

Appendix 'A'

MEMORANDUM

TO: Director of Planning **YOUR REF:** P19-1189
ATTN: Colleen Stoetzel
FROM: Director of Environment **DATE:** 14 April 2020

SUBJECT: **Waterfront Centre Ltd – Balboa Beach**
After-the-fact Land Filling
BLOCK: OPY PARCEL: 193

Under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Law, 2013), the Department of Environment offers the following comments for your consideration.

The Department is very concerned at the extent of unauthorised works which have taken place on this site, including the works which are the subject of this application. The application site is adjacent to a Marine Protected Area, namely a Marine Park and is in a prominent location in the heart of George Town.

At the time of the unauthorised works taking place in June 2019, the Department of Environment reached out to the Department of Planning to clarify if planning permission has been granted for these works and, if not, what action would be taken. To-date it appears that no action has been taken and the landowner has now submitted an application for after-the-fact approval some 6 months after the works took place. Figure 1 illustrates the extent of works and Figure 2 is from an in-water site visit taken by the DoE in December 2019.



Figure 1: DoE site visit photo showing the illegal filling of the application site in June 2019.



Figure 2: DoE site visit photo showing the displacement of the illegally placed rocks in December 2019.

As a consequence of these and several other unpermitted works which have taken place over the years, including the repeated use of construction aggregate as beach sand and the removal in some areas of underwater ironshore formations in some areas, the nearshore area and immediate offshore environment is now considerably degraded. These works have likely contributed to enhanced levels of sedimentation and excessive mechanical damage to underwater features from loose unconsolidated quarried rocks, that were used as fill material, being washed around by storm events and heavy wave action.

The cumulative effect of the ongoing unauthorised placement of construction sand and other unconsolidated material (including the fill material that is the subject of this application) into and adjoining the marine environment, together with the proximity to the local fish market (where regular fish cleaning results in increased nutrient loading and subsequent marine algal growth in the nearshore environment) is creating negative impacts on water quality. This is evident from the nearshore sediments and beach in the area which are often black or grey in colour with a strong odour exhibiting the anoxic characteristics of a highly disturbed environment (see Figures 3 & 4).



Figure 3: DoE drone image from March 2019 showing the anoxic black/grey sediment nearshore.



Figure 4: DoE site visit photo from December 2019 showing the anoxic black/grey sediment nearshore.

The Department notes that this application for the after-the-fact filling of this area forms part of a proposal for the creation of an extension to the existing dock which entails filling the seabed in this location. The Department does not support the filling of the submerged ironshore and recommends that no further filling and/or concreting of the area takes place. As regards the unconsolidated fill that was placed in the sea, this has now been widely dispersed across the seabed and is no longer in the position that it was originally placed. It will likely continue to cause damage to the marine environment through the ongoing attrition caused by the suspension and movement of these rocks during wave activity. The purpose of this after-the-fact application is therefore unclear.

Please do not hesitate to contact the Department should you require further assistance.

Director of Environment
Under Delegated Authority of the National Conservation Council



Figures 1 & 2: DoE site visit photos from December 2019 showing the ironshore within the applicant's boundary completely submerged.

Construction Methodology

The Department reached out to the applicant for details on the proposed construction methodology and from the information provided it is evident that the methodology has not been devised by an engineer (coastal or otherwise). Whilst the application plans were prepared by a local engineering firm when we contacted them to confirm the construction methodology to be used the firm advised that they had not been retained to construct the works and they could not provide a construction methodology. Instead, the applicant has written a construction methodology, which is of concern to the Department. The proposed methodology includes the use of plywood shuttering and sunken cement bags in an active wave dominant environment, which from experience we know is prone to considerable risk of failure. The Department has witnessed the use of a similar methodology in other applications in similar environments which resulted in sedimentation impacts to the surrounding area (see Figure 3).



Figure 3: DoE site visit photo from July 2014 showing the sedimentation impacts at a development site on South Church Street using a plywood shuttering method similar to that proposed by the applicant.

Given that this is currently a prominent tourism area with considerable in-water activity and healthy reefs offshore, the consequences of concrete and associated sediment plumes leaching out into the marine environment would be significant. The area is also extremely vulnerable during Nor'westers and storms as witnessed recently when the illegally placed rock fill was completely washed into the surrounding marine environment, likely causing considerable damage to nearby living marine resources.

Environmental Impacts

As a consequence of the unpermitted works which have taken place over the years, including the illegal filling with rocks, the repeated use of construction aggregate as beach sand and the removal in some areas of underwater ironshore formations, the nearshore area and immediate offshore environment is considerably degraded. The previous works have likely contributed to enhanced sedimentation and excessive mechanical damage to underwater features from loose quarried rocks washed around by storm events and heavy wave action. Water quality is also compromised by the proximity to the local fish market where regular fish cleaning results in increased nutrient loading and subsequent marine algal growth in the nearshore environment. The nearshore sediments and beach in the area are often black or grey in colour with a strong odour exhibiting the anoxic characteristics of a highly disturbed environment (see Figures 4 & 5).

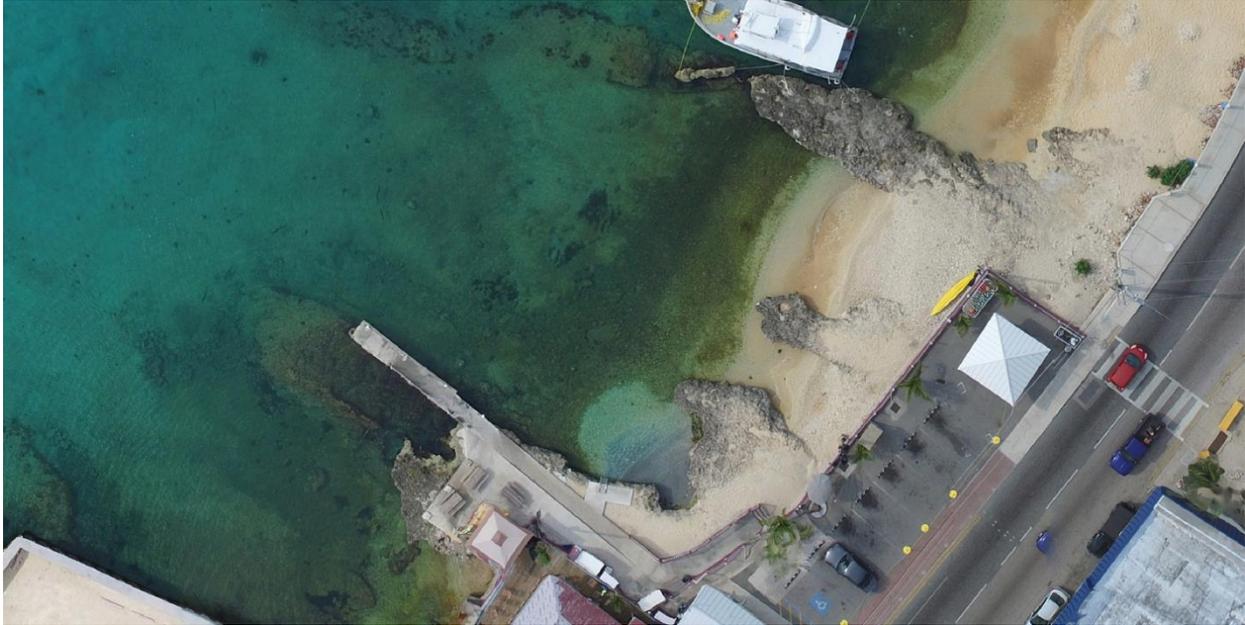


Figure 4: DoE drone image taken March 2019 showing the anoxic black/grey sediment nearshore.



Figure 5: DoE site visit photo from December 2019 showing the anoxic black/grey sediment nearshore.

Conclusion & Recommendations

For the reasons highlighted above, the Department **does not** support this application. **As the subject parcel is currently still located adjacent to a Marine Protected Area, under Section 41(5)(b) of the National Conservation Law, the National Conservation Council (NCC) respectfully directs the Central Planning Authority (CPA) to refuse this application.**

Should the applicant wish to reapply for Planning permission with a construction methodology developed by a civil or coastal engineer, the Department is willing to re-assess the application at that time. If the applicant chooses to pursue reapplying for permission, please note that this will require a separate

consultation with the NCC. We would also recommend that should the applicant reapply, the CPA should also consult with the Port Authority regarding this application given its location within the proposed Port Anchorage Zone and the active George Town Harbour area.

Please do not hesitate to contact the Department should you require further assistance.

Director of Environment
Under Delegated Authority of the National Conservation Council

Appendix 'B'

17th April, 2020

Director of Planning
Cayman Islands Planning Department
C I Government Administration Building
George Town, Grand Cayman

Dear Sir / Madam,

Objection to Waterfront Centre Ltd (OPY 193) Planning Application for Extension of Existing Dock

Will you kindly accept this letter as a formal objection to the plans put forward by the Waterfront Centre Ltd on block and parcel OPY 193 on behalf of my clients namely Shireoak Limited, a company owned by Christopher D. Johnson, and the Estate of the late Kenneth Spraggon, one of whose executors is Mr. Johnson. Specifically the objections are:

1. Planning permission for Balboa Beach was granted but is currently under appeal. No other planning applications on this block and parcel should be heard until a decision has been made.
2. The proposed structure is entirely on the Queens Bottom (beyond the HW Mark). The application should be a Coastal Works Application, not a planning one. I have attached a photograph for reference.
3. A complete and current H W Mark survey is required before the project can be heard by the planning board. The surveyor acting on behalf Waterfront Centre Ltd has conveniently overlooked sections of the coastline (labeled as per 04/074, last surveyed in the 1970's). The survey is attached here for your reference. Arising out of this, 3 areas of land are misrepresented as OPY 193 when in fact they are in excess of 3 feet underwater. The area most southerly is of significant concern as unprotected sheet piles have rusted and consequently the property has been undermined by the sea. Thus, large amounts of fill, under the new outdoor bar at the Sandbar (neighboring property) have been hollowed out and a large dangerous cavern now exists underneath. Natural erosion has washed away these chunks of land and are no longer part of this parcel.
4. The boat launch excavated sometime between the 1950s and 1960s has had much natural erosion since then. The area proposed to be infilled is a mixture of excavated and naturally eroded shoreline. The old boat launch was in fact smaller than what is shown in this photo.
5. Much aquatic life has inhabited the boat launch which is in as much as 3 feet of water. The

proposed dock extension is in a Marine Park zone. Any construction with concrete will spill into the sea and kill aquatic life. It should be noted that on March 24th, 2017 the developer damaged and removed coral from the sea with a crane and flatbed truck without any government permission.

In conclusion, we would respectfully advise the board that any application for filling in the seabed should be a coastal works license and follow standard procedure as stated on the Government webpage for 'Coastal Works Licenses', a copy of which is attached.

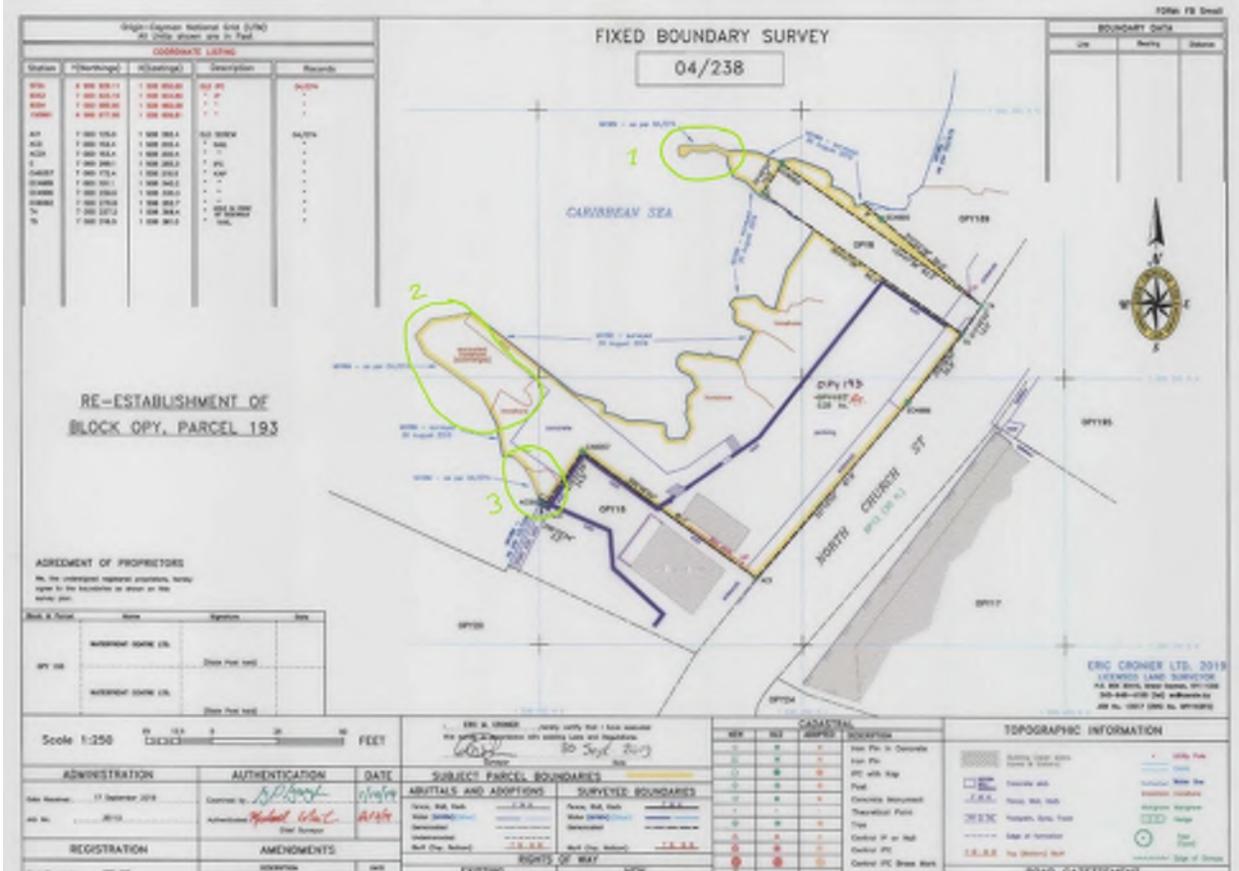
If you have any questions or comments, you may call me at 938-3828 or email Robert@rjda.ky.

Yours truly,

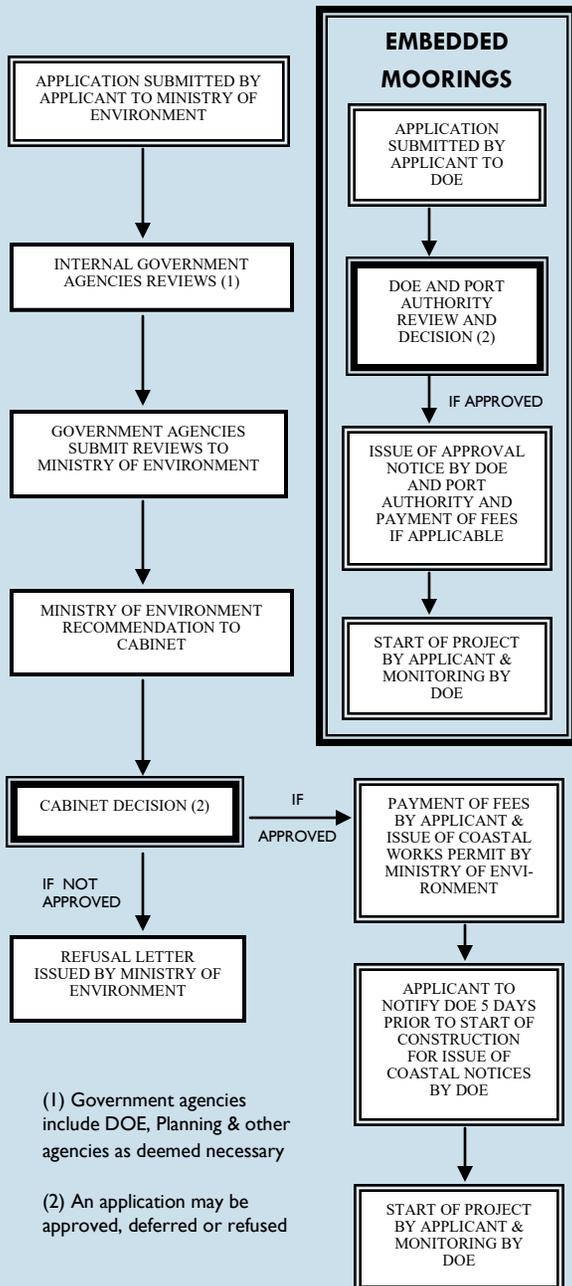


Robert Johnson, B.Eng, M.Arch, NCARB
Principle Architect, Johnson Architecture

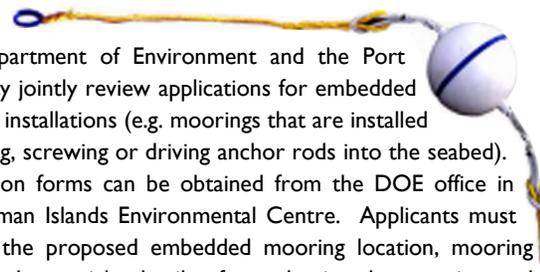




How The Process Works



EMBEDDED MOORING INSTALLATIONS



The Department of Environment and the Port Authority jointly review applications for embedded mooring installations (e.g. moorings that are installed by drilling, screwing or driving anchor rods into the seabed). Application forms can be obtained from the DOE office in the Cayman Islands Environmental Centre. Applicants must provide the proposed embedded mooring location, mooring design and materials, details of vessel using the mooring, and installation equipment and technique. The completed application form should be submitted to the DOE (Refer to process flowchart).

Generally, a fee is not applied when granting permission to install an embedded mooring.

It is the responsibility of the owner to maintain the embedded mooring in a useable condition.

STORM MOORING INSTALLATIONS FOR COMMERCIAL VESSELS ONLY

The Environmental Zone is an exceptionally important feature of our marine ecosystem and access is limited under the National Conservation Law. Government recognizes the area also may offer hurricane protection and may permit installing permanent moorings under exceptional circumstances. Applications for installing commercial vessel storm embedded moorings within the Environmental Zone can be obtained from the DOE. If the application is approved, the applicant will pay an annual permit fee. The annual sum will be based upon the size of the embedded mooring and the impact to the seabed.

Prior to submission of the formal application, applicants are encouraged to consult with the Department of Environment regarding potential impacts of the proposed project or for information about the environment within which the project is proposed.

Guide to Submitting Applications for Coastal Works



Cayman Islands Government Department of Environment

Cayman Islands Environmental Centre
P.O. Box 10202
580 North Sound Road, George Town,
Grand Cayman KY1-1002, Cayman Islands
Tel: 345-949-8469
E-mail: doe@gov.ky Website: www.doe.ky

Ministry of Health, Environment, Culture & Housing

Government Administration Building, George Town,
Grand Cayman KY1-9000, Cayman Islands
Tel: 345-244- 377



GETTING STARTED

Who needs a coastal works permit?

Persons who want to construct in, on, or over waters at or seaward of the mean high water mark (MHWM) or in, on, or over Crown-owned canals such as Governor's Harbour, Lime Tree Bay, Safe Haven Canal and Snug Harbour/Hyatt Canal must apply for a coastal works permit (formerly called a licence). This typically includes construction of:

- Seawalls
- Docks & jetties
- Launching ramps & slipways
- Groynes
- Embedded moorings (see *reverse for embedded mooring application requirements and process*)
- Dredging & filling

What needs to be submitted?

Application forms for coastal works may be obtained from the Ministry of Environment at the Government Administration Building, the DOE at the Cayman Islands Environmental Centre or at <http://doe.ky/resources/brochures/>. Applicants must provide a written description of the proposed project and its location, how works will be completed, what materials and equipment will be used, and what precautions will be taken to ensure the protection of the marine and terrestrial environments. Once the application form is complete, the following should be submitted to the **Ministry of Environment**

- A completed application for each type of proposed works (with notarised Register of Directors/Register of Members if Applicant is a company);
- 5 complete sets of construction plans/drawings/surveys (6 sets for Cayman Brac or Little Cayman applications);
- Registry Map Extract not more than 60 days old;
- Land Register not more than 60 days old;
- Proof of newspaper advertisements;
- Proof of Registered Mail Notices;
- Buffer Map and Owner Listing; and
- Proposed environmental mitigation plan.

Construction plans must be certified by an engineer, architect, or surveyor and must include:

- A dimensioned site plan indicating:
 - MHWM (not more than 12 months old);
 - Location & volume of proposed excavation or land fill areas;
 - Sediment settling areas & associated drainage systems;
 - Boundaries of significant geographical features e.g. channels, shoals;
 - Natural communities e.g. seagrass, mangroves, coral, hard bottom, sand;
 - Proximity to special aquatic or terrestrial sites e.g. marine parks, animal sanctuaries;
- A dimensioned cross-section & elevation views
- A bathymetric survey drawing of the site
- Details of construction must include Materials, Equipment, and General procedures.*

Failure to submit all information requested may result in significant delays in processing the application.

** Docks must be elevated at least 4 feet above high water level and must have at least 1/2 inch spacing between planks in order to promote seagrass growth.*

PERMITS & NOTICES

Once Cabinet has approved the project application, a coastal works permit is issued to the applicant by the Ministry. Permits are legally binding documents which contain specific conditions on how the works must be carried out, and must be signed by applicants and the Chief Officer of the Ministry of Environment to take effect.

The permit requires the applicant to notify the DOE five working days prior to commencement of works. The DOE will then issue two notices to the applicant. These notices must be visibly displayed on site near the area of coastal construction and by the roadside. Works shall not commence without these notices. If notices are not visible, Conservation Officers will suspend works and penalties may be applied.

FEES

There is no fee associated with submitting a coastal works application. If the application is approved, applicants may incur fees for royalties for use of Crown property, mitigation for damage of natural resources, and administrative and monitoring fees at the discretion of Cabinet.

REBUILDING DAMAGED STRUCTURES

Previously permitted coastal structures that have been damaged by storms can be rebuilt without the issuance of a new coastal works permit provided the following conditions are met:

- The Ministry of Environment must be advised of the applicant's intention to rebuild the approved structure. Application forms are available at the Ministry and the DOE.
- The structure must be rebuilt to the **same dimensions** as previously approved and permitted.
- The approved location, footprint and plan area of the structure must remain unchanged.
- Subject to the above requirements, the applicant will receive a Coastal Works Approval from the Ministry.
- The DOE must be notified of the commencement of works to allow for issuance of notices and monitoring.

No additional fees are incurred to rebuild a previously permitted structure provided that all above conditions have been met.

UNAUTHORISED COASTAL WORKS & AFTER-THE-FACT APPLICATIONS

It is illegal to conduct coastal works without a permit. Unauthorised structures may be ordered to be removed. Offenders may incur fines, and/or be subject to prosecution under the National Conservation Law. An application for an after-the-fact coastal works permit may incur additional fees.

Appendix 'C'



Photographs of After-The-Fact concrete slab and filling of land.



Concrete slab with ladder to enter water.



Additional After-The-Fact concrete slab.

Appendix 'D'

Wednesday, August 19, 2020

Mr. Haroon Pandohie
Director of Planning Department
P.O. Box 113 Grand Cayman KY1-9000

Cc: Jessica Peacey, Planning Assistant

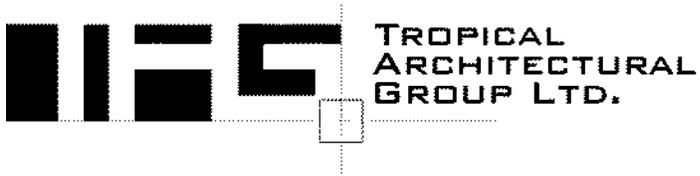
Application for a Proposed Swimming Pool and Pool Equipment Enclosure on Block 15E Parcel 108 - Beach Resort / Residential Zone for Emerald Beach Club, Strata Plan No. 252

The following are our comments based from the report and letters received from the Department of Environment and objectors:

- 1.) The proposed swimming pool is in line with, and does not extend beyond the existing steps of the current deck and will not encroach beyond the previously approved setback which was 75 ft from the Mean High Water Mark (shown on the original strata plans circa 1998 and per 1999 aerial photography from DOE's report). There is also substantial landscaping (palm trees and shrubber) on site which are closer to the shoreline and as the image on the next page shows, the proposed location of the swimming pool will not impact beach access or walking along the public beach.
- 2.) The second image shown on the DOE report shows that the building at Emerald Beach Club was severely undermined during the Hurricane Ivan. Post-Ivan, Apec Engineer were consulted and the foundations repaired with pilings and substantial concrete reinforcement installed under the supervision of Apec Engineering. The proposed swimming pool and walls are to be installed with pilings, will serve as additional protection to the existing foundation of the building.
- 3.) Emerald Beach was built in the early 1990s and the side setback requirement during that time is only 15 ft. The proposed pool equipment enclosure and LPG tank is within the original 15 ft minimum side setback. We are aware that the law regarding BRR Zone was amended and the new side setback requirement is now 20 ft. Following the new setback requirements, a setback variance is being requested for these ancillary structures. The pool equipment enclosure encroached by 5 ft along the east boundary while the LPG tank (*tank dimension for 500 gal are 9'-10" long x 3'-6" wide*) encroached by 1'-5" on the west boundary. Per our discussion with Homegas, the LPG tank needs to be at least 10 ft away from any opening from the building. There is already an existing wall (concrete fence) next to the proposed location of the LPG which will serve as a protection to the tank. The provision of a blast wall around the tank will be considered for an added safety feature if needed. Since both are considered ancillary structures and we hope that the Authorities will find these requests to be acceptable.

- 4.) From the aerial photo received from the Cayman Survey Associates Ltd. (CSA) taken from the CaymanLandInfo, it is clearly shown that the oceanfront units of the objectors' parent parcel (15D 63), i.e. Caribbean Paradise, have their decks well outside the 75 ft HWM setback requirement and most of them into the 50 ft HWM setback. Accordingly what is being proposed is entirely "consistent with the character of the surrounding area" for the purposes of Reg. 8(13)(b)(i)
- 5.) As to concerns regarding Turtle Nesting, we would highlight that there will be no other additional lighting aside from the lights that will be installed inside the swimming pool. The pool lights will only operate until early evening and Emerald Beach Club is willing to liase and cooperate fully with the DOE regarding Turtle Friendly Lighting and other measures for the protection of turtle nest or nesting turtles.





We will be pleased to attend before the Central Planning Authority on the hearing of Emerald Beach Club's application for Planning permission, in support of that application, and to address the above issues and any questions that the Authority may have.

A handwritten signature in blue ink, appearing to read 'D. EBANKS', is written above a horizontal line.

Darrel Ebanks
Tropical Architectural Group Ltd.

For Emerald Beach Club
Strata Plan No. 252
Attention: Mr. Paul Keeble
Chairman, Executive Committee, Emerald Beach Club













Cayman Survey Associates Ltd.

August 19, 2020

Mr. Paul Keeble, Chairman Executive Committee
Unit No. 4, Emerald Beach Club
Strata Plan No. 252
202 South Sound Road
South Sound

Dear Paul,

15E 108, Emerald Beach, Strata Plan #252.

Having reviewed all available Survey Data, we make the following comments on the letters received from the six objectors, all of whom are said to be owners or residents in the adjacent Caribbean Paradise development (15D 63):

- Private ownership of land extends to the MHWL, currently mandated by the Lands & Survey Department as the +1' contour. Although the public does have Prescriptive Rights to traverse and use the beach. **Sophie Prior (nee Benbow)** states that the original pool "was not above the high-water mark". Clearly (as shown on the original Strata Plans. Circa 1998) it was.
- The **Mugglestones** state that the proposed construction is closer than 15' to the boundary lines. Emerald Beach's west boundary is common to the Cemetery, so this statement is incorrect for the west boundary. The proposed pool/pump equipment enclosure is 4' 4" x 7', and measures 15.0' and 15.6' from the boundary common to 15D 63, and this statement is accordingly incorrect also for the eastern boundary. See attached PDF.
- The western boundary of 15E 108 is common to the adjacent Cemetery. Government has Gazetted a proposed road by Boundary Plan (BP) 393, but currently this is just an intention.
- The other main concern which seems to be expressed is that the proposed pool will restrict the public's Prescriptive Rights, i.e. beach access. This is unsustainable. The pool is some 10' wide and is to be constructed to fill the 7' 5" wide alcove or recessed area in the central portion of the Emerald Beach Club building. Accordingly and having measured it personally, the pool will extend about 2' 7" beyond the current deck of Emerald Beach Club and will not project/extend at all beyond the existing two three-riser stairs, which stairs themselves extend some 2' 8" beyond the current deck of the Emerald Beach Club building. Furthermore, the location of the proposed pool is currently landscaped with coconut trees and shrubbery extending some 4-5' beyond the limits of the proposed swimming pool, and generally inaccessible to the public. Accordingly in the circumstances, given the intended location of the pool, there is effectively no change or limitation to beach accessibility, the proposed swimming pool being entirely within the existing footprint of the Emerald Beach Building and well within the existing trees and shrubbery which extend beyond the property.



Cayman Survey Associates Ltd.

- It seems to be the case that the objectors have failed to review the application by Emerald Beach Club sufficiently, including recognizing that the swimming pool proposed is entirely within the existing footprint of the building, not to mention its surrounding vegetation, and does not in the circumstances encroach upon or impede beach access.
- We note that adjacent parcel 15D 63, Caribbean Paradise, has its own beach, over 600' in length. Most of the seafront units at Caribbean Paradise (15D 63) along this 600' of beach have "additions" to their units that **in every case** encroach into the 75' set-back, and **most** of them also into a 50' set-back. The installation of the proposed swimming pool by Emerald Beach Club as proposed with a 49' set back is entirely consistent with, and in keeping with, the set-backs of the seafront units at Caribbean Paradise as my survey illustrates. In the circumstances it hardly rests with the objectors to suggest that beach access is being impeded when Emerald Beach Club's existing building and proposed swimming pool, are entirely consistent with the setback of the seafront units within Caribbean Paradise.
- The other main concern is turtle nesting. You have said that the only additional lighting will be **within** the pool and controlled by a timer such that the pool will not be lit beyond the early evening. I understand from you also that Emerald Beach Club is very concerned with turtle nesting, and is happy to liaise with the DOE about (i) Turtle Friendly Lighting, (ii) the existence of turtle nests prior to construction, (iii) placement of materials to minimize interference during the turtle nesting season (May – November), and (iv) removal of sand (which appears unlikely to be necessary), in order to allay the concerns of the objectors and the Department of the Environment.
- We note that the DOE highlighted undercutting of the building slab after Hurricane Ivan. However, the decking in the DOE photographs was replaced post-Hurricane Ivan with much more substantial construction, and the proposed swimming pool constructed with pilings as intended will provide additional sea defences.

I will be pleased to attend before the Central Planning Authority on the hearing of Emerald Beach Club's application for Planning permission, in support of that application, and to address the above issues and any questions that the Authority may have.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read 'C.R. Fawkes', is written over a light blue horizontal line.

C.R. Fawkes B.Sc. LLS
For Cayman Survey Associates Ltd.

Y:\Colin\AutoCAD Folders\2020Drawings\15E 108 Emerald Beach\objectors.docx

15D 63. Offsets from Beach Side Structures To The 1' Contour (MHWM)



Legend



1:282
8/7/20 4:08 PM



Notes
[Add Map Notes]



Lands and Survey Department © Cayman Islands Government

This map is a user generated static output from Caymap and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. Boundary lines are indicative only. Refer to the individual parcel survey for the correct location.



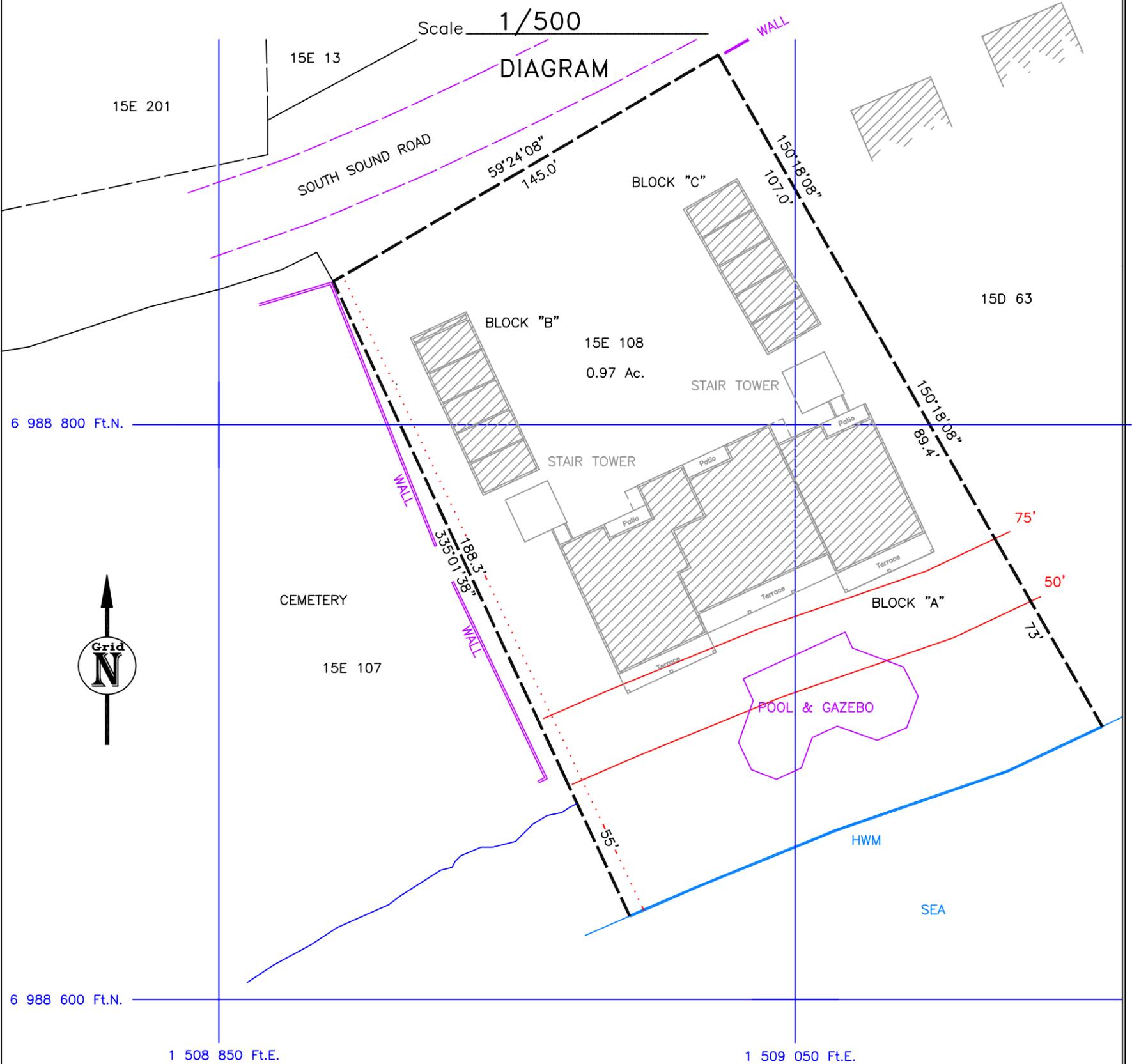
REGISTRATION: SECTION SOUTH SOUND STRATA PLAN No. _____

BLOCK 15E Registered _____

PARCEL No 108 Registrar of Lands _____

Address of Body Corporate } EMERALD BEACH CLUB
 for service of notices } c/o P.O. Box 30117, S.M.B. Last Plan _____

Diagram of location of buildings (and ground floor configuration)
 in relation to parcel boundaries



AMENDMENTS				
NO.	DATE	DETAILS	REMARKS	INIT'L

REGISTRATION:
SECTION

SOUTH SOUND

STRATA PLAN No. 252

BLOCK

15E

Registered _____

PARCEL No

108

Registrar of Lands

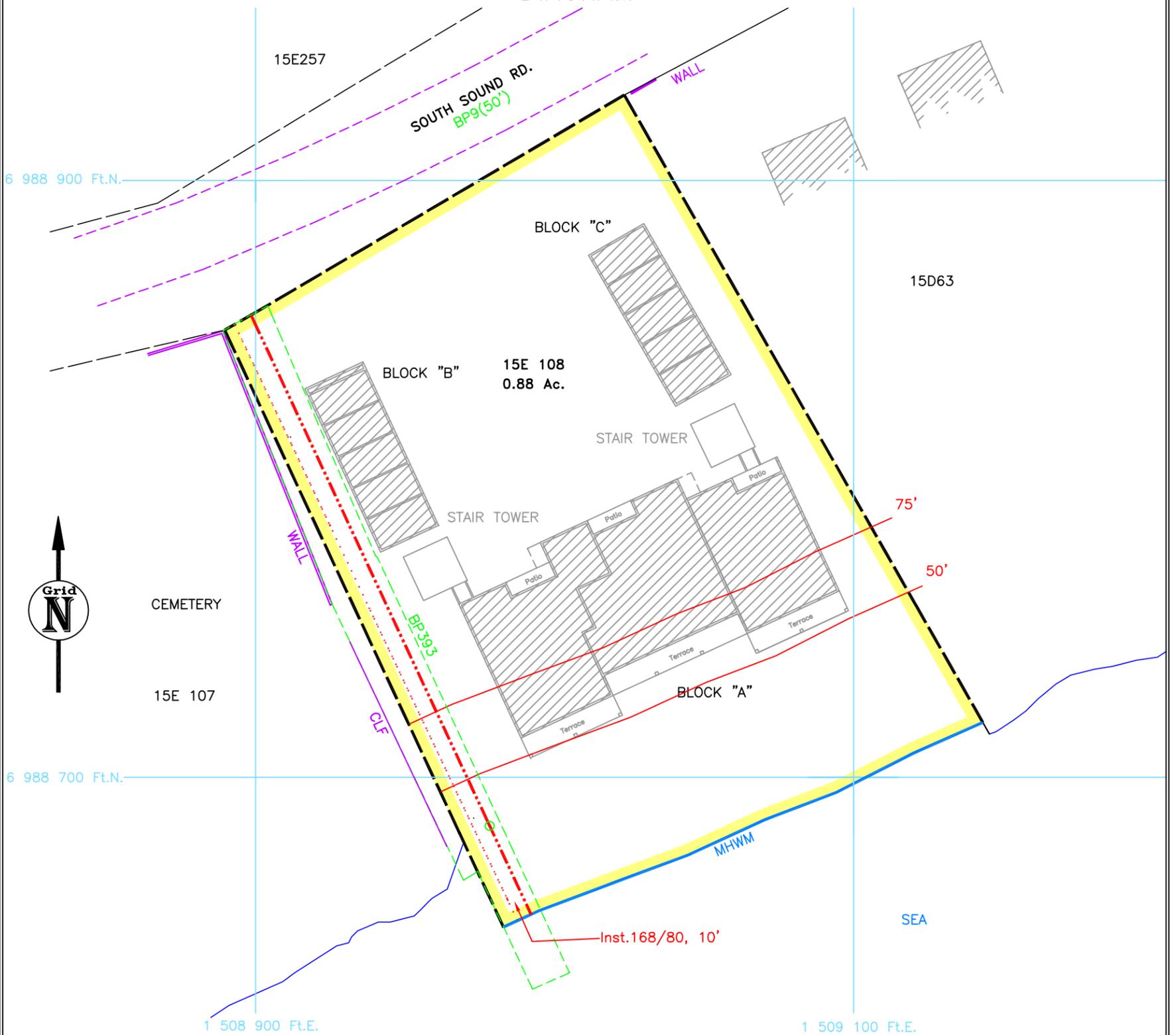
Address of Body Corporate }
for service of notices }

EMERALD BEACH CLUB
c/o P.O. Box 30117, S.M.B.

Last Plan 04/272

Diagram of location of buildings (and ground floor configuration)
in relation to parcel boundaries
Scale 1/500

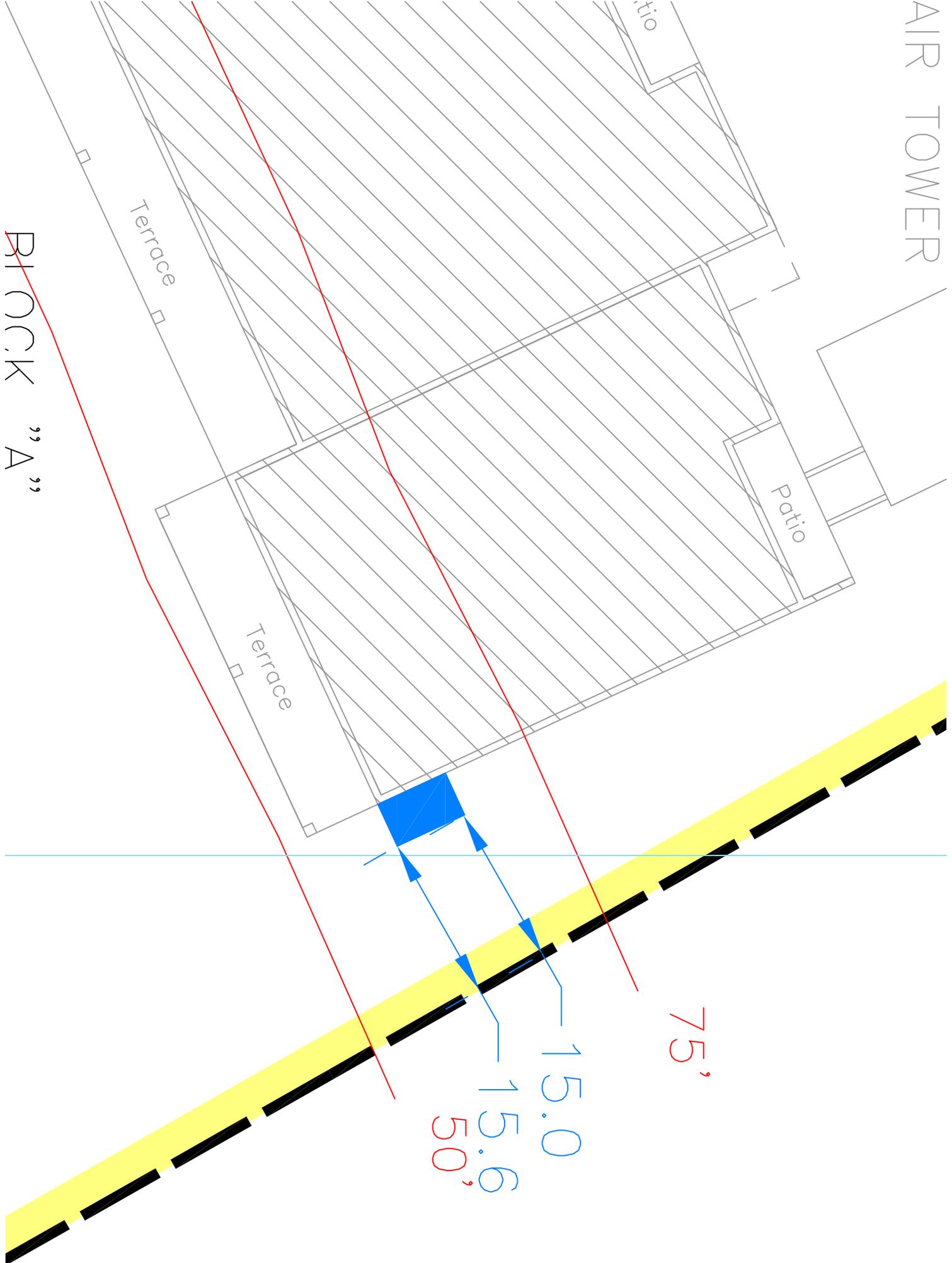
DIAGRAM



AMENDMENTS

NO.	DATE	DETAILS	REMARKS	INIT'L
1	11.9.98	Registration of Units 15E H1 - H20	S.588	GAM
2	19.02.15	Registration of By Laws	S.1945	SEB

AIR TOWER



BRICK "A"

75'

15.0

15.6
50'

15D 63. Offsets from Beach Side Structures To The 1' Contour (MHWM)



Legend



1:282
8/7/20 4:08 PM



Notes
[Add Map Notes]

101.34 0 101.34 Feet

HAMPSON AND COMPANY

ATTORNEYS AT LAW

19 August 2020

Mr. Haroon Pandohie, Director
Department of Planning
Government Administration Building
133 Elgin Avenue, George Town
P.O. Box 113
Grand Cayman KY1-9000

Cc: Jessica Peacey, MRTPI, Planning Assistant
By email as a pdf attachment to Jessica.Peacey@gov.ky

By Mailfast courier with enclosure

Dear Mr Pandohie:

**Application for variance
Proposed Swimming Pool and Pool Equipment Enclosure
Block 15E Parcel 108 - Emerald Beach Club, Strata Plan No. 252
202 South Sound Road, South Sound, Grand Cayman
Planning Application No. P20-0264**

I write on behalf of Emerald Beach Club, Strata Plan No. 252 in support of Emerald Beach Club's application for a variation to permit the installation of a swimming pool, propane tank, and pool equipment enclosure on Emerald Beach Club's parcel on South Sound Road.

Background

Emerald Beach Club is a 10 unit residential development, comprised of 3 single-storey units on the ground level, with 7 two-storey units above, located adjacent to the South Sound Cemetery to west and Caribbean Paradise to the east.

In writing in support of the application by Emerald Beach Club, I write:

- (i) as a joint owner (with my wife) of Unit 4, Emerald Beach Club, where we have lived with our 10-year old daughter since May 2013;
- (ii) as Chairman of the Executive Committee of Emerald Beach Club, which position I have held since our former Chairman, Mike Howard, passed away in early 2015; and

(iii) as attorney for Emerald Beach Club.

As the Authority will likely be aware, when constructed by Kel Thompson in the late 1990's Emerald Beach Club's amenities included a swimming pool, jacuzzi and cabana, constructed some short distance in front of the property, and complying as I understand with setback requirements from the then Mean High Water Mark. As a result of Hurricane Ivan, that swimming pool etc. was lost. Following Hurricane Ivan, Apec Engineering was consulted and under their supervision the seafront terrace/deck portion of Emerald Beach Club was considerably reinforced and strengthened with pilings as I understand to the bedrock below.

Over the years since, the owners within Emerald Beach Club have periodically considered reinstating the swimming pool. As the result of a poll of the owners of Emerald Beach Club taken in May 2019 it was agreed that reinstatement of a small swimming pool Jacuzzi integrated into the recessed 30' x 7' 5" alcove in front of Unit 2 in the centre of the building, would be a considerable amenity to be enjoyed by all within Emerald Beach Club and represent an asset to the development and enhance property values.

The Authority will appreciate that there are few residential units of 10 or more units in the Cayman Islands without a swimming pool of some description, and the lack of a swimming pool is detrimental to the value of the development, and a source of frustration to owners during the hot summers.

The Application for a variance

Accordingly with the strong endorsement of its owners, Emerald Beach Club instructed Tropical Architectural Group Ltd (Darrel Ebanks), and Cayman Survey Associates (Colin Fawkes) to proceed with drawings/renderings, a High Water Mark Survey and an application to the Planning Department for the necessary variance, which application is present before the Authority.

No interference with beach access

As appears from the reports of Cayman Survey Associates and Tropical Architectural Group Ltd submitted to the Authority, it is stressed that the swimming pool and Jacuzzi is to be integrated into and constructed within the 30' x 7'5" alcove, built and designed into the existing layout of Emerald Beach Club. The swimming pool and Jacuzzi, with an overall width of 10', will extend some 2'7" beyond the current deck/terrace of Emerald Beach Club, and not beyond the existing three riser concrete and tiled stairs in front of Units 1 and 3. In other words, the overall footprint of Emerald Beach Club remains entirely unchanged with the swimming pool falling entirely within the existing dimensions of the building.

If one takes into account the extent of the landscaping, comprising palm trees and shrubbery extending some 4 -5' or more from the current terrace/deck of Emerald Beach Club, again the swimming pool is well within the perimeter of that landscaping and shrubbery.

In summary, and as Cayman Survey Associates and Tropical Architectural Group have endeavoured to demonstrate, the proposed swimming pool and Jacuzzi will in no way interfere with existing beach access, or use of the beach by the public. Accordingly with all due respect, the general assertions or concerns expressed by several of the objectors, as to interference with beach access, are unsustainable and suggest that they may not have reviewed Emerald Beach Club's application sufficiently, or did not

request the relevant drawings which would have disclosed the true position and that the construction does not extend beyond the present footprint of Emerald Beach Club.

The setback of the swimming pool from the MHW is entirely consistent with that of adjoining properties

As the reports of Cayman Survey Associates and Tropical Architectural Group Ltd, and attachments to those reports demonstrate, the construction of the proposed swimming pool some 49 feet from the Mean High Water Mark, is entirely consistent with the setbacks of Caribbean Paradise's seafront units, the additions for which along its 600' sea frontage encroach without exception into the 75' set back and most into the 50' set back.

Equally the set back at 49' is entirely consistent with that of the adjacent Tides development to the west of the South Sound Cemetery.

Photographs of the location of the proposed swimming pool and views up and down the beach in both directions appended to this letter illustrate the position, including that the proposed swimming pool will not interfere with the open character of the shoreline, as contemplated by Regulation 20.

In summary what is being proposed by Emerald Beach Club, including the set back from the Mean High Water Mark is entirely "consistent with the character of the surrounding area" for the purposes of Regulation 8(13)(b)(i).

The construction of the swimming pool

As indicated in the Department of Environment's report dated 6 May 2020, the Emerald Beach Club structure was undermined during Hurricane Ivan. It is the case that given the force of Hurricane Ivan, most sea front properties in the area experienced similar effects. The structure at Emerald Beach Club was considerably reinforced with pilings to bedrock post-Hurricane Ivan, under the supervision of Apex Engineering. Emerald Beach Club has instructed and will request and ensure with structural engineering advice as required, that the pool and Jacuzzi are built on pilings and constructed into the bedrock in a professional and proper fashion, such that the pool structure will complement and enhance the resistance of the building to any future Hurricane Ivan type event.

The pool equipment enclosure and propane tank – the side setbacks

As indicated in the report of Cayman Survey Associates, the pool equipment enclosure complies with the 15' side setback requirement to which Emerald Beach Club was built in the late 1990s.

The propane tank for the swimming pool heater may, as indicated in the Tropical Architectural Group report, encroach some 1'5" on the side setback in order to maintain a 10' separation from the Emerald Beach Club building. As I understand depending on the size of the propane tank Emerald Beach Club accordingly may require a minor variance of 1'5", or the exercise of the Authority's discretion under Regulation 15(4)(b)(iii) as it relates to ancillary structures. Emerald Beach Club is prepared to install a blast wall if considered necessary between the tank and the building.

Turtle nesting concerns etc.

The owners within Emerald Beach Club are very concerned with and take a keen interest in turtles nesting in the area, indeed I and my daughter have been very involved in reporting any nesting turtles to the Department of Environment (Ms Janice Blumenthal, who resides within Caribbean Paradise) since our purchase in 2013, and observing the hatching of turtles.

In this regard, and with reference to the Department of Environment report dated 6 May 2020, we confirm that no exterior lights are planned for the swimming pool and Jacuzzi; all lights will be exclusively within the pools, and will be controlled by a timer such that they will not be lit beyond early evening, in the interests not only of potentially nesting turtles but also the owners and residents of Emerald Beach Club.

Equally to allay any concerns with interference with turtle nesting, Emerald Beach Club will be pleased to liaise with the Department of Environment to ensure that construction, and construction materials, do not interfere with nesting turtles. I add that it is the case that since May 2013 we are aware of only one instance of a turtle nesting in front of Emerald Beach Club, and (as Ms Blumenthal will confirm) very few have nested in recent years in the immediate vicinity including along the sea front of Caribbean Paradise, although for the avoidance of doubt I indicate that this area is substantially dark and unlit at night.

The Department of the Environment report refers also to possible removal of sand. Emerald Beach Club does not anticipate that it will be necessary to remove any sand from the area during the course of construction.

Summary

I trust the foregoing clarifies the position, and what may have been a misapprehension on the part of some of the objectors as to the location and extent of the swimming pool proposed. As indicated, the swimming pool will fall entirely within the existing footprint of Emerald Beach Club (including the existing stairs and landscaping) and will not encroach upon or impede beach access or use of the beach.

Further the swimming pool in the proposed location some 49' from the Mean High Water Mark, is entirely consistent with development in this area including the seafront units at Caribbean Paradise and the Tides.

As Chairman of the Executive Committee of Emerald Beach Club, and on behalf of the owners and residents of Emerald Beach Club and including my daughter, who are extremely desirous of having the benefit of a swimming pool, we are grateful for the Authority's consideration of our application for a variance to facilitate the reinstatement of the swimming pool and Jacuzzi as indicated.

Yours very truly,



M. Paul Keeble, Partner
Hampson and Company

Appendix 'E'

August 14, 2020
Central Planning Authority
133 Elgin Avenue
Government Administration Building
George Town, Grand Cayman

Re: DoE response comments for Maggion Residence – Proposed Single Family house, Garage, Summer Kitchen, Pool, and LPG Tank at Block 33B, Parcel 123

Dear Sir or Madam,

Below please find the recommendations received from the DoE with regards to this application, and our responses:

1. Given the climate change predictions for the region and that the application site is on an actively eroding coastline, the applicant should be encouraged to submit revised plans where the development meets the minimum required coastal setback for beach/mangrove coastline and to take into consideration the climate change impact and incorporate climate change resilient features such as raised/wash through foundations for the deck and house

Response: Entire house & pool structure has been moved away from the HWM. Original proposed setback to pool deck has been increased from 24'-5" to 40'-2". Setback from pool structure is 55'-10"

2. Steps should be taken to mitigate against the coastal erosion e.g. planting of mangroves along the coastline.

Response: Client is committed to planting mangroves along the coastline.

3. Any sand that is to be excavated during construction should be retained on-site and beach quality sand should be placed along the active beach profile. if there is an excessive quantity of sand that cannot be accommodated on-site, and the applicant would like to move such sand offsite, it should be the subject of a separate consultation with the national conservation council.

Response: Client is committed to complying with this requirement

4. All construction materials shall be stockpiled away from the sea to prevent run-off and debris from entering the marine protect area.

Response: Client is committed to complying with this requirement

Should you have any questions, do not hesitate to contact this office.

Sincerely,
Mike Stroh
Architect

USA

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