site.

(c) The developer/applicant of lands within the conservation (C) district shall be required to provide a site-engineered delineation of all environmentally sensitive lands, including but not limited to wetlands and upland habitat and shall also indicate the location of lands or waters within the jurisdiction of the state and/or federal government. The applicant shall bear the burden of proof in determining that development plans required pursuant to article II of chapter 108 include appropriate mitigative techniques to prevent/minimize adverse impacts to wetlands, transitional wetlands, upland habitat, yellow heart hammocks, tidal waters, including benthic communities, such as seagrass beds and algal beds, as well as other live bottom communities such as reef systems, or other environmentally fragile natural systems. An on-site survey by environmental professionals shall be submitted by the applicant. Such determinations shall be based on physical and biological data obtained from specific site investigations and provided with the earliest application for city development approval. These determinations shall be predicated on findings rendered by professionals competent in producing data and analyses necessary to support impact assessments, including findings regarding the impacts of potential development on the physical and biological function and value of environmentally sensitive lands. Any development within the

conservation districts shall be required to comply with all performance criteria of chapters 94, 102 and 106; articles I and III through IX of chapter 108; and chapters 110 and 114, especially section 108-1; article III of chapter 110; and articles IV, V, VII and VIII of chapter 110 pertaining to environmental protection, as well as all other applicable land development regulations.
(Ord. No. 97-10, § 1(2-5.1(A)), 7-3-1997)

Sec. 122-128. Uses permitted.
All development within the conservation district shall be by conditional use due to the environmental sensitivity of lands within the conservation district.
(Ord. No. 97-10, § 1(2-5.1(C)), 7-3-1997)

Sec. 122-129. Conditional uses.
Prior to any development within a conservation district, all state or federal agencies having jurisdiction shall have granted requisite permits, including but not limited to dredge and fill permits. As stated in article III of this chapter pertaining to conditional uses, applicants for a conditional use must demonstrate that the proposed uses and facilities identified in this section are compliant with all applicable criteria and relevant mitigative measures for conditional use approval, including but not limited to wetland preservation, coastal resource impact analysis and shoreline protection, protection of marine life and fisheries, protection of flora and fauna, and floodplain protection. The design of proposed conditional use facilities shall be required to apply mitigative measures to prevent and/or minimize adverse impacts on natural systems, including but not limit to habitats, water quality, and the physical and biological functions of wetlands. The size and scale of such development shall be restricted. The proposed uses and facilities that shall be compliant with all applicable criteria and relevant mitigative measures for conditional use approval are as follows:
(1) *Areas below mean high water.* Within areas below mean high water only water-dependent facilities are permitted, including the following:
a. Fishing piers, docks and related boardwalks not exceeding a width of five feet; and
b. Watercraft.
(2) *Areas above mean high water.* Within areas above mean high water the following uses are permitted:
a. Boardwalks not exceeding a width of five feet which shall be elevated in order to reduce adverse impacts on hydrologic functions of wetlands.
b. Water-related facilities as follows:
1. Hiking trails not exceeding a width of four feet to avoid adverse impacts on upland habitats and those portions traversing waterways shall be elevated in order to reduce adverse impacts on hydrologic functions.
2. Picnic areas.
3. Observation towers which shall be elevated in order to reduce adverse impacts on hydrologic functions of wetlands.
c. Residential development is restricted as follows:
1. The maximum density shall be one unit per ten acres. No residential development shall be approved on a site within the conservation district unless a development plan incorporating appropriate mitigation procedures and environmentally sensitive design techniques has been submitted and approved by the city pursuant to article II of chapter 108 and performance criteria of chapters 94, 102 and 106; articles I and III through IX of chapter 108; and chapters 110 and 114, especially environmental protection criteria of section 108-1; article III of chapter 110; and articles IV, V, VII and VIII of chapter 110.
2. Where isolated uplands or disturbed areas are located on a site proposed for development within the conservation district, all development shall be directed to such uplands or disturbed areas; however, the city may determine that, due to the specific size, shape or location of such uplands, less disturbance to environmentally sensitive land will occur if development is allowed within a portion of the wetlands. On-

site residential development shall be required to apply cluster design techniques so that the development minimizes disturbance of wetland and upland habitat buffering wetlands.
3. Where on-site residential is approved by the city, no transfer of development shall be approved on the subject site. If a proposed development lies within a conservation district and another zoning district, the total density and intensity shall not exceed the weighted average provided for in the specific district regulation impacting the site. Once a specific area to be developed has been determined, a conservation easement shall be prepared by the applicant, approved by the city, and filed with the county court clerk. The conservation easement shall preserve in perpetuity all on-site wetlands and upland habitat together with any required upland buffer as open space. The development plan, including the conservation easement, shall be the subject of a development agreement pursuant to article IX of chapter 90.
d. Transfer of development rights is restricted pursuant to the terms of an approved development agreement, as provided in article IX of chapter 90, at a density of one unit per one acre from an approved conservation district sender site to an approved HRCC-2 receiving site. Transfers of development rights together with the required conservation easement shall be duly recorded with the county court clerk as provided in section 122-127. The conservation easements shall prohibit any development right from beingtransferred more than one time. For further limitations, refer to section 122-127 and division 6 of article V of this chapter.
e. Public and private utilities are permitted where such facilities are essential to the public health, safety and welfare.
(Ord. No. 97-10, § 1(2-5.1(D)), 7-3-1997)

Sec. 122-130. Prohibited uses.
All uses not specifically or provisionally provided for in this division are prohibited in the conservation district.
(Ord. No. 97-10, § 1(2-5.1(E)), 7-3-1997)

Sec. 122-131. Dimensional requirements.
The dimensional requirements in the conservation district are as follows:
(1) Maximum density: one dwelling unit per ten acres (0.1 du/acre).
(2) Maximum floor area ratio: 0.01.
(3) Maximum height: 25 feet.
(4) Maximum lot coverage:
a. Maximum building coverage: five percent.
b. Maximum impervious surface ratio: five percent.
c. Maximum site alteration: ten percent.
(5) Minimum lot size: ten acres.
(6) Minimum setbacks: All development, excepting permitted water-dependent uses, must comply with requirements for setbacks from wetlands and open waters established in sections 110-91 and 122-1148.
(Ord. No. 97-10, § 1(2-5.1(F)), 7-3-1997)

Sec. 122-132. Additional criteria for commercial structures, uses and related activities within tidal waters--Generally.
Pursuant to Laws of Fla. ch. 78-540, § 8 and comprehensive plan objective 1-2.4 and comprehensive plan policies 1-2.4.1 and 5-1.1.4, the city shall regulate the location as well as the intensity and character of permanent and temporary commercial water-sport structures, uses, and related activities within an area extending 600 feet into the tidal waters adjacent to the corporate city limits. This section and sections 122-133 through 122-143 do not apply to watercraft located within a duly permitted marina. Applicants desiring to develop, establish or expand temporary or permanent structures, uses, and related activities of a commercial nature within the subject tidal waters, including but not limited to commercial water-sport operations with a clientele which is usually transported from the shoreline into tidal waters, shall be required to file a major development plan pursuant to procedures set forth in article II of chapter 108. The

applicant shall be required to submit a plan compliant with applicable performance criteria set forth in chapter 94; chapters 102 and 106; articles I and III through IX of chapter 108; and chapters 110 and 114, including but not limited to article IV of chapter 110 pertaining to coastal resource impact analysis and article VII of chapter 108 pertaining to off-street parking and loading requirements. In addition, the applicant shall comply with the location criteria, design and aesthetic criteria and safety standards cited in sections 122-133 through 122-143.
(Ord. No. 97-10, § 1(2-5.1(G)), 7-3-1997)

Sec. 122-133. Same--Additional criteria applicable to required development plans.
In addition to the coastal impact analysis criteria set forth in article IV of chapter 110, the coastal impact analysis required in section 122-132 shall include the following:
(1) *Description of potential adverse impacts.* The coastal impact analysis shall include a description of the potential adverse impacts on hardbottom biological communities caused by the following:
a. Any proposed construction activity; and
b. Uses accommodated by the proposed structure, including but not limited to proposed recreational activities involving motorized watercraft.
(2) *Map of tidal waters potentially impacted by the structure and related uses.* The analysis shall include a map delineating the location of the proposed structure as well as the area to which related activities associated with the structure shall be restricted.
(3) *Proposed signs associated with commercial use.* The application shall include proposed signs to be placed on the subject property, including any signs to be placed on floating platform docks. Any such sign shall be subject to review and approval pursuant to chapter 114.
(Ord. No. 97-10, § 1(2-5.1(G)(1)), 7-3-1997)

1.05 Height restriction.
(a) Building height restrictions in the city's land development regulations and building code in effect as of the adoption of this charter section are subject to change only upon approval of a majority of the qualified electors casting ballots at a general municipal election.
(b) If the board of adjustment approves a height variance for habitable building space, this approval shall be submitted to the voters for ratification in the next regularly scheduled election. Board of adjustment approval shall not become effective until voter ratification. Board of adjustment height variances for nonhabitable purposes, including, but not limited to, radio towers, antennae and spires, shall be final and not be subject to referendum. Board of adjustment height variances for a build back of involuntarily destroyed structures which are nonconforming in their height shall also be final and not be subject to referendum.
(Ord. No. 98-21, § 2(Exh. A), 8-4-1998)

PROJECT NAME: CAPT. BILL GROSSCUP

PROJECT ADDRESS: 13 HILTON HAVEN ROAD,
KEY WEST, FLORIDA 33040

LOCATION MAP

SHEET NO.	DESCRIPTION
T-1	COVER SHEET
C-1	SURVEY/SITE PLAN
C-2	EROSION CONTROL
S-1	STRUCTURAL PLAN
S-2	FOUNDATION PLAN
S-3	END BEAMS
S-4	INTERIOR BEAMS
S-5	CONNECTION DETAILS
S-6	CONCRETE BEAM DETAILS

SHEET INDEX

G.M. SELBY, Inc.

6999 N. WATERWAY DR.
MIAMI, FL 33155
TEL. : (305) 262-0715
FAX : (305) 262-0724

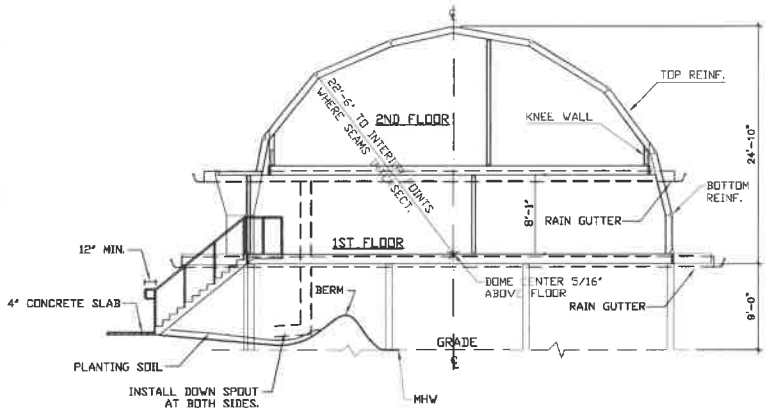
G.M. SELBY NO: MMSC270580
DRAWN BY: F.C. DATE: 12-18-07
CHECKED BY:
ENGINEER: GERALD ZADIKOFF
LICENSE NO.: CIVIL PE # 44208 FL
SEAL:

REVISIONS		
NO.	DATE	DESCRIPTION

HILTON HAVEN ROAD DOME

SHEET TITLE: COVER SHEET

SHEET NO: T-1



DOME CROSS SECTION

N.T.S.

SITE DATA 13 HILTON HAVEN ROAD - SINGLE FAMILY RESIDENCE

ZONING	MDR
FLOOD ZONE	AE8
FINISHED FLOOR HEIGHT	8' ABOVE MSL (0.0 NGVD)
BUILDING CLASSIFICATION	RESIDENTIAL
LOT SIZE	82.5 X 440.8 FT
ROAD CROWN (AVERAGE)	6.2 FT.
DENSITY	1 / LOT

EXISTING/PROPOSED SITE

	REQUIRED	EXISTING	PROPOSED
IMPERVIOUS SURFACE RATIO	50%	4.3%	10.4%
IMPERVIOUS SURFACE AREA(SQ. FT)	2963	1524	3685
MAX BUILDING COVERAGE	35%	3.2%	8.5%
BUILDING COVERAGE (SQ FT)		873.6	3025
MAX HEIGHT ABOVE ROAD (35' MAX)		22	30
AREA ABOVE SEAWATER (SQ FT)		1657	
AREA ABOVE THE LAND (SQ FT)		1360	

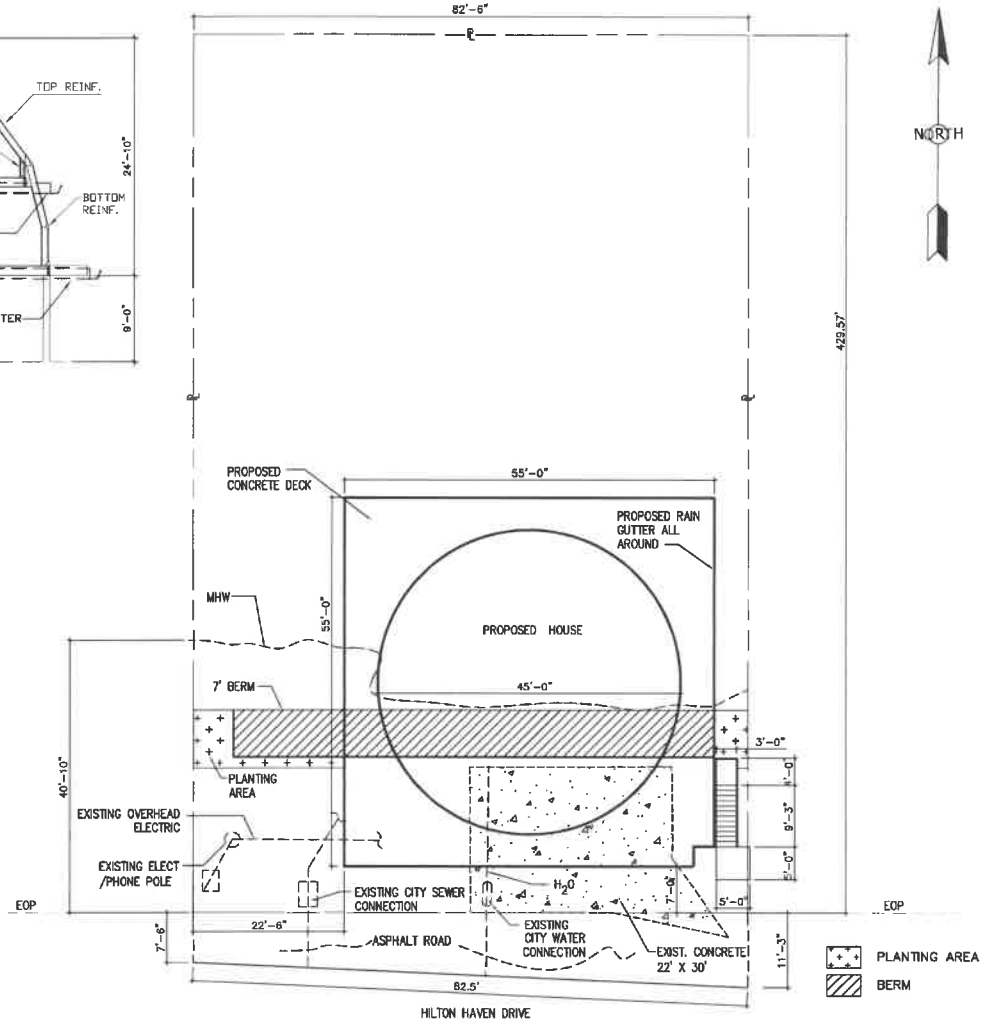
SETBACKS

	REQUIRED	EXISTING	PROPOSED
FRONT (FT.)	N/A	N/A	7
EAST (FT.)	7	10	7
WEST (FT.)	7	32	20.5
REAR (FT.)	20	386.8	365.8

STORMWATER

NOTE: NO NET INCREASE IN IMPERVIOUS SURFACE AREA FROM EXISTING 2 STRUCTURES DESTROYED BY FIRE

PLANTING AREA: (ALL SALT TOLERANT NATIVE SPECIES TO BE DETERMINED BY LANDSCAPE COMPANY AND OWNER.)



SITE PLAN

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

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DRAWN BY: F.C.	DATE: 12-18-07
CHECKED BY:	
ENGINEER: GERALD ZADIKOFF	
LICENSE NO.: CIVIL PE# 44206 FL	
SEAL:	

REVISIONS

NO.	DATE	DESCRIPTION

HILTON HAVEN ROAD DOME

SHEET TITLE:

LAYOUT
SURVEY/SITE PLAN

SHEET NO:

C-1

EROSION CONTROL CONSTRUCTION AND INSTALLATION REQUIREMENTS

SITE PREPARATION

1. AREAS ON WHICH FABRIC FORMS ARE TO BE PLACED SHALL BE CONSTRUCTED TO THE LINES, GRADES,CONTOURS, AND DIMENSIONS SHOWN ON THE CONTRACT DRAWINGS. ALL OBSTRUCTIONS SUCH AS ROOTS AND PROJECTING STONES SHALL BE REMOVED. WHERE SUCH AREAS ARE BELOW THE ALLOWABLE GRADES, THEY SHALL BE BROUGHT TO GRADE BY PLACING COMPACTED LAYERS OF SELECT MATERIAL. THE THICKNESS OF LAYERS AND THE AMOUNT OF COMPACTION SHALL BE AS SPECIFIED BY THE ENGINEER. WHERE REQUIRED BY THE CONTRACT SPECIFICATIONS, SOFT AND OTHERWISE UNSUITABLE SUBGRADE SOILS SHALL BE INDENTIFIED, EXCAVATED AND REPLACED WITH SELECT MATERIALS IN ACCORDANCE WITH THE CONTRACT SPECIFICATIONS.

2. EXCAVATION AND PREPARATION OF APRONS AS WELL AS ANCHOR, TERMINAL OR TOE TRENCHES SHALL BE DONE IN ACCORDANCE WITH THE LINES, GRADES,CONTOURS, AND DIMENSIONS SHOWN ON THE THE CONTRACT DRAWINGS.

3. IMMEDIATELY PRIOR TO PLACING THE FABRIC FORMS, THE PREPARED AREA SHALL BE INSPECTED BY THE ENGINEER, AND NO FORMS SHALL BE PLACED THEREON UNTIL THE AREA HAS BEEN APPROVED.

4. FABRIC FORM PLACEMENT

5. A FILTER FABRIC SHALL BE PLACED ON THE GRADED SURFACE APPROVED BY THE ENGINEER.

6. FABRIC FORMS SHALL BE PLACED OVER THE FILTER FABRIC AND WITHIN THE LIMITS SHOWN ON THE CONTRACT DRAWING. ANCHORING OF THE FABRIC FORMS SHALL BE ACCOMPLISHED THROUGH THE USE OF ANCHOR, TERMINAL AND TOE TRENCHES.

7. ADJACENT FABRIC FORM PANELS SHALL BE JOINED BEFORE FILLING WITH FINE AGGREGATE CONCRETE BY FIELD SEWING OR ZIPPERING THE TWO BOTTOM LAYERS OF FABRIC TOGETHER AND THE TWO TOP LAYERS OF FABRIC TOGETHER. ALL FIELD SEAMS SHALL BE MADE USING TWO LINES OF U.S. FEDERAL STANDARD TYPE 101 STITCHES. ALL SEWN SEAMS SHALL BE DOWNWARD FACING, AND ZIPPER SEAMS SHALL BE FASTENED AS SHOWN ON THE CONTRACT DRAWINGS, EXCEPT WITH THE APPROVED OF THE ENGINEER.

8. WHEN CONVENTIONAL JOINING OF FABRIC FORMS IS IMPRACTICAL OR WHERE CALLED FOR IN THE CONTRACT DRAWINGS, ADJACENT FORMS MAYBE OVERLAPPED A MINIMUM OF THREE FEET (ONE METER) TO FORM A LAP JOINT, PENDING APPROVAL BY THE ENGINEER. BASED ON THE PREDOMINANT FLOW DIRECTION, THE DOWNSTREAM EDGE OF THE FORM SHALL OVERLAP THE UPSTREAM EDGE OF THE NEXT FORM. IN NO CASE SHALL SIMPLE BUTT JOINTS BETWEEN FORMS BE PERMITTED.

9. EXPANSION JOINTS SHALL BE PROVIDED AS SHOWN ON THE CONTRACT DRAWING, OR AS SPECIFIED BY THE ENGINEER.

10. IMMEDIATELY PRIOR TO FILLING WITH FINE AGGREGATE CONCRETE, THE ASSEMBLED FABRIC FORMS SHALL BE INSPECTED BY THE ENGINEER, AND NO FINE AGGREGATE CONCRETE SHALL BE PUMPED THEREIN UNTIL THE FABRIC SEAMS HAVE BEEN APPROVED. AT NO TIME SHALL THE UNFILLED FABRIC FORMS BE EXPOSED TO ULTRAVIOLET LIGHT (INCLUDING DIRECT SUNLIGHT)FOR A PERIOD EXCEEDING FIVE DAYS.

11. FINE AGGREGATE CONCRETE PLACEMENT

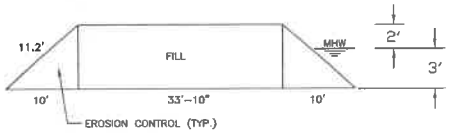
12. FOLLOWING THE PLACEMENT OF THE FABRIC FORMS, SMALL SLITS SHALL BE CUT IN THE TOP LAYER OF THE FABRIC FORM TO ALLOW THE INSERTION OF THE FILLING PIPE AT THE END OF THE FINE AGGREGATE CONCRETE PUMP HOSE. THESE SLITS SHALL BE OF THE MINIMUM LENGTH TO ALLOW PROPER INSERTION OF THE FILLING PIPE. FINE AGGREGATE CONCRETE SHALL BE PUMPED BETWEEN THE TOP AND BOTTOM LAYERS OF FABRIC, FILLING THE FORMS TO THE RECOMMENDED THICKNESS AND CONFIGURATION.

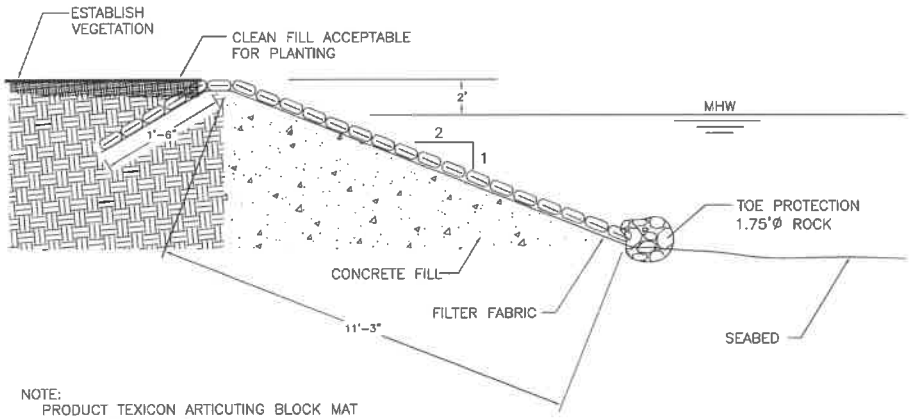
13. FINE AGGREGATE CONCRETE SHALL BE PUMPED IN SUCH A WAY THAT EXCESSIVE PRESSURE ON THE FABRIC FORMS AND COLD JOINTS ARE AVOIDED. A COLD JOINT IS DEFINED AS ONE IN WHICH THE PUMPING OF THE FINE AGGREGATE CONCRETE INTO A GIVEN FABRIC FORM IS DISCONTINUED OR INTERRUPTED FOR AN INTERVAL OF FORTY-FIVE OR MORE MINUTES.

14. HOLES IN THE FABRIC FORMS LEFT BY THE REMOVAL OF THE FILLING PIPE SHALL BE TEMPORARILY CLOSED BY INSERTING A PIECE OF NONWOVEN FABRIC OR SIMILAR MATERIAL. THE NONWOVEN FABRIC SHALL BE REMOVED WHEN THE CONCRETE IS NO LONGER FLUID AND THE CONCRETE SURFACE AT THE HOLE SHALL BE CLEANED AND SMOOTHED BY HAND. FOOT TRAFFIC ON THE FILLED FORM SHALL BE RESTRICTED TO AN ABSOLUTE MINIMUM FOR ONE HOUR AFTER FILLING.

FILL AND EROSION CONTROL

1. AREA OF FILL: 1142 SF
2. VOLUME OF FILL: 5710 CF (AVG. 3' MHW +2' ABOVE)
3. EROSION CONTROL MAT VOLUME OF CONCRETE: 2400 CF





NOTE:
PRODUCT TEXICON ARTICUTING BLOCK MAT OR APPROVED EQUAL

EROSION CONTROL
N.T.S.

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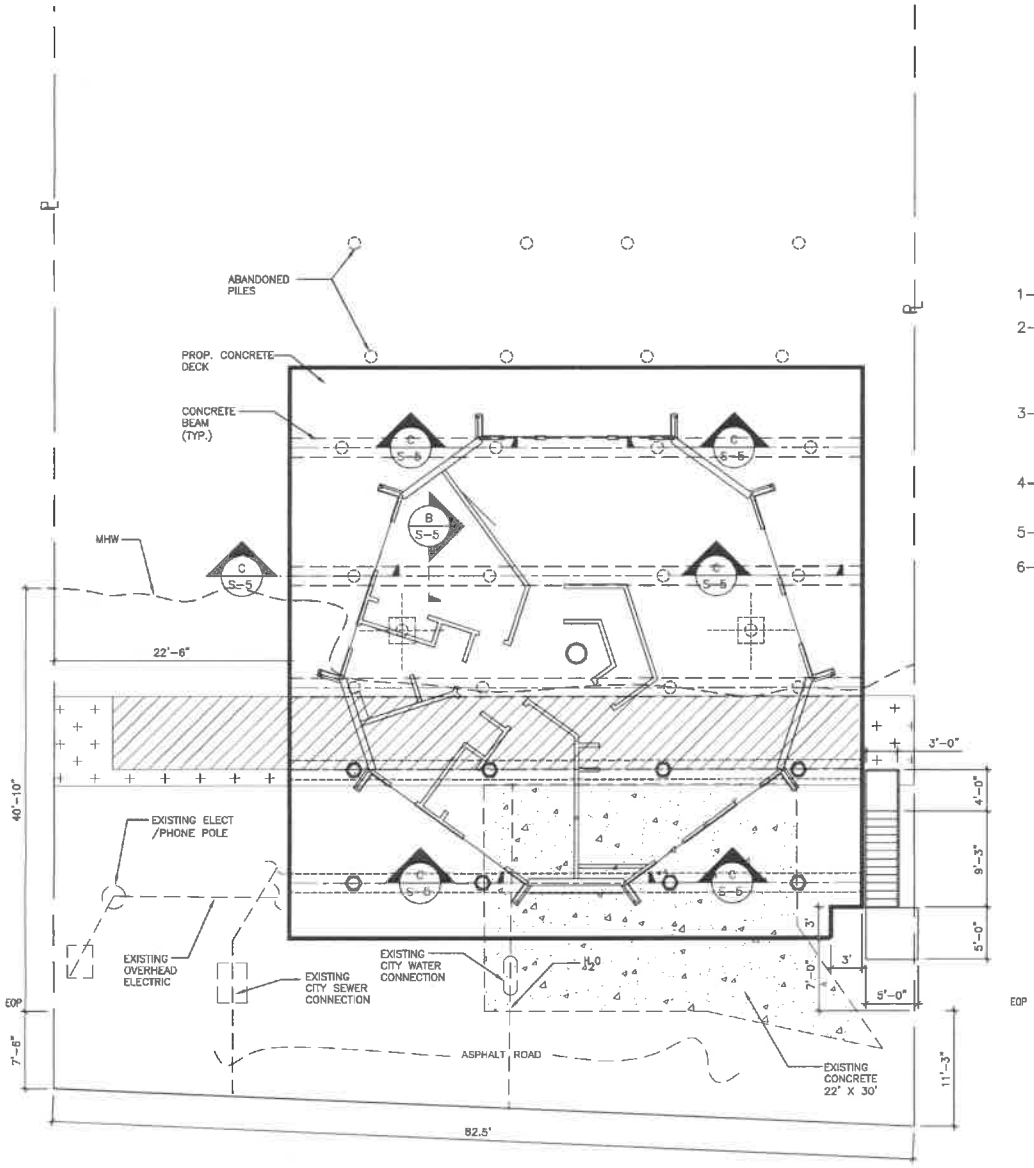
CHECKED BY:
ENGINEER: GERALD ZADIKOFF
LICENSE NO.: CIVIL PE# 44208 FL
SEAL:

REVISIONS	
NO.	DATE / DESCRIPTION

HILTON HAVEN ROAD DOME

SHEET TITLE:
EROSION CONTROL

SHEET NO:
C-2



STRUCTURAL PLAN

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

GENERAL NOTES:

1– REINFORCING STEEL: All reinforcing steel shall be ASTM A615 Grade 60.

2– CONCRETE COVER: Concrete cover shown in the plans does not include reinforcement placement and fabriction tolerances unless shown as "minimum

3–A. EXIST. PILES: 14"ø Prestressed Spun Concrete Piles. furnished by owner.
B. PROP. PILES: 18"ø AUGER CAST PILE.

4–BEAM : 4500 psi concrete 22"x20" cast in place

5–All Piling must be positioned by surveyor

6–Electrical line is 19' from shoreline.

LEGEND:

EXIST. 14" SPUN CONCRETE PILE

PROP. 18" AUGER CAST PILE

PILE CAP

CENTER LINE FOR DOME STRUCTURE

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SEAL:	

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NO.	DATE	DESCRIPTION

HILTON HAVEN ROAD DOME

SHEET TITLE: **STRUCTURAL PLAN**

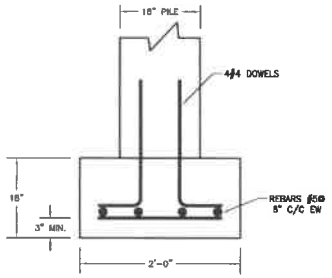
SHEET NO: **S-1**

OPTION I:

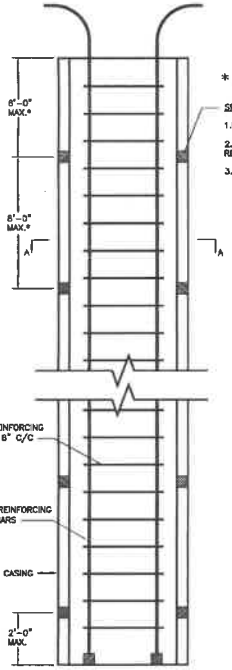
DRILL TO A DEPHT OF
10 FEET OR 6 FEET
INTO ROCK.

OPTION II:

DITCH TO CAP ROCK AND PLACE
A SPREAD FOOTER 24" x 18"
4500 PSI CONCRETE CAST IN
PLACE.



DETAIL
N.T.S.

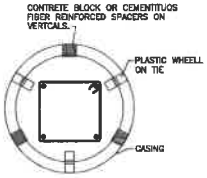


SPACER TYPES:

1.PRECAST CONRETE BLOCK

2.CEMENTITIOUS FIBER REINFORCED SPACERS

3.PLASTIC WHEEL



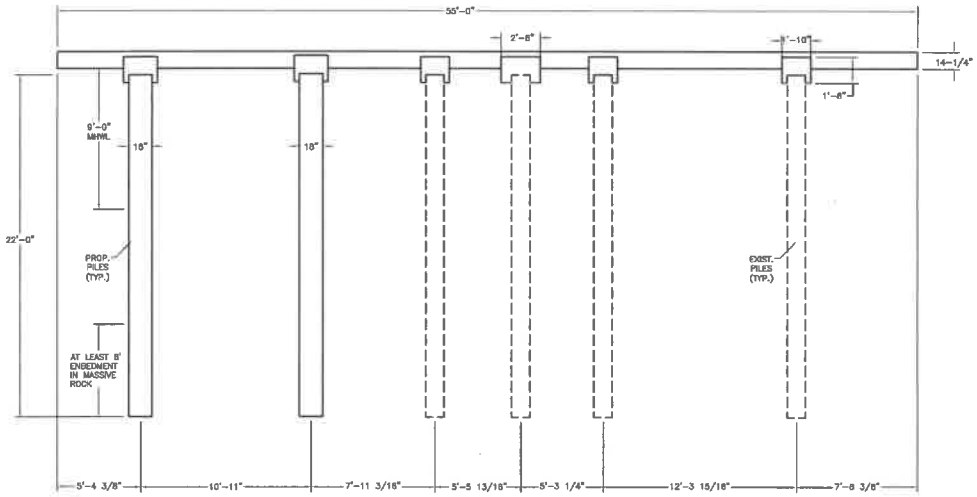
SECTION A-A
N.T.S.

NOTES:
1. THE CONTRACTOR HAS THE OPTION OF USING ANY OF THE SPACERS SHOWN FOR THE REINFORCEMENT CAGE. THE SPACING OF THE SPACERS FOR PROPIETARY ITEMS SHALL BE AS RECOMMENDED BY MANUFACTURER.

2. CONCRETE SPACER BLOCKS TO BE TIED TO MAIN REINFORCING WITH A DOUBLE TIE OF #16 TIE WIRE OR EQUIVALENT.

3. USE 3 SPACERS PER HORIZONTAL PLANE FOR CAISSONS LESS THAN 36" IN DIAMETER. USE 4 SPACERS PER HORIZONTAL PLANE FOR CAISSONS 36" IN DIAMETER AND GREATER OR AS RECOMMENDED BY MANUFACTURER OF THE PROPIETARY ITEMS.

PILE DETAIL
N.T.S.



ELEVATION PLAN
N.T.S.

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DRAWN BY: F.C.	DATE: 12-18-07
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ENGINEER: GERALD ZADIKOFF	
LICENSE NO.: CIVIL PE# 44206 FL	
SEAL:	

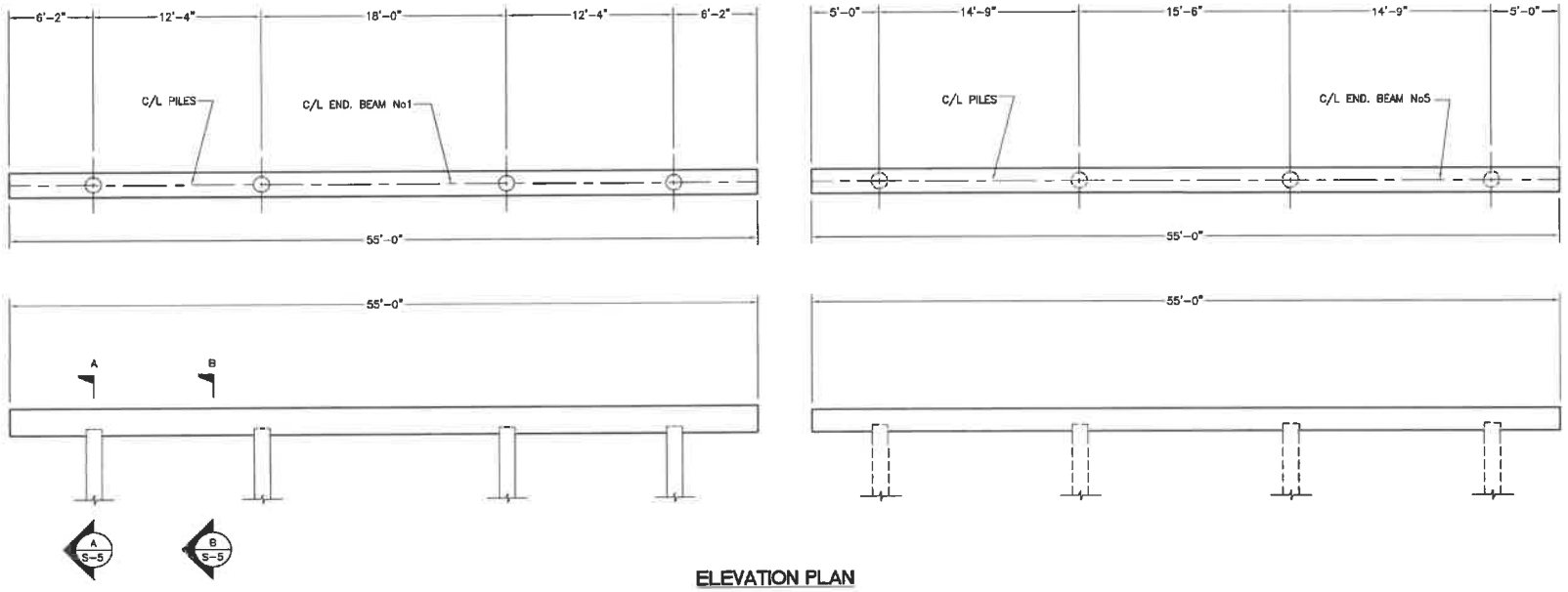
REVISIONS

NO.	DATE	DESCRIPTION

HILTON HAVEN ROAD DOME

SHEET TITLE:
FOUNDATION PLAN

SHEET NO:
S-2



ELEVATION PLAN

N.T.S.

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DRAWN BY: F.C. DATE: 12-18-07
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ENGINEER: GERALD ZADIKOFF
LICENSE NO.: CIVIL PE# 44206 FL
SEAL

REVISIONS

NO.	DATE	DESCRIPTION

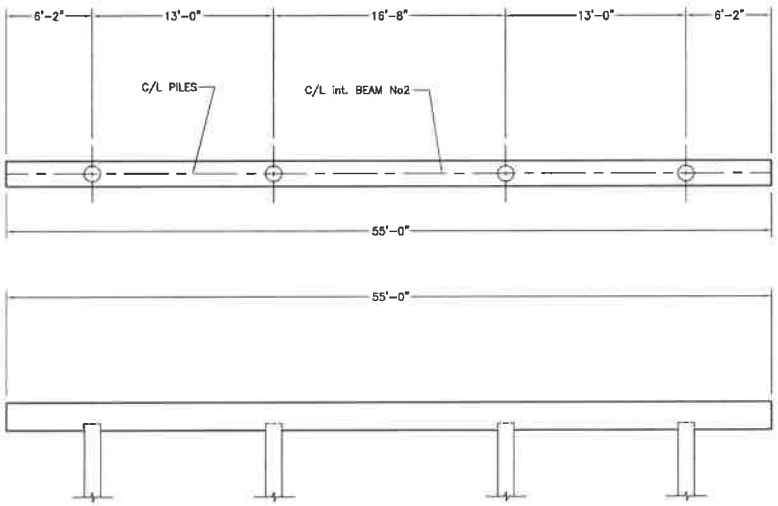
HILTON HAVEN ROAD DOME

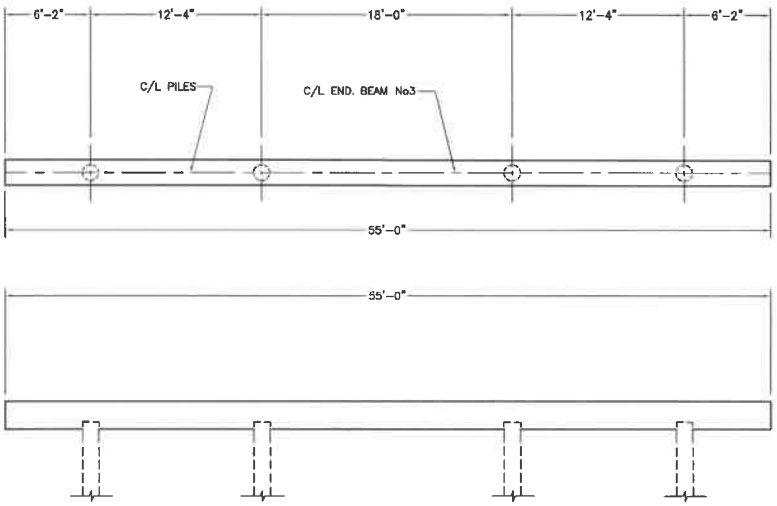
SHEET TITLE:

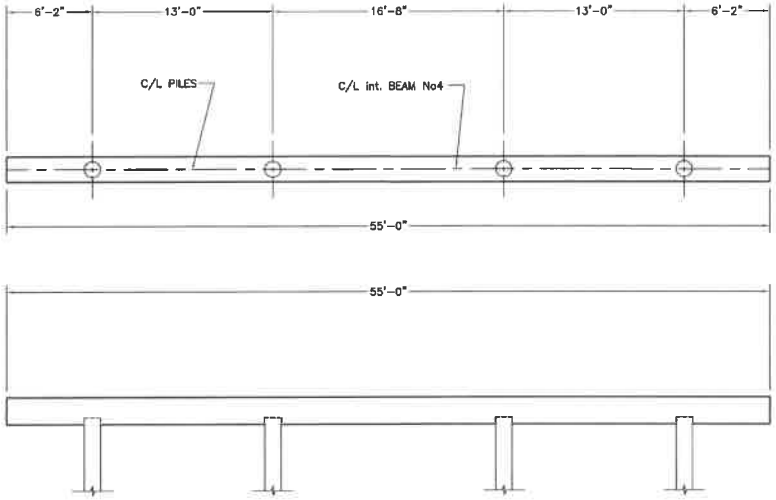
END BEAMS

SHEET NO:

S-3







ELEVATION PLAN

N.T.S.

G.M. SELBY, Inc.

6999 N. WATERWAY DR.
MIAMI, FL 33155
TEL. : (305) 262-0715
FAX : (305) 262-0724

G.M. SELBY NO: MMSC270580
DRAWN BY: F.C. DATE: 12-18-07
CHECKED BY:
ENGINEER: GERALD ZADIKOFF
LICENSE NO.: CIVIL PE# 44206 FL
SEAL:

REVISIONS		
NO.	DATE	DESCRIPTION

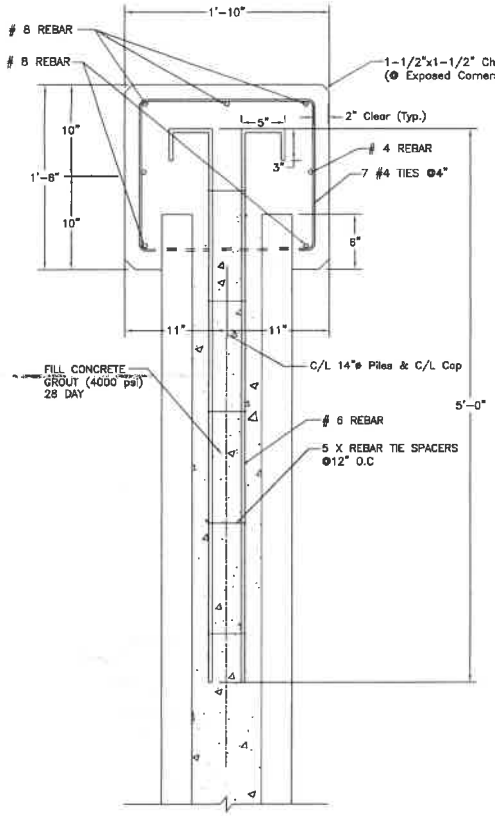
HILTON HAVEN ROAD DOME

SHEET TITLE:

INTERIOR BEAMS

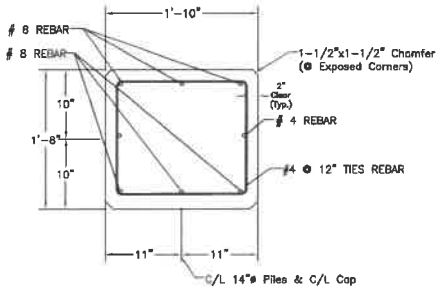
SHEET NO:

S-4



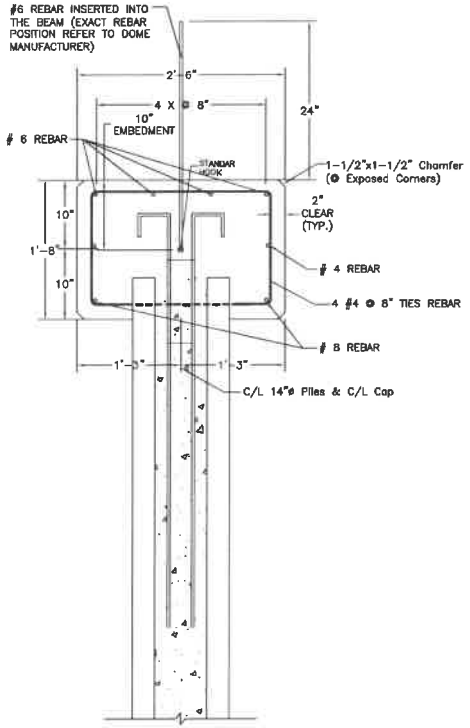
FLUCH CONCRETE BEAM WITH PILE

SECTION A-A



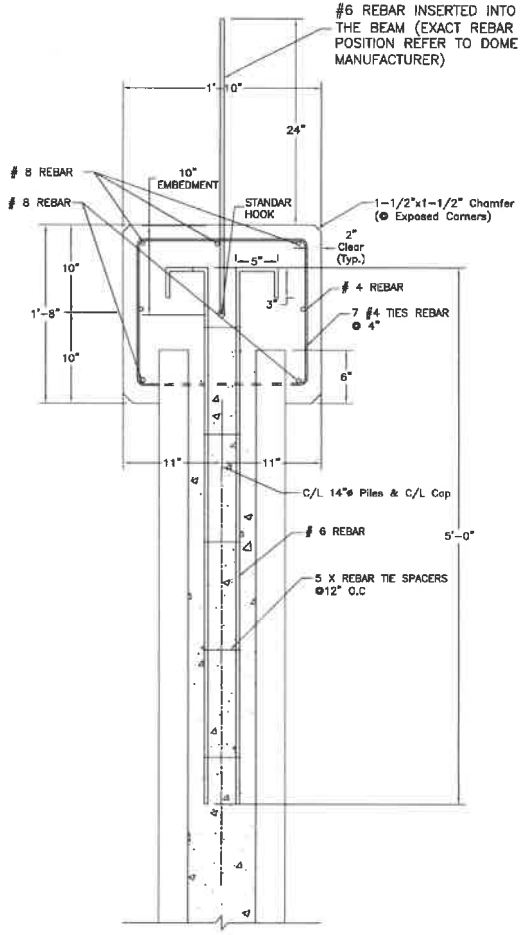
BEAM DETAIL

SECTION B-B



EXIST. DOME ANCHOR AND PILE CAP DETAIL

SECTION D-D



DOME ANCHOR AND BEAM DETAIL

SECTION C-C

G.M. SELBY, Inc.

6999 N. WATERWAY DR.
MIAMI, FL 33155
TEL. : (305) 262-0715
FAX : (305) 262-0724

G.M. SELBY NO:	MMSC2705#0
DRAWN BY: F.C.	DATE: 12-18-07
CHECKED BY:	
ENGINEER: GERALD ZADIKOFF	
LICENSE NO.: CIVIL PE# 44206 FL	
SEAL:	

REVISIONS

NO.	DATE	DESCRIPTION

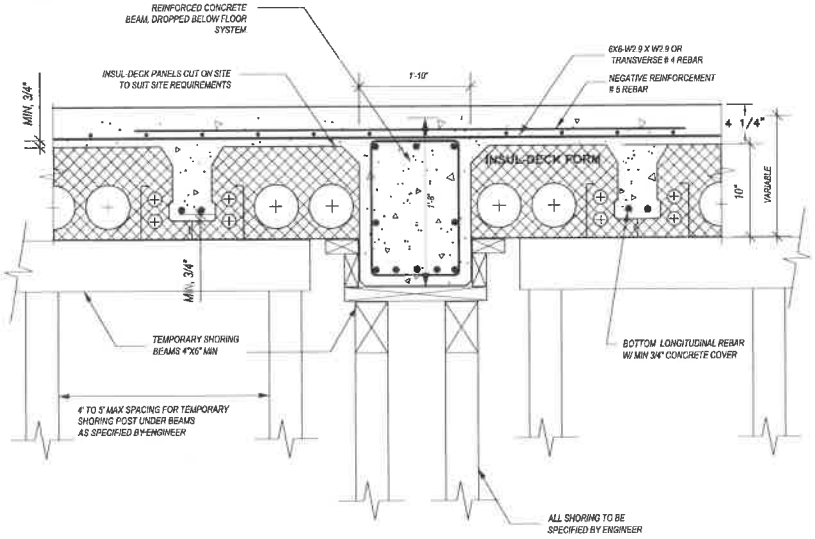
HILTON HAVEN ROAD DOME

SHEET TITLE:

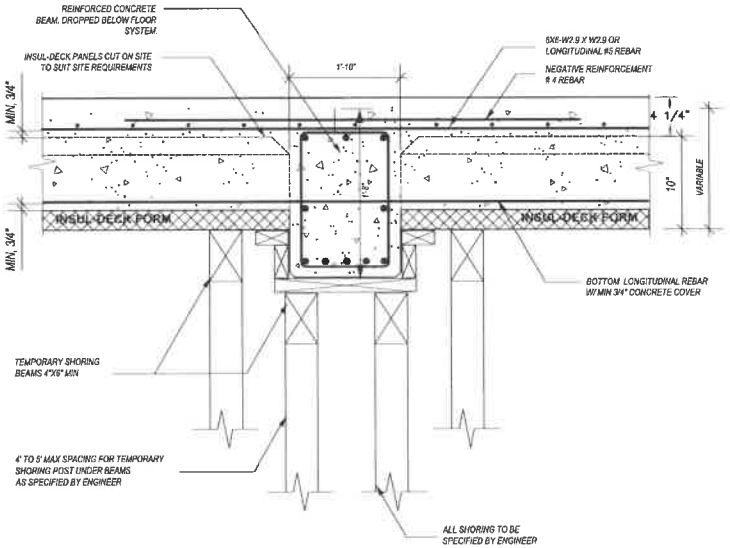
CONNECTION DETAILS

SHEET NO:

S-5



TRANSVERSE SECTION @ DROPPED CONCRETE BEAM



LONGITUDINAL SECTION @ DROPPED CONCRETE BEAM

G.M. SELBY, Inc.

6999 N. WATERWAY DR.
MIAMI, FL 33155
TEL. : (305) 262-0715
FAX : (305) 262-0724

G.M. SELBY NO:	MWSC2705/80
DRAWN BY: F.C.	DATE: 12-18-07
CHECKED BY:	
ENGINEER:	GERALD ZADIKOFF
LICENSE NO.:	CIVIL PE# 44206 FL
SEAL:	

REVISIONS		
NO.	DATE	DESCRIPTION

HILTON HAVEN ROAD DOME

SHEET TITLE:

DROPPED CONCRETE BEAM DETAIL

SHEET NO:

S-6

November 3, 2006

William Grosscup
13 Hilton Haven Drive
Key West, FL 33040

Dear Mr. Grosscup:

Per your request, I have reviewed my old survey of the burned out site and an aerial photograph dated 2004.

The burned out pile supported a two story frame structure. Including the overhang, the area is approximately 42.9' x 31.4 feet or 1347 sf, more or less.

The floating structure, based on my rough measurement (as I could not get on it at the time of the survey) and based on the 2004 aerial photograph is approximately 30' x 62' or 1860sf, more or less.

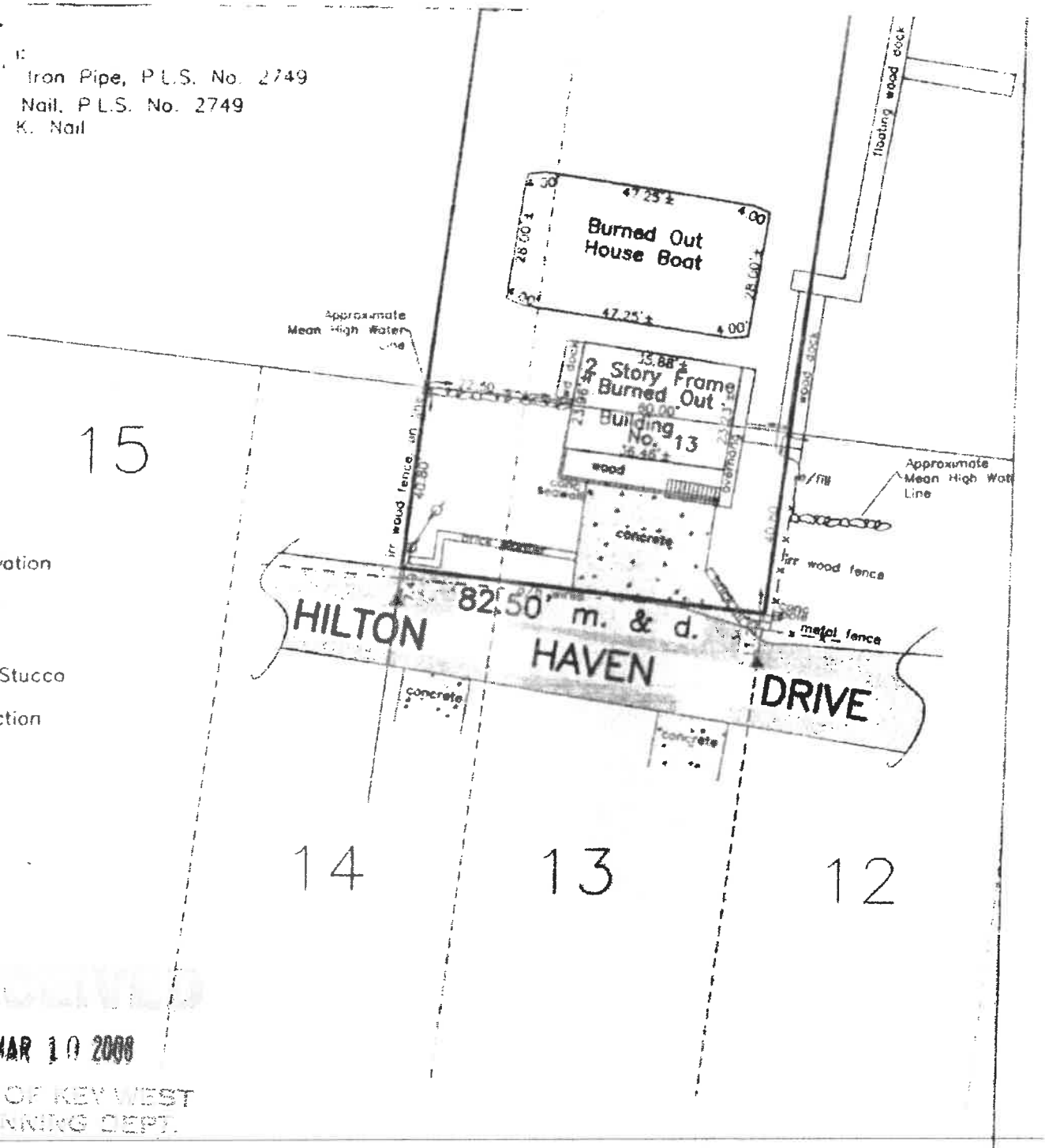
Therefore, to the best of my opinion, the total covered area of the floating structure and the pile supported two story frame structure, including the overhang is 3,207sf, more or less.

If you have any questions, or need further information, please do not hesitate to contact me.

Sincerely,

F. H. Hildebrandt, PLMS, PE

Iron Pipe, P.L.S. No. 2749
Nail, P.L.S. No. 2749
K. Nail



ation

Stucco

ction

RECEIVED
MAR 10 2008
CITY OF KEY WEST
PLANNING DEPT.

af, that it meets the minimum
Surveyors, Chapter 61G17-6,
itle Association, and that

SIGNATURE

William R. Grosscup
13 Hilton Haven Drive, Key West, Florida 33

BOUNDARY SURVEY			Date 05-
Scale 1" = 30'	Ref 182-47	Flood panel no. 1716 H	Date
Date 8/9/05		Flood Zone AE	Flood

REVISIONS AND/OR ADDITIONS

Deposit for service
11-9-1966

CONSUMERS GUARANTY OF PAYMENT DEPOSIT RECEIPT No. A 22625

FLORIDA KEYS AQUEDUCT COMMISSION

MAIN OFFICE - 620 SOUTHARD ST.
KEY WEST, FLORIDA
PHONE CYpress 6-3551

1609

BRANCH OFFICE
MARATHON, FLORIDA
PHONE 743-5409

RECEIVED OF DATE 11-9 1966

NAME J. Fernandez

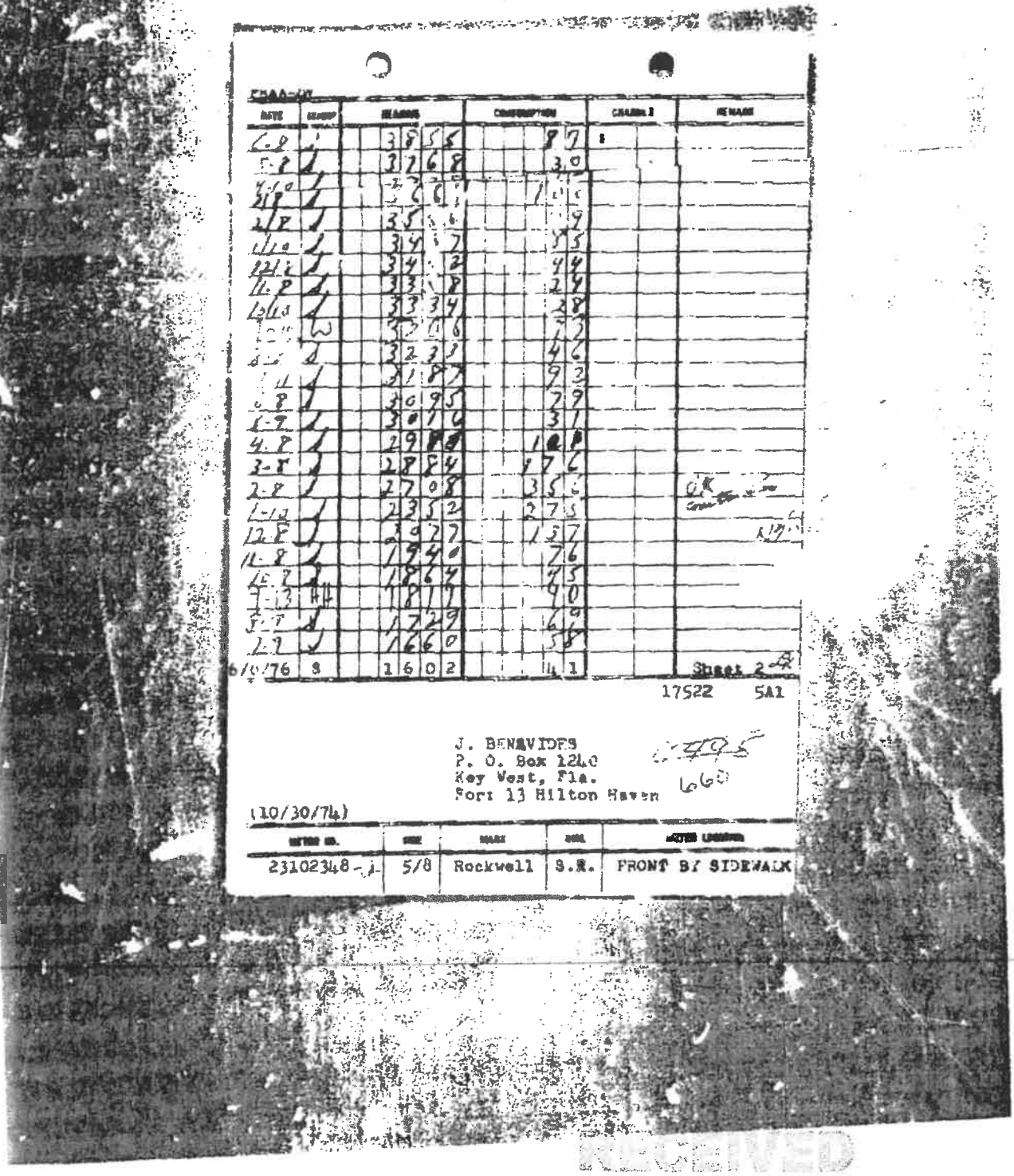
ADDRESS Eaton Hotel

THE SUM OF 5 100 DOLLARS $ 12.00

NOT TRANSFERABLE 7412 NOV 9 65 1506 FLORIDA KEYS AQUEDUCT COMMISSION

ACCOUNT NO. 12522 By

Water reader's log
sheet showing water
usage 1974



DATE	READER	READING	CONSUMPTION	REMARKS
6/10/76	S	1602	41	Sheet 2

17522 5A1

J. BENAVIDES
P. O. Box 1240
Key West, Fla.
Port 13 Hilton Haven

1605
1660

(10/30/74)

METER NO.	SIZE	MAKE	TYPE	METER LOCATION
23102348-J	5/8	Rockwell	S.R.	FRONT BY SIDEWALK

Revised
04/27/20

Application for Variance

City of Key West, Florida • Planning Department

1300 White Street • Key West, Florida 33040 • 305-809-3764 • www.cityofkeywest-fl.gov

Application Fee: $2,300.00 / After-the-Fact: $4,300.00
(includes $200.00 advertising/noticing fee and $100.00 fire review fee)

Please complete this application and attach all required documents. This will help staff process your request quickly and obtain necessary information without delay. If you have any questions, please call 305-809-3764.

PROPERTY DESCRIPTION:

Site Address: 13 Hilton Haven Dr.

Zoning District: MDR & C

Real Estate (RE) #: 00001870-000000

Property located within the Historic District? ☐ Yes ☒ No

APPLICANT: ☐ Owner ☒ Authorized Representative

Name: Trepanier & Associates, Inc.

Mailing Address: 1421 First Street #101

City: Key West State: FL 33040 Zip:

Home/Mobile Phone: NA Office: 305-293-8983 Fax: 305-293-8748

Email: owen@owentrepanier.com

PROPERTY OWNER: (if different than above)

Name: William R Grosscup Rev Trust

Mailing Address: 13 Hilton Haven Road

City: Key West State: FL 33040 Zip:

Home/Mobile Phone: NA Office: c/o325-293-8983 Fax: c/o305-293-8748

Email: c/o owen@owentrepanier.com

Description of Proposed Construction, Development, and Use:

Construct a 1,339.5 sq. ft. single family residence.

List and Describe the specific variance(s) being requested:

Front Yard Setback - Sec. 122-270(6)a.1. of 10.9ft from the 23.4ft required to the 12.5ft proposed. **Coastal Construction Control Line** - Sec. 122-1148(a)2. of 30ft from the 30ft required to the 0ft proposed. **Impervious Surface**. 122-270(4)b.1. of 47.5% from the 50% allowed to the 97.5% proposed. **Wetland Buffer Zone** - Sec. 110-91. of 25ft from the 25ft required to the 0ft proposed; **Landscaping** - Sec. 108-412(a) from the 20% required to the 1.9% proposed; **Open Space** - Sec. 108-346 (6)from the 21% required to the 1.9% proposed.

Are there any easements, deed restrictions or other encumbrances attached to the property? X Yes ☐ No

If yes, please describe and attach relevant documents:

Resolution 10-236 and Access Easement

Will any work be within the dripline (canopy) of any tree on or off the property? X Yes ☐ No
If yes, provide date of landscape approval, and attach a copy of such approval.

Is this variance request for habitable space pursuant to Section 122-1078? ☐ Yes X No

Please fill out the relevant Site Data in the table below. For Building Coverage, Impervious Surface, Open Space and F.A.R. ***provide square footages and percentages.***

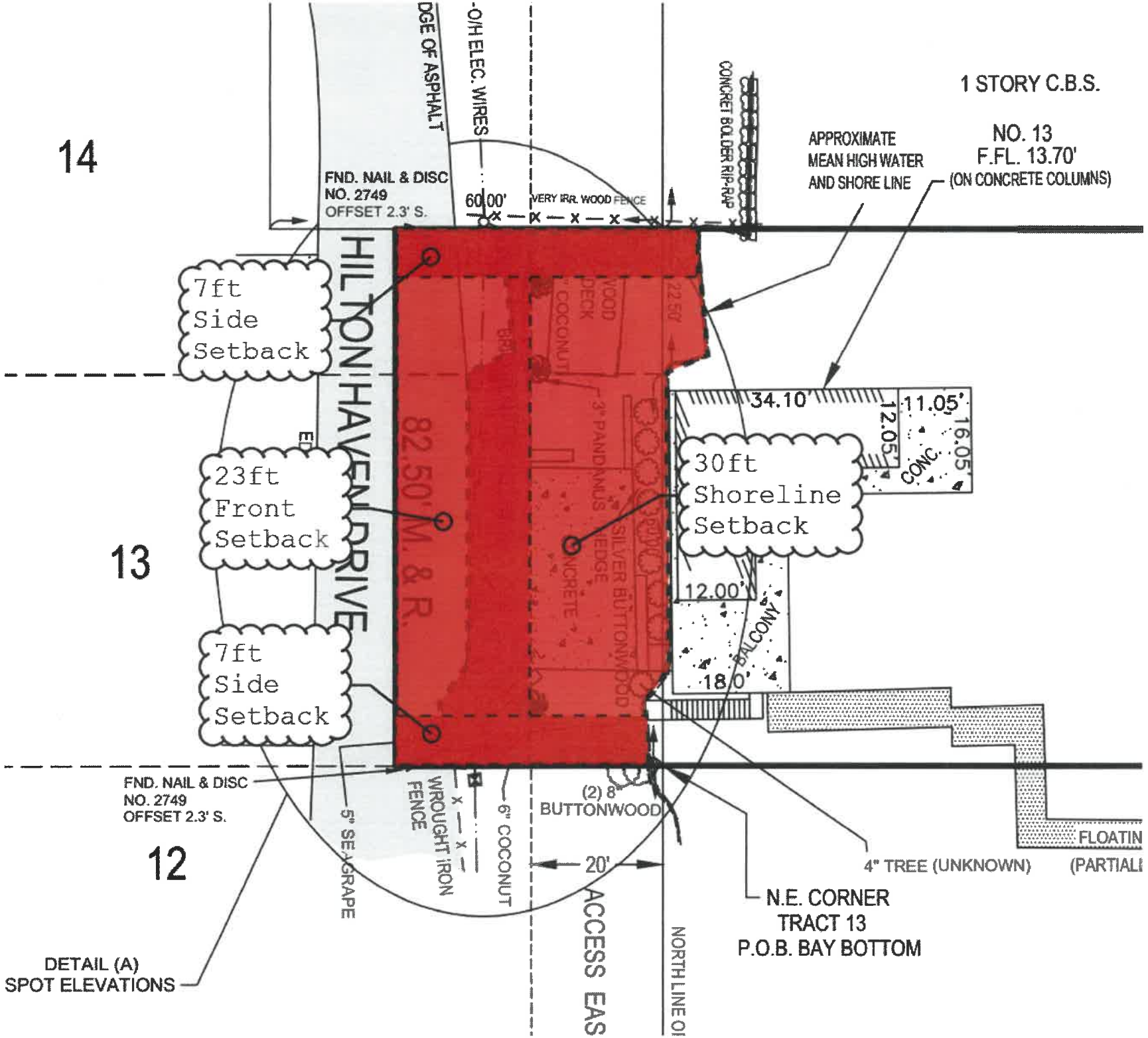
Site Data Table				
	Code Requirement	**Existing**	**Proposed**	**Variance Request**
Zoning				
Flood Zone				
Size of Site				
Height				
Front Setback				
Side Setback				
Side Setback				
Street Side Setback				
Rear Setback		Please See attached Data table		
F.A.R				
Building Coverage				
Impervious Surface				
Parking				
Handicap Parking				
Bicycle Parking				
Open Space/ Landscaping				
Number and type of units				
Consumption Area or Number of seats				

This application is reviewed pursuant to Section 90-391 through 90-397 of the City of Key West Land Development Regulations (LDRs). The City's LDRs can be found in the Code of Ordinances online at http://www.municode.com/Library/FL/Key_West under Subpart B.

***Please note, variances are reviewed as quasi-judicial hearings, and it is improper for the owner or applicant to speak to a Planning Board member or City Commissioner about the hearing.**

13 Hilton Haven Dr.

Site Data	Required/ Allowed		Existing	Proposed	Comments	Required/ Allowed		Existing	Proposed	Compliance	Required/ Allowed		Existing	Proposed	Compliance
Zoning	**Combined**					**MDR**					**C-OW**				
FEMA	NA		AE-8 & AE-9	No Change	*Complies*	NA		AE-8	No Change	*Complies*	NA		AE-9	No Change	*Complies*
Site Size	457,380.0		36,366.0	No Change	*Complies*	21,780.0		3,380.5	No Change	*Complies*	435,600.0		32,985.5	No Change	*Complies*
Building Coverage	Varies	2,832.5	1323.0	2,823.0	*Complies*	35%	1,183.2	0.0	1,500.0	***NonCompliant***	5%	1,649.3	1,323.0	No Change	*Complies*
Front Setback	Varies	23.4	23.4	12.5	***Variance***	23.4		23.4	12.5	***NonCompliant***	NA		0.0	No Change	*Complies*
Side Setback	Varies	7.0	7.0	No Change	*Complies*	7.0		7.0	No Change	*Complies*	NA		7.0	No Change	*Complies*
Rear Setback	Varies	20.0	+20.0	No Change	*Complies*	20.0		NA	No Change	*Complies*	NA		+20.0	No Change	*Complies*
Shoreline Setback	Varies	30.0	0.0	No Change	*Complies*	30.0		0.0	No Change	*Complies*	NA		0.0	No Change	*Complies*
FAR	Varies	329.9	0.0	No Change	*Complies*	0.0		0.0	No Change	*Complies*	0.01	329.9	0.0	No Change	*Complies*
Density	Varies	1.24	1	No Change	*Complies*	16	1.24	1	No Change	*Complies*	0.1%	0.0	0.0	No Change	*Complies*
Building Height	Varies		Varies	Varies	*Complies*	30.0		<30.0	26.1	*Complies*	25.0		<25.0	No Change	*Complies*
Impervious Ratio	Varies	3,677.6	35,040.5	35,465.5	***Variance***	60%	2,028.3	61%	78%	***NonCompliant***	5%	1,649.3	100%	No Change	*Complies*
Landscape	21%	7,636.86	1.4%	1.9%	***Variance***	20%	676.1	15%	20%	*Complies*	20%	6,597.10	0%	No Change	*Complies*
Open Space	20%	7,273.20	1.4%	1.9%	***Variance***	35%	1,183.2	15%	22%	*Improvement*	20%	6,597.10	0%	No Change	*Complies*


14
13
12
HILTON HAVEN DRIVE
EDGE OF ASPHALT
O/H ELEC. WIRES
FND. NAIL & DISC
NO. 2749
OFFSET 2.3' S.
60.00'
VERY IRR. WOOD FENCE
CONCRETE BOULDER RIP-RAP
APPROXIMATE
MEAN HIGH WATER
AND SHORE LINE
1 STORY C.B.S.
NO. 13
F.F.L. 13.70'
(ON CONCRETE COLUMNS)
7ft
Side
Setback
23ft
Front
Setback
7ft
Side
Setback
82.50' M. & R.
WOOD DECK
COCONUT
3" PANDANUS
SILVER BUTTONWOOD
CONCRETE
22.50'
34.10'
11.05'
12.05'
16.05'
CONC.
30ft
Shoreline
Setback
12.00'
BALCONY
18.0'
FND. NAIL & DISC
NO. 2749
OFFSET 2.3' S.
5" SEAGRAPE
WROUGHT IRON
FENCE
6" COCONUT
(2) 8"
BUTTONWOOD
20'
ACCESS EAS
NORTH LINE OF
4" TREE (UNKNOWN)
FLOATIN
(PARTIALL
N.E. CORNER
TRACT 13
P.O.B. BAY BOTTOM
DETAIL (A)
SPOT ELEVATIONS

Application for Variance

City of Key West, Florida • Planning Department

1300 White Street • Key West, Florida 33040 • 305-809-3764 • www.cityofkeywest-fl.gov

Application Fee: $2,300.00 / After-the-Fact: $4,300.00
(includes $200.00 advertising/noticing fee and $100.00 fire review fee)

Please complete this application and attach all required documents. This will help staff process your request quickly and obtain necessary information without delay. If you have any questions, please call 305-809-3764.

PROPERTY DESCRIPTION:
Site Address: 13 Hilton Haven Dr.

Zoning District: MDR

Real Estate (RE) #: 00001870-000000

Property located within the Historic District? ☐ Yes ☒ No

APPLICANT: ☐ Owner ☒ Authorized Representative
Name: Trepanier & Associates, Inc.

Mailing 1421 First Street #101 Address:

City: Key West State: FL 33040 Zip:

Home/Mobile Phone: NA Office: 305-293-8983 Fax: 305-293-8748

Email: lori@owentrepanier.com

PROPERTY OWNER: (if different than above)
Name: William R Grosscup Rev Trust

Mailing 13 Hilton Haven Road Address:

City: Key West State: FL 33040 Zip:

Home/Mobile Phone: NA Office: c/o 325-293-8983 Fax: c/o 305-293-8748

Email: c/o lori@owentrepanier.com

Description of Proposed Construction, Development, and Use:

Construct a 1,339.5 sq. ft. single family residence.

List and Describe the specific variance(s) being requested:
Front Yard Setback - Sec. 122-270(6)a.1. of 10.9ft from the 23.4ft required to the 12.5ft proposed. **Coastal Construction Control Line** - Sec. 122-1148 (a)2. of 30ft from the 30ft required to the 0ft proposed. **Impervious Surface**. 122-270(4)b.1. of 49.98% from the 50% allowed to the 99.98% proposed. **Wetland Buffer Zone** - Sec. 110-91. of 25ft from the 25ft required to the 0ft proposed.

Are there any easements, deed restrictions or other encumbrances attached to the property? X Yes ☐ No

If yes, please describe and attach relevant documents:

Resolution 10-236 and Access Easement

Will any work be within the dripline (canopy) of any tree on or off the property? X Yes ☐ No
If yes, provide date of landscape approval, and attach a copy of such approval.

Is this variance request for habitable space pursuant to Section 122-1078? ☐ Yes X No

Please fill out the relevant Site Data in the table below. For Building Coverage, Impervious Surface, Open Space and F.A.R. ***provide square footages and percentages.***

Site Data Table				
	Code Requirement	**Existing**	**Proposed**	**Variance Request**
Zoning	MDR			
Flood Zone	AE 9			
Size of Site	36,366 SF			
Height	35'			
Front Setback	23.4'*	23.4'*	12.5'	Variance
Side Setback	7.0'	7.0'	7.0'	
Side Setback	7.0'	7.0'	7.0'	
Street Side Setback	NA			
Rear Setback	20.0'	20.0'	20.0'	
F.A.R	NA		NA	
Building Coverage	35%	1,270 SF (3%)	2,670 SF (7%)	
Impervious Surface	50%	34,773 SF(96%)	35,256.5 SF(97%)	Variance
Parking	1	0	1	
Handicap Parking	0	0	0	
Bicycle Parking	0	0	0	
Open Space/ Landscaping	35%	33,275 SF(91%)	32,791 SF(90%)	
Number and type of units	16 du/acre	0	1 SFR	
Consumption Area or Number of seats	NA			

*122-270(6)a.1. Front setback is average depth of front yards within 100 ft.

This application is reviewed pursuant to Section 90-391 through 90-397 of the City of Key West Land Development Regulations (LDRs). The City's LDRs can be found in the Code of Ordinances online at http://www.municode.com/Library/FL/Key_West under Subpart B.

***Please note, variances are reviewed as quasi-judicial hearings, and it is improper for the owner or applicant to speak to a Planning Board member or City Commissioner about the hearing.**

Standards for Considering Variances

Before any variance may be granted, the Planning Board and/or Board of Adjustment must find all of the following requirements are met: Please print your responses.

1. Existence of special conditions or circumstances. That 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 zoning district.

   Please see attached Findings of Fact.

2. Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.

   Please see attached Findings of Fact.

3. Special privileges not conferred. That granting the variance(s) 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.

   Please see attached Findings of Fact.

4. Hardship conditions exist. That 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 under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.

   Please see attached Findings of Fact.

5. Only minimum variance(s) granted. That the variance(s) granted is/are the minimum variance(s) that will make possible the reasonable use of the land, building or structure.

   Please see attached Findings of Fact.

6. Not injurious to the public welfare. That granting of the variance(s) will be in harmony with the general intent and purpose of the land development regulations and that such variances will not be injurious to the area involved or otherwise detrimental to the public interest or welfare.

Please see attached Findings of Fact.

7. Existing nonconforming uses of other property shall not be considered as the basis for approval. That no other nonconforming use of neighboring lands, structures, or buildings in the same district, and that no other permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

Please see attached Findings of Fact.

The Planning Board and/or Board of Adjustment shall make factual findings regarding the following:

- That the standards established in Section 90-395 have been met by the applicant for a variance.
- That the applicant has demonstrated a "good neighbor policy" by contacting or attempting to contact all noticed property owners who have objected to the variance application, and by addressing the objections expressed by these neighbors. Please describe how you have addressed the "good neighbor policy."

REQUIRED SUBMITTALS: *All* of the materials listed below must be submitted in order to have a complete application. Applications will not be processed until all materials are provided. Please submit one (1) paper copy of the materials to the Planning Department along with one (1) electronic copy of materials on a flash drive.

x ☐ Correct application fee. Check may be payable to "City of Key West."

x ☐ Notarized verification form signed by property owner or the authorized representative.

x ☐ Notarized authorization form signed by property owner, if applicant is not the owner.

x ☐ Copy of recorded warranty deed

x ☐ Monroe County Property record card

x ☐ Signed and sealed survey (Survey must be within 10 years from submittal of this application)

x ☐ Site plan (plans **MUST** be signed and sealed by an Engineer or Architect)

x ☐ Floor plans

x ☐ Stormwater management plan

FINDINGS OF FACT AND CONCLUSIONS OF LAW
13 Hilton Haven Drive

In accordance with Section 90-274, the applicant respectfully submits the following FINDINGS OF FACT AND CONCLUSIONS OF LAW for inclusion into the record of proceedings, for consideration by the Planning Board as it pertains to the requested variance of 30ft from Coastal Construction Control Line ("CCCL") requirements per Section 122-1148(2).

Pursuant to Sec. 90-273, the applicant hereby respectfully submits the following substantial competent evidence to support granting this variance. By making these findings, the Planning Board substantiates the ruling that this variance approval accomplishes the legitimate public purpose of allowing beneficial use of land within the City of Key West.

Sec. 90-394. - Action.

1. Granting of this variance permits a use permitted by right in the zoning district involved or any use expressly or by implication prohibited by the terms of the ordinance in the zoning district.
2. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and no permitted use of lands, structures, or buildings in other zoning districts is considered grounds for the authorization of this variance.
3. Granting of this variance does not increase or have the effect of increasing density or intensity of a use beyond that permitted by the comprehensive plan or these LDRs.

Sec. 90-395. - Standards, findings.

The following standards for a variance have been met by the applicant in an affirmative manner:

1. Existence of special conditions or circumstances.

   The existence of special conditions and circumstances which are peculiar to the land, structure or building involved and which are not applicable to other land, structures or buildings in the same zoning district evidenced by the following:

   CCCL - There is no natural shoreline, beach or dune system within the MDR zoned area subject to this variance request. Hilton Haven is historically filled land originally created and used by East Coast Railways. This area is a location where structures and people were located in close proximity to the water's edge. Many regulations encourage structures and uses to be located away from the water's edge to reduce potential negative impacts such as stormwater runoff and beach/ dune degradation. In the case of this Hilton Haven property, the edge of the shoreline is artificially created by historic dredge and fill activity.

   The purpose of the CCCL according to the Comprehensive Plan (5-1.3) is to protect the natural shoreline and the very limited beach/dune system. Hilton Haven happens to fall within the CCCL however it clearly has no natural shoreline or beach dune system. Hilton

Haven's shoreline is a historical working waterfront originally filled for the purposes of hauling freight via rail. Thus, in this particular special case, there is no rational nexus between the CCCL public benefit and its resulting restriction on the property rights of Hilton Haven. Approximately 2/3 of the upland area is located within the Coastal Construction Control Line setback area making any development on the site impossible due to the overlap of the various setback restrictions.

The three setbacks on the property, CCCL, Front Setback, Wetland Buffer Zone, collectively consume the entire property and leave no developable land.

Front Setback – The front setback for this property is approximately 23.4ft.[1] The entire depth of the upland portion of the property is approximately 40ft. The front setback alone consumes 59% of the developable upland. As with the CCCL rationale above, the three setbacks on the property, CCCL, Front Setback, Shoreline Buffer, collectively consume the entire property and leave no developable land.

Impervious Surface – Code Sec. 122-1143. defines impervious surface to include "waterbodies". This property is 90% waterbody, the MDR allows 50% impervious surface, therefore the site, with no upland development is, by code, 90% impervious. There is no definition of "water body", however, the application of such in the past has been to apply to pools, artificial landscape ponds, etc. Obviously, a natural water body is previous, however the literal application of code would prevent the reasonable development of this property.

Wetland Buffer Zone - The Wetland Buffer Zone for this property is approximately 25ft. measured from the MHW. The entire depth of the upland portion of the property is approximately 40ft. The Wetland Buffer Zone alone consumes more than 63% of the developable upland. As with the CCCL rationale above, the three setbacks on the property, CCCL, Front Setback, Wetland Buffer Zone, collectively consume the entire property and leave no developable land.

2. Conditions not created by applicant.

   Special conditions and circumstances do not result from the action or negligence of the applicant as evidenced by the following:

   Hilton Haven was developed long before the applicant, or even the owner, came to be involved with it. The property is a legal lot of record and so enjoys the right to beneficial use. The lot predates CCCL, Front Setback, and Wetland Buffer Zone requirements and is located in the AE-zone. The applicant is responding to the historical and functional relationship created within Hilton Haven over time. The proposed design is considerate of and sympathetic to the close waterfront proximity of this neighborhood.

3. Special privileges not conferred.

[1] Code Sec. 122-270(6)a.1. Front setback: 30 ft or the average depth of front yards within 100 ft of the subject lot but not less than 20 ft.

Granting the variance requested does 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 as evidenced by the following:

Granting of the proposed variances will allow the functional development of the site in a beneficial and appropriate manner. A special privilege in this case would be to allow development in contradiction to the intent of the CCCL, Front Setback, and Wetland Buffer Zone.

4. Hardship conditions exist.

   Literal interpretation of the provisions of the land development regulations deprives the applicant of rights commonly enjoyed by other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant as evidenced by the following:

   Under a literal interpretation of the LDRs, this property cannot be used in a beneficial manner as contemplated under the Comprehensive Plan or the MDR Zone. Both the plan and the zone contemplate residential development of existing lots of record. This proposal seeks reasonable development of a single-family home on this residential lot.

   The purpose of the Coastal Construction Control Line according to the Comprehensive Plan (5-1.3) is to protect the natural shoreline and the very limited beach/dune system. Hilton Haven happens to fall within the CCCL; however, no natural shoreline or beach dune system exists. Hilton Haven's shoreline is a historical working waterfront. A literal interpretation of the Sec. 122-1148 would prevent the property owner from reasonable beneficial use with no furthering of the goals and intent of the CCCL. The three setbacks on the property, CCCL, Front Setback, Wetland Buffer Zone, collectively consume the entire property and leave no developable upland.

5. Only minimum variance granted.

   The variances requested are the minimum necessary that will make possible the reasonable use of the land, building or structure as evidenced by the following:

   Variances will allow a single-family home to be built on a residentially zoned lot of record. There is no expansion of non-conforming uses or non-conforming structures.

6. Not injurious to the public welfare.

   The grant of the variance is in harmony with the general intent and purpose of the land development regulations and as such, the variance will not be injurious to the area involved or otherwise detrimental to the public interest or welfare as evidenced by the following:

   The request is in compliance with all of the standards for considering variances and accomplishes the legitimate public purpose of allowing beneficial use of land. The project is not injurious to the adjacent property owners' rights.

There will be no increase in potential density. Section 122-28(g) requires the City to consider the economic base of the community when evaluating petitions for variances. The construction of a single-family home on this parcel will increase the ad valorem tax base in the community.

7. No nonconforming use.

   No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts is considered grounds for the issuance of this variance

Good Neighbor Policy:

The applicant has demonstrated a "good neighbor policy" by contacting or attempting to contact all noticed property owners.

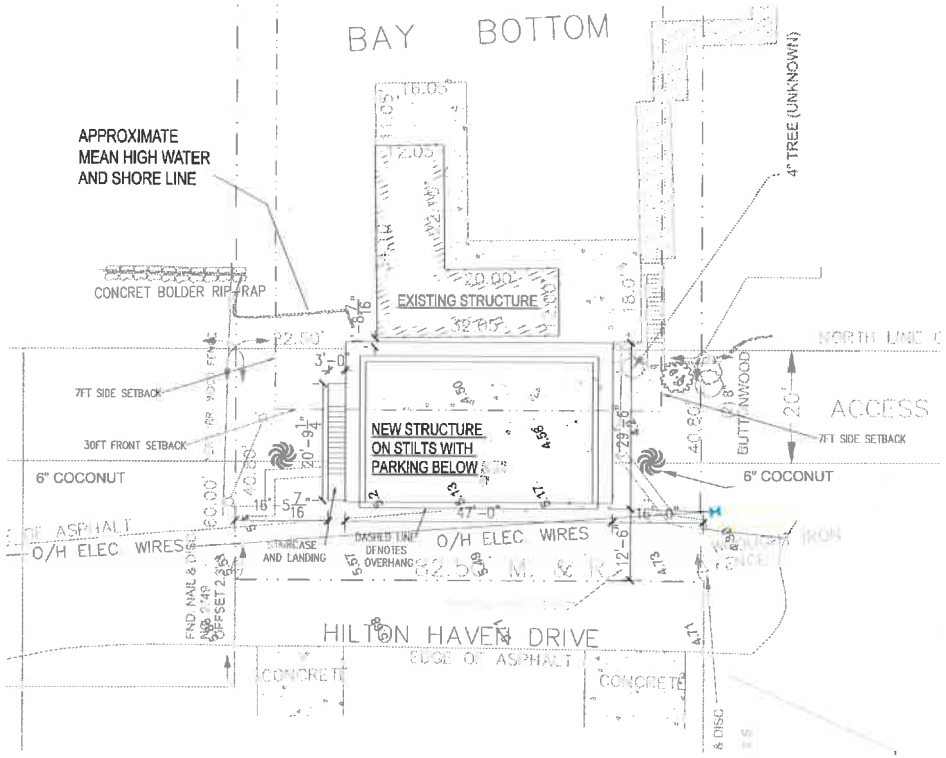
1. THESE PLANS ARE FOR THE CONSTRUCTION AT THE LOCATION SO DESIGNATED HEREIN.
2. THE CONTRACTOR SHALL PROVIDE ALL MATERIAL, LABOR, EQUIPMENT AND SUPERVISION NECESSARY TO PROVIDE THE WORK COMPLETE AND READY FOR USE.
3. THERE SHALL BE NO DEVIATION FROM THESE PLANS WITHOUT PRIOR APPROVAL FROM THE ENGINEER OF RECORD.
4. THE CONTRACTOR SHALL VISIT THE SITE AND BECOME FAMILIAR WITH EXISTING CONDITIONS BEFORE BID, CHECK AND VERIFY ALL DIMENSIONS AND CONDITIONS OF THE WORK SITE AND REPORT ANY DISCREPANCIES, DIFFERENCES OR CONDITIONS THAT ARE UNSATISFACTORY OR UNSAFE.
5. NOTIFY THE ENGINEER OF RECORD IMMEDIATELY OF ANY DISCREPANCIES, DIFFERENCES, UNSATISFACTORY OR UNSAFE CONDITIONS. ANY MODIFICATIONS OR CHANGES MADE WITHOUT PRIOR WRITTEN APPROVAL FROM THE OWNER AND ENGINEER OF RECORD SHALL NOT BE ALLOWED. ANY REWORK, RESTORATION OR OTHER IMPACT AS A RESULT OF NOT OBTAINING SUCH PRIOR APPROVAL WILL BE MADE BY THE CONTRACTOR WITHOUT ADDITIONAL COST OR COMPENSATION FROM THE OWNER.
6. THE CONTRACTOR SHALL PROVIDE FOR THE SAFETY, PREVENTION OF INJURY OR OTHER LOSS AT THE JOB TO ALL PERSONS EMPLOYED IN THE WORK, PERSONS VISITING THE WORK AND THE GENERAL PUBLIC. THE CONTRACTOR SHALL ALSO BE RESPONSIBLE FOR THE PREVENTION OF DAMAGE, DUE TO THE WORK, TO MATERIALS OR EQUIPMENT AND OTHER PROPERTY AT THE SITE OR ADJACENT THERETO.
7. NO RESEARCH AS TO THE PRESENCE OF UNDERGROUND UTILITIES HAS BEEN INCLUDED ON OR PERFORMED FOR THIS PROJECT. CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING SUNSHINE UTILITY LOCATE SERVICE PRIOR TO ANY CONSTRUCTION WITHIN ANY PUBLIC RIGHT-OF-WAY OR OTHER AREAS WHERE UNDERGROUND UTILITIES MAY BE PRESENT (I.E. IN AND AROUND UTILITY EASEMENTS, ETC.)
8. THE GENERAL CONTRACTOR SHALL PROVIDE AN ON-SITE DUMPSTER IN A LOCATION COORDINATED WITH THE OWNER FOR THE DISPOSAL OF REMOVED MATERIAL AND CONSTRUCTION DEBRIS. THE DUMPSTER SHALL BE EMPTIED AT APPROPRIATE INTERVALS TO PREVENT OVERFLOW AND UNSIGHTLY CONDITIONS.
9. THE CONTRACTOR SHALL PERFORM ALL WORK IN STRICT CONFORMANCE WITH THE PLANS, 2017 FLORIDA BUILDING CODE , LOCAL CODES AND ORDINANCES, MANUFACTURER RECOMMENDATIONS AND ACCEPTABLE TRADE PRACTICES. ANY CONFLICT BETWEEN THESE REQUIREMENTS AND THE MOST STRINGENT REQUIREMENTS SHALL GOVERN THE WORK.
10. SHOP DRAWINGS OF ALL PREFABRICATED STRUCTURAL FLOOR AND ROOF SYSTEMS AND MECHANICAL SYSTEMS SHALL BEAR THE SEAL OF A FLORIDA PROFESSIONAL ENGINEER AS REQUIRED BY THE 2017 FLORIDA BUILDING CODE AND SHALL BE SUBMITTED TO THE ENGINEER OF RECORD BY THE CONTRACTOR FOR APPROVAL PRIOR TO FABRICATION AND INSTALLATION.
11. THE CONTRACTOR SHALL NOT SCALE DRAWINGS, ANY INFORMATION THAT THE CONTRACTOR CANNOT OBTAIN FROM DIMENSIONS, DETAIL OR SCHEDULE SHALL BE OBTAINED FROM THE ENGINEER OF RECORD.
12. THE CONTRACTOR SHALL COORDINATE THE WORK OF ALL TRADES TO PREVENT ANY CONFLICTS.
13. THE CONTRACTOR SHALL FURNISH ALL SUBCONTRACTORS WITH A COMPLETE SET OF PLANS. ALL CHANGES SHALL BE NOTED ON THE DRAWINGS AND (2) COMPLETE AS-BUILT SETS SHALL BE DELIVERED TO THE OWNER AFTER COMPLETION OF WORK.
14. THESE PLANS, AS DRAWN AND NOTED, COMPLY WITH THE BUILDING ENVELOPE ENERGY REQUIREMENTS OF THE FLORIDA MODEL ENERGY CODE. THE CONTRACTOR SHALL FAMILIARIZE HIMSELF WITH THE GOVERNING CODE IN ITS ENTIRETY AND BUILD IN ACCORDANCE WITH ALL PROVISIONS OF THIS CODE.

SITE DATA

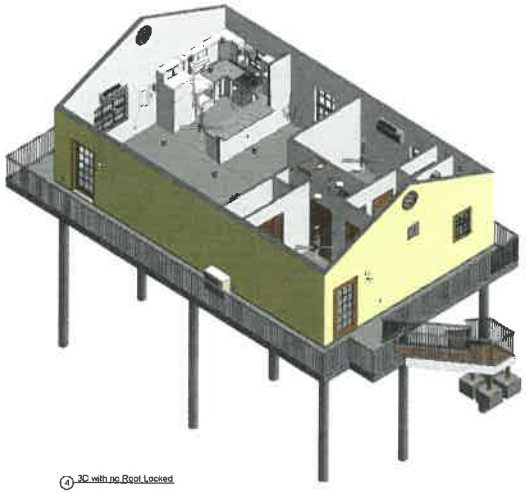
SITE ADDRESS: 13 HILTON HAVEN Dr. KEY WEST, FL
RE: 00001670-000000
ZONING: MDR
FLOOD ZONE: AE9
F.I.R.M.- COMMUNITY#12067C; MAP & PANEL #1526 SUFFIX K; DATE:02-18-05
SECTION/TOWNSHIP/RANGE: 33-67-25
LEGAL DESCRIPTION: KW PT SEC 33 TWP 67S ROE 25E H SIDE OF HILTON HAVEN SUB PB3-138 N 40.8FT TR 13 & N 40.8FT OF EAST 22FT MN TR 14 & FILLED BAY BOTTOM
OCCUPANCY: R-3 (RESIDENTIAL SINGLE FAMILY)
TYPE OF CONSTRUCTION: VB

DESIGN DATA

THE WORK DEPICTED HEREIN WAS DESIGNED TO MEET THE REQUIREMENTS OF THE 6TH EDITION OF THE FLORIDA RESIDENTIAL BUILDING CODE (2017) AND THE LATEST EDITIONS OF THE FLORIDA MODEL ENERGY CODE, FIRE CODE, LIFE SAFETY CODE AND THE NATIONAL ELECTRIC CODE.
THE FOLLOWING LOADINGS WERE USED:
DESIGN LOADS: ASCE 7-16
WIND LOAD: 160 mph; 3 sec gust; EXPOSURE D; ROOF LIVE LOAD 20 PSF; DEAD LOAD 15 PSF, FLOOR LL 40 PSF
SOIL BEARING CAPACITY ASSUMED 2000LBS PER SQ.FT.
FEMA FLOOD DESIGN PER ASCE 24-14
RISK CATEGORY: 2
STRUCTURE TYPE: ENCLOSED



WILLIAM GROSSCUP RESIDENCE
13 HILTON HAVEN RD.
KEY WEST, FL. 33040



4 3D with no Roof Locked

Class of Material	Load Bearing Pressure (Psf)
Crystalline Bedrock	12,000
Sedimentary and Foliated Rock	4 000
Sandy Gravel and/or Gravel (GW and GP)	3 000
Sand, Silty Sand, Clayey Sand, Silty Gravel and Clayey Gravel (SW, SP, SM, SC, GM and GC)	2 000
Clay, Sandy Silty Clay, Clayey Silt, Silt and Sandy Silts(y) (CL, ML, MH and CH)	1500[b]

For SI: 1 pound per square foot = 0.0479 kPa.

a. Where soil tests are required by Section R401.4, the allowable bearing capacities of the soil shall be part of the recommendations.
b. Where the building official determines that in-place soils with an allowable bearing capacity of less than 1,500 psf are likely to be present at the site, the allowable bearing capacity shall be determined by a soils investigation.

1 Soil Bearing Table
12" = 1'-0"

DWELLING-GARAGE SEPARATION

SEPARATION	MATERIAL
FROM THE RESIDENCE AND ATTICS	NOT LESS THAN 1/2-INCH GYPSUM BOARD OR EQUIVALENT APPLIED TO THE GARAGE SIDE
FROM HABITABLE ROOMS ABOVE THE GARAGE	NOT LESS THAN 5/8-INCH TYPE X GYPSUM BOARD OR EQUIVALENT
STRUCTURE(S) SUPPORTING FLOOR/CEILING ASSEMBLIES USED FOR SEPARATION REQUIRED BY THIS SECTION	NOT LESS THAN 1/2-INCH GYPSUM BOARD OR EQUIVALENT
GARAGES LOCATED LESS THAN 3 FEET FROM A DWELLING UNIT ON THE SAME LOT	NOT LESS THAN 1/2-INCH GYPSUM BOARD OR EQUIVALENT APPLIED TO THE INTERIOR SIDE OF EXTERIOR WALLS THAT ARE WITHIN THIS AREA

5 Table R302.6
12" = 1'-0"

CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA WEATHERING AND TERMITE AREA IN ACCORDANCE WITH TABLE 301.2.(1)

SNOW LOAD	WIND DESIGN	TOPOGRAPHICAL EFFECTS	SEISMIC	WEATHERING	FROST LINE	TERMITE	WINTER DESIGN TEMP	ICE SHIELD UNDERLAYMENT	FLOOD HAZARD	AIR FREEZING INDEX	MEAN ANNUAL TEMP
NA	200	NA	NA	NEGLIGIBLE	NA	HEAVY	45°	NA	Zone AE (EL 9')	NA	NA

6 Climatic Criteria
12" = 1'-0"

THIS BUILDING WAS BEEN DESIGNED AS AN ENCLOSED STRUCTURE IN ACCORDANCE WITH THE 2017 FLORIDA BUILDING CODE,- 6TH EDITION - PROTECTION OF ALL OPENINGS IS REQUIRED

1. WIND SPEED - 200 MPH ULTIMATE.
2. WIND IMPORTANCE FACTOR - 1.
3. BUILDING CATEGORY - II
4. WIND EXPOSURE - D.
5. INTERNAL PRESSURE COEFFICIENT +/- 18.
6. COMPONENT & CLADDING DESIGN WIND PRESSURE, SEE SHEET A4.
7. ALL STRUCTURES ON THIS PLAN ARE DESIGNED AS ENCLOSED OPENINGS AND THE TRUSS ENGINEERING SHALL BE PREPARED IN ACCORDANCE WITH FBC R301 & TABLE R301.5

LOADINGS:

TOP CHORD LIVE LOAD	20PSF
TOP CHORD DEAD LOAD	15PSF
BTM CHORD LIVE LOAD	0PSF
BTM CHORD DEAD LOAD	10PSF
WIND SPEED	200MPH
WIND EXPOSURE FACTOR	D
WIND IMPORTANCE FACTOR	II

DEFLECTION CRITERIA:

LIVE LOAD	L/240
TOTAL LOAD	L/180

3 DESIGN CRITERIA
12" = 1'-0"

2 3D Full House Locked

Sheet List

No.	Description	Date
1	City Comments	10/9/2019

James Michael King
5849 East Loop 286 S.
Amarillo, TX 79118
P.E. #85936
m457king@gmail.com

NexGen Permits Systems, llc.
2208 Wilchelmina Court
Palm Bay, Florida 32905
Office (833) 257-8135
www.NextGenPermits.com

Tracking No.
William R. Grosscup
13 Hilton Haven Rd.
Key West, Fl. 33040

Grosscup Residence
Isometric View
Client Approval
Signature
Date:
Client approval required prior to permitting and production. Changes requested by the client after approval shall be made by Change order only.

Project number
Z:\projects\projects\2018\2018.046 Captain Bill\Captain Bill.rvt

Date Started	7/12/2019
Drawn by	RCJ
Checked by	RCJ
Scale	12" = 1'-0"

A0.1

10/23/2019 4:19:21 PM

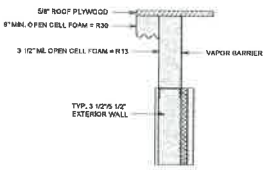
Hangers X4 & X4+ Wall System

Wall Board/Insulation Value Table

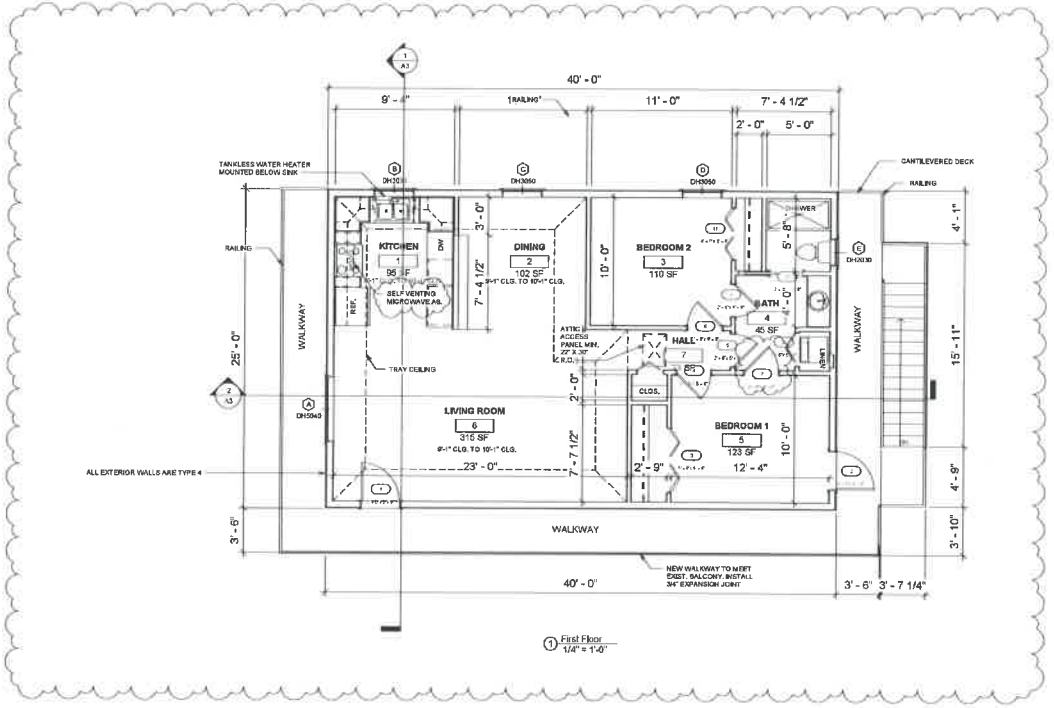
		Type	Stud Spacing		
1.	3 1/2" Exterior Wall & Garage Common	X4	24" O.C. Single Stud	1" E.P.S. + 1" Closed Cell Foam = R12	Optional Open Cell Foam up to R21
2.	5 1/2" Exterior Wall & Garage Common	X4	24" O.C. Single Stud	1" E.P.S. + 2" Closed Cell Foam = R18	Optional Open Cell Foam up to R31
3.	3 1/2" Exterior Wall & Garage Common	X4+	24" O.C. Double Stud	1" E.P.S. + 1" Closed Cell Foam = R12	Optional Open Cell Foam up to R21
4.	5 1/2" Exterior Wall & Garage Common	X4+	24" O.C. Double Stud	1" E.P.S. + 2" Closed Cell Foam = R18	Optional Open Cell Foam up to R31

(2) Wall Board/Insulation Value Table
1 1/2" = 1'-0"

Exterior Spaces Under Roof, But Not Liner Air, I.E. Garages, Entries or Patios.



(3) Exterior Spaces Under Roof
1 1/2" = 1'-0"



(1) First Floor
1/4" = 1'-0"

No.	Description	Date
1	City Comments	10/5/2018

JAMES MICHAEL KING LICENSE No. 86936 STATE OF FLORIDA PROFESSIONAL ENGINEER

James Michael King
5845 East Loop 335 S.
Amarillo, TX 79118
P.E. 86936
m437king@gmail.com

NextGen Framing Systems, Inc.
2398 Wilhelmina Court
Palm Bay, Florida 32905
Office: (833) 237-8335
www.NextGenFraming.com

Tracking No.

William R. Grosscup
13 Hilton Haven Rd.
Key West, Fl. 33040

Grosscup Residence
Floor Plan

Client Approval

Signature

Date

Client approval required prior to permitting and construction. Changes requested after client approval shall be made by Change order only.

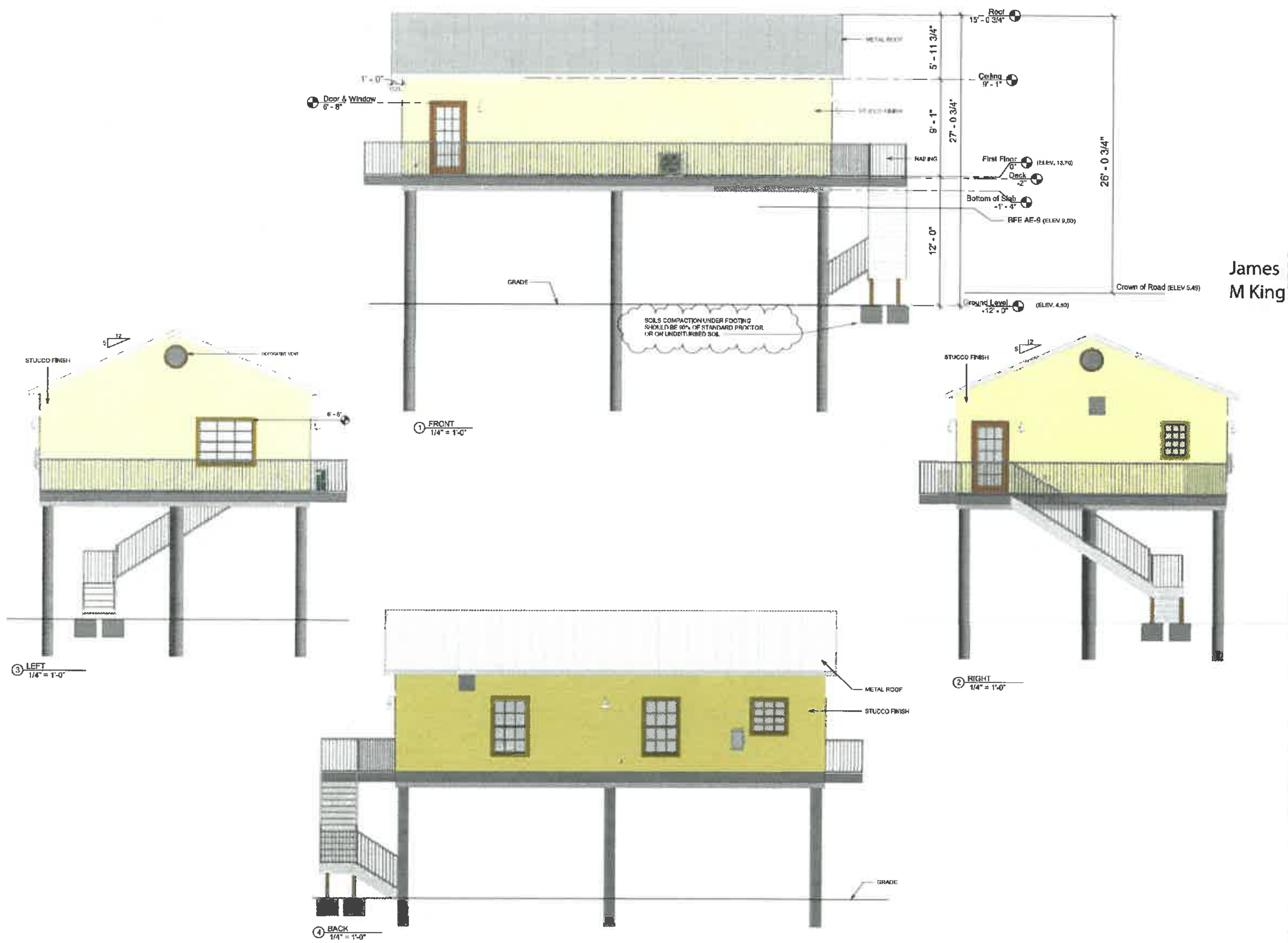
Project number

L:\projects\projects2018\2018.046 Captain Hill\Captain Hill.rvt

Date Started	7/12/2018
Drawn by	RCJ
Checked by	RCJ
Scale	As indicated

A1

10/23/2018 4:19:21 PM



10/23/2019 4:19:24 PM

No.	Description	Date
1	City Comments	10/8/2019
2	Civil Eng Rev	10/16/19
3	Add Elevations	01/15/2020

James M King

Digitally signed by James M King
Date: 2020.01.15

JAMES MICHAEL KING LICENSE No. 88936 STATE OF FLORIDA PROFESSIONAL ENGINEER

James Micheal King
5846 East Loop 335 S.
Amarillo, TX 79118
P.E. #88936
m457king@gmail.com

NextGen Framing System, llc.
2288 Wilhelmina Court
Palm Bay, Florida 32905
Office (833) 237-8335
www.NextGenFraming.com

Tracking No.

William R. Grosscup
13 Hilton Haven Rd.
Key West, Fl. 33040

Grosscup Residence

Elevations

Client Approval

Signature:

Date:

Client approval required prior to permitting and production. Changes requested by the client after approval shall be made by **Change order only.**

Project number
Z:\projects\projects\2018\2018,046 Captain Bill\Captain Bill.rvt

Date Started	7/12/2018
Drawn by	RCJ
Checked by	RCJ
Scale	1/4" = 1'-0"

A2

63-8655
2660 69

1311

HN M. SIRACUSA ESQ. PLLC

Date 12/19/19

to the order of City of Key West $ 3,150.00

No thousand one hundred fifty Dollars

Security Features Included Details on Back

itibank

BANK, N.A.

(3 Hilton Haus - RJ.

no Variance app. - MP

City of Key West
Planning Department

Verification Form
(Where Authorized Representative is an Entity)

I, Owen Trepanier, in my capacity as President
(print name) *(print position; president, managing member)*

of Trepanier & Associates, Inc.
(print name of entity serving as Authorized Representative)

being duly sworn, depose and say that I am the Authorized Representative of the Owner (as appears on the deed), for the following property identified as the subject matter of this application:

13 Hilton Haven Dr.
Street Address of subject property

All of the answers to the above questions, drawings, plans and any other attached data which make up the application, are true and correct to the best of my knowledge and belief. In the event the City or the Planning Department relies on any representation herein which proves to be untrue or incorrect, any action or approval based on said representation shall be subject to revocation.

Signature of Authorized Representative

Subscribed and sworn to (or affirmed) before me on this Jan 10, 2020 by
date

owen Trepanier
Name of Authorized Representative

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

Notary's Signature and Seal

Alvina Covington
Name of Acknowledger typed, printed or stamped

GG328928
Commission Number, if any

ALVINA COVINGTON
Commission # GG 328928
Expires August 27, 2023
Bonded Thru Troy Fain Insurance 800-385-7019

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, William R. Grosscup as
Please Print Name of person with authority to execute documents on behalf of entity

Trustee of William R. Grosscup Revocable Trust
Name of office (President, Managing Member) *Name of owner from deed*

authorize Trepanier & Associates, Inc.
Please Print Name of Representative

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

1/8/20
Signature of person with authority to execute documents on behalf of entity owner

Subscribed and sworn to (or affirmed) before me on this 1/8/20
Date

by William R. Grosscup.
Name of person with authority to execute documents on behalf on entity owner

He/She is personally known to me or has presented FLDL G621-936-40-168-0 as identification.

Notary's Signature and Seal

Lauren Mongelli
Name of Acknowledger typed, printed or stamped

Notary Public State of Florida
Lauren Christine Mongelli
My Commission GG 909917
Expires 07/11/2023

Commission Number, if any

MONROE COUNTY
OFFICIAL RECORDS
FILE #988962
BK#1442 PG#2436
RCD Feb 13 1997 01:51PM
DANNY L KOLHAGE, CLERK

This instrument prepared by:
MARGARET TOBIN MILLS, ESQ.
509 Whitehead St. Suite 1,
Key West, FL 33040
Prop.App. I.D. #0000/870
Grantee's SSN:

THIS QUIT CLAIM DEED, made the 12th day of ~~January~~ February, 1997, by **BILL GROSSCUP**
first party, to **WILLIAM R. GROSSCUP, as Trustee of the William R. Grosscup Revocable Trust,**
whose post office address is 13 Hilton Haven Dr. Key West, FL 33040,
second party

DEED DOC STAMPS 0.70
02/13/1997 DEP CLK

WITNESSETH, That the first party, for and in consideration of the sum of $ 10.00 in hand paid by the said second party, the receipt of which is hereby acknowledged, does hereby remise, release, and quit claim unto the second party forever, all right, title, interest, claim and demand which the said first party has in and to the following described lot, piece or parcel of land, situate, lying and being in **Monroe County, State of Florida**, to wit:

The North 40.8 feet of Tract 13 and the North 40.8 feet of the East 22 feet 6 inches of Tract 14, all in the AMENDED PLAT OF HILTON HAVEN, SECTION 2, a Subdivision on the Island of Key West, Monroe County, Florida, according to the Plat thereof, as recorded in Plat Book 2, Page 138 of Monroe County, Florida Records and a parcel of submerged land Northerly and adjacent to Tract 13 and a part of Tract 14, HILTON HAVEN, SECTION NO. 2, Island of Key West, Monroe County, Florida as recorded in Plat Book 2, Page 138, Monroe County Records and more particularly described as:

Beginning at the Northeasterly corner of Tract 13 according to said Plat of HILTON HAVEN, SECTION NO. 2, thence northerly along the Easterly line of Tract 13 extended a distance of 400 feet to a point; thence Westerly and at right angles a distance of 82.5 feet to a point; thence Southerly and at right angles a distance of 400 feet to a point on the northerly line of said HILTON HAVEN; thence easterly and at right angles and along said Northerly line a distance of 82.5 feet back to the point of beginning.

TO HAVE and to HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said first party, either in law or equity, to the only proper use, benefit and behoof of the said second party forever.

IN WITNESS WHEREOF, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness Signature

JOSEPH M. RULLAN
Witness Printed Name

Witness Signature

Michael J DRASHER
Witness Printed Name

Grantor Signature

BILL GROSSCUP
Grantor Printed Name

13 Hilton Haven Dr., Key West, FL 33040
Grantor P. O. Address

STATE OF FLORIDA
:ss.:
COUNTY OF MONROE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to administer oaths and take acknowledgements, personally appeared WIILIAM R. GROSSCUP known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same, and an oath was not taken. Said person provided the following identification Florida Driver's Lic. No. PERSONALLY KNOWN TO ME.

WITNESS MY HAND AND OFFICIAL SEAL in the County and State last aforesaid this 12TH day of ~~January~~ FEBRUARY, 1997.

Notary Public

FINBAR GITTELMAN
COMMISSION # CC 476100
EXPIRES AUG 18, 1999
BONDED THRU
ATLANTIC BONDING CO., INC.

MONROE COUNTY
OFFICIAL RECORDS

qPublic.net™ Monroe County, FL

Summary

Parcel ID	00001870-000000
Account#	1001970
Property ID	1001970
Millage Group	10KW
Location Address	13 HILTON HAVEN Dr, KEY WEST
Legal Description	KW PT SEC 32 TWP 67S RGE 25E N SIDE OF HILTON HAVEN SUB PB2-138 N 40.8FT TR 13 & N 40.8FT OF EAST 22FT 6IN TR 14 & FILLED BAY BOTTOM OR204-475(II DEED NO 22677) OR400-409/410 OR673-465/467 OR815-1693/1695 OR871-1671Q/C OR1332-1287/1303-E(RES NO 94-484)OR1437-2393Q/C OR1437-2394(BILL OF SALE) OR1442-2436Q/C (Note: Not to be used on legal documents.)
Neighborhood	6225
Property Class	VACANT RES (0000)
Subdivision	
Sec/Twp/Rng	32/67/25
Affordable Housing	No

Owner

GROSSCUP WILLIAM R REV TR
13 Hilton Haven Rd
Key West FL 33040

Valuation

		2019	2018	2017	2016
+	Market Improvement Value	$0	$0	$0	$0
+	Market Misc Value	$4,928	$4,928	$4,928	$4,928
+	Market Land Value	$206,093	$142,169	$142,169	$142,169
=	**Just Market Value**	**$211,021**	**$147,097**	**$147,097**	**$147,097**
=	**Total Assessed Value**	**$161,807**	**$147,097**	**$147,097**	**$139,637**
-	School Exempt Value	$0	$0	$0	$0
=	**School Taxable Value**	**$211,021**	**$147,097**	**$147,097**	**$147,097**

Land

Land Use	Number of Units	Unit Type	Frontage	Depth
VACANT WATERFRONT (00MW)	2,254.80	Square Foot	0	0
ENVIRONMENTALLY SENS (000X)	0.67	Acreage	0	0
EASEMENT (000E)	1.00	Lot	0	0

Yard Items

Description	Year Built	Roll Year	Quantity	Units	Grade
CONC PATIO	1975	1976	1	450 SF	2
FENCES	1975	1976	1	819 SF	3

Sales

Sale Date	Sale Price	Instrument	Instrument Number	Deed Book	Deed Page	Sale Qualification	Vacant or Improved
7/1/1995	$90,000	Quit Claim Deed		1437	2393	O - Unqualified	Improved
7/1/1980	$55,000	Warranty Deed		815	1693	Q - Qualified	Improved
2/1/1976	$3,000	Conversion Code		673	465	Q - Qualified	Improved

Permits

Number	Date Issued	Date Completed	Amount	Permit Type	Notes
11-0409	2/9/2011	1/23/2011	$2,300	Residential	NEW W/H, WASHER, VANITY SHOWER AND MOP SINK IN NEW CONSTRUCTION.
10-3911	1/11/2011	12/30/2011	$80,000	Residential	TO CONSTRUCT A CONCRETE DECK AND STORAGE AREA AS PER DRAWINGS
04-1687	5/25/2004		$5,140	Residential	RED TAGGED TO BUILD ADDITIONAL STORAGE
9702025	7/1/1997	7/1/1997	$1,000	Residential	MOORING PILINGS (2)

View Tax Info

View Taxes for this Parcel

Map

TRIM Notice

Trim Notice

2019 Notices Only

No data available for the following modules: Buildings, Commercial Buildings, Mobile Home Buildings, Exemptions, Sketches (click to enlarge), Photos.

Developed by Schneider GEOSPATIAL

Last Data Upload: 1/7/2020, 3:06:18 AM

Version 2.3.31

ABBREVIATIONS:

A	= ARC
A/C	= AIR CONDITIONER
BLDG.	= BUILDING
CB	= CATCH BASIN
CBS	= CONCRETE, BLOCK, STUCCO
CH	= CHORD
CH BR	= CHORD BEARING.
C & G	= CURB AND GUTTER.
CLF	= CHAIN LINK FENCE
CLR	= CLEAR
CONC	= CONCRETE
CP	= CONCRETE POST
D'	= DEGREE
D	= DELTA
DIP	= DUCTILE IRON PIPE
E	= EAST
EB	= ENGINEERING BUSINESS NUMBER
ELEV	= ELEVATION
ELECT	= ELECTRIC
ENC	= ENCROACHMENT
EP	= EDGE OF PAVEMENT
FIP	= FOUND IRON PIPE
FPL	= FLORIDA POWER AND LIGHT
FND	= FOUND
I.P.	= IRON PIPE.
L	= LENGTH
LB	= SURVEYOR BUSINESS NUMBER
M & R	= MEASURED AND RECORD
MEAS	= MEASURED
MH	= MANHOLE
N	= NORTH
NO.	= NUMBER
N & DISC	= NAIL AND DISC
NO ID.	= NO IDENTIFICATION NUMBER
N.T.S.	= NOT TO SCALE
OBV	= OBSERVED ANGLE
O/E	= OVERHEAD ELECTRIC
O/L	= OVERHEAD ELECTRIC
ORB	= OFFICIAL RECORDS BOOK
O'	= MINUTE OR FEET
O"	= SECOND OR INCH
P	= PLAT
PAV	= PAVEMENT
PB	= PLAT BOOK
PCC	= POINT OF COMPOUND CURVATURE
PC	= POINT OF CURVATURE
PG	= PAGE
PL	= PLANTER
PLS	= PROFESSIONAL LAND SURVEYOR
PI	= POINT OF INTERSECTION
POB	= POINT OF BEGINNING
POC	= POINT OF COMMENCE
PT	= POINT OF TERMINATION
PRC	= POINT OF REVERSE CURVATURE
PSM	= PROFESSIONAL SURVEYOR AND MAPPER
R	= RADIUS OR RECORD
REG	= REGULAR
R/W	= RANGE
R.L.S	= REGISTERED LAND SURVEYOR
R/W	= RIGHT OF WAY
S	= SOUTH
SEC	= SECTION
STA	= STATION
SWK	= SIDEWALK
T	= TANGENT
SS	= SANITARY SEWER
TWP	= TOWNSHIP
W	= WEST
W	= WITH
WF	= WOOD FENCE
WM	= WATER METER
WV	= WATER VALVE
ZW	= ZURWELLE-WHITTAKER,INC

FLOOD INFORMATION:

COMMUNITY NUMBER	: 125129
PANEL NUMBER	: 12087C0919K
SUFFIX	: K
DATE OF FIRM	: 02-18-2005
FIRM ZONE	: AE
BASE FLOOD ELEVATION	: 8'

FIELD WORK INFORMATION

DATE FIELD WORK	: 05-06-2019
DATE DRAFTING	: 05-08-2019
DATE SIGNED AND SEALED	: 02-10-2019
REVISED FIELD SURVEY	: N/A

SYMBOL LEGEND:

- LIGHT POLE
- CONC. POLE
- ELECTRIC BOX
- TRAFFIC SIGNAL BOX
- FIRE HYDRANT
- STORM SEWER/CATCH BASIN
- WATER METER
- SIGN
- TELEPHONE BOX
- WATER VALVE
- EL 7.66 ELEVATIONS
- TRAFFIC LANE FLOW
- CENTER LINE
- MONUMENT LINE
- Ø DIAMETER.

SURVEYOR'S NOTES:

1. EXAMINATION OF THE ABSTRACT OF THE TITLE WILL HAVE TO BE MADE TO DETERMINE RECORD INSTRUMENTS IF ANY, AFFECTING THE PROPERTY.
2. LOCATION AND IDENTIFICATION OF UNDERGROUND ENCROACHMENTS OR UTILITIES ON AND/OR ADJACENT TO THE PROPERTY WERE NOT SECURED AS SUCH INFORMATION WAS NOT REQUESTED
3. NO SEARCH OF PUBLIC RECORDS HAS BEEN MADE (BY THIS OFFICE) FOR ACCURACY AND OR OMISSIONS.
4. THIS CERTIFICATION IS ONLY FOR THE LANDS AS DESCRIBED. IT IS NOT A CERTIFICATION OF TITLE, ZONING, EASEMENTS, OR FREEDOM FROM ENCUMBRANCES, "TITLE" ABSTRACT NOT REVIEWED.
5. THERE MAY BE ADDITIONAL RESTRICTIONS THAT ARE NOT SHOWN ON THIS SURVEY THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY.
6. THIS SURVEY HAS BEEN PREPARED FOR THE EXCLUSIVE USE OF ENTITIES NAMED HEREON AND THE CERTIFICATION DOES NOT EXTEND TO ANY UNNAMED PARTY.
7. DIMENSIONS, BEARINGS OR ANGLES INDICATED HEREIN ARE MEASURED AND ARE THE SAME AS PLAT VALUES UNLESS OTHERWISE INDICATED BEARINGS ARE BASED ON SHOWN PLAT VALUES (IF ANY) OR AN ASSUMED VALUE.
8. ALL RIGHTS OF WAYS SHOWN ARE PUBLIC UNLESS OTHERWISE NOTED
9. UTILITY FACILITIES WITHIN UTILITY EASEMENTS NOT NOTED AS VIOLATIONS, DRIVEWAYS OR PORTIONS THEREOF WITHIN ROADWAYS NOT NOTED AS VIOLATIONS OR ENCROACHMENTS.
10. THE LEGAL DESCRIPTION WAS FURNISHED BY THE CLIENT
11. THIS DRAWING IS PROPERTY OF ZURWELLE-WHITTAKER, INC AND CANNOT BE REPRODUCED WITHOUT WRITTEN CONSENT
12. THE ELEVATION INFORMATION SHOWN HEREON (IF ANY) IS RELATIVE TO THE NATIONAL GEODETIC VERTICAL DATUM, (N.G.V.D.), OF 1929 UNLESS OTHER WISE NOTED
13. BENCHMARK USED: NGS BENCHMARK & PPRN (SEE BENCHMARK INFO.)
14. COORDINATES SHOWN ARE RELATIVE TO THE NORTH AMERICAN DATUM OF 1983/90 AS BASED ON THE STATE OF FLORIDA'S D.O.T. FLORIDA PERMANENT REFERENCE NETWORK (F.P.R.N.) A GPS/GNSS REFERENCE NETWORK. BASE STATION USED: FLPK (SLAMORADA STATION)
15. COORDINATE CONVERSIONS (IF ANY) HAVE BEEN CONVERTED USING CORPSCON VERSION 6.0.1, FROM U.S. ARMY CORPS OF ENGINEERS, ALEXANDRIA,VIRGINIA.
16. UNLESS IT BEARS THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED PROFESSIONAL SURVEYOR AND MAPPER, THIS DRAWING SKETCH, PLAT OR MAP IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT VALID.
17. ACCURACY OF HORIZONTAL CONTROL:(FOR EXPECTED USE OF LAND AS DEFINED BY (5J-17)) THE FIELD MEASUREMENTS VERIFIED BY CALCULATIONS OF A CLOSED GEOMETRIC FIGURE BASED UPON FIELD INFORMATION TAKEN IN THE FIELD BY TOTAL STATION AND OR GPS.

	COMMERCIAL/HIGH RISK	LINEAR: 1 FOOT IN 10,000 FEET
X	SUBURBAN	LINEAR: 1 FOOT IN 7,500 FEET
	RURAL	LINEAR: 1 FOOT IN 5,000 FEET

LOCATION MAP (N.T.S.)

BENCHMARK INFORMATION:

National Geodetic Survey, Retrieval Date = APRIL 11, 2019

DESIGNATION - D 121
PID = AA0020
STATE/COUNTY= FLMON/ROE
COUNTRY = US
USGS QUAD = KEY WEST (1971)
*CURRENT SURVEY CONTROL

NAD 83(1986) POSITION- 24 33 28.47 (N) 081 47 17.55 (W) HD_HELD1
NAVD 88 (ORTHO HEIGHT = 0.783 (meters) 2.57 (feet) ADJUSTED

GEOID HEIGHT = -21.740 (meters) GEOID12B
DYNAMIC HEIGHT = 0.781 (meters) 2.56 (feet) COMP
MODELED GRAVITY= 978,894.1 (mgal) NAVD 88
SUPERSEDED SURVEY CONTROL
NGVD 29 (??/??/92) 1.103 (m) 3.91 (f) SUPERSEDED 1 2
NGVD 29 (08/09/92) 1.103 (m) 3.91 (f) ADJUSTED 1 2

SURVEYORS NOTE:

THIS IS SHEET 1 OF 2

DRAWING SCALE 1"= 30'

SHEET SIZE 13"X19"

LEGAL DESCRIPTIONS:

Total Bay Bottom
The North 40.8 feet of Tract 13 and the North 40.8 feet of the East 22 feet 6 inches of Tract 14, all in the AMENDED PLAT OF HILTON HAVEN, SECTION 2, a subdivision on the Island of Key West, Monroe County, Florida, according to the Plat thereof, as recorded in Plat Book 2, Page 138 of Monroe County, Florida Records and a parcel of submerged land Northerly and adjacent to Tract 13 and a part of Tract 14, HILTON HAVEN, SECTION NO. 2, Island of Key West, Monroe County, Florida as recorded in Plat Book 2, Page 138, Monroe County Records and more particularly described as:
Beginning at the Northeasterly corner of Tract 13 according to said Plat of HILTON HAVEN, SECTION NO. 2, thence northerly along the Easterly line of Tract 13 extended a distance of 400 feet to a point; thence Westerly and at right angles a distance of 82.5 feet to a point; thence Southerly and at right angles a distance of 400 feet to a point on the northerly line of said HILTON HAVEN; thence easterly and at right angles and along said Northerly line a distance of 82.5 feet back to the point of beginning.

ZURWELLE-WHITTAKER
SURVEYORS & ENGINEERS
ESTD. 1926

MONROE COUNTY SURVEYING & MAPPING,INC
SURVEYORS & MAPPERS, CIVIL ENGINEERS
A DIVISION OF ZURWELLE-WHITTAKER, INC (ESTAB. 1926)
100 TRUMAN AVENUE, KEY WEST, FL 33040 CERTIFICATE OF AUTHORIZATION NO. LB8236
PH: (305) 534-4668 OR (305) 293-0466 FAX (305) 531-4589 WWW.MCSMCO.COM
MEMBER: FLORIDA LAND SURVEYOR'S COUNCIL, FLORIDA SURVEYING AND MAPPING SOCIETY

PROJECT:
WILLIAM R. GROSSCUP
13 HILTON HAVEN DRIVE
KEY WEST, FL 33040

EDDIE A. MARTINEZ
PROFESSIONAL SURVEYOR AND MAPPER NO. LS6755
STATE OF FLORIDA

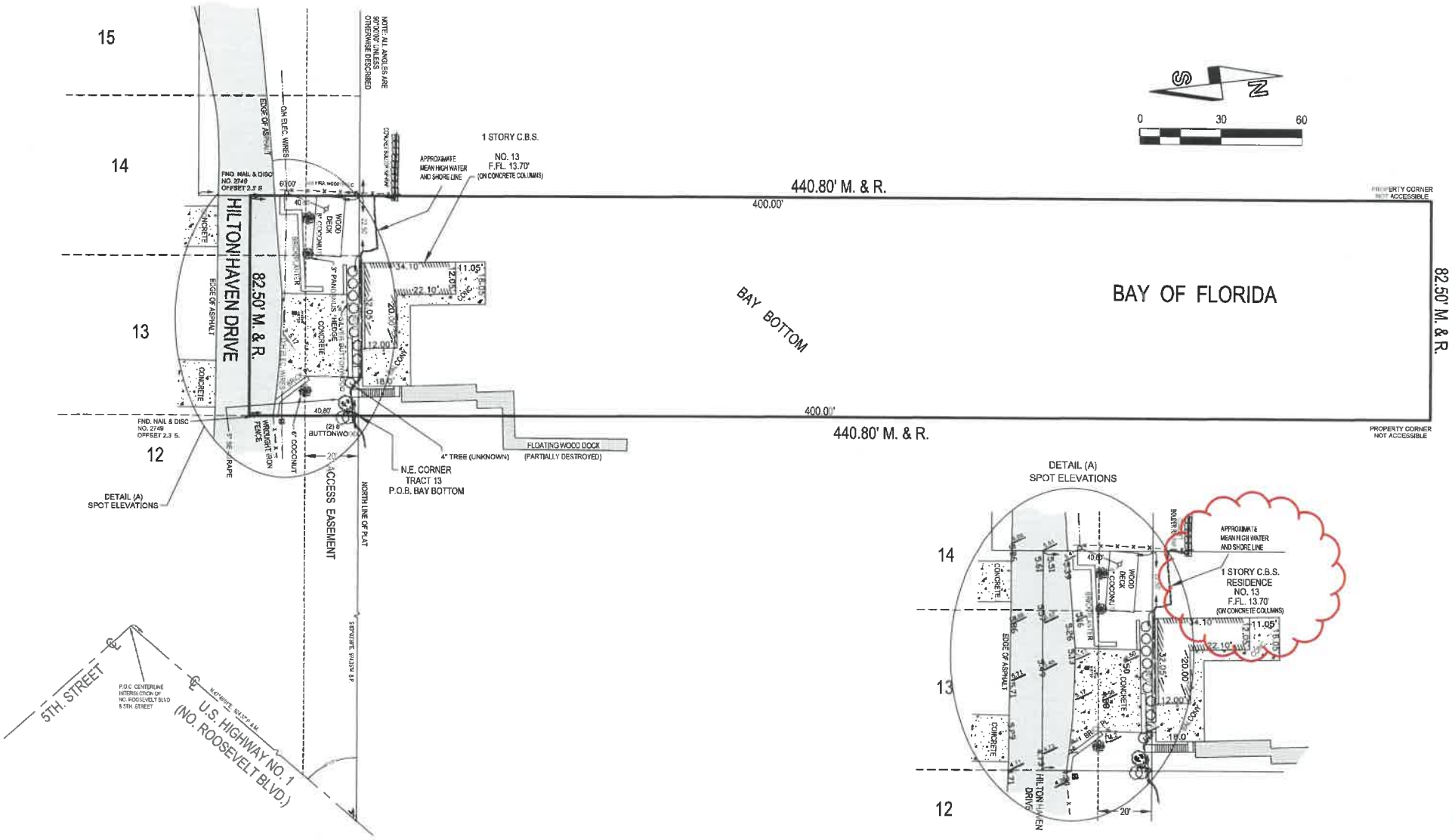
JOB No. N/A	DRAWN: DRF
FIELD BOOK: N/A	REVISED: EAM
SCALE: 1"=30'	SHEET No. 1 OF 2

REVISIONS

SURVEYOR'S CERTIFICATE:

I HEREBY CERTIFY THAT THE ATTACHED "BOUNDARY SURVEY" WAS PREPARED UNDER MY DIRECTION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT THE SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS PURSUANT TO CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027. ALSO THAT THERE ARE NO VISIBLE ENCROACHMENTS OTHER THAT SHOWN HEREON.

CAD FILE



SURVEYORS NOTE:
THIS IS SHEET 2 OF 2, FOR LEGAL DESCRIPTION NOTES, ABBREVIATIONS, LOCATION MAP AND ETCETERA PLEASE SEE SHEET 1 OF 2
DRAWING SCALE 1"= 30' SHEET SIZE 13"X19"

MONROE COUNTY SURVEYING & MAPPING, INC
SURVEYORS & MAPPERS, CIVIL ENGINEERS
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PROJECT:
WILLIAM R. GROSSCUP
13 HILTON HAVEN DRIVE
KEY WEST, FL 33040

EDDIE A. MARTINEZ
PROFESSIONAL SURVEYOR AND MAPPER NO. LS6755
STATE OF FLORIDA

JOB No.	DRAWN:
N/A	FHH/DRF
FIELD BOOK:	REVISED:
N/A	EAM
SCALE:	SHEET No.
1"=30'	2 OF 2

REVISIONS

SURVEYOR'S CERTIFICATE:

I HEREBY CERTIFY THAT THE ATTACHED "BOUNDARY SURVEY" WAS PREPARED UNDER MY DIRECTION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT THE SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS PURSUANT TO CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027, ALSO THAT THERE ARE NO VISIBLE ENCROACHMENTS OTHER THAT SHOWN HEREON.

CAD FILE

212 So.2d 777
District Court of Appeal of Florida, First District.

AMERICAN BANKERS LIFE ASSURANCE COMPANY OF FLORIDA, Petitioner,
v.
Broward WILLIAMS, As State Treasurer and Insurance Commissioner, Respondent.

No. K—70.
|
July 23, 1968.
|
Rehearing Denied Aug. 23, 1968.

Synopsis

Proceeding for certiorari to review final order of insurance commissioner construing statutory phrase. The District Court of Appeal, Rawls, J., held that 'taken by' within statute prohibiting issuance of life policy unless application is taken by licensed Florida agent, does not equire physical presence of agent at time application is completed.

Order quashed.

West Headnotes (5)

[1] **Insurance** Offer and Acceptance; Applications

Statute providing that no life insurer should deliver or issue policy unless application is taken by licensed agent was intended to assure that all applications will pass through licensed Florida agent and to prevent mail-order insurance written by nonadmitted insurers without agents in Florida. F.S.A. § 624.0227.

2 Cases that cite this headnote

[2] **Insurance** Offer and Acceptance; Applications

"Taken by", within statute prohibiting issuance of life policy unless application is taken by licensed Florida agent, does not require physical presence of agent at time application is completed. F.S.A. § 624.0227.

3 Cases that cite this headnote

[3] **Statutes** Plain Language; Plain, Ordinary, or Common Meaning

Words of common usage should be construed in their plain and ordinary sense.

4 Cases that cite this headnote

[4] **Statutes** Language

Court may not construe unambiguous statute in way which would extend, modify, or limit its express provisions or its reasonable and obvious implications.

59 Cases that cite this headnote

[5] **Constitutional Law** Encroachment on Legislature

Courts should never usurp legislative functions.

19 Cases that cite this headnote

Attorneys and Law Firms

*777 Helliwell, Melrose & DeWolf, Miami, for petitioner.

Thomas E. Boyle and Stephen Marc Slepin, Asst. Attys. Gen., and Robert E. Gibson, Insurance Counsel, for respondent.

Opinion

RAWLS, Judge.

American Bankers Life Assurance Company of Florida, a domestic life insurance company, filed its petition for writ of certiorari to review a final order of the Insurance Commissioner construing the phrase 'taken by' when used in Section 624.0227, Florida Statutes, F.S.A., as having the effect of requiring an application for a life insurance policy to be either signed in the presence of the agent or submitted to him for scrutiny in the applicant's presence before being forwarded to the company for acceptance or rejection.

The construction of the above-mentioned statute is the only issue before this court.

Section 624.0227, Florida Statutes, F.S.A., reads as follows: '(1) No life insurer shall deliver or issue for delivery in this state any policy of life insurance, * * * unless the application for such policy or contract is Taken by, and the delivery of such policy or contract is made through, an insurance agent of the insurer duly licensed under the law of Florida, who shall receive *778 the usual commission due to an agent from such insurer.

'(2) Each such insurer shall maintain a licensed insurance agent at all times for the purpose of and through whom policies or contracts issued or delivered in this state, shall be serviced.

'(3) This section shall not apply to policies of insurance or annuity contracts on nonresidents which are applied for outside of and delivered in the state.' (Emphasis supplied.)

[1] [2] The petitioner contends that the intent of the statute is to assure that all applications will pass through a licensed Florida agent and to prevent mail-order insurance written by nonadmitted insurers having no agents in Florida, but it does not require the physical presence of an agent at the time the application is completed. We agree.

[3] [4] In construing the above statute we are compelled to use the same rules as govern this court in construing any and all statutes. Words of common usage should be construed in their plain and ordinary sense. [1] The word 'take' is a very general term with many definitions and without any very specific connotation. Among the most common meanings are: 'to get into one's hands or into one's possession, power or control by force or stratagem' and 'to pay or get hold of with arms, hands, or fingers.'[2] Had the legislature intended the statute to import a more specific and definite meaning, it could easily have chosen words to express any limitation it wished to impose. We note that the section in question follows several others dealing with resident agents, which fact tends to support the petitioner's view of the legislative intent. This court is without power to construe an unambiguous statute in a way which would extend, modify, or limit its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power.

[5] Both parties have admitted that Senate Bill 832, introduced in the 1967 Florida Legislature, proposed to amend Section 624.0227 by inserting the words 'and witnessed by' following the words 'taken by.' The Insurance Commissioner submits that the Bill was amended to require the application to be taken 'in person by a licened agent,' and though it was reported favorably out of committee, it was never acted upon by the Senate due to its busy calendar. The fact that the Bill was introduced supports our conclusion and serves as a reminder that the courts should never usurp legislative functions.

Certiorari is granted with directions that the portion of the Insurance Commissioner's January 31, 1968, order, as it relates to the construction of Section 624.0227, is quashed.

CARROLL, DONALD K., Acting C.J., and JOHNSON, J., concur.

All Citations

212 So.2d 777

Footnotes

1 Pedersen v. Green, 105 So.2d 1 (Fla.1958).

2 Webster's Third New International Dictionary, Unabridged, pp. 2329, 2330, 2331.

End of Document

Coastal Construction Control Line

July 15, 2020

CCCL

Coastal Range Monuments

Range Monuments

Virtual Monuments

1:4,622,324

0 50 100 200 mi

0 80 160 320 km

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community, FDEP, WRM, BCMS

Map created by Map Direct, powered by ESRI.

Coastal Construction Control Line-Key West

July 15, 2020

CCCL

Coastal Range Monuments

Range Monuments

Virtual Monuments

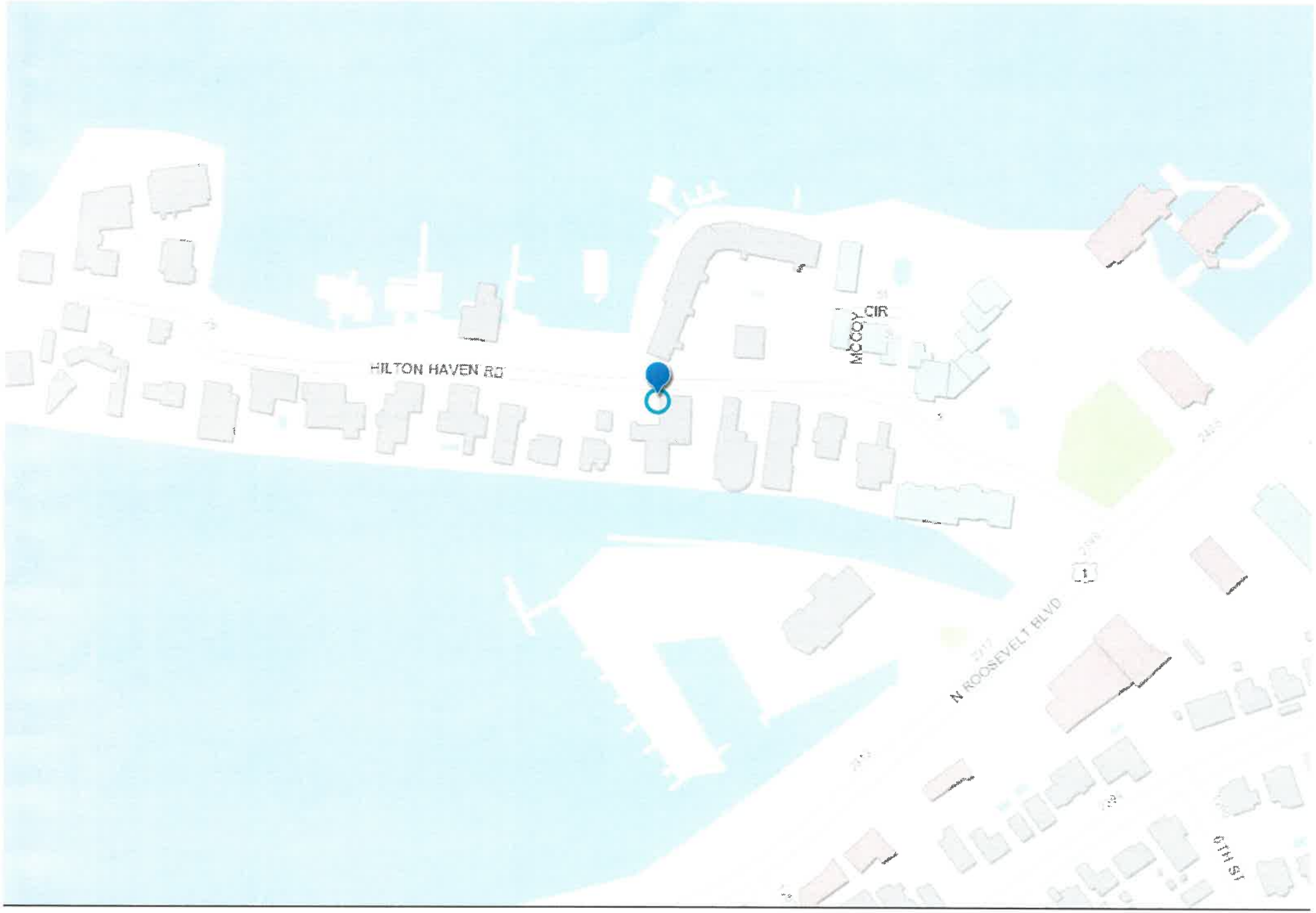
1:36,112

0 0.4 0.8 1.6 mi

0 0.5 1 2 km

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community, FDEP, WRM, BCMS

Map created by Map Direct, powered by ESRI.


HILTON HAVEN RD
MCCOY CIR
N ROOSEVELT BLVD
0
0.03

RESOLUTION NO. 10-236

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE SETTLEMENT IN THE CASE OF WILLIAM R. GROSSCUP V. CITY OF KEY WEST; PROVIDING FOR AN EFFECTIVE DATE

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

Section 1: That the settlement of the circuit court case of William R. Grosscup v. City of Key West in accordance with the terms in the attached Settlement Agreement is hereby approved.

Section 2: 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 3rd day of August, 2010.

Authenticated by the presiding officer and Clerk of the Commission on August 4, 2010.

Filed with the Clerk August 4, 2010.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

Executive Summary

To: James K. Scholl, City Manager

From: Larry R. Erskine, Chief Assistant City Attorney

Date: July 19, 2010

Subject: Approval of Settlement Agreement in Bert Harris Act claim
13 Hilton Haven Drive/William Grosscup

Action Statement:
This is a request for the City Manager and Commission to consider and approve the attached Settlement Agreement in the matter referenced above.

Background:
In April of 2005, the improvements located on William R. Grosscup's property at 13 Hilton Haven Drive were destroyed by fire. City records, as well as aerial photographs, indicate that a floating home and a pile-supported, two-story structure existed on the property at the time of the fire. In July of 2005, the Florida Department of Environmental Protection (DEP) approved the replacement of the pilings located on the bay bottom adjacent to the property. Sometime prior to February of 2006, Mr. Grosscup began construction of a single family dwelling approximately 3,200 square feet in size on concrete support pilings located partially over the bay bottom. On February 8, 2006, the City's Code Compliance Department issued a stop work order based on Mr. Grosscup's failure to obtain a building permit from the City.

In March of 2006, Mr. Grosscup applied to DEP for a permit to construct the dwelling which was the subject of the stop work order on pilings located partially over the bay bottom. The Florida Department of Community Affairs (DCA) objected to the permit, which DEP later denied. In November of 2006, Mr. Grosscup provided notice to DEP and DCA of his intention to file a claim pursuant to Section 70.001, Florida Statutes, more commonly known as the Bert Harris Act. Mr. Grosscup alleged that the actions of DEP and DCA caused an inordinate burden to him. At that time, the City was not made a party to the claim. The provisions contained in the Bert Harris Act require government entities to make good faith settlement offers in response to claims. DCA offered a settlement which called for Mr. Grosscup to rebuild the original dock structure with a second story facility used exclusively for storage and to allow the replacement of the floating home, both in the original footprint. In its response, DEP indicated that it needed additional information in order to properly analyze the proposed project. On May 22, 2007, Mr. Grosscup rejected the settlement proposed by DCA and DEP, and filed suit in circuit court. The City was not a party to the litigation at that time.

In April of 2008, Mr. Grosscup presented the City Planner a proposal to construct the dwelling which was the subject of the stop work order. On April 16, 2008, the City Planner provided Mr. Grosscup with a memorandum outlining the City Planning Department's analysis of the proposed development which outlined the steps necessary to permit the structure which was the subject of the stop work

order. That same day, Mr. Grosscup requested to move forward as outlined in the memorandum. On May 20, 2008, the City Commission passed Resolution No. 08-157, granting permission to initiate a development agreement for the proposed project. However, on May 28, 2008, Mr. Grosscup forwarded the City Planner an email objecting to a number of the issues discussed in her memorandum. The City Planner responded to that email, which Mr. Grosscup attempted to appeal to the City Commission as an administrative interpretation. It was the position of City staff that the City Planner's response was not appealable. However, Mr. Grosscup obtained an order from the Circuit Court directing the City Commission to consider his appeal of the City Planner's determination. After a public hearing on the matter, the Commission upheld the City Planner's interpretation.

On October 24, 2008, Mr. Grosscup provided the City his notice of intention to file a claim pursuant to the Bert Harris Act. In his claim, Mr. Grosscup alleged that the City's failure to recognize his build-back rights constituted a denial of his vested rights, a denial of his right to due process, and also caused an inordinate burden to him and his property. The Bert Harris Act defines "inordinate burden" or "inordinately burdened" as a governmental action which "has directly restricted or limited the use of the real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large."

Pursuant to the provisions of the Bert Harris Act, after receipt of the notice of Mr. Grosscup's claim, the Commission approved a settlement offer which called for Mr. Grosscup to replace the preexisting pilings as well as the floating structure. The offer also called for him to replace the preexisting storage structure without expansion.

On May 28, 2009, Mr. Grosscup rejected the City's settlement offer and filed his circuit court action against the City. Thereafter, Mr. Grosscup's lawsuit against DCA and DEP was consolidated with his cause of action against the City. In addition, earlier this year, Mr. Grosscup filed suit in federal court against, DCA, DEP, the City, and the Army Corp of Engineers based on the same allegations present in the circuit court action.

From the beginning, the parties have acknowledged that Mr. Grosscup has the right to build back the improvements which existed prior to the 2005 fire. However, DCA, DEP, and the City did not initially agree with Mr. Grosscup's position regarding the size of the demolished storage structure. Mr. Grosscup's initial offer to settle the lawsuits called for him to rebuild a storage structure which DCA, DEP, and the City believed to be larger than the original structure. Further, the proposed structure was to be located almost entirely over water. However, as the litigation progressed, Mr. Grosscup reduced the size of the proposed storage structure several times. DCA, DEP, and City staff believe that the storage structure depicted in Mr. Grosscup's last revision is approximately the same size as the original structure.

The proposed settlement agreement provides that Mr. Grosscup may construct a pile supported concrete deck structure with a total footprint not to exceed 1250 square feet with a non-habitable storage enclosure on the deck with a footprint not to exceed 650 square feet. In addition, he may rebuild his dock and replace the houseboat which previously existed. The agreement calls for Mr.

Grosscup to execute a deed restriction in perpetuity in favor of the City, preventing use of the storage space for living, sleeping, or cooking. Further, he would be required to dismiss with prejudice his state and federal lawsuits against DCA, DEP, and the City, with each party liable for its costs and attorneys' fees. DCA and DEP have agreed to the proposed settlement.

Recommendation:
Approve the attached Settlement Agreement.

WILLIAM R. GROSSCUP,

Plaintiffs,

v.

FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION and CITY OF KEY WEST,

Defendants.
_____/

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

CASE NO. 2007-CA-680-K

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF AGREED ORDER APPROVING SETTLEMENT AGREEMENT

Plaintiff, WILLIAM R. GROSSCUP ("GROSSCUP"), and Defendants, FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS ("DCA"), FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION ("DEP") and CITY OF KEY WEST ("KEY WEST"), by and through their undersigned representatives, hereby submit their Settlement Agreement and Stipulation for Entry of Agreed Order Approving Settlement Agreement, and state:

RECITALS

Whereas, on or about May 22, 2007, GROSSCUP brought this action against DCA and DEP for declaratory judgment and damages pursuant to Section 70.001, *Florida Statutes*.

Whereas, on or about May 28, 2009, GROSSCUP brought a related action against KEY WEST for declaratory judgment and damages pursuant to Section 70.001, *Florida Statutes*. On September 17, 2009, Plaintiff's cases against DCA, DEP, and KEY WEST were consolidated.

Whereas, the parties now desire to amicably resolve their litigation.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. All of the above-contained recitals are true and correct and are incorporated herein by reference.

2. The parties have agreed to settle, fully and finally, all differences and disputes arising out of the consolidated cases styled, *Grosscup v. Florida Department of Community Affairs and Florida Department of Environmental Protection*, Case No. 2007-CA-680-K and *Grosscup v. City of Key West*, Case No. 2009-CA-925-K. Therefore, the parties hereby stipulate that all matters raised by the pleadings, or which could have been raised, between the parties in the consolidated cases have been amicably settled.

3. In full and final settlement of the consolidated cases, the parties agree as follows:

(a) The DCA, DEP and KEY WEST agree that GROSSCUP shall be entitled to construct on his property a pile supported concrete deck structure (total footprint not to exceed 1250') with non-habitable storage enclosure on deck (not to exceed 650'); and permanently moor his floating home (habitable) to the pile supported deck structure in accordance with the engineering plans/drawings attached as ***Composite Exhibit "A"*** (hereafter the "Project").

(b) DCA shall withdraw its objection to the Environmental Resource Permit and DEP shall cause within thirty days of the Court's approval of this Settlement

Agreement, the issuance of permits from DEP authorizing GROSSCUP to construct the Project.

(c) Key West shall cause within fifteen days of issuance of permits from both DEP and Army Corps of Engineers for the Project, the issuance of permits from KEY WEST authorizing GROSSCUP to construct the Project.

(d) DCA shall withdraw its objection to the Environmental Resource Permit and DEP and KEY WEST shall cause the issuance of any additional approvals, waivers, variances, special exceptions, permits and/or extensions that may be required to complete the Project and that are within their control to grant. The DCA will write a letter indicating that no appeal will be taken during the 45 day period identified in Rule 9J-1, F.A.C.

(e) GROSSCUP acknowledges that he may not begin construction of the Project until he obtains a permit from the United States Army Corps of Engineers ("USACE"). DCA, DEP and KEY WEST agree they will cooperate with GROSSCUP and will not interfere with his efforts to obtain a permit from USACE.

(f) Prior to the final inspection of the Project and issuance of certificate of occupancy, GROSSCUP expressly agrees herein to execute a restrictive covenant in perpetuity in favor or KEY WEST in a form acceptable to the City Attorney, preventing use of the storage space as habitable space as that term is defined in the residential section of the Florida Building Code. Specifically, GROSSCUP shall be prohibited from utilizing the storage area for living, sleeping, eating or cooking.

(g) To the extent GROSSCUP may be required by other agencies to obtain consents, approvals, waivers, variances, special exceptions, permits and/or

extensions to complete the Project, DCA, DEP and KEY WEST agree they will cooperate with GROSSCUP and will not interfere with his efforts to obtain them.

4. Upon the Court's approval of this Settlement Agreement and GROSSCUP's receipt of permits for the Project from DEP and KEY WEST, the parties agree to exchange the General Releases attached as ***Composite Exhibit "B."*** Further, upon the Court's approval of this Settlement Agreement, GROSSCUP expressly agrees herein to dismiss with prejudice its claims against DCA, DEP and KEY WEST in the matter styled, *Grosscup v. Colonel Alfred Pantano, Jr., District Commander for the Army Corps of Engineers, Jacksonville District, United States Army Corps of Engineers, Florida Department of Community Affairs, Florida Department of Environmental Protection, City of Key West and United States*, Case No. 10-10015-CIV-MARTINEZ/ BROWN in the United States District Court for the Southern District of Florida, with each party to bear their own costs, expenses and attorney's fees.

5. The parties herein expressly agree that this Settlement Agreement is contingent upon Court approval. In the event the Settlement Agreement is not approved by the Court for any reason whatsoever, this Settlement Agreement and the provisions herein shall be void and of no further force and effect.

6. The parties hereby submit themselves to the jurisdiction of the Sixteenth Judicial Circuit Court in and for Monroe County, Florida for all purposes relating to this Agreement, including, but not limited to, its enforcement.

7. This Agreement is binding upon the parties and their respective successors, heirs and assigns and relates solely to the approved engineering plans/ drawings attached as ***Composite Exhibit "A."*** Plaintiff will cure any material

deviations from the approved plans within 30 days notice from KEY WEST or DCA or DEP. The Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of this Agreement. Each party shall bear its own attorney's fees and costs.

8. The parties agree that in the event any case or controversy arises in connection with this Agreement or the settlement of this Action, they consent to venue and jurisdiction in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida.

9. The parties stipulate that the Court may enter the proposed Agreed Order Approving Settlement Agreement, which is attached as ***Exhibit "C."***

IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement and Stipulation for Entry of Agreed Order Approving Settlement to be executed on this 5th day of August, 2010.

By: _____
WILLIAM R. GROSSCUP

STATE OF FLORIDA)
)SS
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this 5th day of August, 2010, by WILLIAM R. GROSSCUP, who is personally known to me or who has produced _____ as identification.

_____
Notary Public
Commission No.
_____
[Name of Notary typed, Printed or stamped]

My Commission Expires: 3-8-12

SEAL

SHERRY L TARR
MY COMMISSION EXPIRES
March 8, 2012
DD 750189
Bonded Thru
Notary Public Underwriters
STATE OF FLORIDA
NOTARY PUBLIC

Not So
Of
William

FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS

By Thomas D. Pelham
its Secretary

STATE OF FLORIDA)
)SS
COUNTY OF Leon)

The foregoing instrument was acknowledged before me this 23rd day of August, 2010, by Thomas G. Pelham who is personally known to me or who has produced N/A as identification.

Paula P. Ford
Notary Public
Commission No.

PAULA P. FORD
MY COMMISSION # DD 819056
EXPIRES: October 13, 2012
Bonded Thru Notary Public Underwriters

[Name of Notary typed, Printed or stamped]

My Commission Expires:

SEAL

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By _____ its DIRECTOR OF DISTRICT MGMT
JON M. IGLEHART

STATE OF FLORIDA)
)SS
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 31st day of AUGUST, 2010, by JON M. IGLEHART, who is personally known to me or who has produced _____ as identification.

Denise M. Scarpuzzi
Notary Public
Commission No.

DENISE M. SCARPUZZI
[Name of Notary typed, Printed or stamped]

My Commission Expires: 10-8-2012

SEAL

DENISE M. SCARPUZZI
Commission DD 829281
Expires October 8, 2012
Bonded Thru Troy Fain Insurance 800-385-7019

DENISE M. SCARPUZZI
Commission DD 829281
Expires October 8, 2012
Bonded Thru Troy Fain Insurance 800-385-7019

CITY OF KEY WEST

By J.K. Scholl
JIM SCHOLL its CITY MANAGER

STATE OF FLORIDA)
)SS
COUNTY OF Monroe)

The foregoing instrument was acknowledged before me this 9 day of August, 2010, by Jim Scholl, who is personally known to me or who has produced _____ as identification.

Maria G. Ratcliff
Notary Public
Commission No.

Maria G. Ratcliff
[Name of Notary typed,
Printed or stamped]

My Commission
Expires:

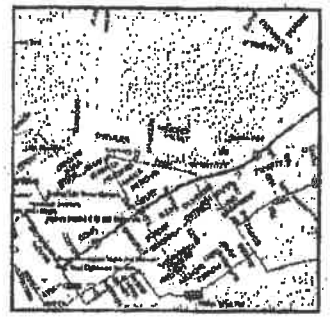
SEAL

1301721

COMPOSITE EXHIBIT A

PROJECT NAME: CAPT. BILL GROSSCUP

PROJECT ADDRESS: 13 HILTON HAVEN ROAD,
KEY WEST, FLORIDA 33040



LOCATION MAP

SHEET NO.	DESCRIPTION	REVISIONS

SHEET INDEX

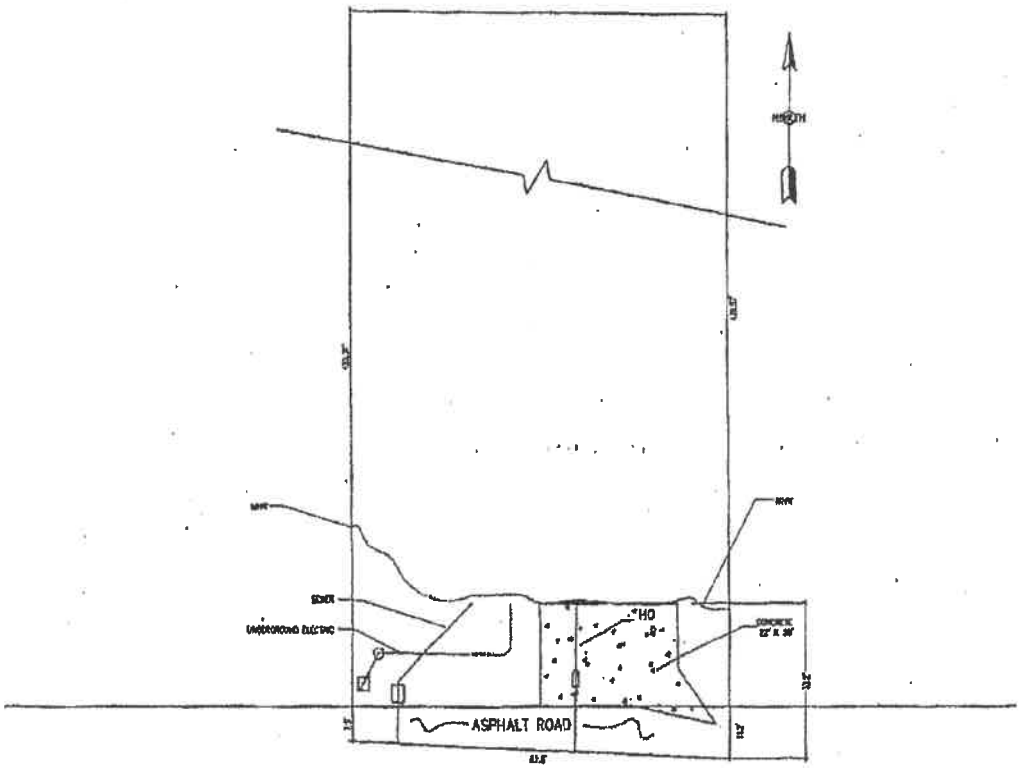
G.M. SELBY, Inc.

HILTON HAVEN HOUSING

SHEET TITLE: COVER SHEET

SHEET NO: T-1

\\GMS-SERVER\GMS Files\ 2007\ MISCEL PROJECTS\ 0MISC2705500 - HILTON HAVEN\ DRAWINGS\ REV 06-08-2010



G.M. SELBY, Inc.

HILTON HAVEN HOUSING

SHEET TITLE: PROPERTY DIMENSIONS

SHEET NO: C-1

\\GIS-SERVER\GIS Files 2007\ MISCEL PROJECTS\ MISC2270580 - HILTON HAVEN DRAWINGS\ REV 06-05-2018

SITE DATA 12 HILTON HAVEN ROAD - FLOATING HOME

ZONING	MDR / C-OW	
FLOOD ZONE	AE 8	
FINISHED FLOOR HEIGHT	8' ABOVE MSL (88 NGVD)	
LOT SIZE	88.5 x 430.31 FT	
ROAD CROWN (AVERAGE)	4.8 FT.	
DENSITY	16 DU/ACRE ; 8 DU/ACRE	

EXISTING/PROPOSED SITE

	REQUIRED	PROPOSED
IMPERVIOUS SURFACE RATIO	50% / 5%	63%
IMPERVIOUS SURFACE AREA (FT)	2163	2149
MAX BUILDING COVERAGE	35% / 5%	4.9%
BUILDING COVERAGE (SQ FT)		2,451
MAX HEIGHT ABOVE ROAD (30' / 25' MAX)		18
ENTIRE COVERED AREA ABOVE THE WATER (SQ FT)		2,424
POLYDOCK AREA ABOVE WATER (SQ FT)		288
AREA ABOVE THE LAND (SQ FT)		63
CONCRETE DECK AREA (SQ FT)		1,241

SETBACKS

	REQUIRED	PROPOSED
FRONT (FT)	30/6	4'-8"
EAST (FT)	7/6	7'-9"
WEST (FT)	7/6	25'-9"
REAR (FT)	20/6	56'-7"

* CHAPTER 122-[illegible]

STORMWATER

NOTE: NO NET INCREASE IN IMPERVIOUS SURFACE AREA FROM EXISTING & STRUCTURES DESTROYED BY FIRE

PLANTING AREA (ALL SALT TOLERANT NATIVE SPECIES TO BE DETERMINED BY LANDSCAPE COMPANY AND OWNER)

REMOVE EXISTING WOOD DOCK UNUSED AND PILINGS COMPLETELY AND DISPOSE IT IN A CORRECT MANNER PER CITY OF KEY WEST ORDINANCES

FLOATING DOCK SYSTEM NOTES:

1- THE CONTRACTOR SHALL FURNISH ALL TOOLS, EQUIPMENT, MATERIALS AND SUPPLIES, AND SHALL PERFORM ALL LABOR, FABRICATION ASSEMBLY AND INSTALLATION OF THE COMPLETE FLOAT SYSTEM.

2- THE CONTRACTOR SHALL EXAMINE THE JOB SITE BEFORE PREPARING HIS SHOP DRAWINGS TO VERIFY ALL PHYSICAL CONDITIONS AND SURROUNDINGS.

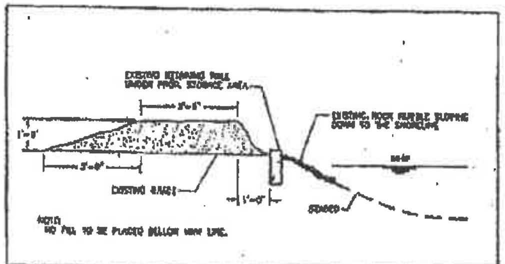
3- FLOAT MODULES SHALL BE STRUCTURALLY CONNECTED BY A ALUMINUM WALER SYSTEM THAT WILL ALLOW REPLACEMENT WITHOUT AFFECTING THE FLOAT MODULES. CONNECTION METHODS THAT CREATES STRUCTURAL FAILURE OF THE FLOAT MODULE WHEN OVER STRESSED WILL NOT BE ALLOWED.

4- WALKING SURFACE OF CONCRETE FLOATS SHALL BE LEVEL AND FLUSH WITH RESPECT TO THE ADJACENT FLOATS.

5- PILES GUIDES SHOWN ON DRAWINGS CORRESPOND ONLY TO ONE OF THE INTERNAL PILE GUIDE OF THE [illegible] DOCK. CONTRACTOR SHALL VERIFY THE SPACING FOR THE ANOTHER INTERNAL PILE GUIDE.

CONSTRUCTION METHODS

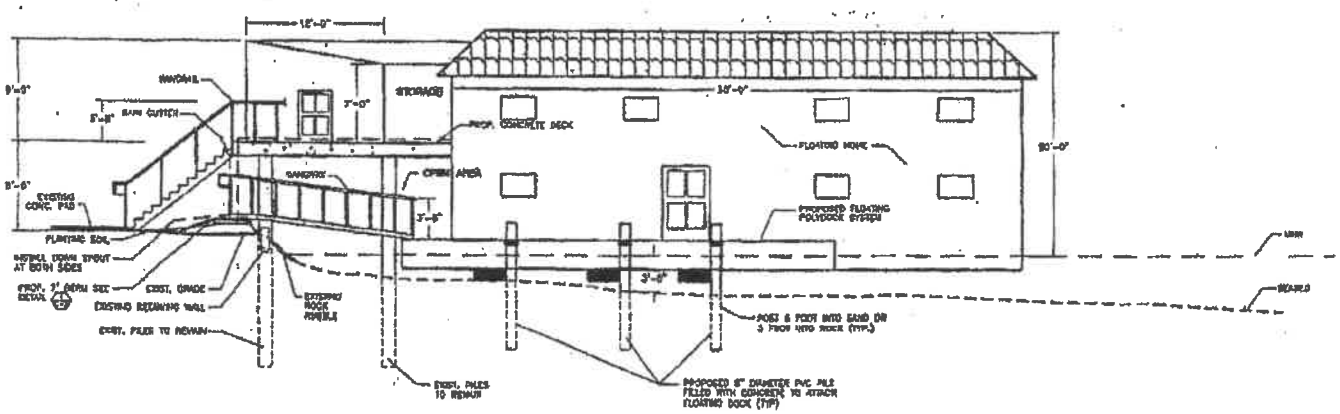
1. ENSURE ALL RUNOFF IS MAINTAINED ON SITE.
2. USE TURBIDITY BARRIERS FOR THE DURATION OF CONSTRUCTION.
3. ENSURE PLANTER HAS ADEQUATE BERM PROTECTION AND SEPARATION FROM [illegible] FRESH WATER.
4. MAINTAIN LOCAL EASEMENTS AND SETBACKS.



1 PROPOSED 7/1 BERM DETAIL
SCALE N.T.S.

NOTES:

1. HANDRAIL TO BE PLACE ALL AROUND CONCRETE DECK
2. STORAGE ROOF SLOPE 2:12



CROSS SECTION A-A
SCALE N.T.S.

G.M. SELBY, Inc.

THIS DRAWING IS COPYRIGHTED AND IS THE SOLE PROPERTY OF G.M. SELBY, INC. [illegible]

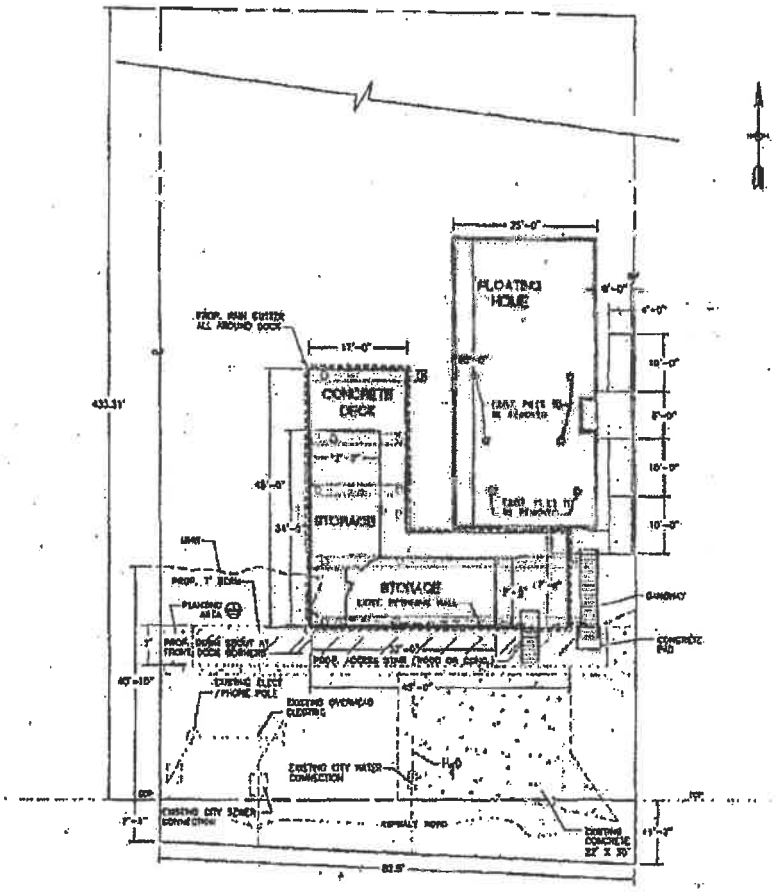
REVISIONS

HILTON HAVEN HOUSING

SHEET TITLE: LAYOUT SURVEY/SITE PLAN

SHEET NO.: C-2

\\GHS-SERVER\GHS Files\ 2007\ MISCEL PROJECTS\ MISC270580 - HILTON HAVEN\ DRAWINGS\ REV 06-06-2016



LAYOUT PLAN

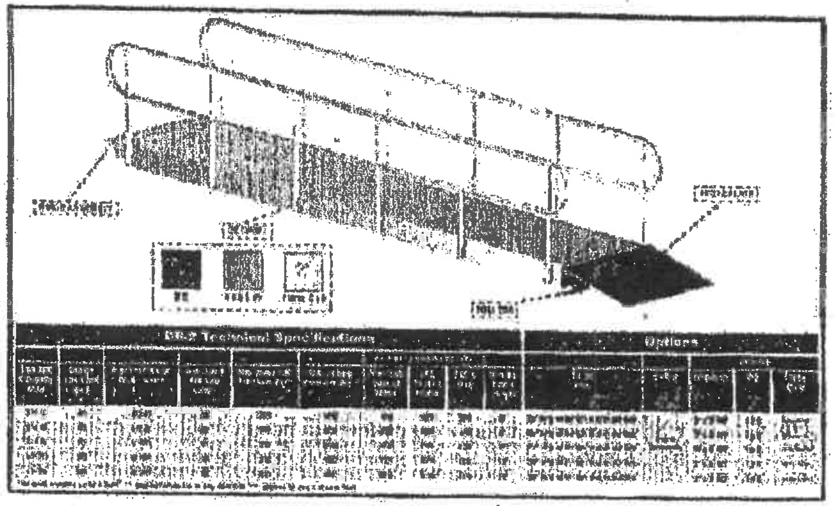
G.M. SELBY, Inc.

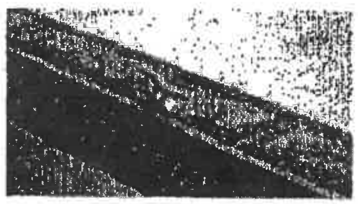
HILTON HAVEN HOUSING

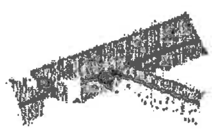
SHEET TITLE: LAYOUT PLAN

SHEET NO: C-3

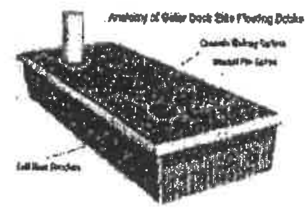
\\GIS-SERVER\GIS Files\ 2007\ MISCEL PROJECTS\ MISC2700390 - HILTON HAVEN\ DRAWINGS\ REV 06-08-2010







FLOATING DOCKS SECTION AND DETAILS



NOTE: GATORDOCK ELITE OR SIMILAR AS APPROVED BY ENGINEER.

Technical Specifications

Total Flotation Capacity (lb/ft²)	90
Total weight (lb/ft²)	34
Freeboard (in)	17.5
Draft (in)	9.5
Vertical Stability Index (in/psi)	7.7

Standard Section Dimensions (ft)

[illegible]	4x10	4x12	4x14	[illegible]	[illegible]	[illegible]	
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Materials

Structural Members	Marine Grade Aluminum 6061 series
Flotation	Closed Cell Polyethylene
Concrete	5000 psi-Consistently reinforced

[illegible]	[illegible]	[illegible]
Pile Guides	4 Roller	[illegible]
Cleats	12" [illegible]	[illegible]

FLOATING DOCKS SPECIFICATIONS

G.M. SELBY, Inc.

HILTON HAVEN HOUSING

SHEET TITLE: FLOATING DOCK DETAILS

SHEET NO: C-4

\\GMS-SERVER\GMS Files\ 2007\ MISCEL PROJECTS\ MISC270380 - HILTON HAVEN\ DRAWINGS\ REV 09-08-2010

GENERAL NOTES

SPECIFICATIONS FOR FLOATING DOCKS

GENERAL

[illegible]

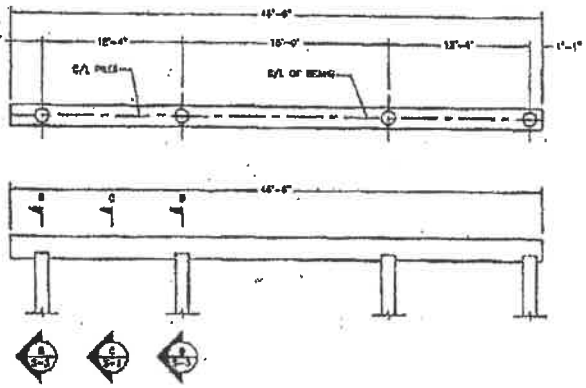
G.M. SELBY, Inc.

HILTON HAVEN HOUSING

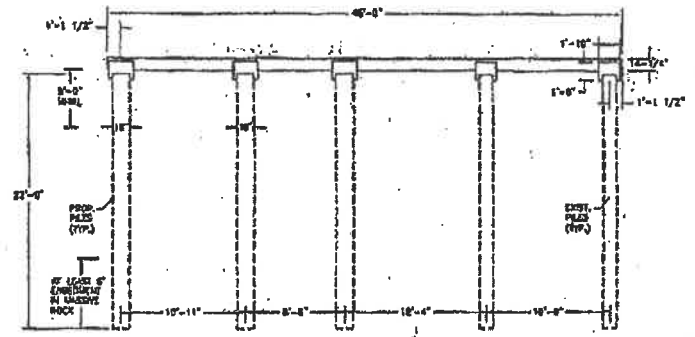
SHEET TITLE: GENERAL NOTES

SHEET NO: C-5

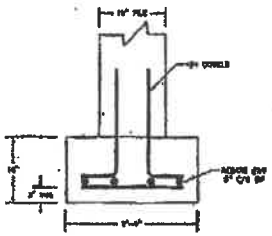
\\GMS-SERVER\GMS Files\ 2007\ MISCEL PROJECTS\ MISC270580 - HILTON HAVEN\ DRAWINGS\ REV 06-08-2010



NORTH ELEVATION



EAST ELEVATION



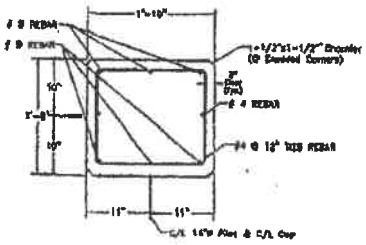
SPREAD FOOTER DETAIL

G.M. SELBY, Inc.

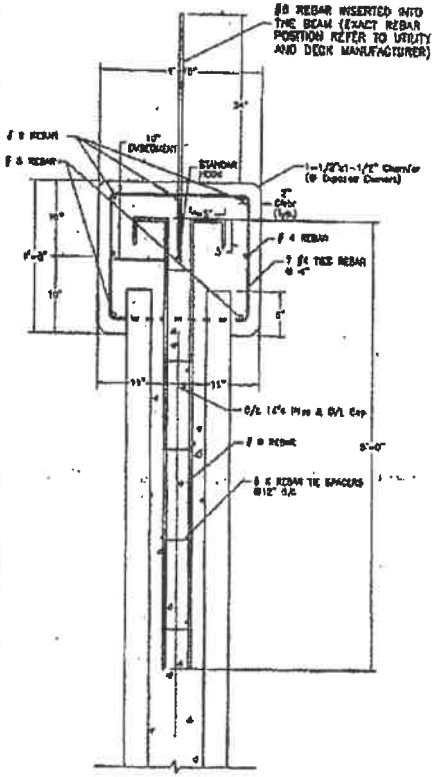
HILTON HAVEN HOUSING

SHEET TITLE:
FOUNDATION PLAN AND CHECK BEAMS

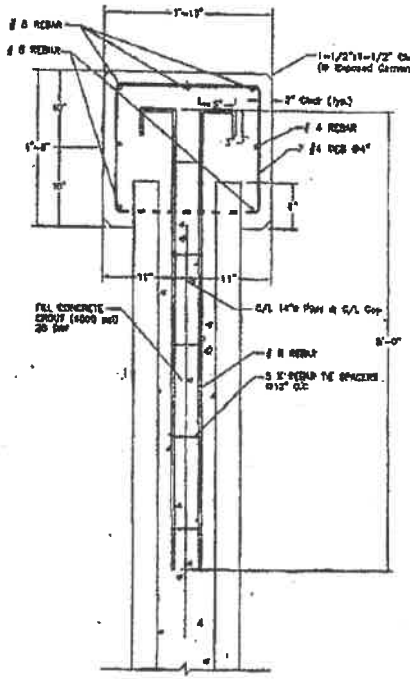
SHEET NO:
S-1



BEAM DETAIL
SECTION C-C



UTILITY AND DECK ANCHOR AND BEAM DETAIL
SECTION B-B



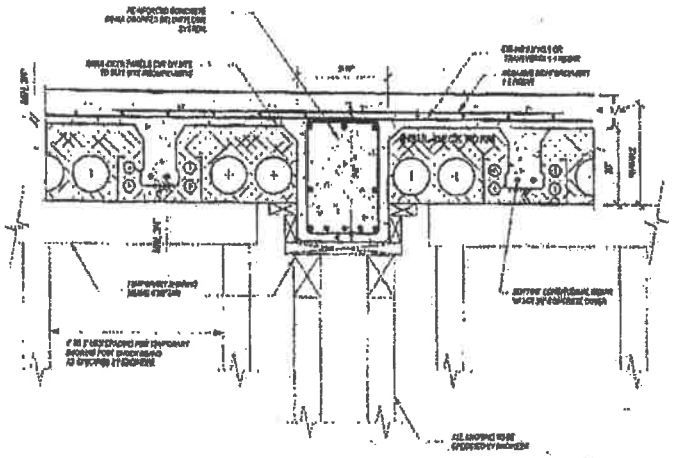
FLUSH CONCRETE BEAM WITH PILE
SECTION D-D

G.M. SELBY, Inc.

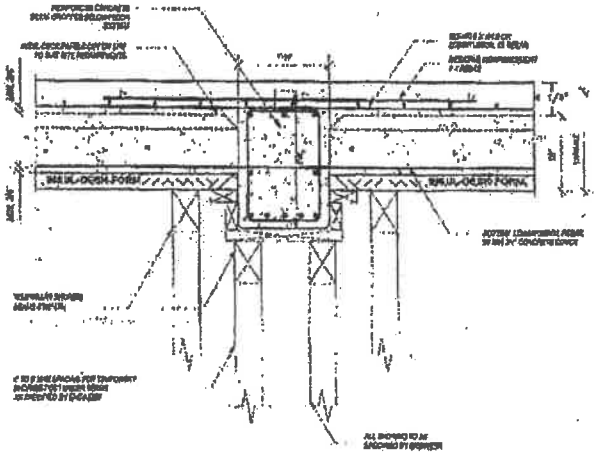
HILTON HAVEN HOUSING

SHEET TITLE
CONNECTION DETAILS

SHEET NO.
S-2



TRANSVERSE SECTION @ DROPPED CONCRETE BEAM



LONGITUDINAL SECTION @ DROPPED CONCRETE BEAM

G.M. SELBY, Inc.

HILTON HAVEN HOUSING

SHEET TITLE:
DROPPED CONCRETE BEAM DETAIL

SHEET NO.
S-3

\\DNS-SERVER\DAS Files\ 2007\ MISCEL PROJECTS\ MISC2705BD - HILTON HAVEN\ DRAWINGS\ REV 06-08-2010

COMPOSITE EXHIBIT B

GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That **WILLIAM R. GROSSCUP** ("**first party**"), for and consideration of good and valuable consideration, received from, or on behalf of **FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS** and **CITY OF KEY WEST, a municipal corporation** ("**second party**"), the receipt of which is herby acknowledged:

HEREBY irrevocably remises, releases, acquits, satisfies, and forever discharges the said **second party**, as well as all past and present agents, servants, attorneys, employees, directors, officers, successors, heirs, executors, administrators, and all other persons, firms, corporations, associations or partnerships, or any other entity associated therewith, of and from any and all claims, defenses, actions, causes of actions, demands, obligations, liens, rights, damages, costs, loss or service, expense and/or compensation, of any nature whatsoever, which the **first party** has or could have against **second party**, including, but not limited to, the claims that were raised and/or could have been raised in the cases styled, *Grosscup v. Florida Department of Community Affairs and Florida Department of Environmental Protection*, Case No. 2007-CA-680-K in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida; *Grosscup v. City of Key West*, Case No. 2009-CA-925-K in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida; and *Grosscup v. Colonel Alfred A. Pantano, Jr., District Commander for the Army Corps and Engineers, Jacksonville District, United States Army Corps of Engineers, Florida Department of Community Affairs, Florida Department of Environmental Protection and United States*, Case No. 10-10015-CIV-MARTINEZ/BROWN in the United States District Court for the Southern District of Florida. This Release does not release any claims **first party** may have against the Federal Defendants in Case No. 10-10015-CIV-MARTINEZ/BROWN.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 2010.

By_____
WILLIAM R. GROSSCUP

(Notary Certification follows)

STATE OF FLORIDA)
)SS
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010 by **WILLIAM R. GROSSCUP**, who is personally known to me or who has produced _____ as identification.

_____
Notary Public
Commission No.

_____
[Name of Notary typed,
Printed or stamped]

My Commission
Expires:

SEAL

GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That **FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION** ("**first party**"), for and consideration of good and valuable consideration, received from, or on behalf of **WILLIAM GROSSCUP** ("**second party**"), the receipt of which is herby acknowledged:

HEREBY irrevocably remises, releases, acquits, satisfies, and forever discharges the said **second party**, as well as all past and present agents, servants, attorneys, employees, directors, officers, successors, heirs, executors, administrators, and all other persons, firms, corporations, associations or partnerships, or any other entity associated therewith, of and from any and all claims, defenses, actions, causes of actions, demands, obligations, liens, rights, damages, costs, loss or service, expense and/or compensation, of any nature whatsoever, which the **first party** has or could have against **second party**, including, but not limited to, the claims that were raised and/or could have been raised in the cases styled, *Grosscup v. Florida Department of Community Affairs and Florida Department of Environmental Protection*, Case No. 2007-CA-680-K in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida; *Grosscup v. City of Key West*, Case No. 2009-CA-925-K in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida; and *Grosscup v. Colonel Alfred A. Pantano, Jr., District Commander for the Army Corps and Engineers, Jacksonville District, United States Army Corps of Engineers, Florida Department of Community Affairs, Florida Department of Environmental Protection and United States*, Case No. 10-10015-CIV-MARTINEZ/BROWN in the United States District Court for the Southern District of Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 31ST day of AUGUST, 2010.

FLORIDA DEPARTMENT OF ENVIRONMENT PROTECTION

By _____

Jon M Iglehart its Director's District Mgr

STATE OF FLORIDA)
)SS
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 31st day of August, 2010 by **FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,** who is personally known to me or who has produced _____ as identification.

Denise M. Scarpuzzi
Notary Public
Commission No.

DENISE M. SCARPUZZI
[Name of Notary typed,
Printed or stamped]

My Commission
Expires: 10-8-2012

SEAL

DENISE M. SCARPUZZI
Commission DD 829281
Expires October 8, 2012
Bonded Thru Troy Fain Insurance 800-385-7019

GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That **FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS** ("**first party**"), for good and valuable consideration, received from, or on behalf of **WILLIAM GROSSCUP** ("**second party**"), the receipt of which is herby acknowledged:

HEREBY irrevocably remises, releases, acquits, satisfies, and forever discharges the said **second party**, as well as all past and present agents, servants, attorneys, employees, directors, officers, successors, heirs, executors, administrators, and all other persons, firms, corporations, associations or partnerships, or any other entity associated therewith, of and from any and all claims, defenses, actions, causes of actions, demands, obligations, liens, rights, damages, costs, loss or service, expense and/or compensation, of any nature whatsoever, which the **first party** has or could have against **second party**, including, but not limited to, the claims that were raised and/or could have been raised in the cases styled, *Grosscup v. Florida Department of Community Affairs and Florida Department of Environmental Protection*, Case No. 2007-CA-680-K in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida; *Grosscup v. City of Key West*, Case No. 2009-CA-925-K in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida; and *Grosscup v. Colonel Alfred A. Pantano, Jr., District Commander for the Army Corps and Engineers, Jacksonville District, United States Army Corps of Engineers, Florida Department of Community Affairs, Florida Department of Environmental Protection and United States*, Case No. 10-10015-CIV-MARTINEZ/BROWN in the United States District Court for the Southern District of Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of August, 2010.

FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS

By Thomas D. Pelham
its Secretary

(Notary Certification follows)

STATE OF FLORIDA)
)SS
COUNTY OF Leon)

The foregoing instrument was acknowledged before me this 23rd day of August, 2010 by **FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS**, who is personally known to me or who has produced N/A as identification.

Paula P. Ford
Notary Public
Commission No.

PAULA P. FORD
MY COMMISSION # DD 816056
EXPIRES: October 15, 2012
Bonded Thru Notary Public Underwriters

[Name of Notary typed,
Printed or stamped]

My Commission
Expires:

SEAL

GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That **CITY OF KEY WEST, a municipal corporation ("first party")**, for good and valuable consideration, received from, or on behalf of **WILLIAM GROSSCUP ("second party")**, the receipt of which is herby acknowledged:

HEREBY irrevocably remises, releases, acquits, satisfies, and forever discharges the said **second party**, as well as all past and present agents, servants, attorneys, employees, directors, officers, successors, heirs, executors, administrators, and all other persons, firms, corporations, associations or partnerships, or any other entity associated therewith, of and from any and all claims, defenses, actions, causes of actions, demands, obligations, liens, rights, damages, costs, loss or service, expense and/or compensation, of any nature whatsoever, which the **first party** has or could have against **second party**, including, but not limited to, the claims that were raised and/or could have been raised in the cases styled, *Grosscup v. Florida Department of Community Affairs and Florida Department of Environmental Protection*, Case No. 2007-CA-680-K in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida; *Grosscup v. City of Key West*, Case No. 2009-CA-925-K in the Sixteenth Judicial Circuit Court in and for Monroe County, Florida; and *Grosscup v. Colonel Alfred A. Pantano, Jr., District Commander for the Army Corps and Engineers, Jacksonville District, United States Army Corps of Engineers, Florida Department of Community Affairs, Florida Department of Environmental Protection and United States*, Case No. 10-10015-CIV-MARTINEZ/BROWN in the United States District Court for the Southern District of Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 2010.

CITY OF KEY WEST

By_____
_____its_____

(Notary Certification follows)

STATE OF FLORIDA)
)SS
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010 by **CITY OF KEY WEST**, a municipal corporation, who is personally known to me or who has produced _____ as identification.

_____
Notary Public
Commission No.

_____
[Name of Notary typed,
Printed or stamped]

My Commission
Expires:

SEAL

1301522

EXHIBIT C

WILLIAM R. GROSSCUP,

Plaintiffs,

v.

FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION and CITY OF KEY WEST,

Defendants.
_____/

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

CASE NO. 2007-CA-680-K

AGREED ORDER APPROVING SETTLEMENT AGREEMENT

THIS CAUSE having come before the Court upon the parties' Settlement Agreement and Stipulation for Entry of Agreed Order Approving Settlement Agreement, and the Court having reviewed the Settlement Agreement and Stipulation of the parties and being otherwise fully advised in the premises, it is hereby:

ORDERED and ADJUDGED: The Settlement Agreement is approved and the parties are ordered to comply with its terms. Further, Defendant City of Key West shall not be required to comply with the regulatory procedures provided for in the Code of Ordinances of the City of Key West prior to the issuance of the approvals, waivers, variances, special exceptions, permits and/or exceptions referenced in the Settlement Agreement. To the extent that the relief provided to the Plaintiff has the effect of a modification, variance, or a special exception to the application of a rule, regulation, or ordinance as it would otherwise apply to the Plaintiff's property, the Court finds that the relief provided for in the Settlement Agreement protects the public interest being served by the regulations at issue and otherwise complies with Section 70.001, *Florida Statutes*. The relief being given is also appropriate to prevent the governmental

regulatory effort from inordinately burdening the subject real property. Each party shall bear its own attorney's fees and costs. The Court retains jurisdiction for the limited purpose of enforcing the Settlement Agreement. The Clerk shall close this case.

DONE and ORDERED in chambers in Key West, Monroe County, Florida on this _____ day of _____, 2010.

MARK JONES
Circuit Court Judge

Copies furnished to:

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Attorney for Defendants, Florida Department of Community Affairs and
Florida Department of Environmental Protection

130167302


Photo courtesy of Jack Thomp

Biosurveys, Inc. bio-consulting

P.O. Box 50043 Marathon, Florida 33050

July 13, 2020

Trepanier & Associates, Land Planning
1421 First Street
Key West, Florida 33040

Re: Biological Assessment of Shoreline – 13 Hilton Haven Dr., Hilton Haven Sub-division - Key West - RE# 00001870-000000; Sec 32 Twn 67 Rng 25

Mr. Trepanier:
I am presenting this letter of biological opinion concerning the proper classification and current conditions relating to the shoreline of the 13 Hilton Haven Dr. property in Key West, Florida. The shoreline is typical from uplands fill placed without armoring or hardening. Over time, the soil fines have escaped the fill with wave action and left rock and rubble of the fill along the mean high-water line and intertidal zone. In addition, this particular property has added deposits of concrete rubble, bricks, and construction remnants placed in the intertidal areas and above the mhw line about five feet. This was added to the fill cobble apparently to help attenuate moderate wave action against the shore. There is no obvious shoreline erosion and no natural vegetation from lot-line to lot-line of the shore. Also, I could not find any bedrock substrate.

The County uses a dredge criterion for determining altered shorelines. This is not County jurisdiction but it is an determinant for an unnatural shoreline classification. The area waterward of the Lot shoreline has been historically dredged in the past and as most dredge work in the Keys, it occurred before permitting protocols and can now deemed lawful. The depth of the water drops quickly from a 3' deep - 25' wide bench parallel to shore into a barren mud and silt bottom approximately 8' to 12' in water depth. This change in depth is under a floating dock and a pile supported concrete storage structure. The landward most concrete piles are found within the intertidal zone of the shore.

Another aspect that causes a highly disturbed shore area is the sunlight shading over 75% of the linear length of the Lot shoreline. This shading prevents optimal light from reaching the bay bottom and into the intertidal zone to the degree that it inhibits natural vegetative growth both on land and underwater. The shade is produced by the concrete storage structure and the floating docks connected to it. Aquatic macro algae vegetation is stunted, atypical in health, and very sparse - scattered on the bay bottom shelf or underwater bench. There are no sea grasses, corals, sponges, or other aquatic vegetation found on this shallow nearshore underwater bench.

The natural slope of the shore is interrupted by a concrete berm that parallels the mean high-water line just landward of it approximately three feet. This berm impacts any

natural function of the shore ecosystem and ends in a dense patch of Beach Naupaka, a Class I - invasive exotic plant. The patch has out-competed sunlight and soil nutrients that could ordinarily be habitat to natural mangrove or Green Buttonwood vegetation. There are no naturally occurring shoreline wetland plants found on the property.

Therefore, I would assign this Lot shoreline classification as unnatural and "Altered" in its current condition. The underwater area is also altered by the severe shading from structures and floating docks. The following factors support my opinion:

The shoreline is altered by –

1. Historic Fill placement on the property without retention or erosion controls,
2. The historic legal dredging immediately off-shore of this Lot,
3. The lack of natural upland vegetation (only invasive exotic Beach Naupaka and a 30' long planted Silver Buttonwood Hedge),
4. Atypical underwater aquatic vegetation bottom growth due to shading,
5. Added rock and rubble along the intertidal zone to attenuate wave action, and
6. The severe sunlight shading from the storage structure and floating docks.

Intertidal Zone of Lot 13 Shoreline – Barren of Vegetation.

Note - shading of Shoreline Under Conc. Structure.

Harry DeLashmutt, Pres. & Biologist

(305) 942-9221 Fax (305) 743-7649 hdelashmutt@comcast.net

KeyCite Yellow Flag - Negative Treatment
Distinguished by Maturo v. City of Coral Gables, Fla.App. 3 Dist., June 8, 1993

383 So.2d 1127
District Court of Appeal of Florida, Third District.

CITY OF CORAL GABLES, a Municipal Corporation, Appellant,
v.
Steve R. GEARY, Appellee.

No. 79-2393.
|
May 20, 1980.
|
Rehearing Denied June 19, 1980.

Synopsis

Applicant sought variances from building restriction imposed by city's zoning code. The Circuit Court, Dade County, George Orr, J., required city to grant variances, and city appealed. The District Court of Appeal, Schwartz, J., held that alleged hardship, i. e., fact that unusual triangular shape of property rendered it simply and practicably impossible for it to be developed in accordance with existing regulations, was not "self-created," thus precluding relief.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (2)

[1] **Zoning and Planning** Unique or peculiar hardship in general

Irregular shape or other peculiar physical characteristic of particular parcel constitutes a classic "hardship" unique to an individual owner, which justifies, and in some cases, requires, granting of a variance.

4 Cases that cite this headnote

[2] **Zoning and Planning** Self-created hardship; prior knowledge

Where hardship involved, i. e., the unusual triangular shape of property which rendered it simply and practicably impossible for it to be developed in accordance with existing regulations, arose from circumstances peculiar to realty alone, unrelated to conduct or to self-originated expectations of any of its owners or buyers, "self-imposed" hardship doctrine would not apply and right to variance possessed by original owner would not be lost simply because succeeding owner bought or contracted to buy with knowledge of restrictions.

2 Cases that cite this headnote

Attorneys and Law Firms

*1127 Robert D. Zahner, Coral Gables, for appellant.

*1128 Starr W. Horton, Miami, for appellee.

Before SCHWARTZ, NESBITT and PEARSON, DANIEL, JJ.

Opinion

SCHWARTZ, Judge.

Coral Gables appeals from a final judgment requiring it to grant the plaintiff-appellee four variances from building restrictions imposed by the city's zoning code. The variances, which deal with set-back requirements and building and wall height limitations, were ordered because, as appeared without contradiction below, the unusual triangular shape of the plaintiff's property rendered it simply and practicably impossible for it to be developed in accordance with the existing regulations.

[1] It is, of course, well-recognized that the irregular shape or other peculiar physical characteristic of a particular parcel constitutes a classic "hardship" unique to an individual owner which justifies, and in some cases requires the granting of a variance. Forde v. City of Miami Beach, 146 Fla. 676, 1 So.2d 642 (1941); see Leveille v. Zoning Board of Appeals, 145 Conn. 468, 144 A.2d 45 (1958); Downey v. Grimshaw, 410 Ill. 21, 101 N.E.2d 275 (1951); City of Baltimore v. Sapero, 230 Md. 291, 186 A.2d 884 (1962); 3 Anderson, American Law of Zoning s 18.34 (2nd ed. 1977).

The appellant does not really take issue with this rule or with its clear application to the case at bar.

[2] The city does contend, however, relying primarily upon Elwyn v. City of Miami, 113 So.2d 849 (Fla. 3d DCA 1959), cert. denied, 116 So.2d 773 (Fla.1959), that the alleged hardship was "self-created," thus precluding relief, because the plaintiff purchased the property in its present configuration with knowledge of the already-imposed building restrictions. See Allstate Mortgage Corp. of Fla. v. City of Miami Beach, 308 So.2d 629 (Fla. 3d DCA 1975), cert. denied, 317 So.2d 763 (Fla.1975); Crossroads Lounge, Inc. v. City of Miami, 195 So.2d 232 (Fla. 3d DCA 1967), cert. denied, 201 So.2d 459 (Fla.1967); Friedland v. City of Hollywood, 130 So.2d 306 (Fla. 2nd DCA 1961). We do not agree with this position. Unlike the situation in each of the cited decisions, 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 the discussion of the cases on this issue from other jurisdictions in 3 Rathkopf, Law of Zoning and Planning, s 39.02 (4th ed. 1979).[1] In this case, therefore, as the court observed in Murphy v. Kraemer, 16 Misc.2d 374, 182 N.Y.S.2d 205, 206 (Sup.Ct.1958), "since it is not the act of the purchaser which brings the hardship into being, it is incorrect to charge him with having created it." It is undisputed that the appellee's predecessor in title, who held the property when the restrictions were initially imposed, would then have been entitled to the variances in question. Compare Duval Productions, Inc. v. City of Tampa, 307 So.2d 493 (Fla. 2d DCA 1975), cert. denied, 317 So.2d 78 (Fla.1975) (predecessor compensated for "hardship" created by condemnation). The "self-imposed" hardship doctrine thus does not apply. We endorse the principle stated in Harrington Glen, Inc. v. Municipal Board of Adjustment, 52 N.J. 22, 243 A.2d 233, 237 (1968):

> As we indicated in Wilson v. Borough of Mountainside, 42 N.J. 426, 452-453, 201 A.2d 540 (1964), when neither the owner *1129 of the lot at the time of adoption of the zoning ordinance . . . nor a subsequent owner, did anything to create the condition . . . for which the variance is sought, a right to relief possessed by the original owner passes to the successor in title. Such right is not lost simply because the succeeding owner bought or contracted to buy with knowledge of the . . . restriction. See 2 Rathkopf, Law of Zoning & Planning, c. 48, p. 48-20 (3d ed. 1966). (e. s.) Accord, Landmark Universal, Inc. v. Pitkin County Board of Adjustment, 40 Colo.App. 444, 579 P.2d 1184, 1185 (1978) ("If a prior owner would have been entitled to a variance at the time the zoning ordinance was passed, that right is not lost to a purchaser simply because he bought with knowledge of the zoning regulation involved."); School Committee v. Zoning Board of Review, 86 R.I. 131, 133 A.2d 734, 737 (1957) ("The zoning law deals with the use of land. The time when the land was acquired is not pertinent in determining its proper use."); Denton v. Zoning Board of Review, 86 R.I. 219, 133 A.2d 718, 720 (1957) ("The question of whether an applicant is entitled to a variance because of hardship flowing from a literal application of the terms of the ordinance is in no way dependent upon his knowledge or lack of knowledge of the existence of zoning restrictions affecting the land.").

Affirmed.

All Citations

383 So.2d 1127

Footnotes

1 Rathkopf's summary of these decisions at s 39.02(3) aptly characterizes the Florida cases as well:
> Despite the fact that some courts have used language which, taken upon its face, would indicate that even where a unique hardship existed with respect to land which would have warranted the person owning that property prior to the enactment of the ordinance to apply for and receive a variance, the mere act of purchase with knowledge of the ordinance may alone bar the purchaser from the same relief, it is apparent that few higher court decisions have actually so decided. In each case in which the refusal of a variance was upheld and in which such language was used, the facts showed either that there was an affirmative

act which created the hardship peculiar to the property involved or that there was insufficient evidence as to at least one of the elements required for the grant of a variance.

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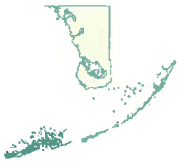
Overview



Legend

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

Parcel ID	00001870-000000	**Alternate ID**	1001970	**Owner Address**	GROSSCUP WILLIAM R REV TR
Sec/Twp/Rng	32/67/25	**Class**	VACANT RES		13 Hilton Haven Rd
Property Address	13 HILTON HAVEN Dr KEY WEST				Key West, FL 33040
District	10KW				

Brief Tax Description KW PT SEC 32 TWP 67S RGE 25E N SIDE OF HILTON HAVEN SUB PB2-138 N 40.8FT TR 13 & N 40.8FT OF EAST 22FT 6IN TR 14 & FILLED BAY BOTTOM OR204-475(II DEED NO 22677) OR400-409/410 OR673-465/467 OR815-1693/1695 OR871-1671Q/C OR1332-1287/1303-E(RES NO 94- 484)OR1437-2393Q/C OR1437-2394(BILL OF SALE) OR1442-2436Q/C
(Note: Not to be used on legal documents)

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