

AGENDA

KEY COLONY BEACH CITY COMMISSION PUBLIC HEARING

Thursday, May 18, 2023 – 9:30 a.m.

Located at the Temporary Meeting Place for the City of Key Colony Beach,
at the Key Colony Inn Banquet Room, 700 W. Ocean Drive, Key Colony Beach
& Virtually via Zoom Conferencing

<https://us02web.zoom.us/j/82898987302>

- 1. *Call to Order, Pledge of Allegiance, Prayer, Roll Call***
- 2. *Agenda Additions, Changes & Deletions***
- 3. *Approval of Minutes from the 04-20-2023 City Commission Public Hearing – Pgs. 1-4***
- 4. *Administration of Oath to Witnesses***
- 5. *Citizen Comments and Correspondence***
(Members of the public may speak for three minutes on any agenda items; and may only speak once unless waived by a majority vote of the commission)
- 6. *Disclosure of Ex-Parte Communications – Pg. 5***
- 7. *VARIANCE REQUEST: 260 9th Street, Shawn M. & Donna Saban Ogni***
Applicant requests a variance to the City of Key Colony Beach Code of Ordinances Chapter 101, Section 26 (11), to allow the installation of a pool within the 10' setback to 5'. Current setback requirements are 10' feet.
 - a. *Proof of Legal Publications & Affidavits of Mailing/Posting – Pgs. 6-10***
 - b. *Presentation of Variance Request – Building Department***
 - c. *Statement by Applicant - Pgs. 11-16***
 - d. *Planning & Zoning Board Recommendation – Chair George Lancaster – Pg. 17***
 - e. *Planning & Zoning Board Meeting Minutes from 04-19-2023 – Pgs. 18-22***
 - f. *Motion to Approve, Deny, or Approve with Conditions***

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“Members of the public may speak for three minutes and may only speak once unless waived by a majority vote of the commission.”

Letters submitted to the city clerk to be read at the Commission Meeting will be made part of the record but not read into record. Persons who need accommodations in order to attend or participate in this meeting should contact the city clerk at 305-289-1212 at least 48 hours prior to this meeting in order to request such assistance. If a person decides to appeal any decision made with respect to any matter considered at any meeting, that person will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

8. SECOND/FINAL PUBLIC HEARING on the Discussion & Approval of a Development Agreement with Garrison Bight Marina Inc, 300/400 Sadowski Causeway, Key Colony Beach:

*Applicant requests approval of a Development Agreement pursuant to Chapter 101 of Land Development Regulations Article XII, Section 101-176, seeking approval for redevelopment of an existing marina property. The project combines the two (2) properties located at 400 Sadowski Causeway and adjacent 300 Sadowski Causeway, Key Colony Beach into one property (the "Property") that will continue to operate a marina facility as its principal use. The proposed marina facility would comprise (a) a marina and ship store, (b) live-aboard vessel slips and other temporary docking facilities, (c) redevelopment of one (1) ~~3,894~~ **3581** sq. foot restaurant and (d) renovation of existing commercial 6,465 sq. ft building on the Property. New Restaurant will be tiki style construction and new finished floor will meet current flood zone regulations. The maximum height of structures on the property shall be ~~40~~ **43** feet in accordance with building plans and permits issued by the City. The unified Property is zoned B-1 Neighborhood Business District and comprises approximately 1.75 acres with a maximum allowable density of 8 units per acre. The request was submitted by Greg Oropeza, Esq., Oropeza, Stones & Cardenas, 221 Simonton Street, Key West, Florida 33040.*

- a. Proof of Legal Publications & Affidavits of Mailing/Posting – Pgs. 23-26*
- b. Presentation of the Development Agreement – Pgs. 27-52*
- c. Statement by Applicant/Applicant's Representative*
- d. Review of Planning & Zoning Recommendation and First Public City Commission Hearing – Pgs. 1-4 & 18-22*
- e. Commissioner Comments*
- f. Motion to Approve, Deny, or Approve with Conditions*

9. Resolution No. 2023-05: *A Resolution Of The City Commission Of Key Colony Beach, Florida Approving A Development Agreement Pursuant To Chapter 163, Florida Statutes, Between The City And Garrison Bight Marina, Inc., For The Property Located At 300/400 Sadowski Causeway, Key Colony Beach With Real Estate Numbers 00079371-000200 And 00079371-000100; Authorizing The Appropriate City Officials To Implement The Terms And Conditions Of The Agreement; Authorizing The Mayor To Execute The Agreement And Any Other Required Documents; And Providing For An Effective Date. – Pgs. 53-55*

10. Other Business

11. Adjournment

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The City of Key Colony Beach is inviting you to a scheduled Zoom meeting.

This meeting will be held in person at the Temporary Meeting Place for the City of Key Colony Beach, at the Key Colony Inn Banquet Room, 700 W. Ocean Drive, Key Colony Beach & Virtually via Zoom Conferencing

Join Zoom Meeting

<https://us02web.zoom.us/j/82898987302>

Meeting ID: 828 9898 7302

One tap mobile

+13052241968,82898987302# US

+16469313860,82898987302# US

Find your local number: <https://us02web.zoom.us/j/82898987302>

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MINUTES

KEY COLONY BEACH CITY COMMISSION PUBLIC HEARING

Thursday, April 20, 2023 – 9:30 a.m.

Key Colony Inn Banquet Room, 700 W. Ocean Drive, Key Colony Beach
& Virtually via Zoom Conferencing

1. Call to Order, Pledge of Allegiance, Prayer, Roll Call: *The Key Colony Beach City Commission Public Hearing was called to order by Mayor Trefry at 9:30 am followed by the Pledge of Allegiance, Prayer, and Rollcall. Present: Vice-Mayor Ramsay-Vickrey, Commissioner Harding, Commissioner Foster, Commissioner Raspe, Mayor Trefry. Also Present: City Administrator Dave Turner, Fire Chief Mike Card, Building Official Lenny Leggett, Police Chief Kris DiGiovanni, Police Corporal Jamie Buxton, Code Enforcement Officer Barry Goldman, Public Works Department Head Mike Guarino, Administrative Assistant Tammie Anderson, City Attorney Dirk Smits, City Attorney Roget Bryan.*

Public Attendance: 17

2. Agenda Additions, Changes & Deletions: *None.*

3. Administration of Oath to Witnesses: *City Clerk Gransee administered the Oath of Witness to all planning to testify.*

4. Citizen Comments and Correspondence: *None.*

5. Disclosure of Ex-Parte Communications: *None.*

6. Discussion/Approval of a Development Agreement with Garrison Bight Marina Inc, 300/400 Sadowski Causeway, Key Colony Beach:

a. Proof of Legal Publications & Affidavits of Mailing/Posting: *Included in the agenda packet.*

b. Presentation of the Development Agreement: *Planning & Zoning Chair George Lancaster spoke to the Commission on the Recommendations from the Planning & Zoning Board and suggested stipulations.*

c. Statement by Applicant/Applicant's Representative: *Jim Figuerado, owner of Garrison Bight Marina, addressed the Commission on his visions for the marina, restaurant, and retail businesses.*

City Administrator Turner spoke to the Commission in support of the development agreement.

d. Planning & Zoning Board Recommendation: See under b.

e. Commissioner Comments: Commissioner Raspe applauded the owner for his efforts on improving the property but voiced concerns against vacation rentals. Commissioner Raspe gave thoughts on the location of the slips, employee, and long-term housing, and worries on transient housing.

Mayor Trefry elaborated on Commissioner Raspe's comments and gave input on the units square footage and allowable occupancy. Mayor Trefry gave concerns on verifying square footage and asked for documentation from the manufacturer on square footage of the house boats.

Commissioner Raspe continued addressing concerns on existing slips in the residential area and the preferred use of the slips for employee or long-term housing, available parking spaces, and overall concern on the use for vacation rentals.

Vice-Mayor Ramsay-Vickrey thanked the staff for addressing questions and concerns, and stated appreciation for the applicants plan redevelopment. Vice-Mayor Ramsay-Vickrey gave thoughts on landscaping needs along the Causeway to which the applicant agreed.

Commissioner Harding thanked the owner for the proposal and asked about the availability of the boat ramp to residents. The applicant confirmed the use for a fee. Commissioner Harding gave further thoughts on timelines for the application site plan and applicable permits.

Commissioner Foster voiced agreement with Commissioner Harding and gave questions on liveaboards and the overall allowable number of boats. The applicants attorney clarified the timeframe on transient boats to be in accordance with the city's code in addition to the liveaboards. City Attorney Bryan gave information on land-use perspective, residential density, and short-term regulations rentals versus long term rentals.

City Administrator Turner stated agreement with City Attorney Bryan and gave information on hurricane evacuations procedure.

The applicant thanked the Commission for all comments and suggested a compromise on the overall number of liveaboards and the number of vacation rentals and employee housing.

Commissioner Raspe stated this to be a good compromise and gave additional input on the challenges of vacation rentals. The applicant spoke on the point made and expressed flexibility in his views.

Mayor Trefry expressed the importance of a good relationship and concerns on square footage, occupancy, and parking. The applicant gave solutions to the raised concerns including assigned parking and terms in the contract.

Fire Chief Mike Cart asked on available fire suppression and fire alarms on the houseboats and gave concerns on fire safety. The applicant confirmed the houseboats to have smoke alarms and having passed vacation rental requirements.

The applicant gave additional information on hurricane preparations procedures.

Vice-Mayor Ramsay-Vickrey expressed support on the compromise on workforce housing and vacation rentals and asked on hurricane evacuation procedures for work-force housing. City Attorney Bryan explained this to take a degree of cooperation and possible lease provisions for evacuations.

Commissioner Raspe explained his understanding on workforce housing and his opinion for the owners employees to have priority.

Vice-Mayor Ramsay-Vickrey asked on possible stipulations on workforce housing. City Attorney Bryan explained requirements for public hearings and the applicants ability to work with attorneys and informing on the local government not regulating ownership and business model. The applicant explained his support and concerns on possible stipulations.

Commissioner Foster voiced concerns on business regulations and stated not to be in favor of the Commission regulating a business.

Commissioner Harding agreed to limitations on what the government should be doing.

Mayor Trefry asked for further comments from the Commission and Staff.

City Attorney Smits asked for a consensus on agreement to the propositions that were given.

City Attorney Bryan clarified the previously raised question on timelines for permits.

The applicant stated to wait for 12 month until bringing in vacation boat rentals or until the certificate of occupancy is issued for the restaurant. The applicant further confirmed the allowable time for transient slips to be 36 hours.

f. Motion to Approve, Deny, or Approve with Conditions: *Mayor Trefry asked for a motion to approve, deny, or approve with conditions the development agreement with Garrison Bight Marina.*

MOTION: *Motion made by Vice-Mayor Ramsay-Vickrey to approve with the following conditions.*

1. A maximum height not to exceed 43 feet.

2. The restaurant square footage in the agreement to be corrected to 3581 square feet as noted on the site plan.

3. The number of liveboards changed to 7 liveboard vacation rentals and 7 liveboard workforce housing.

Mayor Trefry asked for a second. Commissioner Raspe seconded the motion.

DISCUSSION: *Discussion followed on clarification of workforce housing, income restrictions, priorities for applicants employees, time frame on when vacation rentals are starting, and assignability. Mayor Trefry asked for clarification on the motion and for Vice-Mayor Ramsay-Vickrey to withdraw.*

ON THE MOTION: *Vice-Mayor Ramsay-Vickrey withdrew her motion.*

MOTION: *Motion made by Vice-Mayor Ramsay-Vickrey to approve with the following five conditions.*

1. A maximum height not to exceed 43 feet.

2. The restaurant square footage in the agreement to be corrected to 3581 square feet as noted on the site plan.

3. No more than seven (7) liveboard vacation rentals and seven (7) liveboard workforce housing units.

4. No liveboards should be brought on board for 12 month or until the certificate of occupancy has been issued for the restaurant.

5. Unassignable without consent.

Vice-Mayor Ramsay-Vickrey confirmed the number 4 clause to apply to vacation rentals and workforce housing.

Mayor Trefry asked for a second. Commissioner Raspe seconded the motion.

DISCUSSION: *None.*

ON THE MOTION: *Rollcall vote. Unanimous approval.*

The applicant thanked the Commission.

City Attorney Bryan informed of the Second and Final Public Hearing to be held on May 18th, 2023, at 9:30 am.

7. Other Business

8. Adjournment: *The meeting adjourned at 10:14 am.*

Respectfully Submitted,

Silvia Gransee

City Clerk

EX-PARTE COMMUNICATIONS

An ex-parte communication is defined as:

any contact, conversation, communication, writing, correspondence, memorandum or any other verbal or written communication that takes place outside a public hearing between a member of the public and a member of a quasi-judicial board, regarding matters which are to be heard and decided by said quasi-judicial board.

Site visits and expert opinions are also considered ex-parte communications.

In the event that someone contacts a Board Member about a quasi-judicial matter outside of a public meeting, at such time that particular issue is brought before the Board, the Board Member should state on the record:

- the existence of any ex-parte communication,
- the nature of the communication,
- the party who originated the ex-parte communication, and
- whether or not the ex-parte communication affects your ability to impartially consider the evidence presented.

Similarly, any correspondence received by a Board Member must be forwarded to the Board Clerk.

Note: The term “Board Member” would include all members of the Code Enforcement Board, the Planning & Zoning Committee, and the City Commission when they are acting in a quasi-judicial capacity (for example, but not limited to, code violation hearings and variance hearings).

AFFIDAVIT OF MAILING

STATE OF FLORIDA
COUNTY OF MONROE

Before me, the undersigned authority, personally appeared Cheryl Baker, who, having been first duly sworn according to law, deposes and says:

1. I am the Administrative Assistant to the City Clerk for the City of Key Colony Beach.
2. I hereby confirm that on the 20 day of March, 2023 (no less than 30 days prior to the Planning & Zoning Public Hearing on April 19th, 2023, and the City Commission Public Hearing on May 18, 2023) I mailed the Notice of Hearing by first class U.S. mail to the address on file with the Monroe County Property Appraiser's Office for all property owners within 300 feet of the property at 260 9th Street, Key Colony Beach, Florida, 33051.

Cheryl Baker
Signature

Sworn and subscribed before me this
20th day of March, 2023.

Christine Marie McLeod
Notary Public, State of Florida
My commission expires: 6/5/2026

Personally known

Produced _____ as identification



City of Key Colony Beach

PO Box 510141 Key Colony Beach, Florida • Phone = 305-289-1212 • Fax = 305-289-1767



To: Property Owners within 300 feet of 260 9th Street
From: The City of Key Colony Beach
Planning & Zoning Hearing **and** City Commission Public Hearing for a Variance Request

The City of Key Colony Beach will be holding Public Hearings on:

Planning & Zoning Hearing: Wednesday, April 19, 2023, 9:30 A.M.
City Commission Public Hearing: Thursday, May 18, 2023, 9:30 A.M.

NOTICE IS HEREBY GIVEN that the City of Key Colony Beach, Florida, will hold a **Planning & Zoning Hearing on Wednesday, April 19, 2023, at 9:30 A.M.**, and a **City Commission Public Hearing, on May 18, 2023, at 9:30 A.M.**, at the

**City of Key Colony Beach Temporary Meeting Place at the
Key Colony Inn Banquet Room,
located at 700 W. Ocean Drive, Key Colony Beach, Florida, 33051,**

to hear a Variance Request from Shawn M. and Donna Saban Ogni, owners of the property located at 260 9th Street, Key Colony Beach, Florida 33051. This meeting will be available virtually via Zoom Meetings. Members of the public who wish to attend virtually may email cityclerk@keycolonybeach.net or call 305-289-1212, Ext. 2 for further instructions on attending via Zoom Meetings.

Applicant requests a variance to the City of Key Colony Beach Code of Ordinances Chapter 101, Section 26 (11), to allow the installation of a pool within the 10' setback to 5'. Current setback requirements are 10' feet.

Interested parties may attend the Hearing and be heard with respect to the requested variance. If any person decides to appeal any decision made by the City Commission of the City of Key Colony Beach with respect to any matter considered at the Variance Hearing, that person will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

If you are unable to attend the Hearings on Wednesday, April 19, 2023, or Thursday, May 18, 2023, but wish to comment, please direct correspondence to P.O. Box 510141, Key Colony Beach, FL 33051, or cityclerk@keycolonybeach.net, and your comments will be entered into the record.

Mailed: On or before Monday, March 20th, 2023

AFFIDAVIT OF POSTING

STATE OF FLORIDA
COUNTY OF MONROE

Before me, the undersigned authority, personally appeared Cheryl Baker, who, having been first duly sworn according to law, deposes and says:

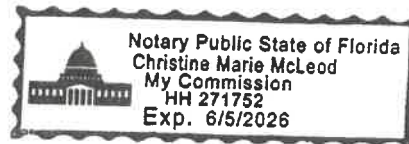
1. I am the Administrative Assistant to the City Clerk for the City of Key Colony Beach.
2. I hereby confirm that on the 3 day of April, 2023 (no less than 14 days prior to the Planning & Zoning Public Hearing on April 19th, 2023, and the City Commission Public Hearing on May 18, 2023) I posted the Notice of Hearing for the property at 260 9th Street, Key Colony Beach, Florida, 33051, at the Postal Office and City Hall.

Cheryl Baker

Signature

Sworn and subscribed before me this
3rd day of April, 2023.

Christina Marie McLeod
Notary Public, State of Florida
My commission expires: 6/5/2026



Personally known

Produced _____ as identification



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Posted: On or before Wednesday, April 5, 2023



Published Weekly
Marathon, Monroe County, Florida

PROOF OF PUBLICATION

**STATE OF FLORIDA
COUNTY OF MONROE**

Before the undersigned authority personally appeared **JASON KOLER** who on oath, says that he is **PUBLISHER** of the **WEEKLY NEWSPAPERS**, a weekly newspaper published in Marathon, in Monroe County, Florida; that the attached copy of advertisement was published in said newspaper in the issues of: (date(s) of publication)

April 6, 2023

Affiant further says that the said **WEEKLY NEWSPAPERS** is a newspaper published at Marathon, in said Monroe County, Florida, and that the said newspaper has heretofore been continuously published in said Monroe County, Florida, once each week (on Thursday) and has been qualified as a second class mail matter at the post office in Marathon, in Monroe County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement. The affiant further says that he has neither paid nor promised any person, firm, or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper(s) and that The Weekly Newspapers is in full compliance with Chapter 50 of the Florida State Statutes on Legal and Official Advertisements.

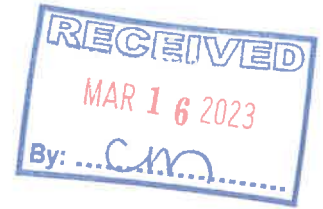
Sworn to and subscribed before me this day of April 6, 2023
(SEAL)


Notary



PUBLIC MEETING NOTICE
The City of Key Colony Beach will be holding Public Hearings on:
Planning & Zoning Hearing
Wednesday, April 19, 2023, 9:30 A.M.
City Commission Public Hearing
Thursday, May 18, 2023, 9:30 A.M.
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Publish:
April 6, 2023
The Weekly Newspapers

CITY OF KEY COLONY BEACH
P.O. BOX 510141
KEY COLONY BEACH, FL 33051-0141
305-289-1212 FAX: 305-289-1767



APPLICATION FOR VARIANCE

APPLICANT: Shawn M and Donna Saban Ogni

Property Owner Name

Phone Number

260 9th Street Key Colony Beach, FL 33051

58 9

Key Colony Beach 1st Add

Street Address of Variance

Lot Block Subdivision

150 West Rd. Angier, NC 27501

Mailing Address of Property Owner

Owners may have an agent complete this application and represent them at the hearings. In this case, owners must attach to this application a written, signed statement stating the name of the individual or business that may represent them in this matter.

Lisette Llago Guerrero (Amazing Pools of the Keys) 305-440-3282

Agent Name

Agent Phone Number

VARIANCE REQUESTED to: Land Development Regulations Chapter _____, Section _____
Code of Ordinances Chapter _____, Section _____

DESCRIPTION OF VARIANCE: Please describe the variance request in regard to type of structure, location on lot, distance from side, rear or front lot lines, or details of the variance, including the current rule in effect and the reason for the variance (for example, building would encroach into the setback by _____ feet). Also state if this is for future construction or existing conditions.

Swimming pool would encroach in the setback by 5 feet, only in the right side of the lot.

Please attach the following to this application:

- A sketch or site plan of the property showing the variance requested.
- Written responses to the five criteria (questions attached).
- Fee of \$700.00

Signature of Applicant

Office Use Only

Date Filed 3-20-23

Date Paid 3-17-23 Check # online

Variance granted / denied on (date) _____

Signature of City Official

*OK To move forward To p2
3/20/23*

Applicant Questions and Responses-

Summarizing Land Development Code 101-171 (5)(a): Variances shall be approved only if the applicant can demonstrate a good and sufficient cause, that denial would result in unnecessary hardship, it will not be contrary to the public interest, that special conditions exist, and that it will not confer any special privilege on the applicant. Please see the attached pages for the entire city codes relating to Variances.

To assist the Planning & Zoning Committee and City Commission in evaluating this variance request, please answer the following questions:

1. What is the "good and sufficient cause" that explains why this variance should be granted?

Need to build a pool, but having 10' setbacks on each side, it is impossible to have it done. We understand that others residences from KCB have been approved.

2. What are the unnecessary hardships that would result if the variance is not granted?

We will not be able to build a pool due to the small area.

3. If this variance is granted, would there be any increase to public expense that would not otherwise occur? Would it create a threat to public health and safety? Would it create a nuisance? Or cause fraud or victimization of the public?

No, there would not be any increase to public expense. No, it would not to create a treat to public health and safety. No, it would not create any nuisance. And it will not to cause fraud or victimization of the public.

4. What are the unique or peculiar physical/geographical circumstances or conditions that apply to this property, but do not apply to other properties in the same zoning district?

Space, many other Duplex have gone the OK with the extra 5'setbacks.

5. If the variance is granted, would it confer upon the applicant any special privilege that is denied to other properties in the immediate neighborhood in terms of the established development pattern?

We feel that every homeowner should be treater equal, we all live in the same community and we all paid taxes.

Office Use Only

Comments and Recommendation of the Building Official

Applicant Questions and Responses-

LAND DEVELOPMENT REGULATIONS - Section 101-171. Variances.

(1) **Initiation.** Any owner, agent, lessee or occupant of land or a structure may apply in writing to the city clerk for a variance, on that land, from the requirements of this chapter, except that no request for a use variance will be considered. Details must be included with the request and be filed with the city clerk together with the established fee for a variance. If the applicant is other than the owner of the property, the written consent of the owner for the variance requested must be submitted with the application. When the petitioner is a public agency, the city commission may authorize the waiver or reduction of the fee.

(2) **Planning and zoning committee procedure.**

- (a) Upon receipt of a written request, the city clerk will deliver the request to the planning and zoning committee.
- (b) The planning and zoning committee shall make an investigation of the conditions pertaining to the requested variance in advance of the public hearing by the city commission. This investigation shall be at a duly noticed meeting. Mailing of notice of the meeting shall be made by the city to all property owners within three hundred (300) feet of the boundaries of the property which is the subject of the variance request.
- (c) The planning and zoning committee, shall make their recommendation to the city commission in writing, based upon the standards in (5) below. They may recommend approval or disapproval of the variance or may recommend approval of the same subject to such specified conditions as it may deem to be necessary or advisable in furtherance of the provisions of this chapter. Reasons for the recommendation shall be stated.

(3) **City commission procedure.**

- (a) After receipt of the planning and zoning committee report, the city commission shall give notice in a newspaper stating the date, time and place of a city commission public hearing as provided for in section 101-173.
- (b) After their public hearing the city commission may approve or disapprove the requested variance or may approve the same subject to specified conditions as it may deem to be necessary or advisable in furtherance of the provisions of the zoning ordinance. If the applicant desires to present evidence not presented to the planning and zoning committee, the matter shall be returned to the planning and zoning committee for further deliberation and recommendation unless the city commission finds by majority vote that the new evidence is insignificant or unsubstantial.
- (c) The commission shall state reasons for their decision, based on the standards detailed in (5) below.
- (d) The decision of the city commission shall be final. No new request for similar action concerning the same property may be made to the city commission or planning and zoning committee for a period of not less than six (6) months after the date of said decision by the city commission.

(4) **Effective period.**

A building permit application must be submitted within twelve (12) months of variance approval otherwise the approval expires. Any extension of up to twelve (12) months may be granted by the city commission for good cause.

Applicant Questions and Responses-

(5) Standards for granting variances.

(a) Specific criteria:

- (1) The applicant shall demonstrate a showing of good and sufficient cause;
- (2) Failure to grant the variance would result in unnecessary hardship to the applicant;
- (3) Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;
- (4) Property has unique or peculiar circumstances, which apply to this property, but which do not apply to other properties in the same zoning district;
- (5) Granting the variance will not give the applicant any special privilege denied other properties in the immediate neighborhood in terms of established development patterns.

(b) Recommendations to the city commission.

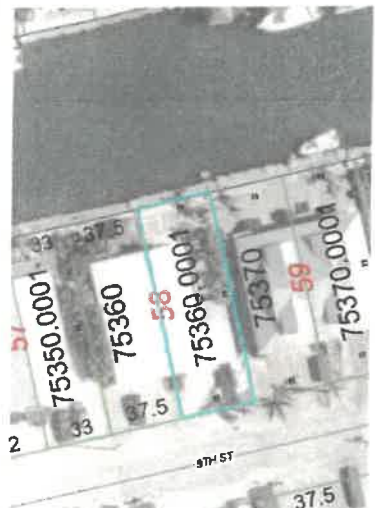
- (1) If all 5 specific criteria are met, then the planning & zoning committee shall recommend approval to the city commission. Approval by the city commission would be by majority vote of the city commission.
If the planning & zoning committee finds the five (5) specific criteria are not met, they shall recommend disapproval of the variance unless they specifically find that the granting of the variance will have minimal adverse effect on other citizens of the city or on the city. Approval of a variance where all five (5) specific criteria are not met shall require a favorable vote of four-fifths (4/5) of the city commission.
- (2) Conditions: The planning and zoning committee may recommend, and the city commission may prescribe, appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.
- (3) Use Variance: Under no circumstances shall the city commission grant a variance to permit a use not generally permitted in the zoning district. No nonconforming use of neighboring lands, structures or buildings in the 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.

DATE: _____
 DRAWN BY: _____
 CHECKED BY: _____
 DATE: _____

OPJD Architect, LLC
 ORLANDO
 PEREZ JR
 ARCHITECT
 2600 5TH ST, SUITE 100
 ORLANDO, FL 32803
 407-512-0000



OWNER: DONNA S. & SHAWN H. OGNI
PROJECT: A SWIMMING POOL FOR
 2600 5TH ST, KEY COLONY BEACH, FL 32801
 DATE: 02/27/2023
 DRAWN BY: YFF
 C-0



STORM WATER RETENTION WORKSHEET

LOT: 58 BLOCK: 9 SUBDIVISION: KEY COLONY FIRST ADDITION
 PHYSICAL ADDRESS: 2600 5TH ST, 32803 OWNER NAME: DONNA S. & SHAWN H. OGNI

PREVIOUSLY IMPROVED AREAS:
 (A) MAIN FILL: 128' x 128' = 16,384 sq. ft.
 (B) INT. AREA: 488' x 128' = 62,464 sq. ft.

(C) CUBIC FEET REQUIRED, SITE AREA: 16,384' x 0.25' = 4,096'³
 (D) MAIN FILL: 128' x 128' x 12' = 204,800'³
 (E) INTERFLOWS AREA: 128' x 128' x 12' = 204,800'³
 (F) CUBIC FEET REQUIRED, INTERFLOWS AREA: 204,800'³ + 4,096'³ = 208,896'³

(G) STORMWATER TREATMENT VOLUME (GREATER OF C OR F): 208,896'³

(H) Stormwater treatment discharge facilities shall discharge directly to sensitive receiving water bodies. If discharge to a sensitive receiving water body is not possible, the owner shall provide a secondary treatment facility. The owner shall provide a secondary treatment facility to the extent that the owner deems appropriate. The owner shall provide a secondary treatment facility to the extent that the owner deems appropriate. The owner shall provide a secondary treatment facility to the extent that the owner deems appropriate.

TOTAL CUBIC FEET REQUIRED: 208,896'³

PREVIOUSLY IMPROVED SITE:
 (1) NEW INTERFLOWS AREA: 488' x 128' = 62,464'²
 (2) MAIN FILL: 128' x 128' = 16,384'²
 (3) CUBIC FEET REQUIRED, INTERFLOWS AREA X RAINFALL: 62,464'² x 1.1 x 1.1 = 78,400'³
 (4) Stormwater treatment discharge facilities shall discharge directly to sensitive receiving water bodies. If discharge to a sensitive receiving water body is not possible, the owner shall provide a secondary treatment facility. The owner shall provide a secondary treatment facility to the extent that the owner deems appropriate. The owner shall provide a secondary treatment facility to the extent that the owner deems appropriate. The owner shall provide a secondary treatment facility to the extent that the owner deems appropriate.

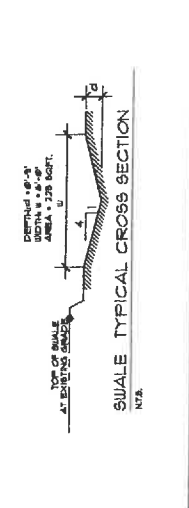
TOTAL CUBIC FEET REQUIRED: 78,400'³

(5) CUBIC FEET REQUIRED: 78,400'³

(6) SQUARE FEET CROSS SECTIONAL AREA: 235' x 128' = 30,080'²
 (7) SWALE LENGTH: 128' x 128' = 16,384'²

(8) SWALE LENGTH: 128' x 128' = 16,384'²

(9) SQUARE FEET CROSS SECTIONAL AREA: 128' x 128' = 16,384'²



ARCHITECT'S NOTES

1. THE DESIGN IS BASED ON THE ARCHITECT'S PROFESSIONAL KNOWLEDGE AND BELIEFS. THE ARCHITECT DOES NOT WARRANT THAT THE DESIGN WILL BE FREE FROM ERRORS OR OMISSIONS. THE ARCHITECT'S LIABILITY IS LIMITED TO THE DESIGN SERVICES PROVIDED BY THE ARCHITECT.

2. THE OWNER IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES. THE ARCHITECT IS NOT RESPONSIBLE FOR OBTAINING THESE PERMITS AND APPROVALS.

3. THE ARCHITECT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE OWNER. THE ARCHITECT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE OWNER.

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9. THE ARCHITECT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE OWNER. THE ARCHITECT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE OWNER.

10. THE ARCHITECT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE OWNER. THE ARCHITECT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE OWNER.

REAR SETBACK CALC

5180 FEET X 20 FEET REAR SETBACK = 103,600 SQ. FT.
 ALLOWED 65% = 67,340 SQ. FT. ALLOWED

PROPOSED POOL INTO REAR SETBACK = 14,800 SQ. FT.
 EXISTING CONC. BEYOND INTO REAR SETBACK = 81,540 SQ. FT.
 TOTAL AREA INTO REAR SETBACK = 96,340 SQ. FT. < 103,600 SQ. FT. OK

SWALE NOTES

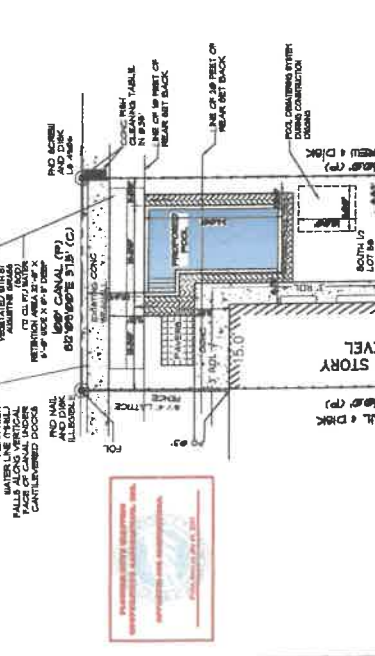
1. SWALE LENGTH MUST BE GREATER THAN ITS WIDTH.
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 8. SWALE LENGTH MUST BE GREATER THAN ITS WIDTH.
 9. SWALE LENGTH MUST BE GREATER THAN ITS WIDTH.
 10. SWALE LENGTH MUST BE GREATER THAN ITS WIDTH.

OPEN SPACE CALCULATION TOTAL LOT AREA = 4,126 SQ. FT.

- RESIDENCE (STAIR NOT THIS PERMIT)	• 868 SQ. FT. = 21%
- EXISTING CONC. DRIVEWAY / EXTERIOR AREAS	• 284 SQ. FT. = 7%
- EXISTING CONC. BEYOND	• 141 SQ. FT. = 3.4%
- EXISTING CANOPY	• 50 SQ. FT. = 1.2%
- POOL DECK	• 21 SQ. FT. = 0.5%
TOTAL INTERFLOWS AREA	• 1,374 SQ. FT. = 33.3%
REQUIRED OPEN SPACE = 26	
INTERFLOWS AREA = 26	
PROPOSED OPEN SPACE AREA = 1,304 SQ. FT. = 44.44%	

FLOOD ZONE INFORMATION

ALL ACCESSORY STRUCTURES WITHIN THE SHORELINE SETBACK SHALL BE CONSIDERED TO BE FOUNDATION HEIGHTS TO EXCEED 18 INCHES ABOVE GRADE.



LEGAL DESCRIPTION

THE SOUTHERLY 1/2 OF LOT 58, BLOCK 9, ATTENDED FLAT OF KEY COLONY BEACH FIRST ADDITION, ATTENDED FLAT, ACCORDING TO THE PUBLIC RECORDS OF HONORABLE COUNTY, FLORIDA.

COMPLIANCE WITH THE FLORIDA BUILDING CODE TO THE EXTENT THAT IT APPLIES TO THE PROJECT AND PROFESSIONAL JUDGMENT TO BE MADE WITH THE REQUIREMENTS OF THE FLORIDA BUILDING RESIDENTIAL CODE (FBC) 10th EDITION, 2020.

UNIT AREA

PROPOSED SWALE	18.00
PROPOSED POOL DECK	21.00

STRUCTURAL DESIGN CRITERIA

ASCE 7-16/18
 BASIC WIND VELOCITY = 160 MPH, AT A HEIGHT OF 30 FEET.
 RISK CATEGORY II

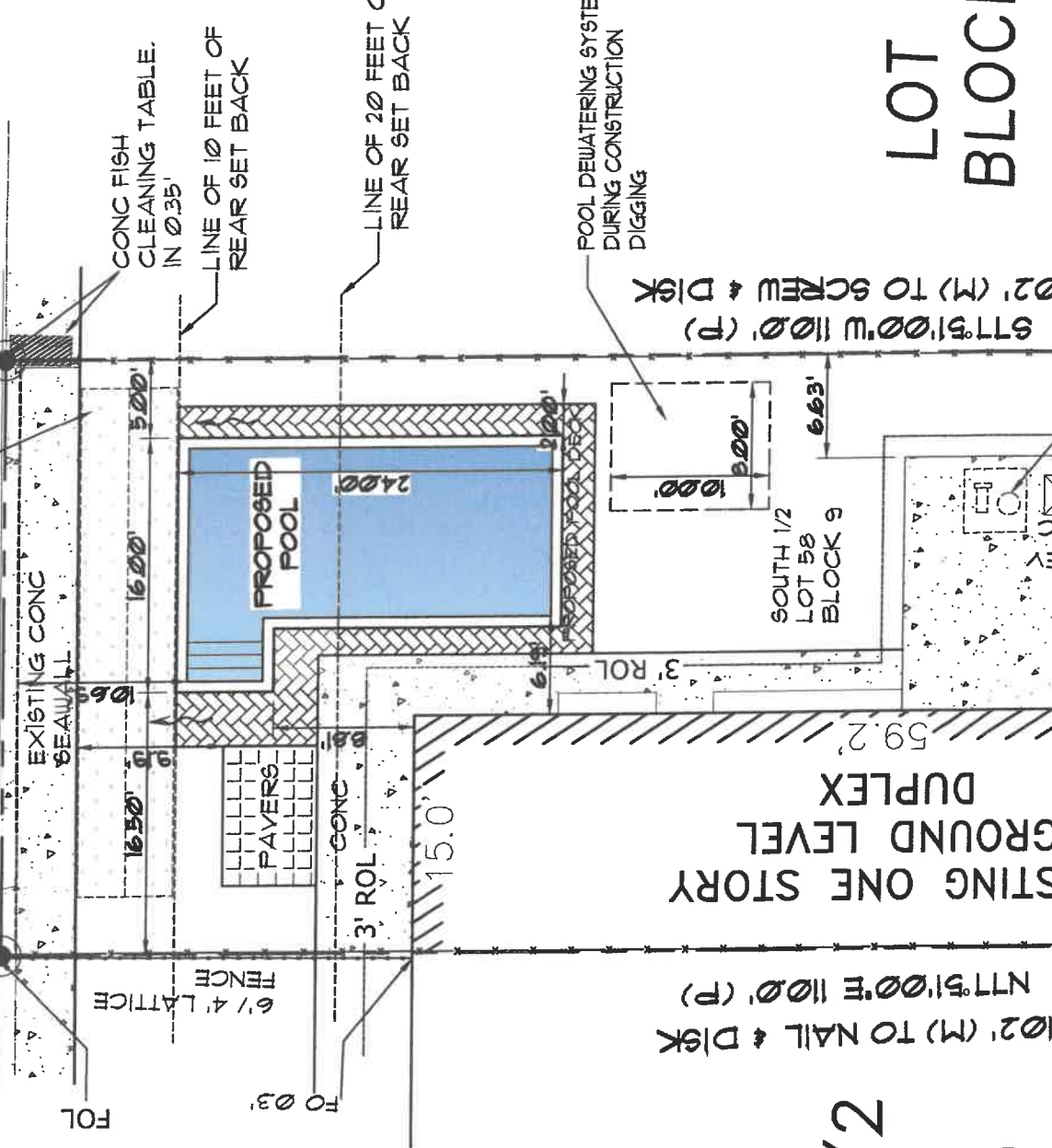
SUALES TO BE
VEGETATED WITH ST
AUGUSTINE GRASS
(SOD)
(12 CU. FT.) WATER
RETENTION AREA 32'-0" X
6'-0" WIDE X 0'-9" DEEP

100' CANAL (P)
S12°09'00"E 375' (C)

MEAN HIGH
WATER LINE (MHWL)
FALLS ALONG VERTICAL
FACE OF CANAL UNDER
CANTILEVERED DOCKS

END NAIL
AND DISK
ILLEGIBLE

END SCREW
AND DISK
LS 4906



STING ONE STORY
GROUND LEVEL
DUPLEX

02' (M) TO NAIL & DISK
N17°51'00"E 1100' (P)

02' (M) TO SCREW & DISK
S17°51'00"W 1100' (P)

NORTH 1/2
LOT 58
BLOCK 9

LOT
BLOCK

City of Key Colony Beach

P.O. Box 510141, Key Colony Beach, FL 33051-0141 • Phone: 305-289-1212
Fax: 305-289-0247
www.keycolonybeach.net



April 19, 2023

To: The City of Key Colony Beach Board of Commissioners

From: The Key Colony Beach Planning & Zoning Board

Re: 260 9th Street, Shawn M. & Donna Saban Ogni

The Planning & Zoning Board heard the applicant's request for a variance to the City of Key Colony Beach Code of Ordinances Chapter 101, Section 26 (11), to allow the installation of a pool within the 10' setback to 5'. Current setback requirements are 10' feet.

Post Hearing Questions Results:

- | | |
|------------------------------|--|
| 1) Chair George Lancaster | Yes on all 5 (five) Post Hearing Questions |
| 2) Vice-Chair Tom DiFransico | Yes on all 5 (five) Post Hearing Questions |
| 3) Board Member Mike Yunker | Yes on all 5 (five) Post Hearing Questions |
| 4) Board Member Lin Walsh | **absent** |
| 5) Board Member Bob Glassman | Yes on all 5 (five) Post Hearing Questions |

MOTION: Motion made by Mike Yunker to recommend for the requested variance for 260 9th Street to be approved. Bob Glassman seconded the motion.

DISCUSSION: None.

ON THE MOTION: Rollcall vote. Unanimous approval.

Final Recommendation: The Planning & Zoning Board recommends to the City of Key Colony Beach Board of Commissioners for the requested variance for the property at 260 9th Street to be approved.


George Lancaster, Chair

MINUTES
PLANNING & ZONING BOARD
REGULAR MEETING & PUBLIC HEARING

Wednesday, April 19, 2023 - 9:30 a.m.

Key Colony Inn Banquet Room & virtually via Zoom Conferencing

1. Call to Order, Pledge of Allegiance & Roll Call: *The Regular Meeting and Public Hearing of the Key Colony Beach Planning & Zoning Board was called to order by Chair Lancaster at 9:30 am followed by the Pledge of Allegiance and Rollcall. Present: Chair George Lancaster, Vice-Chair Tom DiFransico, Bob Glassman, Mike Yunker. Absent: Lin Walsh. Also Present: City Administrator Dave Turner, City Clerk Silvia Gransee, Building Official Lenny Leggett, City Attorney Roget Bryan, City Attorney Janette Smith (virtual).*

Public Attendance: 2

2. Agenda Additions, Deletions, or Changes: *None.*

3. Citizen Comments & Correspondence: *None.*

4. Approval of Minutes: *The Planning & Zoning Board Meeting Minutes from January 18, 2023, were adopted by motion.*

MOTION: *Motion made by Tom DiFransico to adopt the Planning & Zoning Board meeting minutes from January 18, 2023.*

DISCUSSION: *None.*

ON THE MOTION: *Rollcall vote. Unanimous approval.*

5. Administration of Oath of Witnesses: *City Clerk Gransee administered the Oath of Witness to all planning to testify.*

6. Disclosure of Ex-Parte Communication: *None.*

7. VARIANCE REQUEST: 260 9th Street, Shawn M. & Donna Saban Ogni

Applicant requests a variance to the City of Key Colony Beach Code of Ordinances Chapter 101, Section 26 (11), to allow the installation of a pool within the 10' setback to 5'. Current setback requirements are 10' feet.

a. Proof of Legal Publications & Affidavits of Mailing/Posting: *Included in the agenda packet.*

b. Presentation of Variance Request: *Building Official Leggett presented the Variance Request to the Board and informed that similar requests have been approved in the past. The Building Official further confirmed that the property in question is not part of the recently approved Ordinance on pool side setback changes. Building Official Leggett stated that the Building Department has no reason not to approve the requested variance and confirmed that neighbors are in support. Discussion followed on the location of the pool, possible alternative locations, and dimensions.*

c. Statement by Applicant: The Applicant's representative was not present.

d. Applicant Questions & Responses: Chair Lancaster read the Applicants 'Questions and Responses'.

e. Post Hearing Questions: City Clerk Gransee read the Post-Hearing questions.

1.) Has the applicant shown good and sufficient cause to grant the variance?

Mike Yunker Yes
George Lancaster Yes
Lin Walsh **absent**
Tom DiFransico Yes
Bob Glassman Yes

2.) Will denial of the variance result in unnecessary hardship to the applicant?

Bob Glassman Yes
George Lancaster Yes
Lin Walsh **absent**
Tom DiFransico Yes
Mike Yunker Yes

3.) Granting this variance will not result in public expense, a threat to public health & safety and it will not create a threat to or nuisance, or cause fraud or victimization of the public?

Lin Walsh **absent**
Bob Glassman Yes
Tom DiFransico Yes
Mike Yunker Yes
George Lancaster Yes

4.) The property has unique or peculiar conditions or circumstances to this property that do not apply to other properties in the same zoning district.

Tom DiFransico Yes
Mike Yunker Yes
Bob Glassman Yes
George Lancaster Yes
Lin Walsh **absent**

5.) Granting this variance would not confer any special privileges in terms of established development in the immediate neighborhood?

Mike Yunker Yes
George Lancaster Yes
Lin Walsh **absent**
Bob Glassman Yes
Tom DiFransico Yes

Discussion followed on the number of side setback pool variances approved in the last year and the reason behind not all zones having the same regulations.

f. Planning & Zoning Board Recommendation: Chair Lancaster asked for a motion.

MOTION: Motion made by Mike Yunker to recommend for the requested variance for 260 9th Street to be approved. Bob Glassman seconded the motion.

DISCUSSION: None.

ON THE MOTION: Rollcall vote. Unanimous approval.

Final Recommendation: The Planning & Zoning Board recommends to the City of Key Colony Beach Board of Commissioners for the requested variance for the property at 260 9th Street to be approved.

8. DEVELOPMENT AGREEMENT REQUEST by Garrison Bright Marina Inc, 300/400 Sadowski Causeway, Key Colony Beach:

Applicant requests approval of a Development Agreement pursuant Chapter 101 of Land Development Regulations Article XII, Section 101-176, seeking approval for redevelopment of an existing marina property. The project combines the two (2) properties located at 400 Sadowski Causeway and adjacent 300 Sadowski Causeway, Key Colony Beach into one property (the "Property") that will continue to operate a marina facility as its principal use. The proposed marina facility would comprise (a) a marina and ship store, (b) live-aboard vessel slips and other temporary docking facilities, (c) redevelopment of one (1) 3,894 sq. foot restaurant and (d) renovation of existing commercial 6,465 sq. ft building on the Property. New Restaurant will be tiki style construction and new finished floor will meet current flood zone regulations. The maximum height of structures on the property shall be ~~40~~ 45 feet in accordance with building plans and permits issued by the City. The unified Property is zoned B-1 Neighborhood Business District and comprises approximately 1.75 acres with a maximum allowable density of 8 units per acre. The request was submitted by Greg Oropeza, Esq., Oropeza, Stones & Cardenas, 221 Simonton Street, Key West, Florida 33040.

a. Proof of Legal Publications & Affidavits of Mailing/Posting: Included in the agenda packet.

b. Presentation of Development Agreement: City Administrator Turner introduced the agenda item to the Board.

City Attorney Roget Bryan introduced himself to the Board and informed on having had conversations with individual Board Members to answer questions on the topic. City Attorney Roget continued explaining that the Development Agreement will be presented at two City Commission Public Hearings with two separate readings according to statute.

City Attorney Bryan explained and clarified details of the agreement including the site plan, square footage, number of liveboards, and the maximum height.

c. Statement by Applicant: The applicant introduced himself to the Board and explained his future plans for the property.

d. Discussion: City Attorney Bryan and the applicants representatives answered questions on the terms of the development agreement, maximum height, and flood level requirements. The Board continued asking questions on aesthetics and height, the site plan, outside seating, elevation questions, and weekly rentals vs. long-term rentals which were answered by the City Attorney, the City Administrator, and the applicants

representative.

Discussion continued on short-term vacation rentals, occupancy restrictions per vessel and bedrooms, number of maximum liveaboard vessels, and additional boats being allowed for a short period of time. The Board continued asking questions on pump-out requirements, preparations in case of a hurricane, and water integrity of the vessel.

The Board continued asking questions on future plans for the Dive Center and anticipated renovations for the strip center including landscaping, the number of stories, elevation requirements for the AE-7 flood zone, elevation of the restaurant, parking, fuel tanks, location of the kitchen, and the availability of a liquor license.

Chair Lancaster asked the Board on discussion for a recommendation of approval. Discussion followed on a maximum height with the applicant's Architect giving input on suggested maximum heights. City Attorney Bryan informed of current code restrictions and the applicant falling within the code. Discussion continued on suggested maximum height restrictions, approved Land Development Regulations, and approved building heights by Code.

The applicants representative suggested 43 feet as a compromise for the maximum building height and confirmed the maximum height would apply to the Restaurant Tiki for the roof pitch and water shed.

e. Planning & Zoning Board Recommendation: Chair Lancaster asked for a motion.

MOTION: Motion made by Tom DiFransico to recommend for the Development Agreement for 300/400 Sadowski Causeway to be approved as written with two recommended (2) modifications. Mike Yunker seconded the motion.

1. Term of the agreement is set for 5 years.
2. Maximum height not to exceed 43 feet.

DISCUSSION: Discussion followed on an amendment to the motion.

AMENDED MOTION: Amended motion made by Tom DiFransico to include two (2) additional modifications. Mike Yunker seconded the amended motion.

1. The square footage for the restaurant referenced in the agreement is corrected from 3894 to 3581 as reflected on the site plan.
2. No more than 10 live-aboard vessels.

FURTHER DISCUSSION: Additional discussion followed on square footage.

ON THE MOTION: Rollcall vote. Unanimous approval.

Recommendation: The Planning & Zoning Board recommends to the City of Key Colony Beach Board of Commissioners for the requested Development Agreement for the property at 300/400 Sadowski Causeway to be approved as written with the following four (4) modifications.

1. Term of the agreement is set for 5 years.
2. Maximum height not to exceed 43 feet.
3. The square footage for the restaurant referenced in the agreement is corrected from 3894 to 3581 as reflected on the site plan.
4. No more than 10 Live-Aboard Vessels.

9. Discussion/Approval: Recommendation to the City Commission to amend the Schedule of Violations and Penalties as set forth in in Ordinance No. 2021-467 adopted October 28, 2021: City Administrator Turner introduced the agenda item and explained the reasoning for the Planning & Zoning Board to review the agenda item. Vice-Chair DiFransico raised the question on increasing penalties for recurring violations. City Attorney Smith explained statutory requirements for repeat violations and the reason why the fee is being lowered.

City Administrator Turner explained progressive discipline for repeat violations in addition to monetary fines.

Chair Lancaster asked for a motion.

MOTION: *Motion made by Mike Yunker to recommend the approval of the revised Schedule of Violations and Penalties. Tom DiFransico seconded the motion.*

DISCUSSION: *None.*

ON THE MOTION: *Rollcall vote. Unanimous approval.*

10. Other Business: *Vice-Chair DiFransico asked for a review of the adopted Comprehensive Plan at the next meeting.*

11. Adjourn: *The meeting adjourned at 10:23 am.*

Respectfully submitted,

Silvia Gransee

City Clerk

AFFIDAVIT OF POSTING

STATE OF FLORIDA
COUNTY OF MONROE

Before me, the undersigned authority, personally appeared Cheryl Baker, who, having been first duly sworn according to law, deposes and says:

1. I am the Administrative Assistant to the City Clerk for the City of Key Colony Beach.
2. I hereby confirm that on the 26 day of April, 2023 (no less than 14 days prior to the Second and Final City Commission Public Hearing on May 18th, 2023) I posted the Notice of Hearing for the property at 300/400 Sadowski Causeway at the United States Postal Office and at City Hall.

Cheryl Baker

Signature

Sworn and subscribed before me this
26 day of April, 2023.

Christine Marie McLeod
Notary Public, State of Florida
My commission expires: 6/5/2026



Personally known

Produced _____ as identification



PUBLIC NOTICE FOR THE SECOND & FINAL PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City of Key Colony Beach, Florida, will hold its

**Second and Final Public Hearing on Thursday, May 18th, at 9:30 A.M.,
at the City of Key Colony Beach Temporary Meeting Place at the Key Colony Inn Banquet
Room, located at 700 W. Ocean Drive, Key Colony Beach, Florida,**

to consider a Development Agreement with Garrison Bight Marina Inc, 300/400 Sadowski Causeway, Key Colony Beach. This meeting will be available virtually via Zoom Meetings. Members of the public who wish to attend virtually may email cityclerk@keycolonybeach.net or call 305-289-1212, Ext. 2 for further instructions on attending via Zoom Meetings.

Applicant requests approval of a Development Agreement pursuant to Chapter 101 of Land Development Regulations Article XII, Section 101-176, seeking approval for redevelopment of an existing marina property. The project combines the two (2) properties located at 400 Sadowski Causeway and adjacent 300 Sadowski Causeway, Key Colony Beach into one property (the "Property") that will continue to operate a marina facility as its principal use. The proposed marina facility would comprise (a) a marina and ship store, (b) live-aboard vessel slips and other temporary docking facilities, (c) redevelopment of one (1) ~~3,894~~ **3581** sq. foot restaurant and (d) renovation of existing commercial 6,465 sq. ft building on the Property. New Restaurant will be tiki style construction and new finished floor will meet current flood zone regulations. The maximum height of structures on the property shall be ~~40~~ **43** feet in accordance with building plans and permits issued by the City. The unified Property is zoned B-1 Neighborhood Business District and comprises approximately 1.75 acres with a maximum allowable density of 8 units per acre. The request was submitted by Greg Oropeza, Esq., Oropeza, Stones & Cardenas, 221 Simonton Street, Key West, Florida 33040.

This notice is made under the provisions of Chapter 163.3225, Florida Statutes. The Development Agreement may be inspected by the public and a copy obtained by contacting the City Clerk. These matters are subject to quasi-judicial rules of procedure. Interested parties should limit contact with the City Commission on this topic to properly noticed public hearings or to written communications to the City Clerk. All interested parties are hereby advised that they may appear at said meetings and be heard with respect to said agreement.

If any person decides to appeal any decision made by the City Commission of the City of Key Colony Beach with respect to any matter considered at the Hearing, that person will need a record



of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

If you are unable to attend the Hearing on Thursday, May 18, 2023, but wish to comment, please direct correspondence to P.O. Box 510141, Key Colony Beach, FL 33051, or cityclerk@keycolonybeach.net . and your comments will be entered into the record.

City Clerk, City of Key Colony Beach

Published: On or before May 8, 2023

Posted: On or before May 4, 2023



Published Weekly
Marathon, Monroe County, Florida

PROOF OF PUBLICATION

**STATE OF FLORIDA
COUNTY OF MONROE**

Before the undersigned authority personally appeared JASON KOLER who on oath, says that he is PUBLISHER of the WEEKLY NEWSPAPERS, a weekly newspaper published in Marathon, in Monroe County, Florida; that the attached copy of advertisement was published in said newspaper in the issues of: (date(s) of publication)

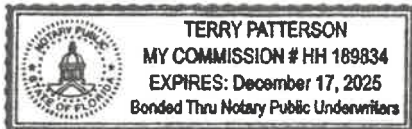
May 4, 2023

Affiant further says that the said WEEKLY NEWSPAPERS is a newspaper published at Marathon, in said Monroe County, Florida, and that the said newspaper has heretofore been continuously published in said Monroe County, Florida, once each week (on Thursday) and has been qualified as a second class mail matter at the post office in Marathon, in Monroe County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement. The affiant further says that he has neither paid nor promised any person, firm, or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper(s) and that The Weekly Newspapers is in full compliance with Chapter 50 of the Florida State Statutes on Legal and Official Advertisements.

Jason Koler

Sworn to and subscribed before me this day of May 4, 2023
(SEAL)

Terry Patterson
Notary



PUBLIC HEARING NOTICE
PUBLIC NOTICE FOR THE SECOND & FINAL PUBLIC HEARING
NOTICE IS HEREBY GIVEN that the City of Key Colony Beach, Florida, will hold its Second and Final Public Hearing on Thursday, May 18th, at 9:30 A.M., at the City of Key Colony Beach Temporary Meeting Place at the Key Colony Inn Banquet Room, located at 700 W. Ocean Drive, Key Colony Beach, Florida, to consider a Development Agreement with Garrison Bight Marina Inc, 300/400 Sadowski Causeway, Key Colony Beach. This meeting will be available virtually via Zoom Meetings. Members of the public who wish to attend virtually may email cityclerk@keycolonybeach.net or call 305-289-1212. Ext. 2 for further instructions on attending via Zoom Meetings. Applicant requests approval of a Development Agreement pursuant to Chapter 101 of Land Development Regulations Article XII, section 101.176, seeking approval for redevelopment of an existing marina property. The project combines the two (2) properties located at 400 Sadowski Causeway and adjacent 300 Sadowski Causeway, Key Colony Beach into one property (the "Property") that will continue to operate a marina facility as its principal use. The proposed marina facility would comprise (a) a marina and ship store, (b) live-aboard vessel slips and other temporary docking facilities, (c) redevelopment of one (1) 3,894 3581 sq. foot restaurant and (d) renovation of existing commercial 6,465 sq. ft building on the Property. New Restaurant will be tiki style construction and new finished floor will meet current flood zone regulations. The maximum height of structures on the property shall be 40-43 feet in accordance with building plans and permits issued by the City. The unified Property is zoned B-1 Neighborhood Business District and comprises approximately 1.75 acres with a maximum allowable density of 8 units per acre. The request was submitted by Greg Oropeza, Esq., Oropeza, Stones & Cardenas, 221 Simonton Street, Key West,

Florida 33040.
This notice is made under the provisions of Chapter 163.3225, Florida Statutes. The Development Agreement may be inspected by the public and a copy obtained by contacting the City Clerk. These matters are subject to quasi-judicial rules of procedure. Interested parties should limit contact with the City Commission on this topic to properly noticed public hearings or to written communications to the City Clerk. All interested parties are hereby advised that they may appear at said meetings and be heard with respect to said agreement. If any person decides to appeal any decision made by the City Commission of the City of Key Colony Beach with respect to any matter considered at the Hearing, that person will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. If you are unable to attend the Hearing on Thursday, May 18, 2023, but wish to comment, please direct correspondence to P.O. Box 510141, Key Colony Beach, FL 33051, or cityclerk@keycolonybeach.net and your comments will be entered into the record.
City Clerk, City of Key Colony Beach
Publish:
May 4, 2023
The Weekly Newspapers

This instrument prepared by:
Vernis & Bowling of the Florida Keys, P.A.
81990 Overseas Highway, 3rd Floor.
Islamorada, FL 33036

Revised V. 3-: 05/10/2023

After recording return to:

Attn: City Administrator
City of Key Colony Beach
P.O. Box 510141
600 W. Ocean Dr.,
Key Colony Beach, FL 33051-0141

----- [SPACE ABOVE THIS LINE FOR RECORDING DATA] -----

**DEVELOPMENT AGREEMENT
PURSUANT TO
CHAPTER 163, FLORIDA STATUTES**

THIS DEVELOPMENT AGREEMENT, executed by the Parties as of the _____ day of _____ 2023, and having the Effective Date specified below, is entered into by and between:

CITY OF KEY COLONY BEACH, a Florida municipal corporation ("CITY")

and

GARRISON BIGHT MARINA, INC.,
hereinafter referred to as ("Owner").

RECITALS:

- A. WHEREAS, the Florida Local Government Development Agreement Act (the "Act"), Chapter 86-191, Laws of Florida, now codified at Sections 163.3220 through 163.3243, Florida Statutes, authorizes local governments to enter into development agreements with property owners subject to the procedures and requirements of the Act; and
- B. WHEREAS the lack of certainty in the approval of a development can result in a waste of economic land resources, discourage sound capital improvement planning and financing and escalate the cost of housing and development and discourage commitment to comprehensive planning; and
- C. WHEREAS, assurance to a developer that upon receipt of his or her development permit that he or she may proceed in accordance with existing laws and policies, subject to the conditions of a development and financing, assists in assuring that there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the economic costs of development; and
- D. WHEREAS, the Owner is the legal and equitable owner of real property located in Monroe County, Florida, with a principal address of 300 and 400 Sadowski Causeway,

Key Colony Beach, Florida 33051 also located within the jurisdictional boundaries of the City of Key Colony Beach (the "City"), as described on attached Exhibit "A" (the "Property"); and

- E. WHEREAS, the Owner intends to combine the two (2) properties located at 400 Sadowski Causeway and adjacent 300 Sadowski Causeway into one property (the "Property") that will continue to operate as a marina facility as its principal use; and
- F. WHEREAS, the proposed marina facility would comprise a marina and ship store, liveaboard vessels slips and other temporary docking facilities, as well as redevelop the previously damaged restaurant and existing commercial rental building on the Property; and
- G. WHEREAS, the Owner has disputed the positions asserted by the City regarding the existing and proposed future uses and redevelopment of the Property; and
- H. WHEREAS, the Owner has submitted permit applications to the City to enter into a development agreement to establish for the record existing and proposed uses for the Property; and
- I. WHEREAS, to encourage future development of the Property consistent with the City's Comprehensive Plan and Land Development Regulations, the Owner and the City desire to agree upon and reduce to contractual terms, the status of the current and proposed site development regarding the Property; and
- J. WHEREAS, City has determined that the provisions of this Agreement are consistent with, and not in contravention with, the provisions of City's Concurrency Management System; and
- K. WHEREAS, City has provided its Notice of Intent to consider entering into this Development Agreement by advertisements published in newspapers of general circulation and readership in Monroe County, Florida, on and, and by mailing a copy of the Notice of Intent to Owner, and by announcing the date, time, and place of the second hearing during the first hearing; and
- L. WHEREAS, the City Commission of the City of Key Colony Beach has held public hearings to consider this Agreement, and has found and determined that its execution of this Agreement will further the objectives of the Local Government Comprehensive Planning and Land Development Regulation Act, and that the development contemplated and permitted by this Agreement is consistent with the City's Comprehensive Plan and Land Development Regulations.

NOW THEREFORE, in consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto agree as follows:

1. **INCORPORATION OF RECITALS & EXHIBITS.** The parties confirm and agree that the above recitals are true and correct and incorporate the terms and provisions herein for all purposes. All terms and provisions of all Exhibits which are attached to this Agreement and referenced in this Agreement are, by this reference, incorporated into this Agreement for all purposes.

2. **DEFINITIONS.** For the purposes of this Agreement, in addition to those terms which are specifically defined elsewhere in this Agreement the following terms shall have the following definitions:
 - 2.1. ***“Agreement”*** – This Development Agreement, as the same may be subsequently amended, modified, or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3161 through 163.3215, inclusive, of the Florida Statutes.
 - 2.2. ***“City”*** – City of Key Colony Beach, a Florida municipal corporation.
 - 2.3. ***“City Code”*** – The City’s Code of Ordinances, as the same may be subsequently amended, modified, or supplemented.
 - 2.4. ***“City Laws and Policies”*** – The laws and policies of City concerning development of real property arising under City’s Comprehensive Plan, the City Code, policies approved by City Council, and Resolutions approved by City Council.
 - 2.5. ***“County”*** – Monroe County, Florida, a political subdivision of the State of Florida.
 - 2.6. ***“Effective Date”*** – The date the terms of this Agreement become effective, as set forth in paragraph 8.16.
 - 2.7. ***“Entitlements”*** – All heretofore established and future rights with respect to the Property, or any portion thereof, existing as of the Effective Date of this Agreement to develop the Property or any portion thereof for, under, or in accordance with a particular use, development intensity, requirements (or non-requirements) for site plan review, site and building design specifications and criteria, and requirements (or non-requirements) for public hearings concerning approvals of development plans, existing as of the Effective Date of this Agreement under the provisions of the City Laws and Policies.
 - 2.8. ***“Florida Department of Economic Opportunity (DEO)”*** and ***“state land agency”*** - Refers to the “state land planning agency” as defined in Chapter 163, Part II, Florida Statutes.

- 2.9 **“Land Development Regulations”** – Chapter 101. *et seq.*, of the City Code in existence on the Effective Date of this Agreement.
- 2.10. **“Parcel” or “Parcels”** – One or more of the parcels of real property located in Monroe County, Florida, specifically described or referenced in this Agreement, including the Property (as defined below).
- 2.11. **“Party” or “Parties”** – As applicable, either Owner or City, or both Owner and City.
- 2.12 **“Property”** – The real property owned by Owner located within the jurisdictional boundaries of City also located in Monroe County, Florida, as described on attached Exhibit **“A”**.
- 2.13 **“Public Facilities”** – Those facilities that are specifically described in Section 163.3221, Florida Statutes, and as set forth in this Agreement.

3. **REPRESENTATIONS AND WARRANTIES.** As a material inducement to the other Party to enter into this Agreement, each Party makes the following representations and warranties regarding this Agreement:

3.1. **Owner Representations and Warranties.** Owner represents and warrants to City that:

- 3.1.1. Owner is the legal and equitable owner of the Property.
- 3.1.2. Owner has taken all corporate actions prerequisite necessary for the execution and delivery of this Agreement, and upon the execution and delivery of this Agreement by Owner the obligations of Owner hereunder shall be valid and binding obligations of Owner. The entities or individuals executing this Agreement on behalf of Owner are duly authorized representatives of Owner, authorized to execute this Agreement in their respective capacities as set forth below.
- 3.1.3. The execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of any agreement, covenant, Court Order, Judgment, or the Articles of Organization or Operating Agreement of Owner.

3.2. **City Representations and Warranties.** City represents and warrants to Owner that:

- 3.2.1. The actions by the City hereunder are consistent with the terms and provisions of the City’s Comprehensive Plan and City Code.

3.2.2. City has taken all necessary actions prerequisite to the execution and delivery of this Agreement, including but not limited to the necessary public hearings, providing proper notice of the public hearings, and conducting public hearings related thereto.

3.2.3. Upon the execution and delivery of this Agreement by the City, the obligations of City shall be valid and binding obligations of City.

3.2.4. Execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of the City's Charter, Code of Ordinances, Land Development Regulations, or by the terms and provisions of any agreement, covenant, Court Order or Judgment to which City is a party.

4. **TERM AND DURATION OF THE AGREEMENT.** This Agreement shall have an initial term of five (5) years, which may be extended by mutual consent of the City Commission and the Owner, subject to a public hearing in accordance with F.S. Ch. 163.3225 pursuant to procedures set forth in section 101-176 of the City's Code of Ordinances.

5. **STATUS OF SITE DEVELOPMENT.** The Parties agree that as of the Effective Date of this Agreement and continuing thereafter in accordance with the provisions of paragraph 6 below, that the Property has heretofore been developed and is presently pursuing additional permitting for redevelopment.

5.1 The parties agree that the Owner has submitted a revised boundary survey dated September 9, 2022, which is attached hereto and incorporated herein as Exhibit "B" and a Conceptual Site Plan prepared by T. S. Neal Architects, Inc. ("TSN") dated 4-18-2023 identifying all existing and proposed uses and structures. Such Conceptual Site Plan will serve as a site plan of reference ("Site Map") for the purposes of this Agreement and the associated building permit application(s) and is attached as Composite Exhibit "C" hereto. The Site Map reflects five (5) units on the combined Property, encompassing the following: (1) Marina and Ship Store with 46 existing boat slips, two (2) House boats, one (1) commercial restaurant structure which previously existed on the Property and was condemned due to damage from Hurricane Irma, and an existing commercial retail center of 6,465 square feet.

5.1.1. **Legal Description: Ownership.** Owner is the legal and equitable owner of real property located in Monroe County, Florida, with a principal address of 300 and 400 Sadowski Causeway, Key Colony Beach, Florida 33051 also located within the jurisdictional boundaries of the City of Key Colony Beach (the "City"), as legally described on attached **Exhibit "A"** and incorporated herein

5.1.2 **Statutory and regulatory requirements.** The parties recognize the binding effect of the Florida Local Government Develop Agreement Act, Sections 163.3221, *et. seq.*, Florida Statutes, and the City Code as to the form and contents of this Agreement.

The parties hereto set forth and agree to the terms of this Agreement in accordance therewith.

5.2 Permitted Use Approval of Conceptual Site Map, including Densities and Intensities. The Owner seeks to obtain approval for specific uses associated with the Marina and its related services, as well as redevelopment on the Property consistent with the following:

- (a) Ability to reconfigure exiting structures from current locations identified on the Site Map attached as Exhibit "C"; and
 - (i) Continuing operation of the Marina facility and Ship Store, encompassing 46 existing boat slips inclusive of two (2) existing live-aboard vessels; and
 - (ii) Ability to redevelop a previously existing commercial restaurant structure within its prior building footprint; and
 - (iii) Ability to redevelop an existing 6,465 square foot commercial retail center.
- (b) Ability to designate of fourteen (14) total live-aboard vessels within the existing boat slips, subject to the terms of this Agreement and applicable provisions of the City Code and Land Development Regulations.
- (c) Ability to apply for requisite vacation rental license for operation of the live-aboard vessels pursuant to the City Code and Land Development Regulations.

5.2.1. The Site Map referenced above reflects an inventory of the existing structures and uses, referencing the five (5) units on the Property, encompassing the Marina and Ship Store with 46 existing boat slips, two (2) House boats, a proposed commercial restaurant structure of 3,581 square feet to replace the restaurant which previously existed on the Property, and an existing commercial retail center of 6,465 square feet, together with ancillary improvements as shown on the Site Map shown in Exhibit "C".

5.2.2 The Site Map reflects and indicates the location of all current structures and uses and the proposed relocation of any structures and uses, and their associated building permits if already applied for.

5.2.3 Density, Intensity and Height Restrictions. Unless otherwise specifically provided for in this Agreement, density, intensity and height restrictions shall be in accordance with applicable provisions of the City Code and Land Development Regulations. The height of any new structure associated with redevelopment of the Property shall not exceed forty-three (43) feet.

5.2.3.1 Density: Live-aboard vessels. The Property is located within the B-1 Neighborhood Business District which allows for live-aboard vessels tied up to docks within B-1 zoning. The Parties agree that the use of the live-aboard vessels on the Property is a permitted use.

- (a) Pursuant to Sections 5-15 and 101-17 of the City Land Development Regulations, live-aboard vessels shall not exceed a density of 8 dwelling units per net acre with each such boat considered a dwelling unit.
- (b) Pursuant to Sections 5-15 and 101-17 of the City Land Development Regulations, Owner and City hereby agree that the maximum number of live-aboard vessels on the Property shall be restricted to fourteen (14) total (2 existing and a maximum of 12 additional), with each such vessel considered a dwelling unit for density calculation. No more than seven (7) liveaboard vessels shall be used for vacation rentals (VR's) pursuant to the provisions of the City Code and Land Development Regulations. Seven (7) of the liveaboard vessels shall be allowed to be utilized for workforce employee housing units, subject to the following provisions proffered by the Owner:
 - (1) Workforce housing on the seven (7) liveaboard vessels is restricted for renters/tenants who are employed either within the City of Key Colony Beach or within Monroe County and who earn less than one hundred forty percent (140%) of the Area Mean Income (AMI) for the County.
 - (2) Owner agrees to reserve and provide preference for such workforce housing for those employed within Monroe County as first responders, law enforcement, military, teachers and employees of the marina/restaurant on the Property.
 - (3) The Owner agrees to enter into a Declaration of Restrictive Covenants regarding the provision of workforce housing, and reflecting Owner's commitment to provide up to seven (7) liveaboard vessels as workforce housing as set forth herein.
- (c) Owner shall be permitted to use seven (7) live-aboard vessels for short-term vacation rentals, only upon completion of the City's requisite vacation rental license application process, for short-term rental operation of the live-aboard vessels pursuant to the City Code and Land Development Regulations.
- (d) Pursuant to Section 5-15 of the City Land Development Regulations, all live-aboard vessels shall either be connected to central sewer by means approved and permitted by the City or by proof of sanitary facility pump out service.

5.2.4 Public facilities. The public facilities that are required and that will service the development authorized by this Agreement; who shall provide the facilities; what new facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.

- (a) Potable Water. Domestic potable water is provided by the Florida Keys Aqueduct Authority.
- (b) Electric service. Electric service is provided by Florida Keys Electric Cooperative.
- (c) Solid Waste. Solid waste is provided by Marathon Garbage Services or its successors and assigns, as determined by the City Council.
- (d) Fire Service. Fire service is provided by the Marathon Fire Department.
- (e) Wastewater. Wastewater collection and treatment is provided by the City of Key Colony Beach.

5.2.4.1 Concurrency. All public facilities identified are available as of the date of this Agreement, and capacity for each is projected to be available concurrent with the impacts of development.

5.2.5 Impact Fees. Any increased impacts on public facilities or public services attributable to development of the Property and the cost of capital improvements to meet the associated demand on such facilities or services shall be paid by Owner to the City, concurrent with the issuance of the building permits. The owner shall be responsible for any applicable City impact fees required by the City code, as well as by payment of any applicable utility system development fees.

5.3 The Owner recognizes and acknowledges that the Site Map referenced in this Section and attached as Exhibit "B" hereto is a conceptual site plan only and does not constitute a formal or approved site plan by the City.

5.4 Site Plan Approval Required. Owner shall be required to submit an application for and obtain formal Site Plan Approval from the City in accordance with the requisite procedures set forth in the City land development regulations. Owner shall submit such application for Site Plan Approval within twelve (12) months of the execution date of this Agreement and receive approval of the Site Plan prior to the expiration of the initial term of this Agreement.

5.5 Final Approval of pending permitting application(s) shall be obtained by Owner in accordance with the City Code of Ordinances, which shall not be unreasonably withheld by the City.

5.6 Additional Development Conditions. The following additional conditions, terms, restrictions and other requirements have been determined by the City to be

necessary for the approval of this Agreement and shall be incorporated into the formal Site Plan approval process.

5.6.1 Setbacks. Setbacks shall comply with all applicable requirements of the City Code.

5.6.2 Utilities, Lighting and Signage. Utilities, lighting and signage shall comply with all applicable requirements of the City Code, including the waterfront lighting criteria set forth therein.

5.6.3 Landscaping. Owner shall submit a plan to utilize best practices of landscaping throughout the Property, in accordance with the provisions of the City Code and Land Development Regulations.

5.6.4 Fire Safety. Owner shall provide fire protection facilities as required by the City Code, Florida Fire Prevention Code and Life Safety Code.

5.6.5. Stormwater Management. The development shall comply with the stormwater management criteria in the City Code and shall meet all applicable federal, state and regional stormwater management requirements.

5.6.6. Additional Conditions by Mutual Consent. Nothing in this Agreement shall preclude the parties from applying additional conditions by mutual agreement during final site plan review or permitting.

5.7 Cost Recovery by City. Owner shall provide a cost recovery deposit to City and reimburse all fees and expenses of outside attorneys and third-party consultants that the City engages in connection with this Agreement and the implementation thereof.

6. CITY LAWS AND POLICIES GOVERNING DEVELOPMENT.

6.1. The City has initiated the process of amending its Comprehensive Plan and portions of the City Code concerning the development of real property. It is the intention of the Parties hereto that such actions by the City shall not operate to result in the termination, modification or loss of any of the provisions of this Agreement under the current City Laws and Policies.

6.2. The City Laws and Policies governing the development of the Property on the Effective Date of this Agreement shall govern the future development of the Property for the duration of this Agreement. The Property shall retain, without modification or limitation, all development currently existing and options currently available under the City Laws and Policies, notwithstanding any future amendment of the City Laws and Policies.

6.3. Notwithstanding any recitals above, in the event that the City, subsequent to the Effective Date, modifies City Laws and Policies and includes the Property within such modifications, in a manner that provides the Property with additional options that are reasonably expected to enhance the development of the Property, or decrease the time or expense associated with such development, such modified laws and policies shall apply to the Property.

6.4 Development Permits. Certain provisions of this Agreement will require that the City and/or its boards, departments, or agencies take certain governmental actions, acting in their governmental capacity, and issue Development Permits in order to accomplish and satisfy the authorization and construction of the Owner's Project.

6.5 Applications for Development Approvals. Promptly after the Effective Date hereof, the Owner shall initiate and diligently pursue any necessary Development Approval applications. The City shall process all Development Permit applications in a timely fashion and the City shall cooperate with the Owner (at no cost to the City) in processing all necessary Development Approvals from federal, State and County agencies, as needed.

6.6 Permits from Other Regulatory Entities. Other agency permits may be required as provided by applicable law prior to the City's issuance of building permits for redevelopment of the Property. The Developer shall obtain all necessary permits from other local, regional, State and federal regulatory entities and provide copies of each to the City within a reasonable time after such permits are issued.

6.7 Development to Comply with City Code, Comprehensive Plan and Permit Conditions. The development described in an authorized by this Agreement shall be developed in accordance with all required permits, and in accordance will applicably provisions of the City's Comprehensive Plan, City Code and Land Development Regulations in effect on the date of execution of this Agreement. No certificate of occupancy for any building on the Property shall be issued until all plans for that building are approved by the City and the Owner has complied with all conditions in permits issued by the City and other regulatory authorities for that building.

6.8 Compliance with Permits, Terms, Conditions and Restrictions Not Identified Herein. The failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the Owner of having to comply with the law governing said permitting, requirements, conditions, terms or restrictions.

7. RIGHT OF TERMINATION.

Notwithstanding anything to the contrary contained herein, if Owner fails to timely comply with the provisions of Section 5, City shall have the right to terminate this Agreement and be released from any liability and obligations hereunder in accordance with Section 101-176 of the City Code of Ordinances.

8. **GENERAL PROVISIONS.**

8.1. **Notices.**

8.1.1. All notices, requests, consents and other communications required or under this Agreement shall be in writing (including faxed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, faxed, or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed to the following or to such other addresses as any party may designate by notice complying with the terms of this paragraph:

a. AS TO THE CITY:

Attn: City Administrator
City of Key Colony Beach
P.O. Box 510141
600 W. Ocean Dr.,
Key Colony Beach, FL 33051-0141

1) With Copy To:

Attn: City Attorney
Vernis & Bowling of the Florida Keys, P.A.
81990 Overseas Highway, 3rd Floor.
Islamorada, FL 33036

b. AS TO OWNER:

Attn: James Figuerado, Jr.
Garrison Bight Marina, Inc.
489 Maddison Court
Fort Myers Beach, Florida 33931,

1) With Copy To:

Gregory S. Oropeza, Esq.
Oropeza, Stones & Cardenas, PLLC
221 Simonton Street
Key West, Florida 33040

8.1.2. Each such notice shall be deemed delivered:

- a. On the date delivered if by personal delivery.
- b. On the date of facsimile transmission if by facsimile; and

- c. If the notice is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; (b) the date upon which delivery is refused; (c) the date upon which notice is designated by the postal authorities as not having been delivered; or (d) the third business day after mailing.
- d. Notwithstanding the foregoing, service by personal delivery delivered, or by facsimile sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.

8.1.3. If a notice is delivered by multiple means, the notice shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.

8.1.4. If the above provisions require notice to be delivered to more than one person (including a copy), the notice shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

8.2. **Negation of Partnership.** None of the terms or provisions of this Agreement shall be deemed to create a partnership before Owner and City in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprises. Each Party shall be considered a separate Party, no Party shall have the right to act as an agent for another Party and no Party shall have the right to act as an agent for another Party unless expressly authorized to do so in this Agreement.

8.3. **No Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided no right, privileges or immunities of any Party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained in this Agreement.

8.4. **Default Provisions.**

8.4.1. The terms of this Agreement shall not entitle any Party to cancel, rescind, or otherwise terminate this Agreement. However, except as expressly set forth herein (e.g., in paragraph 8.4.5), such limitations shall not affect in any manner any other rights or remedies which a Party may have hereunder or under applicable law by reason of any such breach.

8.4.2. All easements, rights and covenants contained herein shall be enforceable by suit for specific performance and mandatory injunctive relief, in addition to any other remedies provided by law or equity except as expressly set forth herein (e.g., in paragraph 8.4.5).

8.4.3. No Party shall be entitled to pursue any action for specific performance, injunctive relief, or any other available remedy arising out of a default under this Agreement until the non-defaulting Party has provided to the Party alleged to be in default a written Default Notice specifying the specific nature of the default, and the alleged defaulting Party has failed to cure the default within sixty (60) days of the effective date of the Default Notice. In the event the cure of a default reasonably requires greater than the 60 day time period specified, the grace period granted herein shall, if the defaulting Party has initiated cure of the default within the 60 day time period and is continuing to pursue completion of the cure with due diligence, extend the reasonable time period required for the cure of the default to the period which is a reasonable time period.

8.4.4. In the event of a material default by Owner with respect to its obligations to City under this Agreement, and failure of Owner to cure the default within the grace period set forth above, in addition to any other remedies available to them under the terms of this Agreement, City shall be entitled to withhold issuance of additional development permits or authorizations until the default has been cured. If Owner has, prior to the occurrence of the default, conveyed some or all of the Property to unrelated third parties (such parcel or parcels then becoming a "Third Party Parcel") and the default of Owner is not with respect to, or impact City obligations regarding, the Third-Party Parcel, the right of City to withhold permits upon a default by Owner shall not extend to City permits pending or to be issued with respect to a successor owner of such Third-Party Parcel.

8.4.5. In the event of a material default by City with respect to its obligations to Owner under this Agreement, and failure of City to cure the default within the grace period set forth above, Owner may seek relief as set forth in paragraph 8.4.2 against City but may not seek damages (including, without limitation, compensatory damages or lost profits), such relief being expressly waived by Owner.

8.5. **Estoppel Statements.** Each Party agrees that upon written request from time to time of any other Party it will timely issue at no charge to a current or prospective lender to such Party, or to a current or prospective purchaser or successor party to such other Party, or to another governmental entity requesting or requiring the same, an Estoppel Statement stating:

8.5.1. Whether the Party to whom the request has been directed knows of any default by any Party under this Agreement, and if there are known defaults, specifying the nature thereof.

8.5.2. Whether this Agreement has been modified or amended in any way by such Party (and if it has, stating the nature thereof).

8.5.3. That to the best of the requested Party's knowledge this Agreement, as of the Estoppel Statement date is in full force and effect.

8.5.4. That (if known by the requested Party, if not known by the requested Party that Party shall reply only with respect to any monies owed to it) to the best of the requested Party's knowledge there are not any monies currently owed by any Party to another Party under the terms of this Agreement, or if there are monies owed, the amount and details of all monies owed.

8.5.5. That, as to the Project or as to a specific parcel therein (as applicable, based upon the request) there are no moratoriums or suspensions of the right to procure Development Orders, Building Permits, or Certificate of Occupancy or other development approvals in effect as of the date of the Estoppel Statement.

8.5.6. Such written statement shall act as a waiver of any claim by the Party furnishing it to the extent such claim is based on facts contrary to those asserted against a bona fide mortgagee or purchaser for value without knowledge of facts to the contrary of those contained in the Estoppel Certificate who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the Party furnishing it to any liability whatsoever, notwithstanding the negligent or other inadvertent failure of such Party to disclose correct and/or relevant information.

8.6. **Litigation.** In the event of any litigation arising out of this Agreement, each party shall bear their own costs incurred with respect to such litigation. In the event this Agreement is challenged successfully, the parties agree to be bound by any modification pursuant any legal authority. If any such event occurs the City shall be indemnified by the Owner for any costs, including attorney's fees, in defending such challenge. In the event that any legal modification to this Agreement results from a legal challenge, the City shall not be held responsible for any resultant impact including financial consequences in accordance with this Section 8.6. In the event that the proposed development becomes impossible or impractical based upon such legal challenge, the parties agree that this Agreement is void.

8.7. **Binding Effect.** The parties to this Agreement represent to each other that each party fully understands the facts surrounding this Agreement and each is signing this Agreement fully and voluntarily, intending to be bound by it. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective spouses, heirs, executors, and administrators. There are no representations or warranties other than those set forth herein.

8.8. **Headings.** The headings contained within this Agreement are for identification purposes only, and shall not be construed to amend, modify, or alter the terms of the Agreement.

8.9. **Severability.** Except as otherwise set forth herein, in the event any provision or paragraph of this Agreement is determined to be invalid or unenforceable, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.

8.10. **Survival of Representations and Warranties.** All representations and warranties contained herein are made in writing by the parties in connection herewith shall survive the execution and delivery of this Agreement.

8.11. **Successors.**

8.11.1. All covenants and agreements in this Agreement made by or on behalf of any parties hereto shall bind and inure to the benefit of the respective successors of the parties hereto, whether so expressed or not.

8.11.2. Upon a sale or other transfer of a Parcel or a portion thereof, the terms and provisions of this Agreement, as applicable, shall remain in full force and effect as to the Parcel or a portion of the Parcel.

8.11.1 **Assignment.** This Agreement is non-assignable without City's consent, and the Owner shall not assign the Owner's rights and obligations under this Agreement without the prior written consent of the City, which shall not be unreasonably withheld.

8.12. **Applicable Law.** This Agreement is being delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida. The venue for any legal proceeding arising out of this Agreement shall be Monroe County, Florida.

8.13. **Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

8.14. **Amendment of Agreement.** This Agreement cannot be changed, modified or released orally, but only by an agreement in writing signed by the parties against whom enforcement of said change, modification or discharge is sought.

8.15. **Gender.** As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.

8.16. **Effective Date.**

8.16.1. This Agreement shall become effective upon completion of its execution by both Parties, and the recordation of the Agreement in the Public Records of Monroe County, Florida.

8.16.2. Notwithstanding the foregoing:

- a. The parties shall be obligated to perform any obligations hereunder that are required before such Effective Date, including rendering this Agreement to the Department of Economic Opportunity (DEO) for review pursuant to Section 380.07(2), Florida Statutes, and Rule 73C-44, Florida Administrative Code; and
- b. In the event that this Agreement is challenged, including a challenge pursuant to Section 163.3243, Florida Statutes, within thirty (30) days of the recordation of this Agreement in the Public Records of Monroe County, Florida, the obligations of the parties shall be suspended hereunder, except to the extent such suspension would be inconsistent with requirements of Florida Department of Economic Opportunity.

(This Space is intentionally left blank)

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

**SIGNATURE PAGE(S) OF
CITY OF KEY COLONY BEACH AND
GARRISON BIGHT MARINA, INC.**

ATTEST:

**CITY OF KEY COLONY BEACH,
FLORIDA**

Silvia Gransee, City Clerk

By: _____
Patricia Trefry, Mayor

APPROVED AS TO FORM AND
LEGALITY:

Date: _____, 2023.

Dirk M. Smits, City Attorney

APPROVED BY THE CITY COMMISSION OF KEY COLONY BEACH ON
_____, 2023.

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing **DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES** was acknowledged before me this _____ day of _____, 2023, by Patricia Trefry, as Mayor of Key Colony Beach, Florida, a Florida municipal corporation, on behalf of the City.

Notary Public, State of Florida

Name: _____

(Please print or type)

Commission Number:

Commission Expires:

Notary: Check one of the following: ____ Personally known
OR ____ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____

**SIGNATURE PAGE(S) OF
SIGNATURE PAGE(S) OF
CITY OF KEY COLONY BEACH AND
GARRISON BIGHT MARINA, INC.**

GARRISON BIGHT MARINA, INC.

By: _____

Date: _____, 2023

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing **DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES** was acknowledged before me this _____ day of _____, 2023, by _____.

Notary Public, State of Florida

Name: _____

(Please print or type)

Commission Number:

Commission Expires:

Notary: Check one of the following: ___ Personally known
OR ___ Produced Identification (if this box is checked, fill in
blank below).

Type of Identification Produced: _____

EXHIBIT "A"

Property Addresses and Parcel Identification Numbers:

300 Sadowski Causeway, Key Colony Beach, Florida 33051
Real Estate No.: 00079371-000200
Alternative Key No.: 1086410

LTS 2 -3 AND 3A MARINA SUBDIVISION REPLAT PB7-2 SHELTER KEY OR760-528 OR760-529 OR918-62 OR1145-1510 OR2213-667/68 OR2340-2174 OR2490-73/74 OR2490-75/76 OR2777-988/89 OR3189-0658 OR3189-1676

400 Sadowski Causeway, Key Colony Beach, Florida 33051
Real Estate No.: 00079371-000100
Alternative Key No.: 1086401

LOT 1 & BB ADJ TO KCB CAUSEWAY & PVT ROAD MARINA SUBDIVISION REPLAT PB7-2 SHELTER KEY OR391-241 OR410-548 OR410-550 OR424-924 OR661-434 OR770-1113 OR856-846 OR862-1289 OR864-892 OR1185-472 OR1511-1142 OR3155-2465 OR3155-2467

FULL LEGAL DESCRIPTION(S) TO BE DETERMINED

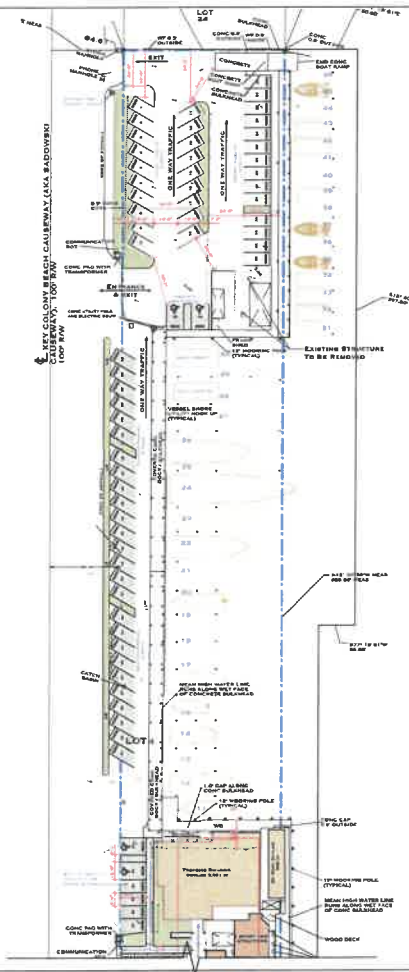
SEE ATTACHMENT "1"

EXHIBIT "B"

Survey:

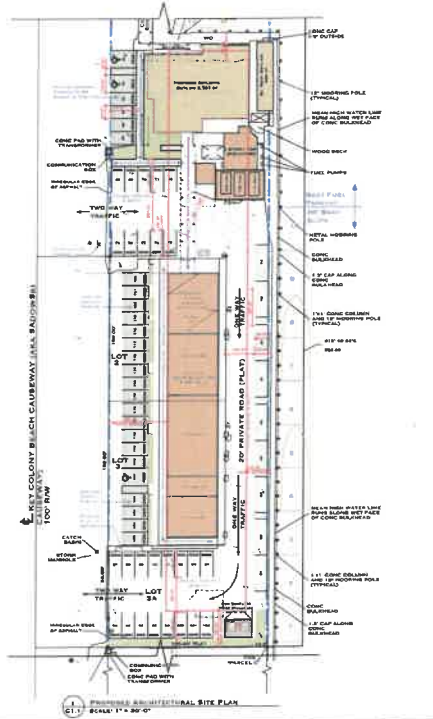
EXHIBIT "C"

Site Map:



SITE DATA				
ITEM	REQ. PER LDR	EXISTING	PROPOSED	REMARK
DISTRICT	D-1	D-1	D-1	NEIGHBORHOOD BUSINESS DISTRICT
LOT SIZE	16,000 SQ. FT.	70,000 SQ. FT.	EXISTING	
PLANNING AREA	MIN. LOT	39,000 SQ. FT.	33,179 SQ. FT.	NO VARIANCE
RECREATION AREA	12,281 SQ. FT.	39,000 SQ. FT.	33,179 SQ. FT.	NO VARIANCE
OPEN SPACE	30% MIN.	18,100 SQ. FT.	18,100 SQ. FT.	NO VARIANCE
LOT COVERAGE	34,270 SQ. FT.	18,100 SQ. FT.	18,100 SQ. FT.	NO VARIANCE
PERMITS	2000 SQ. FT.	18,100 SQ. FT.	18,100 SQ. FT.	NO VARIANCE
UPPERMERE	2000 SQ. FT.	18,100 SQ. FT.	18,100 SQ. FT.	NO VARIANCE
STATE	2000 SQ. FT.	18,100 SQ. FT.	18,100 SQ. FT.	NO VARIANCE
REMARKS	2000 SQ. FT.	18,100 SQ. FT.	18,100 SQ. FT.	NO VARIANCE

PARKING SPACE COUNT:
 183 SEATS TOTAL: 1 SPACE FOR 3 SEATS = 61 SPACES REQUIRED
 1 PARKING SPACE FOR 1 BOAT SLIP = 48 SPACES REQUIRED
 EXISTING SPACES AT RETAIL BUILDING = 80 EXISTING SPACES
 TOTAL PARKING SPACES PROVIDED FOR BOAT SLIPS, COMM. BLD. AND RESTAURANT = 128



T.S. NEAL
 ARCHITECTS INC.
 2874 OYSTER CREEK
 LUNDAWAY, FL
 33041
 305 340 8857
 305 462 9947

A NEW COMMERCIAL DEVELOPMENT AT
 400 SADOWSKI CAUSEWAY
 KEY COLONY BEACH, FL 33051

DRAWING TITLE:
 PROPOSED OVERALL
 ARCHITECTURAL SITE PLAN

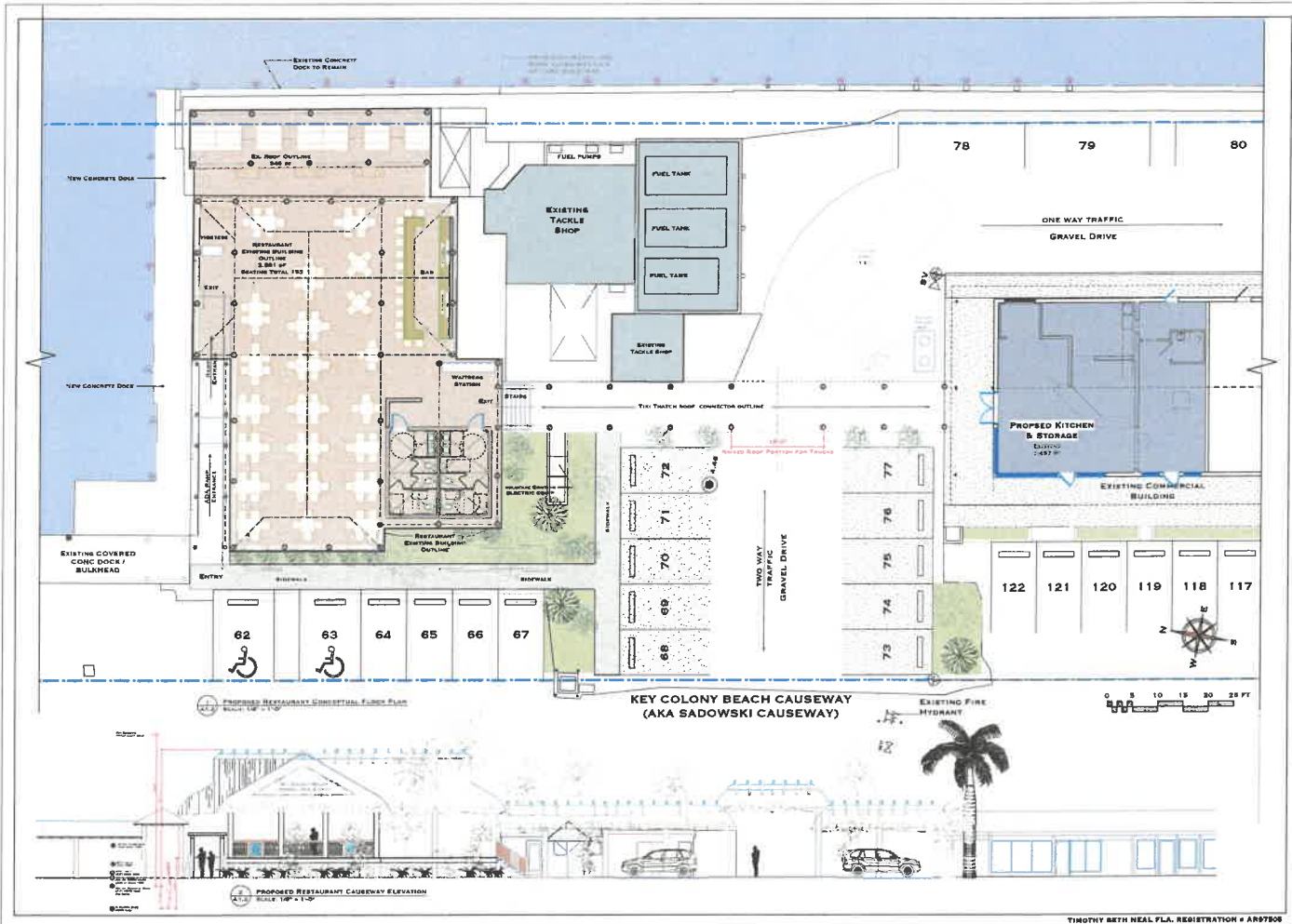
DATE: 11/28/2011
 CHECKED: [Signature]
 DATE: 11/28/2011

BY: [Signature]
 DATE: 11/28/2011

C1.1
 SHEET #

TSH
 T.S. NEAL, ARCHITECT, INC.

TIMOTHY BATH, NEAL, P.L.A. REGISTRATION # AR97808



T.S. NEAL ARCHITECTS INC.
8875 BIRCHWOOD DR
DOVER FL, FL 33004
305-345-0867
351-832-8847

**A NEW COMMERCIAL DEVELOPMENT AT
400 SADOWSKI CAUSEWAY
KEY COLONY BEACH, FL 33051**

DRAWING TITLE:
PROPOSED RESTAURANT
CONCEPTUAL FLOOR PLAN

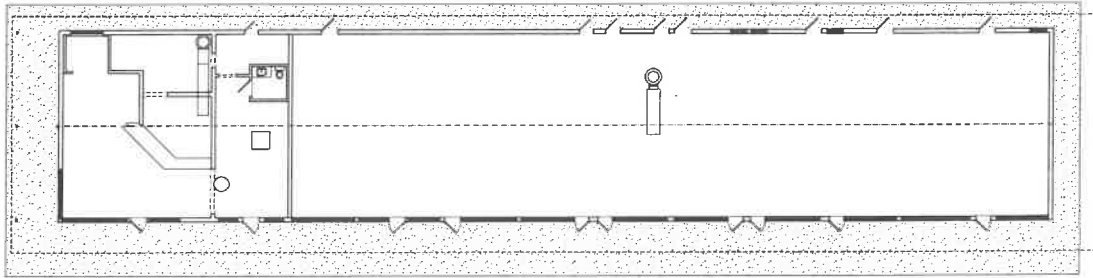
DESIGN: TSM
CHECKED: TSM
DATE: 11-05-2023

REV. #1	11-07-2023
REV. #2	11-08-2023
DATE:	11-05-2023

A1.1
SHEET #

TSM
T.S. NEAL ARCHITECTS INC.

TIMOTHY BETH NEAL FLA. REGISTRATION # AR97808



1. EXISTING COMMERCIAL BUILDING FLOOR PLAN
SCALE: 1/8" = 1'-0"

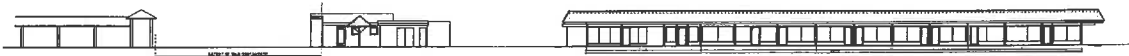


2. EXISTING COMMERCIAL BUILDING
SCALE: 1/8" = 1'-0"



3. EXISTING PARTIAL MARINA & BOAT SHOP BUILDING
SCALE: 1/8" = 1'-0"

EXTENT OF OLD RESTAURANT BUILDING, SEE SURVEY



4. EXISTING SADOWSKI STREETSCAPE
SCALE: 1/8" = 1'-0"



T.S. NEAL
ARCHITECTS INC.
22874 OVERSEAS DR
SUITE 201, FL
33092
305-340-8887
281-422-8847

A NEW COMMERCIAL DEVELOPMENT AT
400 SADOWSKI CAUSEWAY
KEY COLONY BEACH, FL 33051

DRAWING TITLE
EXISTING PLANS & ELEVATIONS
DRAWN: TSN
CHECKED: JSM
DATE: 11/28/2008

REV. #1	3/6/2008
REV. #2	4/14/2008

Ex1.1
SHEET #



T.S. NEAL ARCHITECTS INC.

TIMOTHY BETH NEAL, F.L.A. REGISTRATION # AR97808

RESOLUTION NO. 2023-05

A RESOLUTION OF THE CITY COMMISSION OF KEY COLONY BEACH, FLORIDA APPROVING A DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES, BETWEEN THE CITY AND GARRISON BIGHT MARINA, INC., FOR THE PROPERTY LOCATED AT 300/400 SADOWSKI CAUSEWAY, KEY COLONY BEACH WITH REAL ESTATE NUMBERS 00079371-000200 AND 00079371-000100; AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ANY OTHER REQUIRED DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Florida Local Government Development Agreement Act (the “Act”), Chapter 86-191, Laws of Florida, now codified at Sections 163.3220 through 163.3243, Florida Statutes, authorizes local governments to enter into development agreements with property owners subject to the procedures and requirements of the Act; and

WHEREAS, the lack of certainty in the approval of a development can result in a waste of economic land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning; and

WHEREAS, assurance to a developer that upon receipt of a development permit that they may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring that there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the economic costs of development; and

WHEREAS, the City of Key Colony Beach, Florida (the “City”) and Garrison Bight Marina, Inc., (the “Owner”) have negotiated a development agreement under the authority of Chapter 163, Florida Statutes (the “Agreement”); and

WHEREAS, in accordance with Chapter 163 of Florida Statutes and Chapter 101, Article XII, Section 101-176 of the City’s Code of Ordinances, the City is required to hold public hearings for the City Commission to consider approval of a development agreement; and

WHEREAS, the City Commission scheduled and held public hearings on April 20, 2023, and May 18, 2023, to consider this Agreement, and has found and determined that execution of this Agreement will further the objectives of the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, the development contemplated and permitted by this Agreement is consistent with the City’s Comprehensive Plan and Land Development Regulations; and

WHEREAS, the City Commission deems that approval of this Agreement in the best interest of the City.

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

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Chapter 163 Development Agreement. The City Commission of Key Colony Beach hereby approves the Development Agreement between the City and the Owner, a copy of which is attached as Exhibit “1,” together with such non-material changes as may be acceptable to the City Administrator and approved as to form and legality by the City Attorney.

Section 3. Authorization of City Officials. The City Administrator or his designee and the City Attorney are authorized to take all actions necessary to implement the terms and conditions of the Agreement.

Section 4. Execution of Documents. The Mayor is authorized to execute the Agreement and any other associated documents related to the Agreement.

Section 5. Effective Date. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was offered by _____, who moved for its adoption. This motion was seconded by _____, and upon being put to a vote, the vote was as follows:

FINAL VOTE AT ADOPTION
CITY COMMISSION OF KEY COLONY BEACH

Mayor Patricia Trefry	NO _____ YES _____
Vice-Mayor Beth Ramsay-Vickrey	NO _____ YES _____
Commissioner Freddie Foster	NO _____ YES _____
Commissioner Tom Harding	NO _____ YES _____
Commissioner Joey Raspe	NO _____ YES _____

PASSED AND ADOPTED this 18th day of May 2023.

Patricia Trefry, Mayor

Attest: Silvia Gransee, City Clerk

Approved as to form and legal sufficiency:

Dirk M. Smits, City Attorney

April 20, 2023, 1st Public Hearing
May 4, 2023, Date of Notice, Florida Keys Weekly
May 18, 2023, 2nd Public Hearing Reading