

Central Planning Authority

Agenda for a meeting of the Central Planning Authority to be held on **September 29, 2021 at 10:00Am, in Conference Room 1038, 1st Floor, Government Administration Building, Elgin Avenue.**

20th Meeting of the Year

CPA/20/21

Mr. Ian Pairaudeau (Chair)

Mr. Handel Whittaker (Deputy Chair)

Mr. Joshua Bernard

Mr. Gillard McLaughlin

Mr. Charles Russell Jr.

Mr. Windel Scott

Mr. Peter Campbell

Mr. Kenneth Ebanks

Ms. Danette McLaughlin

Ms. Shakina Bush

Ms. Christine Maltman, MCIP, AICP

Ms. Celecia Bancroft

Mr. Ashton Bodden

Mr. Haroon Pandohie (Executive Secretary)

Mr. Ron Sanderson (Deputy Director of Planning – Current Planning)

- 1. Confirmation of Minutes & Declarations of Conflicts/Interests**
- 2. Applications**
- 3. Development Plan Matters**
- 4. Planning Appeal Matters**
- 5. Matters from the Director of Planning**
- 6. CPA Members Information/Discussions**

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APPLICANTS ATTENDING THE AUTHORITY’S MEETING

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Philip Blackledge	11:00	2.2	15
Pro Plus	11:30	2.3	17
Gumtree Capital	1:00	2.4	25
Charles Russell	1:30	2.5	27
Barkers Beach Resort	2:00	2.6	36
Harry Lalli	2:30	2.7	51

1.1 Confirmation of Minutes of CPA/19/21 held on September 15, 2021.

1.2 Declarations of Conflicts/Interests

ITEM	MEMBER

2.0 APPLICATIONS
APPEARANCES (Items 2.1 to 2.7)

2.1 CAYMAN PROPERTY INVESTMENTS LTD. (MJM Design Studio) Block 5B Parcel 151 (P20-1162) (\$11,000,000) (MW)

Application for 31,686 sq. ft. (6) unit three story apartment building with diesel generator, swimming pool, 8' retaining wall, 105 panel solar panel array with setback & height variances.

Appearance at 10:30

FACTS

<i>Location</i>	West Bay Rd., West Bay
<i>Zoning</i>	Neighbourhood Commercial
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	0.25 ac. (10,890 sq. ft.)
<i>Parcel size required</i>	20,000 sq. ft.
<i>Current use</i>	Existing Residence to be demolished.
<i>Proposed building size</i>	31,686 sq. ft.
<i>Total building site coverage</i>	64.1%
<i>Allowable units</i>	CPA discretion
<i>Proposed units</i>	6 units
<i>Allowable bedrooms</i>	CPA discretion
<i>Proposed bedrooms</i>	24 bedrooms
<i>Required parking</i>	9 spaces
<i>Proposed parking</i>	12 spaces

BACKGROUND

July 21, 2021 (CPA/15/21; item 2.6) – the application was adjourned to re-invite the applicant to appear with their architect in order to fully answer the Authority's questions

Recommendation: Discuss the application, **for the following reasons:**

- 1) Zoning
- 2) Building height
- 3) Parking area

- 4) Roadside setback
- 5) Retaining wall height

AGENCY COMMENTS

Comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment (NCC) are noted below.

Water Authority

Please be advised that the Water Authority’s requirements for the proposed development are as follows:

Wastewater Treatment and Disposal

The developer, or their agent, is required to submit an Onsite Wastewater Treatment Proposal, per the attached Form, which meets the following requirements. Water Authority review and approval of the proposed system is a condition for obtaining a Building Permit.

- ***The proposed development requires Aerobic Treatment Unit(s) with NSF/ANSI Standard 40 (or equivalent) certification that, when operated and maintained per manufacturer’s guidelines, the system achieves effluent quality of 30 mg/L Biochemical Oxygen Demand and 30 mg/L Total Suspended Solids. The proposed system shall have a treatment capacity of at least 2,250 US gallons per day (gpd), based on the following calculations:***

BUILDING	UNITS/BLDG	GPD/UNIT	GPD/BLDG	GPD
Apartment Building	6 x 4-Bed Units	375gpd/4-Bed Unit	2,250gpd	2,250gpd
TOTAL				2,250gpd

- ***Treated effluent from the ATU shall discharge to an effluent disposal well constructed by a licenced driller in strict accordance with the Authority’s standards. Licenced drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.***
- ***To achieve gravity flow, treated effluent from the ATU must enter the disposal well at a minimum invert level of 4’6” above MSL. The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.***

Elevator Installation:

Hydraulic elevators are required to have an approved pump with oil-sensing shut off installed in the sump pit. Specifications shall be sent to the Water Authority at development.control@waterauthority.ky for review and approval.

Generator and Fuel Storage Tank(s) Installation:

*In the event underground fuel storage tanks (USTs) are used the Authority requires the developer to **install monitoring wells for the USTs**. The exact number and location(s) of the monitoring wells will be determined by the Authority upon receipt of a detailed site plan showing location of the UST(s) and associated piping. The monitoring wells shall comply with the standard detail of the Water Authority linked below. All monitoring wells shall be accessible for inspection by the Authority. In the event above ground fuel storage tanks (ASTs) are used, monitoring wells will not be required.*

https://www.waterauthority.ky/upimages/download/USTMonitoringWellFeb2013_1445632994.pdf

Existing septic tank shall be decommissioned

The Existing septic tank shall be decommissioned as per the Water Authority's Best management: practices:

http://www.waterauthority.ky/upimages/download/BMPs_abandoned_WW_systems1_1423220782.pdf

Water Supply:

Please be advised that the proposed development site is located within the Cayman Water Company's (CWC) piped water supply area.

- The developer is required to notify the Cayman Water Company without delay, to be advised of the site-specific requirements for connection.*
- The developer shall provide water supply infrastructure per CWC's specification and under CWC's supervision.*

If there are questions or concerns regarding the above, please email them to: development.control@waterauthority.ky

National Roads Authority

As per your memo dated May 5th, 2021 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.

Road Capacity Issues

The traffic demand to be generated by a residential development of six (6) multi-family units has been assessed in accordance with ITE Code 220. Thus, the assumed average trip rates per dwelling unit provided by ITE for estimating the daily, AM and PM peak hour trips are 6.63, 0.51 and 0.62 respectively. The anticipated traffic to be added onto West Bay Road is as follows:

Expected Daily Trip	AM Peak Hour Total Traffic	AM Peak 16% In	AM Peak 84% Out	PM Peak Hour Total Traffic	PM Peak 67% In	PM Peak 33% Out
40	3	1	2	4	3	1

Based on these estimates, the impact of the proposed development onto West Bay Road is considered to be minimal.

Access and Traffic Management Issues

One-way driveway aisles with diagonal parking shall be a minimum of twelve (12) to sixteen (16) ft wide.

Entrance and exit curves shall have no less than fifteen (15) feet radius curves, and have a width of twenty-two (22) ft.

A six (6) foot sidewalk shall be constructed on West Bay Road and Boogy Sand Road, within the property boundary, to NRA standards.

Tire stops (if used) shall be placed in parking spaces such that the length of the parking space is not reduced below the sixteen (16) feet minimum.

Stormwater Management Issues

*The applicant is encouraged to implement state-of-the-art techniques that manage stormwater runoff **within the subject parcel** and retain existing drainage characteristics of the site as much as is feasible through innovative design and the use of alternative construction techniques. However, it is critical that the development be designed so that post-development stormwater runoff is **no worse than** pre-development runoff. To that effect, the following requirements should be observed:*

- *The applicant shall demonstrate, prior to the issuance of any Building Permits, that the Stormwater Management system is designed to embrace storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties and/or nearby roads are not subject to stormwater runoff from the subject site.*
- *The stormwater management plan shall include spot levels (existing and finished levels) with details of the overall runoff scheme. Please have the applicant provide this information prior to the issuance of a building permit.*
- *Construct a gentle ‘hump’ at the entrance/exit (along the entire width of each driveway) in order to prevent stormwater runoff from and onto West Bay Road and Boogy Sand Road. Suggested dimensions of the ‘hump’ would be a width of 6 feet and a height of 2-4 inches. Trench drains often are not desirable.*
- *Curbing is required for the parking areas to control stormwater runoff.*

- *Roof water runoff should not drain freely over the parking area or onto the surrounding property. Note that unconnected downspouts are not acceptable. We recommend piped connection to catch basins or alternative stormwater detention devices. Catch basins are to be networked, please have the applicant provide locations of such wells along with details of depth and diameter prior to the issuance of any Building Permits.*
- *Sidewalk detail needs to be provided as per NRA specifications. See <https://www.caymanroads.com/upload/files/3/Sidewalk%20&%20Curbing%20Details.pdf>*

At the inspection stage for obtaining a Certificate of Occupancy, the applicant shall demonstrate that the installed system will perform to the standard given. The National Roads Authority wishes to bring to the attention of the Planning Department that non-compliance with the above-noted stormwater requirements would cause a road encroachment under Section 16 (g) of The Roads Law (2005 Revision). For the purpose of this Law, Section 16(g) defines encroachment on a road as

"any artificial canal, conduit, pipe or raised structure from which any water or other liquid escapes on to any road which would not but for the existence of such canal, conduit, pipe or raised structure have done so, whether or not such canal, conduit, pipe or raised structure adjoins the said road;"

Failure in meeting these requirements will require immediate remedial measures from the applicant.

Department of Environmental Health

Please see the department's comments on the above application:

- 1. This premises will require a (8) eight cubic yard container serviced twice weekly.*
- 2. The location and dimensions of the proposed solid waste enclosure does not meet the department's requirements.*
- 3. Specifications and plans for the swimming pool must be submitted for review and approval.*

Department of Environment (NCC)

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 site is man-modified and of low ecological value. However, the beach at Boggy Sand Road, to the west of the site (across the street), is a turtle nesting beach (with Critical Habitat beyond to the north west) and the beach to the south east is Critical Habitat for turtle nesting (Critical Habitat is defined in the Interim Directive for the designation of Critical Habitat of Green turtles (*Chelonia mydas*), Loggerhead turtles (*Caretta caretta*), Hawksbill turtles (*Eretmochelys imbricata*), Leatherback turtles (*Dermochelys coriacea*) and all other species*

that may occur in Cayman waters including Kemp's Ridley turtles (Lepidochelys kempii) and hybrids (2020)). The areas of turtle nesting and Critical Habitat are shown in Figure 1 below.

Whilst the development is on the landward side of Boggy Sand Road, the application plans shows that the building has the massing and bulk of a 5-storey development with a roof ridge height of 60.5 feet above the level of West bay Road and 53.5ft above the level of Boggy Sand Road. This substantial built form has the potential for exterior lighting on the property to present an issue for turtle nesting activity on neighbouring beaches. It is difficult to establish the level of impact based on the plans provided. The Department would urge the CPA to consider requesting the applicant to provide a photomontage of the proposed development within the streetscape and from a variety of viewpoints (including the nesting beach habitat), to allow for a more informed perspective of the scale of the development within its context. Boggy Sand Road is a historic road with many traditional Caymanian houses remaining. The Central Planning Authority should consider this scale of development in this area carefully. Guidelines on best practice for such visual renderings can be found in the 'Guidelines for Visual Landscape & Visual Impact Assessment' prepared by the Landscape Institute and Institute of Environmental Management & Assessment.

In addition, due to the scale, we recommend that a Turtle Friendly Lighting Plan is prepared which minimises the effect of artificial lighting on the nesting beach. Bright lights on the beach can deter female turtles from nesting and cause baby turtles to crawl away from the sea, where they often die from dehydration, exhaustion, predators or vehicles. It is important therefore that any lighting that may directly, indirectly or cumulatively illuminate the nesting beach be turtle friendly.



Figure 1. The site (blue) and areas of sea turtle Critical Habitat (red) and sea turtle nesting beaches (yellow).

We note that the section of West Bay Road in front of this property typically floods and increasing the amount of impermeable ground cover and the height of the site could exacerbate this flooding. The area to the east, between Boggy Sand Road and West Bay Road, was previously a mangrove wetland with standing water (Figure 2). As the area has become more developed, the drainage capacity of the wetland has decreased. We recommend that a Stormwater Management Plan is prepared for the site to ensure there are no adverse impacts to the public road and that stormwater can be adequately handled on site and will not result in any off site flooding impacts.



Figure 2. The application site (red) in 1958, showing an area of mangroves and standing water to the east, which would have been providing drainage for the surrounding area.

If the CPA is minded to grant planning permission for this application, we strongly recommend the inclusion of the below condition in any grant of planning approval:

- 1) The applicant shall prepare and submit a plan to the Department of Environment for turtle friendly lighting, which minimises the impacts of artificial lighting on sea turtles. All lighting shall be installed in accordance with the plan, to be approved by the DoE. Guidance on developing a lighting plan can be found in the DoE’s Turtle Friendly Lighting: Technical Advice Note (September 2018).

Fire Department

Fire access all R1 and R2 Occupancies three stories or more in height shall provide open space of at least twenty feet along 3 sides of the building. Please depict existing / proposed fire well. 14 Jan 21

Petroleum Inspectorate (OfReg)

Approved subject to detailed review at BCU stage for fuel system to Generator on Roof. 17 Feb 21

APPLICANT'S LETTER

Letter #1

With respect to our December 14, 2020 submission for a three storey on 5B 151. The project is comprised of the following elements require variances in setbacks to allow:

- 1. The balconies of the apartments facing south (boggy sand road) will extend 3'-9 ¾" beyond the 20 FT setback line. This extension will only be on the upper floors, and the basement/ grade level will be treated as a landscaped area.*
- 2. Wastewater treatment plant to extend 4'-8" beyond the road 20 FT setback line (over west bay road).*

In making the application for such a variance, our client is mindful of provisions of Regulations 8 (13) of the Development and Planning Regulations, and would submit that there is sufficient reason and exceptional circumstances that would permit such setback allowance, in that:

- (i) The characteristics of the proposed development are consistent with the character of the surrounding area.*
- (ii) The proposed structures will not be materially detrimental to persons residing in the vicinity, to the adjacent properties, or to the neighboring public welfare.*

We thank you for your consideration of this matter and look forward to a favourable decision on this application in due course.

Letter #2

See Appendix A

PLANNING DEPARTMENT ANALYSIS

General

The application is for a 31,686 sq. ft. (6) Unit Three Story Apartment Building with Diesel Generator, Swimming Pool, 8' Retaining Wall, 105 Panel Solar Panel Array with Setback & Height Variances to be located on West Bay Rd., West Bay.

Zoning

The property is zoned Neighbourhood Commercial.

Specific Issues

1) Zoning

Section (13)(1)(b) states "*Neighborhood Commercial zones are zones in which the primary use is a less intense form of development of that permitted in a General Commercial zone and which cater principally for the needs of persons resident in, or in the vicinity of, the zone.*"

Section 13(10) states "*Notwithstanding subregulations (8) and (9), residential development may be permitted on any or all floors of a building in a General Commercial zone, a Neighborhood Commercial zone or a Marine Commercial zone if-*

- (a) *the development is a replacement or redevelopment of an existing residential development; or*
- (b) *the development forms part of a mixed – use development situated on one parcel of land and the planned development includes a mixture of commercial and residential uses proposed for close interaction.*

In this instance, there is an existing house on the site which would be replaced by the proposed 6 apartments. The Authority needs to determine if the proposal meets the intent of sub-regulation (a) in order to allow the site to be developed with residential use only. Sub-regulation (b) does not apply.

2) Building Height

Regulation 13(7)(a) states *“The maximum height of any building in a Neighborhood Commercial zone shall be 40’ or 3 stories, whichever is the greater.”* The proposed building height from finished grade to the roof of the gym/owners lounge would be about 53’ with an overall fronting road (West Bay Rd.) building height of 62’-0”.

Additionally, the proposal includes a roof top area with cabanas, an owners lounge and a gym. The applicant has labelled these areas as occupiable /non-habitable spaces. The exemption to building height for non-habitable ancillary spaces does not apply to this application as it was submitted prior to the Regulations being amended. Also, the Authority made a determination on a similar application at CPA/13/21; 2.2 where a similar concept of a gym with restaurant was considered a storey and needed to be removed from the scheme. In this instance, the gym and owners lounge would be considered a storey and the Authority has no discretion to allow it. Finally, the proposal includes a lower level parking area which if determined to be a basement would not be considered a storey.

3) Parking area

The driveway aisle in the lower level parking area is 18’ wide which is not sufficient to allow vehicles to reverse out of perpendicular parking spaces. Parking spaces #12 will conflict with traffic entering from West Bay Rd and will encourage users to reverse onto West Bay Rd which is a dangerous movement. Also, the proposal includes parking space #18 which is a parallel space on Boggy Sand Rd. There is some concern with the functionality of the space on a narrow road which could lead to traffic safety issues.

4) Road Side Setback

Regulation 8(8)(b) of the Development & Planning Regulations (2021 Revisions) states *“the minimum road setbacks shall be 20’ and the minimum side and rear setbacks shall be 6’ unless otherwise specified by the Authority”*. The proposed Wastewater Treatment Plant would be 18’-9” from the fronting road boundary in addition the balconies for the rear face of the apartments (Southern Boundary facing Boggy Sand Road) would be 16’-2 ¼” from the rear road boundary a difference of 1’-3” & 3’-9 ¾” respectively.

5) Fence Height

The CPA fence guideline (Section 4.4.1) states *“In commercial, industrial and institutional zones, no part of a solid wall or fence should exceed 48” in height”*. The proposed boundary retaining wall would be 8’-0” in height a difference of 4’-0” respectively.

SUPPLEMENTAL ANALYSIS

The Authority should be reminded the above mentioned application was seen on July 21, 2021 (CPA/15/21; Item 2.6) and it was resolved to adjourn the application and re-invite the applicant to appear with their architect in order to fully answer the questions of the Authority in relations to certain design aspects of the proposal. The applicant has submitted a second letter from their Attorney to address certain issues as noted in Appendix A.

2.2 PHILIP STEPHAN BLACKLEDGE (DDL Studio Ltd.) Block 24D Parcel 29 (P21-0414) (\$20,000) (BES)

Application for after-the-fact raised deck & proposed new detached garage & 36" high wall fence.

Appearance at 11:00

FACTS

<i>Location</i>	Mallard Drive, Spotts
<i>Zoning</i>	LDR
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	0.6833 ac. (29,764.54 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Residential
<i>Proposed building size</i>	787 sq. ft.
<i>Total building site coverage</i>	19.6%

BACKGROUND

July 21, 2021 (**CPA/15/21; Item 2.23**) – CPA adjourned the application to invite the applicant to appear before the Authority to discuss concerns regarding the canal setback and the after-the-fact nature of the works.

Recommendation: Discuss the application, **for the following reason:**

- 1) Rear setback (1'-5" vs 20')

AGENCY COMMENTS

Comments from the Department of Environment (NCC) are noted below.

Department of Environment (NCC)

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

We have no objection to the proposal as the application site is man-modified and of limited ecological value. However, the applicant should be advised to stockpile construction materials away from the canal's edge to reduce the possibility of rainwater runoff washing material and debris into the canal causing turbidity and impacting water quality.

APPLICANT'S LETTER

This application is seeking planning approval for the after-the-fact house addition of an elevated decking area, per the submitted drawings.

The application respects the 20 feet rear setback and both 20 feet side setbacks as imposed by the current Planning Development Zoning Guidelines in particular to canal/inland waterway minimum setbacks from high water mark. Our client wasn't aware of the regulation and approached us for help to seek for planning approval.

Encroachment to the setback was due to a floor decking that was built w/ a 6'-2" height above from the used to be lower deck area adjacent to the boat dock with five (5) concrete poured columns as support. Columns were embedded on the old deck concrete slab.

Currently, the said structure was put on hold due to our client wanting everything to be built in compliance with the C.I. Planning Regulations. We are therefore requesting a variance for this setback and seek your kind consideration to allow what they have started in compliance of what Planning Department may require.

For reference, we have attached six Planning approved setback precedents, in the same street / neighbourhood. Please refer to the Lands and Survey images A-F on pages two and three, for reference. We are humbly seeking the same kind consideration and decision, as was granted in these instances.

We thank you for your time. Please let us know if you require any additional information.

PLANNING DEPARTMENT ANALYSIS

General

The application is for an after-the-fact raised deck & proposed new detached garage & 36" high wall fence. The property is located on Mallard Drive, Spotts.

Zoning

The property is zoned Low Density Residential.

Specific Issue

1) Canal setback

Per Regulation 8(10)(ea), the minimum canal setback is 20', whereas the ATF deck setback is 1'-5". The Authority needs to determine if the applicant has demonstrated sufficient reason for allowing the lesser setback per the provisions of Regulation 8(11).

SUPPLEMENTARY ANALYSIS

No additional information was submitted regarding the above application.

2.3 PRO-PLUS CONSTRUCTION LTD. (Tropical Architectural Group Ltd.) Block 20D Parcel 171 (P21-0193) (\$8.6 million) (BES)

Application for 2-storeys apartments, 2-storeys townhouses, clubhouse/gym/cabana, swimming pool, 2-signs, and 4' wall with 6' gate

Appearance at 11:30

FACTS

<i>Location</i>	Off Linford Pierson HWY, George Town
<i>Zoning</i>	LDR
<i>Notification result</i>	Objectors
<i>Parcel size proposed</i>	approx. 10.5 ac (approx. 4.5 ac for current phase)
<i>Parcel size required</i>	25,000 sq. ft.
<i>Current use</i>	Vacant
<i>Proposed use</i>	apartments
<i>Proposed building size</i>	101,968 sq ft
<i>Total building site coverage</i>	26.8%
<i>Allowable units</i>	157 (67 in current phase area)
<i>Proposed units</i>	104
<i>Allowable bedrooms</i>	252 (108 in current phase area)
<i>Proposed bedrooms</i>	128
<i>Required parking</i>	156
<i>Proposed parking</i>	191

BACKGROUND

May 26, 2021 (CPA/11/21; Item 2.2) – CPA adjourned the application **for the following reason:**

- 1) The applicant raised at the meeting that revised plans had been prepared to address road network issues and the deletion of access to Halifax Rd. The Authority determined that the application would have to be adjourned so that the applicant could formally submit the revised plans to the Department and this process would require the re-notification of adjacent land owners and re-circulation to the relevant agencies.

The site is currently zoned LDR. The applicant has submitted an application to rezone the property to High Density Residential (HDR) and this was supported by the Authority, see CPA/03/21; item 3.3. The rezone application has not been presented to Cabinet for consideration.

Recommendation: Discuss the application for the following reasons:

- 1) Suitability
- 2) Revised Site Plan indicating changes to the site layout
- 3) Ministry of Planning email regarding access via BP600
- 4) Concerns of the objectors

AGENCY COMMENTS

Comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment (NCC) are noted below.

Water Authority

The Water Authority's requirements for the proposed development are as follows:

Wastewater Treatment and Disposal

The developer, or their agent, is required to submit an Onsite Wastewater Treatment Proposal, per the attached Form, which meets the following requirements. Water Authority review and approval of the proposed system is a condition for obtaining a Building Permit.

- ***The proposed development requires Aerobic Treatment Unit(s) with NSF/ANSI Standard 40 (or equivalent) certification that, when operated and maintained per manufacturer's guidelines, the system achieves effluent quality of 30 mg/L Biochemical Oxygen Demand and 30 mg/L Total Suspended Solids. The proposed system shall have a treatment capacity of at least 17,600 US gallons per day (gpd), based on the following calculations.***

BUILDING	UNITS/BLDG	GPD/UNIT	GPD/BLDG	GPD
Building 1	8 x 1-Bed Apartments	150gpd/1-Bed Unit	1,200gpd	1,200gpd
Building 2	8 x 1-Bed Apartments	150gpd/1-Bed Unit	1,200gpd	1,200gpd
Building 3	8 x 1-Bed Apartments	150gpd/1-Bed Unit	1,200gpd	1,200gpd
Building 4	8 x 1-Bed Apartments	150gpd/1-Bed Unit	1,200gpd	1,200gpd
Building 5	8 x 1-Bed Apartments	150gpd/1-Bed Unit	1,200gpd	1,200gpd
Building 6	8 x 1-Bed Apartments	150gpd/1-Bed Unit	1,200gpd	1,200gpd
Building 7	8 x 1-Bed Apartments	150gpd/1-Bed Unit	1,200gpd	1,200gpd
Building 8	8 x 1-Bed Apartments	150gpd/1-Bed Unit	1,200gpd	1,200gpd
Building 9	6 x 2-Bed Townhouse Units	225gpd/2-Bed Unit	1,350gpd	1,350gpd
Building 10	6 x 2-Bed Townhouse Units	225gpd/2-Bed Unit	1,350gpd	1,350gpd
Building 11	6 x 2-Bed Townhouse	225gpd/2-Bed Unit	1,350gpd	1,350gpd

	Units			
Building 12	6 x 2-Bed Townhouse Units	225gpd/2-Bed Unit	1,350gpd	1,350gpd
Building 13	8 x 1-Bed Apartments	150gpd/1-Bed Unit	1,200gpd	1,200gpd
Building 14	8 x 1-Bed Apartments	150gpd/1-Bed Unit	1,200gpd	1,200gpd
Clubhouse	2 x WC's & Office	200gpd	200gpd	200gpd
TOTAL				17,600gpd

- ***Treated effluent from the ATU shall discharge to an effluent disposal well constructed by a licenced driller in strict accordance with the Authority's standards. Licenced drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.***
- ***To achieve gravity flow, treated effluent from the ATU must enter the disposal well at a minimum invert level of 4'5" above MSL. The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.***

Water Supply:

The proposed development site is located within the Water Authority's piped water supply area.

- *The developer shall contact Water Authority's Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the public water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority's supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority's web page: <http://www.waterauthority.ky/water-infrastructure> .*

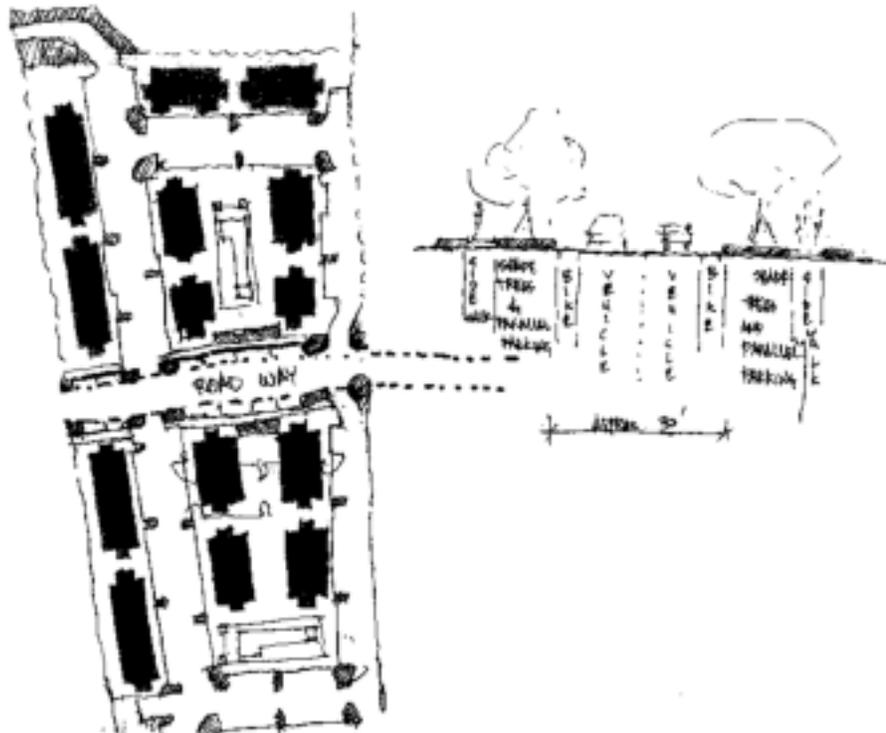
The Authority will not be held responsible for delays and/or additional costs incurred by the developer due to the developer's failure to provide sufficient notice to the Authority.

National Roads Authority

As per your memo dated March 15th 2021 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.

General Issues

The NRA and the Ministry of Works would like to work with the developer to extend the gazetted road of BP600 west across parcel 20D171 so that the neighborhood’s street connectivity is achieved, please see graphic below. Communities are not typically a single developments wide in scale but they are made up of multiple developments that interconnect, this street is to be the local access for multiple new developments that will occur to the west and eventually connect to the southern extension of Halifax Road. The roadway needs to be designed in a complete street fashion (bike paths with a combination of parallel parking or shade trees protecting the sidewalk) to be a fully functioning neighbourhood street. The NRA would be happy to meet with the developer in regards to this project, to see if they would be willing to work with us.



Schematic of proposed extension

Road Capacity Issues

The traffic demand to be generated by a residential development of a one hundred and four (104) multi-family units has been assessed in accordance with ITE Code 220. Thus, the assumed average trip rates per dwelling unit provided by ITE for estimating the daily, AM and PM peak hour trips are 6.63, 0.51 and 0.62 respectively. The anticipated traffic to be added onto the Linford Pierson Highway via Halifax Road is as follows:

Expected Daily Trip	AM Peak Hour Total Traffic	AM Peak 16% In	AM Peak 84% Out	PM Peak Hour Total Traffic	PM Peak 67% In	PM Peak 33% Out
690	53	8	45	65	43	22

Average weekday daily traffic volume on the LPH west of Crewe Road was about 21,270 vph. Based on the development and traffic estimates, the impact of the proposed development onto Linford Pierson Highway via Halifax Road or voa BP 600, is considered to be minimal.

Access and Traffic Management Issues

Two-way driveway aisles shall be a minimum of twenty-two (22) ft. wide.

Entrance and exit curves shall have no less than fifteen (15) feet radius curves, and have a width of twenty-four (24) ft. onto Halifax Rd.

Tire stops (if used) shall be place in parking spaces such that the length of the parking space is not reduced below the sixteen (16) feet minimum.

Stormwater Management Issues

*The applicant is encouraged to implement state-of-the-art techniques that manage stormwater runoff **within the subject parcel** and retain existing drainage characteristics of the site as much as is feasible through innovative design and use of alternative construction techniques. However, it is critical that the development be designed so that post-development stormwater runoff **is no worse than** pre-development runoff. To that effect, the following requirements should be observed:*

- The applicant shall demonstrate, prior to the issuance of any Building Permits, that the Stormwater Management system is designed to embrace stormwater runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties and/or nearby roads are not subject to stormwater runoff from the subject site.*
- The stormwater management plan shall include spot levels (existing and finished levels) with details of the overall runoff scheme. Please have applicant provide this information prior to the issuance of a building permit.*
- Construct a gentle ‘hump’ at the entrance/exit (along the entire width of each driveway) in order to prevent stormwater runoff from and onto Halifax. Suggested dimensions of the ‘hump’ would be a width of 6 feet and a height of 2-4 inches. Trench drains often are not desirable.*
- Curbing is required for the parking areas to control stormwater runoff.*
- Roof water runoff should not drain freely over the parking area or onto surrounding property. Note that unconnected downspouts are not acceptable. We recommend piped connection to catch basins or alternative stormwater detention devices. If catch basins are*

to be networked, please have applicant to provide locations of such wells along with details of depth and diameter prior to the issuance of any Building Permits.

- Please provide sidewalk detail on the proposed SWMP, [Sidewalk & Curbing Details.pdf \(caymanroads.com\)](#).

At the inspection stage for obtaining a Certificate of Occupancy, the applicant shall demonstrate that the installed system will perform to the standard given. The National Roads Authority wishes to bring to the attention of the Planning Department that non-compliance with the above-noted stormwater requirements would cause a road encroachment under Section 16 (g) of The Roads Law (2005 Revision). For the purpose of this Law, Section 16(g) defines encroachment on a road as

"any artificial canal, conduit, pipe or raised structure from which any water or other liquid escapes on to any road which would not but for the existence of such canal, conduit, pipe or raised structure have done so, whether or not such canal, conduit, pipe or raised structure adjoins the said road;"

Failure in meeting these requirements will require immediate remedial measures from the applicant.

Fire Service

The CFO approved the site layout

Department of Environmental Health

1. This development will require (4) 8 cubic yard containers with six times per week servicing.
2. A swimming pool application must be submitted for review and approval prior to constructing the pool.
3. All future development must be submitted to DEH for review.

Memo June 24, 201

Solid Waste Facility:

This development requires (4) 8 cubic yard containers with 6 times per week servicing.

Table 1: Specifications for Onsite Solid Waste Enclosures

Container size (yd3)	Width (ft)	Depth (ft)	Height (ft)	Slab Thickness (ft)	Requirements
8	10	10	5.5	0.5	Water (hose bib), drain, Effluent Disposal well; guard rails

NOTE:

The drain for the enclosure must be plumbed to a garbage enclosure disposal well as per the

Water Authority's specifications. Contact development.control@waterauthority.ky for deep well details.

Swimming Pool:

A swimming pool application must be submitted to DEH for review and approval prior to constructing the pool.

Department of Environment (NCC)

See Appendix B

APPLICANT'S LETTERS

Letter 1

Further to our meeting earlier today, please accept this as my confirmation of granting easement through my property located on Halifax Road Blk 20E Parcel 228 to my adjoining property located on Blk 20D Parcel 171. I can confirm that I own both piece of land held in my company Called Yarl Towers for which I am the sole Director.

Letter 2

Email from Lands and Survey Dept.

Hi Sam,

Following our conversation today, the NRA have confirmed that as part of the compensation for the land acquired for the widening of Linford Pierson Highway, the subject parcel will be permitted access onto Boundary Plan 600 which is attached to this email If you have any questions, please let me know.

Letter 3

Through this letter, we would like to formally withdraw the Land Clearing & Fill Application (P21-0066) and Strata Subdivision Application (P21-0174) of Yarl Development.

OBJECTION LETTERS

See Appendix C

PLANNING DEPARTMENT ANALYSIS

General

The application is for 2-storeys apartments, 2-storeys townhouses, clubhouse/gym/cabana, swimming pool, 2-signs (27-sq ft and 2 sq ft respectively), 4'-wall with 6'-gate and 25-strata lots subdivision at the above-captioned property. The site is located on Halifax Rd and Linford Pierson HWY, George Town.

As noted above, the applicant has withdrawn the land clearing and strata subdivision applications which were associated with this application and a revised the site plan has been submitted removing the subdivision lot lines.

The two signs (27-sq ft and 2 sq ft respectively) would be attached on a 4' high boundary wall at the entrances to the property.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Suitability

The subject property lies within a large area of Low Density Residential zoning to the south of the Linford Pierson Highway, although is close to a group of parcels which are zoned for Neighbourhood Commercial use, approximately 300-ft to the east. To the north of the subject property, and north of the highway, is a large area of Medium Density Residential zoning.

The surrounding land uses in the area include apartments, single-family dwelling houses and vacant properties based on Cayman Land Info Map. Additionally, the Authority should be aware of the existing apartment adjoining the subject parcel to the east and the recent approval for another 97 apartments also adjoining the parcel to the east.

2) Continuation of BP600

As noted in appendix C, the applicant has access over BP600 and L&S Department has confirmed that the NRA has agreed that as part of the compensation for land acquired for the widening of Linford Pierson HWY access over BP600 was permitted.

The NRA has indicated a preference that the current site plan be re-designed to accommodate the continuation of BP600 going west through the property. The Authority should give consideration to this recommendation.

At the previous meeting, there was information available to the Authority regarding this matter, see Appendix D.

SUPPLEMENTARY ANALYSIS

The applicant has submitted a revised site plan depicting the following:

- Road network issues and the deletion of access to Halifax Rd per the decision of May 26, 2021 (CPA/11/21; Item 2.2);
- A 10-ft wide swale along Linford Pierson HWY and the east boundary line;
- 10' wide swale and 3' diameter culvert along the west property line;
- Buildings moved fronting Linford Pierson HWY and access to the property via BP600 and extended to 20E 213 Rem3 east boundary.

The following email was received from the Ministry of PAHI regarding BP600:

Thanks for your email. You can use the road at this time. The Government is in the process of creating a "PCM" (prescribed composite map) which schedules the road as a Public Road; however, the road has been defined in a Boundary Plan (BP600) under Section 3 & 6 of the Roads Act, 2021 Rev., and as such, can be used by anyone (i.e. the public).

The Ministry, on the 25th May 2021 advised the Planning Dept. that we support Yarl having access through BP600.

As noted in appendix C, the applicant has access over BP600 and L&S Department has confirmed that the NRA has agreed that as part of the compensation for land acquired for the widening of Linford Pierson HWY access over BP600 was permitted.

The NRA has indicated a preference that the current site plan be re-designed to accommodate the continuation of BP600 going west through the property. The Authority should give consideration to this recommendation.

2.4 GUMTREE CAPITAL 121 (EKT Architecture) Block 20C Parcel 121 (P20-0378) (\$15,000) (JP)

Application for an after-the-fact addition.

Appearance at 1:00

FACTS

<i>Location</i>	Beckz Close, George Town
<i>Zoning</i>	GC
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	0.2 ac. (20,028.88 sq. ft.)
<i>Current use</i>	Storage units
<i>Proposed building size</i>	11,277.01 sq. ft.
<i>Total building site coverage</i>	90%
<i>Required parking</i>	12
<i>Proposed parking</i>	14

BACKGROUND

August 18, 2021 (CPA/17/21; item 2.16) – Members considered the application for an after-the-fact addition and adjourned determination to enable the applicant to appear before CPA.

November 28, 2018 (CPA/26/18; item 2.5) – application for 5 storage units and 6 storage rooms approved (P18-0925)

Recommendation: Discuss the application, **for the following reason:**

- 1) Canal setback (17’ 11’ v 20’)

AGENCY COMMENTS

Department of Environment (NCC)

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 application site is man-modified with limited ecological value, however construction materials should be stockpiled away from the canal edge to avoid run off and debris from entering the marine environment.

APPLICANT'S LETTER

Contained within unit #5 and adjacent to the boater's bathroom there was an alcove of inefficient dead space which we thought would serve as an area to host a forklift. As such we added a smaller door to the existing 5 storage doors and one side door. And on the deck we added two windows and opted not to install the boaters ramp for the time being (but we may install at a later date).

The purpose of adding a door is to better access where maintenance materials could be better accessed (shovels, rakes, leaf blower, forklift etc).

In doing so approx. 170 sf of extra space was created, and the corner of the building is now approx. 19' off the canal.

Nothing has changed structurally. The lintel beam above is continuous the length of the building front. The structural was designed by APEC Engineers and these lintel beams were approved on July 3 and July 25 2020 by John Davies and Maurice Lawson respectively.

Nothing has changed from either use of storage or number of users.

We ask that you support this variance.

PLANNING DEPARTMENT ANALYSIS

General

The application site is located in a commercial area which is being developed with storage units. A canal, leading to North Sound, bounds the site to the south with Beckz Close providing access from the north.

The application seeks Planning Permission to regularise an unauthorised addition to the storage facilities.

Zoning

The property is zoned General Commercial.

Specific Issues

1) Suitability

Regulation 8(10)(ea) requires a 20' setback from the physical edge of the canal. The addition is constructed 17' 11" from the canal edge. The applicant has provided a letter to address the application.

SUPPLEMENTARY ANALYSIS

The applicant was invited to appear before the Authority and there have been no changes to the plans.

2.5 CHARLES RUSSELL (Tropical Architectural Group Ltd.) Block 44B Parcel 440 (P21-0602) (BES)

Application to modify planning permission to change site layout.

Appearance at 1:30

FACTS

<i>Location</i>	Bodden Town Road
<i>Zoning</i>	MDR
<i>Notification result</i>	Objectors
<i>Parcel Size Proposed</i>	2.278 ac. (99,229.7 sq. ft.)
<i>Parcel Size Required</i>	20,000 sq. ft.
<i>Current Use</i>	Vacant
<i>Building Size</i>	40,272 sq ft.
<i>Building Footprint</i>	18,742 sq ft
<i>Building Site Coverage</i>	18.9%%
<i>Allowable Units</i>	45
<i>Proposed Units</i>	40
<i>Allowable bedrooms</i>	68
<i>Proposed bedrooms</i>	56
<i>Required Parking</i>	60
<i>Proposed Parking</i>	72

BACKGROUND

March 17, 2021 (**CPA/06/21; Item 2.3**) – CPA granted planning permission for 40-apartments, cabana, pool 4’ vinyl fence, sign and 3-1,000 gallons LPG tanks with conditions.

Recommendation: Discuss the application, **for the following reasons:**

- 1) Side setback variances
- 2) Objectors concerns

AGENCY COMMENTS

Comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment (NCC) are noted below.

Department of Environment/(NCC)

Under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Law, 2013), the Department of Environment confirms that we have no objection to the proposed apartments at this time as the site is man-modified and of limited ecological value. However, we recommend the applicant plants and incorporates native vegetation into the landscaping scheme. Native vegetation is best suited for the habitat conditions of the Cayman Islands, resulting in vegetation that requires less maintenance which makes it a very cost-effective choice.

National Roads Authority

As per your memo dated November 2nd, 2020 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.

General Issue

The width of the registered V.R.O.W on Block 44B Parcel 439 for Block 44B Parcel 440 is twenty-four (24)ft. As the NRA would consider this a commercial development, twenty-four (24)ft. would be the minimum width recommended, at minimum it should be provided at the entrance/exit.

Road Capacity Issues

The traffic demand to be generated by a residential development of a four (4) multi-family units has been assessed in accordance with ITE Code 220. Thus, the assumed average trip rates per dwelling unit provided by ITE for estimating the daily, AM and PM peak hour trips are 6.63, 0.51 and 0.62 respectively. The anticipated traffic to be added onto Bodden Town Road is as follows:

<i>Expected Daily Trip</i>	<i>AM Peak Hour Total Traffic</i>	<i>AM Peak 16% In</i>	<i>AM Peak 84% Out</i>	<i>PM Peak Hour Total Traffic</i>	<i>PM Peak 67% In</i>	<i>PM Peak 33% Out</i>
266	20	4	16	25	16	9

Based on these estimates, the impact of the proposed development onto Bodden Town Road is considered to be minimal.

Access and Traffic Management Issues

Two-way driveway aisles shall be a minimum of twenty-two (22) ft. wide.

Entrance and exit curves shall have no less than fifteen (15) feet radius curves, and have a width of twenty-four (24) ft. Please have applicant provide.

Tire stops (if used) shall be placed in parking spaces such that the length of the parking space is not reduced below the sixteen (16) feet minimum.

Stormwater Management Issues

*The applicant is encouraged to implement state-of-the-art techniques that manage stormwater runoff **within the subject parcel** and retain existing drainage characteristics of the site as much as is feasible through innovative design and use of alternative construction techniques. However, it is critical that the development be designed so that post-development stormwater runoff **is no worse than** pre-development runoff. To that effect, the following requirements should be observed:*

- The applicant shall provide both existing and intended contour elevations for the site. The reason for this request is late last year during TS ETA substantial flooding occurred in this general area and the NRA would like to advise the CPA on the drainage of the local area and the potential impacts of the proposed development on the surrounding area. The NRA requests that the CPA have the applicant provide the SWMP prior to the overall plan being approved, as the site layout may be affected.*
- The applicant shall demonstrate, prior to the issuance of any Building Permits, that the Stormwater Management system is designed to embrace storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties and/or nearby roads are not subject to stormwater runoff from the subject site.*
- The stormwater management plan shall include spot levels (existing and finished levels) with details of the overall runoff scheme. Please have applicant provide this information prior to the issuance of a building permit.*
- Construct a gentle 'hump' at the entrance/exit (along the entire width of each driveway) in order to prevent stormwater runoff from and onto Bodden Town Road. Suggested dimensions of the 'hump' would be a width of 6 feet and a height of 2-4 inches. Trench drains often are not desirable.*
- Curbing is required for the parking areas to control stormwater runoff.*
- Roof water runoff should not drain freely over the parking area or onto surrounding property. Note that unconnected downspouts are not acceptable. We recommend piped connection to catch basins or alternative stormwater detention devices. Catch basins are to be networked, please have applicant to provide locations of such wells along with details of depth and diameter prior to the issuance of any Building Permits.*
- Sidewalk detail needs to be provided as per NRA specifications. See (<https://www.caymanroads.com/upload/files/3/Sidewalk%20&%20Curbing%20Details.pdf>)*

At the inspection stage for obtaining a Certificate of Occupancy, the applicant shall demonstrate that the installed system will perform to the standard given. The National Roads Authority wishes to bring to the attention of the Planning Department that non-compliance with the above-noted stormwater requirements would cause a road encroachment under Section 16 (g) of The Roads Law (2005 Revision). For the purpose of this Law, Section 16(g) defines encroachment on a road as

"any artificial canal, conduit, pipe or raised structure from which any water or other liquid escapes on to any road which would not but for the existence of such canal, conduit, pipe or raised structure have done so, whether or not such canal, conduit, pipe or raised structure adjoins the said road;"

Failure in meeting these requirements will require immediate remedial measures from the applicant.

DEH

Please see the department’s comments on the above application:

- 1) The department has no objections to the proposed in principle.*
- 2) This development will require two eight cubic yard containers serviced twice weekly.*
- 3) Plans and specifications for the swimming pool must be submitted for review and approval.*

Memo dated 20/7/21

Solid Waste Facility:

This development requires (2) 8 cubic yard containers with twice per week servicing.

Table 1: Specifications for Onsite Solid Waste Enclosures

Table 1: Specifications for Onsite Solid Waste Enclosures

Container size (yd3)	Width (ft)	Depth (ft)	Height (ft)	Slab Thickness (ft)	Requirements
8	10	10	5.5	0.5	Water (hose bib), drain, Effluent Disposal well; guard rails

NOTE:

The drain for the enclosure must be plumbed to a garbage enclosure disposal well as per the Water Authority’s specifications. Contact development.control@waterauthority.ky for deep well details.

Swimming Pool:

A swimming pool application must be submitted to DEH for review and approval prior to constructing the pool.

Water Authority

The Water Authority’s requirements for the proposed development are as follows:

Wastewater Treatment and Disposal

The developer, or their agent, is required to submit an Onsite Wastewater Treatment Proposal, per the attached Form, which meets the following requirements. Water Authority review and approval of the proposed system is a condition for obtaining a Building Permit.

- **The proposed development requires Aerobic Treatment Unit(s) with NSF/ANSI Standard 40 (or equivalent) certification that, when operated and maintained per manufacturer’s guidelines, the system achieves effluent quality of 30 mg/L Biochemical Oxygen Demand and 30 mg/L Total Suspended Solids. The proposed system shall have a treatment capacity of at least 7,200 US gallons per day (gpd), based on the following calculations.**

BUILDING	UNITS/BLDG	GPD/UNIT	GPD/BLDG	GPD
Building 1	4 x 1-Bed Units 4 x 2-Bed Units	150gpd/1-Bed Unit 225gpd/2-Bed Unit	1,500gpd	1,500gpd
Building 2	4 x 1-Bed Units	150gpd/1-Bed Unit	600gpd	600gpd
Building 3	4 x 1-Bed Units 4 x 2-Bed Units	150gpd/1-Bed Unit 225gpd/2-Bed Unit	1,500gpd	1,500gpd
Building 4	4 x 1-Bed Units 4 x 2-Bed Units	150gpd/1-Bed Unit 225gpd/2-Bed Unit	1,500gpd	1,500gpd
Building 5	4 x 1-Bed Units 4 x 2-Bed Units	150gpd/1-Bed Unit 225gpd/2-Bed Unit	1,500gpd	1,500gpd
Building 6	4 x 1-Bed Units	150gpd/1-Bed Unit	600gpd	600gpd
TOTAL				7,200gpd

Treated effluent from the ATU shall discharge to an effluent disposal well constructed by a licenced driller in strict accordance with the Authority’s standards.

Licenced drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.

- **To achieve gravity flow, treated effluent from the ATU must enter the disposal well at a minimum invert level of 4’11” above MSL. The minimum invert level is that required to**

maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.

Water Supply:

The proposed development site is located within the Water Authority’s piped water supply area.

- *The developer shall contact Water Authority’s Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the public water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority’s supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority’s web page: <http://www.waterauthority.ky/water-infrastructure>.*

The Authority will not be held responsible for delays and/or additional costs incurred by the developer due to the developer’s failure to provide sufficient notice to the Authority.

Memo dated 7/7/21

The Water Authority’s requirements for the proposed development are as follows:

Wastewater Treatment and Disposal

The developer, or their agent, is required to submit an Onsite Wastewater Treatment Proposal, per the attached Form, which meets the following requirements. Water Authority review and approval of the proposed system is a condition for obtaining a Building Permit.

- *The proposed development requires Aerobic Treatment Unit(s) with NSF/ANSI Standard 40 (or equivalent) certification that, when operated and maintained per manufacturer’s guidelines, the system achieves effluent quality of 30 mg/L Biochemical Oxygen Demand and 30 mg/L Total Suspended Solids. The proposed system shall have a treatment capacity of at least 7,200 US gallons per day (gpd), based on the following calculations.*

BUILDING	UNITS/BLDG	GPD/UNIT	GPD/BLDG	GPD
Building 1	4 x 1-Bed Units	150gpd/1-Bed Unit	600gpd	600gpd
Building 2	4 x 1-Bed Units 4 x 2-Bed Units	150gpd/1-Bed Unit 225gpd/2-Bed Unit	1,500gpd	1,500gpd
Building 3	4 x 1-Bed Units	150gpd/1-Bed Unit	600gpd	600gpd
Building 4	4 x 1-Bed Units 4 x 2-Bed Units	150gpd/1-Bed Unit 225gpd/2-Bed Unit	1,500gpd	1,500gpd
Building 5	4 x 1-Bed Units	150gpd/1-Bed Unit	1,500gpd	1,500gpd

	4 x 2-Bed Units	225gpd/2-Bed Unit		
Building 6	4 x 1-Bed Units	150gpd/1-Bed Unit	1,500gpd	1,500gpd
	4 x 2-Bed Units	225gpd/2-Bed Unit		
TOTAL				7,200gpd

- *Treated effluent from the ATU shall discharge to an effluent disposal well constructed by a licenced driller in strict accordance with the Authority’s standards. Licenced drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.*
- *To achieve gravity flow, treated effluent from the ATU must enter the disposal well at a minimum invert level of 4’11” above MSL. The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.*

Water Supply:

The proposed development site is located within the Water Authority’s piped water supply area.

- *The developer shall contact Water Authority’s Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the public water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority’s supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority’s web page: <http://www.waterauthority.ky/water-infrastructure> .*

The Authority will not be held responsible for delays and/or additional costs incurred by the developer due to the developer’s failure to provide sufficient notice to the Authority.

OBJECTIONS

Letter #1

I have received a notice dated 24th June 2021 for the Modification to Site Re-Layout Due to Existing Site Contour in relation to the above-noted parcel owned by LCL Property Development Ltd. I am the owner of three parcels in the immediate vicinity, Block 44B, Parcels 421 and 425 and Block 43A, Parcel 128). Two of these parcels - #421 and #425 —are adjacent to the boundary of Parcel 440.

Firstly, I have a question in relation to the statement that this is a “modification to site re layout” since this is the first notice that I have received regarding anything in relation to this parcel other than a notice relating to a vehicular right of way which was in 2017. There were no plans in relation to the property at that time. It would be good to know if there was some other application relating to this parcel about which I was not notified and please note that I check my post office box regularly.

I have viewed the plans for the “modification to site re layout” in the Planning Notices section of your website and have a number of questions and comments in relation to the plans which I have set out below:

- 1. I note that the property will have 40 apartments situated on it with the only access being the above-noted vehicular right of way which I believe is 24 feet wide and runs between my dwelling house (on parcel 421) and another dwelling house to the east of it. This right of way is very close to the homes either side of it and it barely has space for the anticipated two lanes of traffic. It is very narrow.*

A development of 40 apartments is likely to be under construction for a year or possibly more and will result in a lot of construction equipment traffic along that road together with the related traffic involving the installation of utility lines. Once constructed, there will then possibly be anywhere up to 80 vehicles traversing that road to and from the development assuming it is fully occupied.

As the owner of a home which is immediately adjacent to the access road, and with all bedrooms on the eastern side of the house facing the road, I am quite concerned about the expected noise and lights of the traffic which will affect me throughout the construction period and beyond.

I note that the fencing around the development is only expected to be a four foot vinyl fence therefore I would like to know what is available to me, under the Planning laws, to afford me greater protection and also provide me with more privacy.

- 2. I note from the plan that there appears to be a very slight truncation where the access road intersects with the main Bodden Town Road. My property has a concrete wall on the Bodden Town Road ending in a column where it meets the access road. Additionally, there is another concrete column opposite mine for the property on the east. I believe there is insufficient truncation at the intersection and I fear that both concrete columns will likely be casualties through drivers misjudging the sharp corners that they will have to negotiate when entering the access road. I would respectfully request that this be reviewed and rectified.*
- 3. Lastly, I cannot see any information on the plans as to how water drainage is going to be addressed. The properties in this area sit at their highest point to close to 30 feet above sea level and the land slopes down towards the Bodden Town Road and down on the other side towards the residential development to the north. When heavy rains occur, it will therefore mean that water will flow down the access road to the main Bodden Town Road and down to the northern side of the property. My concern is whether, without either some protection or a proper drainage system, my property will be affected both on the north and south fronts in these situations and this includes both parcels 421 and 425. I would like to know what the developer/owner proposes to address this.*

I trust that my concerns as expressed above will be taken into consideration when the Central Planning Authority is considering this application and I hope that I may be given the opportunity of discussing them further when the application is being considered.

Letter #2

I emailing in regards the planned condo complex in block:44b parcel:440 in bodden town. My wife and I recently purchased the lot in front of it 44b 439 and we were not made aware of the project. What we would like to know is there anyway the proposed bin area can be moved from behind out back wall as trash from 40 condos would stink our back yard and the noise from people using it and we feel it would negatively impact the value of our house should we try sell or rent in the future. Also there is a couple of poinsettia trees in the property that hang over our walls, if there's any way to keep them they provide great shade and privacy to our yard. Finally the power line for our yard hangs low over the easement and large vehicles may not be able to pass cleanly underneath.

PLANNING DEPARTMENT ANALYSIS

General

The application is to modify planning as follows:

- The pool and cabana have moved from the rear of the property to the front of the site
- Variance request for buildings# 1, 2, and 6
- The parking layout has been modified by increasing the parking spaces from 71 to 72 - the minimum required parking spaces is 60
- The fence has been setback to its property line – approximately 147'-3" from the road
- Sign relocated to the western portion of the property by parking space 61

Zoning

The property is zoned Medium Density Residential.

Specific Issues

1) Side setbacks

When the application was first approved, the Authority granted side setback variances as follows:

Building 1	8' 7"
Building 2	13' 9"
Building 4	14' 5"

With the revised site layout, which involves adjusting the locations of the buildings, the following side setback variances are required:

Building 1	11' 6"
Building 2	7'2" to 12' 1"
Building 6	11' to 12' 8"

2.6 BARKERS BEACH RESORT (Coe Group Ltd) Block 8A Parcel 180 (P21-0557) (\$118.5 million) (NP)

Application for a hotel with restaurant, pool and cabanas.

FACTS

<i>Location</i>	Conch Point Drive, West Bay
<i>Zoning</i>	Hotel Tourism
<i>Notification Results</i>	One objector
<i>Parcel size</i>	1.09 acres
<i>Parcel size required</i>	0.5 acres
<i>Current use</i>	two-storey apartment building
<i>Proposed use</i>	Hotel
<i>Proposed building footprint</i>	8,424 sq. ft.
<i>Proposed building size</i>	47,378 sq. ft.
<i>Total building site coverage</i>	17.7%
<i>Number of bedrooms allowed</i>	70
<i>Number of bedrooms proposed</i>	26
<i>Parking required</i>	23
<i>Parking proposed</i>	21 on-site 61 off-site

Recommendation: Discuss the application, **for the following reasons:**

- 1) Concerns of the Objector
- 2) Proposed seaside setback (minimum 130 feet required vs various setbacks proposed)
- 3) Proposed east side setback (15' vs 20')
- 4) Proposed west side setback (10' vs 20')
- 5) Proposed rear setback (12' vs 20')
- 6) Proposed off-site parking surface on 8A 8 (gravel vs hard surface)
- 7) Public right of way (0' vs 6')
- 8) Sign (not applied for and straddles boundary)
- 9) Traffic flow (counter clockwise vs clockwise)

AGENCY COMMENTS

Comments from the various agencies are noted below.

Department of Environment (NCC)

This review is provided by the Director of the Department of Environment under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).

The application site is predominately man-modified and is not located on a turtle nesting beach. However, it is located adjacent to a Marine Protected Area, namely a Line Fishing Only Zone.

CONSTRUCTION DEBRIS IMPACTS ON MARINE ENVIRONMENT

We have experienced developments along the coast inadvertently polluting the marine environment from wind-borne debris. For example, the Department has witnessed and experienced complaints from members of the public regarding pollution from expanded polystyrene (EPS) beads on construction sites around the island

The beads made their way into the adjacent Marine Reserve and neighbouring properties. Neighbours complained to the DoE about the pollution. Developers attempted to remedy the situation by cleaning neighbouring pools and yards daily but it was impossible to collect all of the beads, especially once they entered the marine environment. A screen was then fastened around the building to contain the beads. EPS is used in a variety of applications, including thermal insulation in buildings, civil engineering applications and decorative mouldings and panels. During construction, once EPS is cut, tiny microbeads are blown into the air, polluting neighbouring yards, stormwater drains, and nearby water bodies. Polystyrene is not biodegradable, and the EPS beads can be consumed by wildlife where it enters the food chain. EPS beads that make their way to the sea can be mistaken by fish and birds as fish eggs and have the potential to cause blockages in their digestive systems. It is almost impossible to collect the polystyrene beads once they have become wind-borne.

We strongly recommend that Best Management Practices are adopted during the construction process to ensure that construction-related debris does not enter the marine environment.

The application does not appear to include a request to modify or groom the shoreline at this time. However, the DoE highlights that the application site has a naturally rocky/rubbly beach due to the off-shore topography and grooming this beach will not result in a "Seven Mile Beach" sandy aesthetic. Constant beach grooming is not typically endorsed by the DoE as it tends to lead to other impacts such as the loss of the beach profile or erosion. On windward coastline beaches such as this, the rock and rubble act to stabilize the shoreline sediment including the sand beach itself. Sifting of the sand brings the finer sands to the top of the beach profile, exposing them to wind erosion (they tend to get blown inland).

DIRECTED CONDITION

Therefore, on the basis of the above information, in the exercise of powers which have been conferred through express delegation by the National Conservation Council, pursuant to section 3(13) of the National Conservation Act (2013) the Director of DoE therefore

respectfully stipulates that the following condition be imposed by the Central Planning Authority or Department of Planning, as part of any agreed proposed action for planning approval:

- 1) All construction materials shall be stockpiled a minimum of 50ft from the Mean High Water Mark. This condition is directed to prevent run-off and debris from entering the Marine Protected Area causing turbidity and impacting sensitive marine resources.*

A person aggrieved by a decision of the National Conservation Council to impose a condition of approval may, within 21 days of the date on which the decision is received, appeal against it to the Cabinet by serving on the Cabinet notice in writing of the intention to appeal and the grounds of the appeal (Section 39 of the National Conservation Act, 2013).

FURTHER RECOMMENDATIONS

We also recommend:

- Any sand 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.*
- The use of Best Management Practices during the construction process, i.e. the use of alternative materials to expanded polystyrene and containing any debris that could be airborne with the use of appropriate screens and containment methods; and*
- The planting and incorporation of native vegetation in the landscaping scheme. Native vegetation is best suited for the habitat conditions of the Cayman Islands resulting in vegetation that requires less maintenance which makes it a very cost-effective choice.*

Department of Environmental Health (DEH)

The applicant must provide the following in order to complete the review:

- 1. A detailed labelled floor plan of the kitchen showing the layout of all equipment.
– Specifications for equipment must be submitted.*
- 2. Approved BCU drawings for the exhaust ventilation system.*
- 3. Specifications for the hot water system which shall include:
 - a. The type of heater proposed*
 - b. The minimum designed hot water requirements*
 - c. The storage capacity of the heater in gallons*
 - d. The percentage thermal efficiency of the heater*
 - e. The BTU rating of the heater*
 - f. The recovery rate of the heater in gallons per hour.**
- 4. For manual washing and sanitizing of utensils, provide a stainless steel sink with no fewer than 3-compartments. The sink compartments shall be large enough to*

hold the largest pot, pan or piece of equipment. Each compartment shall be supplied with adequate hot and cold potable running water.

5. The kitchen will require a two compartment sink and the bar areas will require hand wash sinks.

Swimming Pool:

A swimming pool application must be submitted to DEH for review and approval prior to constructing the pool.

Water Authority Cayman (WAC)

Please be advised that the Water Authority’s requirements for the proposed development are as follows:

Wastewater Treatment and Disposal

The developer, or their agent, is required to submit an Onsite Wastewater Treatment Proposal, per the attached Form, which meets the following requirements. Water Authority review and approval of the proposed system is a condition for obtaining a Building Permit.

- ***The proposed development requires Aerobic Treatment Unit(s) with NSF/ANSI Standard 40 (or equivalent) certification that, when operated and maintained per manufacturer’s guidelines, the system achieves effluent quality of 30 mg/L Biochemical Oxygen Demand and 30 mg/L Total Suspended Solids. The proposed system shall have a treatment capacity of at least 6,555 US gallons per day (gpd), based on the following calculations.***

BUILDING	UNITS/BLDG	GPD/UNIT	GPD/BLDG	GPD
Building A	10 x 2-Bed Units 5 x 3-Bed Units	225gpd/ 2-Bed Unit 300gpd/3-Bed Unit	3,750gpd	3,750gpd
Building B	288sqft Office 168sqft Staff Room 168sqft Admin Office	0.15gpd/sqft net office space	93.6gpd	93.6gpd
Building C	576sqft Dining 225sqft Lounge 100sqft Bar 2 x 2-Bed Units 3 x 3-Bed Units	1.8gpd/sqft Dining area 1gpd/sqft Lounge area 1gpd/sqft Bar area 225gpd/ 2-Bed Unit 300gpd/3-Bed Unit	2,712gpd	2,712gpd
TOTAL				6,555gpd

- ***Treated effluent from the ATU shall discharge to an effluent disposal well constructed by a licenced driller in strict accordance with the Authority’s standards. Licenced drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.***

- *To achieve gravity flow, treated effluent from the ATU must enter the disposal well at a minimum invert level of 4'7" above MSL. The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.*

Grease Interceptor Required

A grease interceptor with a minimum capacity of 600 US gallons is required to pre-treat flows from kitchen fixtures and equipment with grease-laden waste; e.g., pot sinks, pre-rinse sinks; dishwashers, soup kettles or similar devices; and floor drains. The outlet of the grease interceptor shall be plumbed to the sanitary sewage line leading to the ATU.

Existing septic tank shall be decommissioned

The Existing septic tank serving the existing Building C shall be decommissioned as per the Water Authority's Best management: practices with the flows plumbed to the ATU.

http://www.waterauthority.ky/upimages/download/BMPs_abandoned_WW_systems1_142322_0782.pdf

Lint Interceptor Required at commercial, institutional & coin-op laundries.

An approved lint interceptor is required for commercial, institutional and coin-operated laundries. The developer is required to submit specifications for all laundry (washer) equipment to the Water Authority for determination of the required capacity of interceptor. Specifications can be sent via email to development.control@waterauthority.ky

Elevator Installation:

Hydraulic elevators are required to have an approved pump with oil-sensing shut off installed in the sump pit. Specifications shall be sent to the Water Authority at development.control@waterauthority.ky for review and approval.

Generator and Fuel Storage Tank(s) Installation:

*In the event underground fuel storage tanks (USTs) are used the Authority requires the developer to **install monitoring wells for the USTs**. The exact number and location(s) of the monitoring wells will be determined by the Authority upon receipt of a detailed site plan showing location of the UST(s) and associated piping. The monitoring wells shall comply with the standard detail of the Water Authority linked below. All monitoring wells shall be accessible for inspection by the Authority. In the event above ground fuel storage tanks (ASTs) are used, monitoring wells will not be required.*

https://www.waterauthority.ky/upimages/download/USTMonitoringWellFeb2013_144563299_4.pdf

Water Supply:

Please be advised that the proposed development site is located within the Cayman Water Company's (CWC) piped water supply area.

- *The developer is required to notify the Cayman Water Company without delay, to be advised of the site-specific requirements for connection.*
- *The developer shall provide water supply infrastructure per CWC's specification and under CWC's supervision.*

APPLICANT'S LETTERS

Before you today is the Re-Development of an existing site located on Conch Point Road; Block 8A Parcel 180 now named Barkers Beach Development.

Barkers Beach Development is located approximately One Thousand Two Hundred Feet (1,200 FT) west from the old chained access that is at the end boundary of the Villas Papagallo and Papagallo Restaurant of Barkers National Park. Our Project was called Barkers Beach Development as the beach leads to Barkers National Park. As a matter of clarity we are not located in Barkers National Park.

Property Characteristics:

The property has a natural 12'-0" high sand ridge and the beach side is comprised of underlying rock beneath the beach sand and is generally a rocky beach in nature. The property has existing local trees such as Almond, Sea grape, Birch Trees and two mature Date Palms, Coconut Palms and Casuarina Pines on the sea side. We intend to maintain certain trees of significance were we can and will relocate these trees on site where it suits.

Existing Development on Site:

The existing development on the property consists of a six (6) one bedroom, two (2) storey apartment building, The Existing Site Plan Drawing is shown on sheet A-J03 of the drawings package. This parcel and the neighboring parcels to an extent are all zoned Hotel/Tourism.

The Re- Development of the site:

With the new re-development, we are renovating the existing building and adding three storeys above the existing two storey building and building two completely new buildings.

The Buildings are labeled on sheet A-J0J as Building A,B &C.

The general concept of the project operates like a Boutique Hotel; where within luxury condos, restaurant and bar, pool are and pool deck with gazebos, onsite laundry services and ancillaries that are common for these types of developments. All buildings on site will be five storeys in height with roof decks that are in connectivity to each building.

The site will be finished with lavished landscaping and providing a new ambience to the area.

CPA & Planning Variances:

As with any developments being designed and applying for Planning Permission, there are bound to be variances that are needed to be sought in order to move forward. We have tried to provide a project that would be free of variances but unfortunately we have a few variances that we will be seeking these are as follows:

*A. The Existing Building (**Building C**)and new building additions variance;*

The existing building is built 15'-0" from the boundary, however we have an additional 6'-0" beach access from our boundary into the neighbor's (Sea Orchard Retreat- 8A 7) boundary that we can adopt and have the full 20'-0" side setback that is required both by the Zoning Requirements and Fire Lane Access. We have reached out to our neighbor who has given us written permission to incorporate the beach access as a part of our set back and fire lane, being that no obstructions of any kind are permitted to be in this area. Currently as shown in the attached photos; this is the existing situation as is now on the site. Also attached is the Letter of Permission from Sea Orchard Retreat in regards to the incorporation of the Beach Access into our Fire Lane. The addition to the existing building occurs on the third floor and the side setback for the addition is in compliance as shown on sheet A-112. On the sea side the existing building is as its current location; the New Additions occur at 75'-0" from the HWM as shown on Sheet A-102.

We are seeking a variance for the Third Floor and onward floors to the roof deck in the respect to Development and Planning Regulations (2018 Revision) ie.

(e) in a Hotel/Tourism zone, all structures and buildings up to three storeys, including ancillary buildings, walls and structures, shall be setback a minimum of one hundred and thirty feet from the high water mark, with an additional fifteen foot setback for each of the fourth through the seventh storeys, and the minimum setback for the eighth through the tenth storeys shall be the same as that for the seventh storey;

The Existing Building as is not in compliance with this section and from Third Floor to the roof; we cannot meet the requirement of the 15'-0" setback for additional floors due to its an existing building and with the site constraints of the property that would force the amenities Building (B) into the fire lane and displace Building A into the Parking area which would cause further off-site parking that we have currently.

B. Building B Variance:

We are seeking a variance for the side setback for Building B from 20 Ft to 15Ft from our boundary, however with the additional 6'-0" of the Beach Access will have met the 20 Ft requirement for the side setback and the Fire Lane as shown on Sheet A-102

C. Building a Variance:

On the sea side of Building A as shown on the site plan; the building is setback 130'-0" from the HWM as shown on Sheet A-102.

We are seeking a variance for the Fourth Floor and onward floors to the roof deck in the respect to Development and Planning Regulations (2021 Revision) ie.

(e) in a Hotel/Tourism zone, all structures and buildings up to three storeys, including ancillary buildings, walls and structures, shall be setback a minimum of one hundred and thirty feet from the high water mark, with

an additional fifteen foot setback for each of the fourth through the seventh storeys, and the minimum setback for the eighth through the tenth storeys shall be the same as that for the seventh storey;

Building A is not in compliance with this section from the Third Floor to the roof. We cannot meet the requirement of the 15'-0" setback for additional floors due to the site constraints of the property that would force the building into the fire lane and displace Building A into the Parking area which would cause further off-site parking that we have currently.

D. Ancillary Variances:

Gazebos: we have three pool side gazebos as shown on Sheet **A-102**, we are seeking a variance to reduce the side setback from 20 Ft to 10Ft. Due to the general design of the pool and pool deck along with providing the required clearances for mobility; is the general reason behind the variance request. We have reached out to our neighbor (8A 179, Pampered Ponies) who has given us written consent to having the Gazebos 10Ft from their property boundary.

Parking Spaces:

As shown on Sheet **A-102** we have 11 parking spaces that are straddling both properties; This situation has occurred due to the limited space at the front of the property and with the general design of the Building A along with maintaining the high water mark setback and fire lane, has created this situation. We have reached out to our neighbor (8A 179, Pampered Ponies) who has given us written consent to having the parking configured this way on both properties. We are seeking a variance for two parking spaces that are partially over the front 20 Ft setback as shown on Sheet **A-102**, these parking spaces are a part of the total site parking requirements. Please see the attached letter from Pampered Ponies in regards to the parking arrangements.

Sewage Treatment Plant, Garbage Enclosure and CUC Pad & Vault:

As shown on Sheet **A-102** these components are not fully within the 20 Ft front setback; the Sewage Treatment Plant is 12 Ft from the front boundary, the Garbage Enclosure is 10 Ft from the front boundary and the CUC Pad and Vault is 8 Ft from the front boundary; the pad and vault is positioned in this location due to the CUC Pole and new upgrades are besides each other. The Sewage Treatment Plant is located where it is due to the site constraints with parking and due to the property is sloping towards the road

The Garbage Enclosure is located where it is due to the site constraints with parking and to provide the easiest access for the garbage truck to maneuver and carry out their services.

In general all of the variances that are being sought for the Front Setbacks are due to the new High Water Mark as shown on Sheet A-102 and on Sheet A-104 where we lost approximately 25 Ft of property and this chain effect has delivered us to where we are as shown on the drawings. As is currently we are not seeking any variances to move the development closer to the sea side.

Restaurant, Bar and Guest Parking Functionality

As shown on Sheet A-105 and A-J06 our development will have an open to the public restaurant and bar on the property. The restaurant will consist of 22 indoor seats and the indoor bar will consist of 16 indoor seats and the outdoor bar will consist of 12 seats. Both bars will have the capability of food service.

Parking for the restaurant, bar and visiting guests will be valet parking service. The valet parking area is located on our neighbor (Sea Orchard Retreat) other property that they own 8A 8 which is approximately 106 Ft away from our nearest boundary. As shown on Sheet A-J05 we are seeking to have the parking area to be built from compacted fill and graveled finished, due to we are leasing the property from the land owner until we can acquire the property or acquire another property in the vicinity. In the event either should happen we would make a Modification to Planning Permission at a later date to solidify the parking requirements for our development.

In closing, we have provided as much information as possible to explain our project to its totality; should you require more information please do not hesitate to contact us.

OBJECTOR'S LETTER

I am writing to raise objection to the Planning application by Coe Group Ltd. for the purpose of:

“MIXED USE BEACH RESORT, ONE POOL, ONE GENERATOR AND 2 X 1000 GALLONS UNDERGROUND TANKS” on Block 8A Parcel 180 referred to as Planning Project P21-0557.

1. Lack of Notice: The first concern was addressed in the email sent Thursday August 26th (Subject is “URGENT: NO Notice received for P21-0557 on Conch Pt Road West Bay”) regarding the undelivered notices.

We have requested an extension of the objection period of another 21 days (through Friday, 17th September 2021) to assess:

- who did and did not receive notice;*
- reason(s) notice was not received;*
- what concerns the community wished to raise beyond what is addressed in this letter.*

2. *Setback: There is a section on the NE corner of the building plan that does not meet the 75' setback line.*

Please see the screenshot attached in the email titled: "BBR corner beyond 75' setback"

3. *Erosion Risk: There is little to no vegetation directly between the building and the shore in either the plan or digital renderings on the website. This raises great concerns regarding beach erosion, especially in light of the massive erosion of Seven Mile Beach.*

- What erosion mitigation is being planned?

Please see attached screenshots titled "BBR no vegetation from plan", "BBR white sand beach" and "BBR white sand beach and scale height to trees" 1, 2, and 3.

4. *White Sand Beach: The renderings from BarkersBeach.com seem to advertise a white sand beach and the buildings being right on the shore.*

- Are their clients aware of what that beach actually looks like?

- Will Coe Group be seeking a Coastal Works application to dredge/ alter the beach to meet client's expectations as advertised? This cannot be considered!

Please see attached screenshots titled "BBR no vegetation from plan", "BBR white sand beach" and "BBR white sand beach and scale height to trees" 1, 2, and 3.

5. *Height, Scale and Storm Risk: The highest point is marked at 77' 3/4" for the elevator shaft roof slab. This is far above the 5 storey height consideration of, I believe, 62' 6" or 12.5' per storey.*

- Please confirm the zoning and height restrictions for this lot.

- With the height being a full 30' above the power poles and far above the height of the trees, and being stocked with rooftop patio amenities and furniture, what mitigation will be planned for storms damaging the property and blowing debris to other properties and damaging powerlines?

- The scale is also completely out of character for the community, being far larger and taller than any other development in the area. This not only creates risks regarding storms but changes the character of the community.

Please see attached screenshots titled "BBR height specs", "BBR view from road" and "BBR white sand beach and scale height to trees" 1, 2, and 3.

6. *Character of the Community: The style and scale of the project are akin to something found in South Beach, Florida or on the Seven Mile Beach corridor. Our community is not Seven Mile Beach! There is a bar and restaurant planned for the project.*

- I live directly across from the site and do not know how I feel about a venue being onsite, nor do I wish to see what the renderings show as the view from the parking area and road. I know that many other members in this community feel the same way and have concerns of how this project will change the character of

our community and the precedent it will set for future development.

- The scale and style of this project must be scrutinized especially since no hotel needs assessment has been completed, and considerations of PACT to adopt Plan Cayman have not been tabled for discussion.

Please see attached screenshots titled “BBR height specs”, “BBR restaurant and bar specs”, “BBR view from road” and “BBR white sand beach and scale height to trees” 1, 2, and 3.

7. Floodwater Mitigation: The plan for parking clearly shows extensive paving and addition of pavers on what is now permeable land. This raises a great concern for storm water and floodwater mitigation. What is the plan?

Please see screenshot titled “BBR parking plan” and “BBR view from road”.

8. Affordable Housing: The resort will replace what is now, regrettably disheveled, rental apartments with a luxury resort.

- Is there a plan to address development of affordable and mid range rental properties for residents? Again, this speaks to the development needs assessment regarding entry and mid level rental properties vs how much luxury and tourist accommodation our country actually needs.

9. Property Costs: There is great concern about entry level properties for young Caymanians in their own homeland and young people in our community to reinvest in the Barkers/ Conch Point/ Spanish Bay/ Mount Pleasant area. Luxury developments like this, while they might increase my own property evaluation, will only drive up property costs more, putting ownership further from the reach of young people. The short term gain in property sales values is not worth the long term impact to the housing market.

- Is there a plan to address development of entry level and mid range properties for purchase by Caymanians, especially our young people? This also speaks to the development needs assessment regarding entry and mid level properties for purchase vs how much luxury and tourist accommodation our country actually needs.

Please see attached Cayman Compass article entitled “Home ownership a distant dream for young Caymanians - Lowest rungs of rungs of the property ladder out of reach for many”.

Thank you for your time in considering the above points and in regards to extending the notification period so that others in this beautiful community can give input on this project.

PLANNING DEPARTMENT ANALYSIS

General

The subject property is located in West Bay on Conch Point Drive, immediately east of Pampered Ponies.

The property presently contains a two storey apartment building.

The proposal is for three, five storey buildings connected by walkways, as well as a pool, three cabanas, restaurant, bar, and LPG tanks.

Zoning

The property is zoned Hotel Tourism.

Specific Issues

1) Proposed Sea setbacks

The property is zoned Hotel Tourism. Regulation 8(10)(e) requires that all structures and buildings, including ancillary buildings, walls, and structures, up to three stories shall be setback a minimum of one hundred and thirty feet from the high water mark. Floor 4 shall be setback an additional fifteen feet and floor five a further fifteen feet.

Therefore, floors 1 to 3 shall be setback 130 feet, floor 4 shall be setback 145 feet, and floor 5 shall be setback 160 feet.

Building A

Building A is a proposed new 5 storey building.

Floors 1 to 3 are proposed to be setback 130 feet to the edge of the building and 138 feet to the wall (there is a balcony), floor 4 is proposed to be setback 130 to the edge of the building and 153 feet to the wall (there is a balcony), and floor 5 is proposed to be setback 142 feet to the edge of the building and 153 feet to the wall (there is a balcony).

Floors 4 and 5 of Building A do not comply with the required seaside setback and the applicant has requested a variance.

Building B

Building B is a proposed new 5 storey building. The proposed setback from the high water mark is 142 feet for all five stories.

Therefore proposed floors 4 and 5 do not comply with the required seaside setbacks of 145 feet and 160 feet respectively. The applicant has requested a variance.

Building C

Building C is an existing two storey apartment building.

The proposal is to add three new stories above the existing building and the result is a five storey building.

The restaurant and bar will be located on the ground floor and hotel units will be provided on the second to fifth floors.

The existing setback of building C is 67 feet to the edge of the building and 75 feet to the wall (there is an 8 foot balcony on each floor).

Therefore floors 1 to 5 of Building C would not comply with the seaside setback and the applicant has requested a variance.

Pool

The proposed pool is required to be setback 130 feet from the high water mark.

The proposed setback is 75 feet and the applicant has requested a variance for the pool setback.

Cabanas

The proposed cabanas are required to be setback 130 feet from the high water mark.

The closest of the three proposed cabanas is proposed to be setback 75 feet from the high water mark and the applicant has requested a variance.

2) Proposed East Side setback

Regulation 11(1)(f) requires a minimum side setback of 20 feet. As required by the regulations, this setback is measured to the property boundary.

As noted earlier, Building C is an existing two storey building that is proposed to be increased to five stories. The existing side setback to the east side boundary is 15 feet and the proposed setback to the three new floors is also 15 feet.

The proposed east side setback for proposed all new Building B is also 15 feet to the boundary.

In both instances, the applicant has applied for a variance and has cited that there is an existing public right of way located along the west boundary of the neighbouring property. The applicant's letter indicates that when taking into account the public right of way, the effective on the ground setback is 21 feet.

3) Proposed West Side setback

Regulation 11(1)(f) requires a minimum side setback of 20 feet. As required by the regulations, this setback is measured to the property boundary.

The site plan depicts a proposed west side setback of 10 feet to the proposed cabanas.

The applicant has applied for a variance in this regard.

4) Rear Setback

Regulation 11(1)(h) requires a minimum 20 foot setback from the edge of the road.

The proposed rear setback to the sewage treatment plant is 12 feet and the applicant has requested a variance.

5) Parking

In accordance with Regulation 8(1), the required parking for the proposed development is 23 spaces with a maximum one accessible space.

The proposal is to provide a total of 21 parking spaces on-site including one accessible space.

In addition to the onsite parking, 11 parking spaces are proposed to be provided on the neighbouring property to the west (8A 179), which is the Pampered Ponies site, and 50 spaces are proposed to be provided on a property to the east (8A 8), which is located 136 feet away.

In both instances, the property owners have provided correspondence stating that they have agreed to provide offsite parking for the proposal.

The applicant has been advised that long term leases will be required for the both offsite parking arrangements.

The applicant has indicated that valet parking will be used primarily for restaurant and bar patrons.

Regarding the parking on 8A 8, it is shown as a gravel surface. The Authority should discuss whether gravel is suitable for commercial uses in this instance.

6) Public right of way

Regulation 32 requires a minimum 6 foot wide public right of way access to the beach be provided on the property.

The site plan does not include a right of way to the beach and the applicant is requesting a variance in this regard, however, the Authority has no legal discretion per Regulation 8(13)

7) Sign location

The proposed site plan indicates that a sign will be located in the south west corner of the property and straddled the boundary of the abutting property (8A 179).

No sign has been applied for and the site plan should be revised to eliminate the sign depicted.

8) Traffic flow

The site plan indicates that traffic will flow counter clockwise in a one way direction on the hotel site. It is suggested that traffic should flow clockwise on the hotel site property.

9) DEH Comments

The Department of Environmental Health has provided comments regarding the proposal.

It seems that the comments are more appropriate for the Building Permit stage.

2.7 HARRY LALLI (Abernethy & Associates Ltd) Block 33E Parcels 133 to 138 (P20-0639) (\$6,041) (JP)

Application for a parcel combination and a nine (9) lot subdivision.

Appearance at 2:30

FACTS

<i>Location</i>	Rum Point Drive, Rum Point
<i>Zoning</i>	LDR
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	2.42AC/105,376 sq. ft.
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Vacant

BACKGROUND

October 28, 20102 (CPA/18/20; item 2.15) – current application adjourned to invite the applicants to appear before CPA.

Recommendation: Discuss the application, **for the following reason:**

- 1) Lot width (18' vs 80')

AGENCY COMMENTS

Comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment (NCC) are noted below.

Water Authority

Water Supply

The proposed development site is located within the Water Authority's piped water supply area.

- *The developer shall contact Water Authority's Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the piped water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority's supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority's web page: <http://www.waterauthority.ky/water-infrastructure>.*

The Authority shall not be held responsible for delays and/or additional costs incurred by the developer due to the developer's failure to provide sufficient notice to the Authority.

Wastewater Treatment

- *The developer is advised that wastewater treatment and disposal requirements for built development are subject to review and approval by the Water Authority.*

National Roads Authority

No comments received

Department of Environment (NCC)

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

The application site is man-modified and is located within an area which was formerly mangroves but was dredged and filled in 2003. No development has taken place in the last 15 years and the site has remained derelict with low ecological value. The site is, therefore, an appropriate place for sustainable development. The department has no objection to the proposed subdivision at this time. However, any proposed development of the resulting parcels should be the subject of a separate consultation with the national conservation council.

APPLICANT'S LETTER

I write with regard to the above application to request a variance for the lot width to be less than 80' under the Planning Regulation 8(13) (b) (iii) for the following reasons:

1. *Due to the nature of the turning circle and land layout, it is very difficult to create a width of 80' in the majority of the parcel area due to their wedge like shape, in order to do so the lots become very large, and by extension expensive, sadly this has meant that the whole development remains largely unsold with no building of any kind, necessitating the development of virgin property and leaving his site partially developed in a very valuable area where holiday homes could generate allot of income for the government.*
2. *There are many instances of plots much smaller than those we are requesting that have created successful and high quality communities, these have typically been in high value areas such as South Sound and Crystal Harbour. By designing smaller homes with well-designed foot-prints, it has been proven in these instances that a "single family" unit development can be established on much smaller lots than these, in some cases the plots are as small as 5,000 sq.ft. with very narrow widths, far less than those we are requesting. We are happy to provide instances of this with specific examples should the board require them.*

3. *We applied for smaller cottages to be developed on the lots in the subdivision to prove that no setbacks variances would be required, however we cannot submit that application until the subdivision has been registered.*
4. *We have attached a sketch showing the setback, building footprints achievable following setbacks required, that proves the development of the lots is feasible.*
5. *All our lots exceed 10,000 sq.ft. area required for Low Density lots.*
6. *All our lots have around 100' waterfrontage on the canal, or slightly less, that is in keeping with other lots, but as discussed they narrow towards the road due to the property shape and road layout.*
7. *The subdivision is at the end of a no through road, which should have very little if any passing traffic, therefore the multiple driveways onto the turning circle should not cause a disruption to traffic, and driveways are designed to operate in pairs so that there are half the number of access points onto the turning circle, with two lots and driveways sharing one access point.*
8. *There was some concern with an earlier application at The Village (which was refused by the board) that the denser type development plans we suggested would not be suitable and objected to by owners of lots in the subdivision and surrounding owners, I am delighted now to report that this is absolutely not the case. We presented the plans to the Cayman Kai Owners association and they were universally applauded, I understand that feeling was passed onto some members of the board by local residents, I attach letters of support from owners in the subdivision and surrounding home owners who would like to see the development move forward in our proposed form, and to see the land developed.*
9. *These are not apartments but single-family homes, with lots above the minimum size.*
10. *Whilst we understand the board are not concerned with financial viability or the market acceptance of a proposed plan, we hope they may in this instance they may agree that this will help move sustainable low-rise development on a site that has remained vacant for many, many years. We already have interested parties willing to buy and build on this proposed subdivision based on the smaller more affordable lots, they are local owners and Caymanians in Cayman Kai who support the Village and our aspirations.*

Please do not hesitate to contact us if you require further information or clarification of any points, many thanks for your help in this matter.

PLANNING DEPARTMENT ANALYSIS

General

The application site is located in Rum Point with existing canal network running along the western, southern and eastern boundaries. To the north vacant land exists. The established subdivision road runs from the north off Rum Point Drive.

The application seeks Planning Permission for the combination and subdivision of land to create 9 lots.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) **Lot widths (18' vs 80')**

Regulation 9(8)(g) requires a minimum lot width of 80'.

Proposed lots 1-8 gain access from the subdivision road from separate 18' driveways and lot 9 has a lot width of 60' 7".

Submitted plans identify an 80ft width is only achievable in the last quarter or third of the proposed lots 1-8.

Given the lots are less than the required 80' width with narrow street frontages, the Authority is asked to consider whether the proposed subdivision represents overdevelopment.

SUPPLEMENTARY ANALYSIS

November 23, 2020 (CPA/19/20; Item 2.3) – CPA considered the above application and after deliberation refused to grant Planning Permission based on the following reasons:

- 1) Regulation 9(8)(g) requires a minimum lot width of 80'. The Authority acknowledges that the Regulations do not define where the width of a lot is to be measured so has undertaken the following analysis of the proposed subdivision:
 - a) Proposed lot 9 does comply with the required 80' lot width.
 - b) The concept of wedge shaped lots around a cul-de-sac is not unique to this application and the Authority has previously approved many such lots, including the underlying lots of this proposal that will be combined and re-subdivided.
 - c) The road frontages of the existing lots, excluding Parcel 138, range approximately from 32' to 38'. The road frontages of the proposed lots, excluding lot 9 (which is essentially Parcel 138) range approximately from 18' to 26'.
 - d) The applicant has indicated on the plan where each proposed lot achieves a minimum lot width of 80'. With the exception of lot 9, the percentage of the area of each proposed lot that complies with the required 80' width ranges approximately from 17' to 45' with 8 lots less than 40%.

Given this analysis, the Authority is of the view that the proposed lots are not consistent with the intent of the minimum required lot width and represents an over-intensification of development that is not consistent with the expected character of development in a residential subdivision in the Low Density Residential zone.

The applicant appealed the decision with a hearing on March 2021. The Planning Appeal Tribunal issued their decision on the 10th September 2021. The full decision is available in Appendix E for review and consideration.

The Planning Appeal Tribunal summarised their conclusions as follows:

- i) The Respondent has erred in law by misdirecting itself; failing to consider the planning application in accordance with the Regulations; failing to consider the variance application at all; taking into account the irrelevant percentage and purpose tests; not taking into account factors that are relevant or would have been relevant if the Respondent had directed itself correctly; and breaching the Appellant's right to natural justice.
- ii) The Respondent's Decision is unreasonable because irrelevant factors were considered and relevant factors were not.
- iii) The Respondent breached the Appellant's right to natural justice by applying alternative tests to determine their application, without giving to the Appellant notice or a proper opportunity to address the Respondent as to the appropriateness and intended application of these tests.

In light of the above the Central Planning Authority is invited to reconsider the application taking into account the Planning Appeal Tribunal's conclusions.

2.0 APPLICATIONS
REGULAR AGENDA (Items 2.8 to 2.29)

2.8 MARVA HEWITT (GMJ Home Plans Ltd.) Block 27D Parcel 278 (P21-0685) (\$244,000) (EJ)

Application for an addition to a house to create a duplex and an application for an after-the-fact storage shed.

FACTS

<i>Location</i>	Brightside Street
<i>Zoning</i>	LDR
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.2004 ac. (8,729 sq. ft.)
<i>Parcel size required</i>	12,500 sq. ft.
<i>Current use</i>	House and storage shed
<i>Proposed building size</i>	1,292 sq. ft.
<i>Total building site coverage</i>	24.44%
<i>Required parking</i>	2
<i>Proposed parking</i>	3

BACKGROUND

February 22, 2006 – Permission granted for a two-bedroom house.

Recommendation: Discuss the application, **for the following reasons:**

- 1) Lot size variance (8,729 sq. ft. vs 12,500 sq. ft.),
- 2) Setback variance (7.4' & 7.5' vs 10' & 20').

APPLICANT'S LETTER

"We write on behalf of our clients, Ms. Marva D Hweitt, with regards to the following variance:"

1. *A lot size variance – [To] allow the proposed on an 8,729.4 sqft parcel which is less than the required 12,500 sqft in a low density zone.*

We request permission for the proposed development to remain as shown on the drawings provided and humbly give the following reasons:

1. *Per section 8(13)(d) of the Planning Regulations, the owners of the adjacent properties were notified by register mail and there have been no objections to date:*

2. *Per section 8(13)(b)(iii) of the Planning Regulations, the proposed will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighbourhood, or to the public welfare;*
3. *A similar lot size variance was granted in 2006 on parcel 27D249. To date, the existing duplex on this nearby parcel is not negatively affected the neighbourhood.*
4. *The application complies with all the other relevant planning requirements.”*

PLANNING DEPARTMENT ANALYSIS

General

The applicant proposes a two-bedroom (single-storey) addition to the existing house creating a duplex and an after-the fact storage shed.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Lot Size Variance

The applicant is seeking a lot size variance, proposed 8,729 sq. ft. vs 12,500 sq. ft. for this low density residential zone. It should be noted that the parcel in question originated in a Frank Hall Homes land strata lot subdivision where lots well under the prescribed size of 12,500 sq ft were approved at that time. The following additional background information is provided for the Authority’s consideration:

- a) The applicant has referenced a previous approval for a duplex on 27D 249 in 2006 on a similar sized lot. In researching that matter, the circumstances of that approval differ markedly from the current application. With the 2006 application, the proposal was for a house to be built on land strata lot 32B to be combined with a future house on land strata lot 32A. The two dwellings were proposed to be joined by a 20’ wide trellis thus creating a duplex. AT that time, the Authority determined that the proposal was not for a duplex, as there was no proposal for the other strata lot (32A) and determined that the house on 32B could be approved as it complied with the Regulations.
- b) On May 12, 2021, the Authority considered an application for a two storey addition to an existing house to create a duplex on 27D 291. That application was submitted by the same agent as the current application. The application was refused for the following reasons:
 - *The Authority notes that the applicant’s representative was in attendance at the meeting of March 17, 2021(CPA/06/21; item 2.2) where he was afforded an opportunity to provide reasons why the Authority should approve the application with lot size and setback variances. The Authority adjourned the application at that meeting in order for the Department to further research any previous approvals for similar applications in the area as indicated had occurred by the applicant’s representative. The Department has now reported that there were two other similar applications approved in the area, in 2009 and 2016. As there*

were no new issues being considered by the Authority, it was determined that there was no need to hear further from the applicant and that there was no breach of natural justice in that regard.

- *The Authority acknowledges the two previous approvals for similar applications on 27D 253 and 27D 311, however, the Authority is of the view that each application must be considered on its own merits and the Authority is not strictly bound by previous decisions of previous constitutions of the Authority. In that regard:*
 - *The application does not comply with the minimum lot size requirement per Regulation 9(8)(d) of the Development and Planning Regulations (2020 Revision) and the Authority is of the opinion that pursuant to Regulation 8(13)(b), the applicant failed to demonstrate that there is sufficient reason and exceptional circumstance to warrant allowing the lesser lot size.*
 - *The application does not comply with the minimum rear and side setback requirements per Regulations 9(8)(i) and (j) of the Development and Planning Regulations (2020 Revision) and the Authority is of the opinion that pursuant to Regulation 8(13)(b), the applicant failed to demonstrate that there is sufficient reason and exceptional circumstance to warrant allowing the lesser setbacks.*

2) Setback Variances

The applicant is also seeking permission for the after-the-fact (100 sq. ft.) storage shed; which does not meet the required side and rear setbacks proposed at 7.4' vs 10' and 7.5' vs 20', respectively. The Authority is asked to consider the merits of the applicant's letter.

2.9 WINSTON & ARLENE PEARSON (Tony Lattie) Block 38B Parcel 277 (P20-0919) (\$60,000) (EJ)

Application for a change of use from a house to a duplex.

FACTS

<i>Location</i>	Poplar Street
<i>Zoning</i>	LDR
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.22 ac. (9,583 sq. ft.)
<i>Parcel size required</i>	12,500 sq. ft.
<i>Current use</i>	house
<i>Proposed building size</i>	544.76 sq. ft.
<i>Total building site coverage</i>	26.90%
<i>Required parking</i>	2

BACKGROUND

1983 – Permission granted for a house.

Recommendation: Discuss the application, **for the following reasons:**

- 1) Lot size variance (9,583 sq. ft. vs 12,500 sq. ft.)
- 2) Existing rear setbacks

APPLICANT’S LETTER

The proposed is for a change of use to a duplex, the existing structures has been in place for 22 years for the main house and 13 years for the shed, we are seeking approval for the change of use, lesser setback conditions for the existing structures and a lot size variance.

Lesser setback and lot size variance

*The development is located in a Low Density Residential zone; the subject parcel is surrounding by residential homes duplexes **the proposed development complies with all required setbacks for a LDR zoned development.***

*We are seeking a lot size variance under **regulation 8(13) (b) & (d)** of 9,583.2 sqft vs 12,500 sqft, under the following conditions*

1. *The characteristics of the proposed development are consistent with the character of the surrounding area. **“type of development”** no exterior change or addition to the existing.*
2. *The proposal will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighbourhood, or to the public welfare.*
3. *Where lesser setbacks are proposed for a development or a lesser lot size is proposed for a development, the Authority shall in addition be satisfied that the adjoining property owners have been notified of the application. **“We confirm that all required land owners have been notified.”***
4. ***No objection** has been received from the surrounding property owners affected by the lesser lot size condition during the notification period.*
5. *The proposed development is located near to other apartment developments within the area with similar lot size condition and type of development three units,
(see appendix 1&2)*

We are proposing that the existing structures in question is viewed by the CPA members that the lesser setbacks and lot size conditions has existed for a number of years

Please keep in mind that the above conditions have been in place for a number of years, it should be noted that there are other approved duplexes along the same road with similar lot size.”



Appendix 1 – Year 2008 existing site condition (13 years)



Appendix 2 – Year 1999 existing site condition (22 years)

PLANNING DEPARTMENT ANALYSIS

General

The applicant proposed convert the existing house to creating a duplex and therefore is seeking a lot size.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Lot size

The applicant is seeking a lot size variance proposed 9,583 sq. ft. vs 12,500 sq. ft. for this low density residential zone. The Authority is asked to consider the merits of the applicant's letter. Additionally, the Authority should take note that duplexes were approved on 38B 243 and 355 on lots that are 10,890 sq. ft. in size. Both of those duplexes are also on Poplar St. The duplex on 38B 243 was approved in 1984 and the other duplex on 38B 355 was approved in 2005.

2) Rear setback

The subject development “house” existed prior to 1999 and the “shed” existed prior to 2004 with all of the rear setback violations; nevertheless, the applicant has notified the adjacent parcels and the Department is not in receipt of any objections. The Authority is asked to consider the merits of the applicant’s letter.

2.10 PAM DEVELOPMENT (Dweainy Construction) Block 28C Parcel 547 (P21-0689) (\$1,600,000) (MW)

Application for 8 apartments.

FACTS

<i>Location</i>	Roses Estate Dr., Bodden Town
<i>Zoning</i>	Low Density Residential
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	0.5417 ac. (23,596.452 sq. ft.)
<i>Parcel size required</i>	25,000 sq. ft.
<i>Current use</i>	Vacant
<i>Proposed building size</i>	10,653 sq. ft.
<i>Total building site coverage</i>	22.2%
<i>Allowable units</i>	8 units
<i>Proposed units</i>	8 units
<i>Allowable bedrooms</i>	13 bedrooms
<i>Proposed bedrooms</i>	16 bedrooms
<i>Required parking</i>	12 spaces
<i>Proposed parking</i>	14 spaces

BACKGROUND

N/A

Recommendation: Discuss the application, **for the following reasons:**

- 1) suitability
- 2) lot size (23,596.452 sq. ft. vs. 25,000 sq. ft.)
- 3) bedroom density (16 bedrooms vs. 13 bedrooms)
- 4) rear setback for pool (16’-3” vs. 20’-0”)

AGENCY COMMENTS

Comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment (NCC) are noted below.

Water Authority

Please be advised that the Water Authority's requirements for this development are as follows:

Wastewater Treatment & Disposal

- *The developer shall provide a **septic tank(s)** with a capacity of at least **2,500 US gallons** for the proposed, based on the following calculations:*

BUILDING	UNITS/BLDG	GPD/UNIT	GPD/BLDG	GPD
Building A	6 x 2-Bed Units	225gpd/2-Bed Unit	1350gpd	1350gpd
Building B	2 x 2-Bed Units	225gpd/2-Bed Unit	450gpd	450gpd
TOTAL				1800gpd

- *The septic tank shall be constructed in strict accordance with the Authority's standards. Each compartment shall have a manhole to allow for inspection and service. Manholes shall extend to or above grade and be fitted with covers that provide a water-tight seal and that can be opened and closed by one person with standard tools. Where septic tanks are located in traffic areas, specifications for a traffic-rated tank and covers are required.*
- ***Treated effluent from the septic tank shall discharge to an effluent disposal well constructed by a licensed driller in strict accordance with the Authority's standards.** Licensed drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.*
- ***To achieve gravity flow, treated effluent from the septic tank shall enter the disposal well at a minimum invert level of 4'11" above MSL.** The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.*

For Water Authority approval at BCU stage, a detailed profile drawing of the proposed wastewater treatment system is required. The drawing shall indicate:

1. *If the proposed septic tank will be site-built or precast. (You may use the Water Authority drawing for site-built tanks available from the Authorities website or a Precast septic tank drawing if you intend to use a Precast Tank).*
2. *All dimensions and materials shall be provided for any site-built tanks.*
3. *Manhole extensions are permitted up to a maximum of 24" below finished grade.*
4. *Detailed specifications including make and model for (H-20) traffic-rated covers for septic tanks proposed to be located within traffic areas.*
5. *A detailed profile cross-section of the wastewater system clearly showing the plumbing from building stub out to the effluent disposal well achieving the minimum invert connection specified above. (Alternatively details of proposed lift station shall be required)*

6. *The Water Authorities updated 2020 effluent disposal well specifications.*
7. *A 30ft horizontal separation between the effluent disposal well and any stormwater drainage wells.*

Water Supply

The proposed development site is located within the Water Authority's piped water supply area.

- *The developer shall contact Water Authority's Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the public water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority's supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority's web page: <http://www.waterauthority.ky/water-infrastructure> . The Authority shall not be held responsible for delays and/or additional costs incurred by the developer due to the developer's failure to provide sufficient notice to the Authority.*

National Roads Authority

None received at this time.

Department of Environmental Health

This application is approved with the condition that the applicant revises the site plan to show that 4 of the garbage bins have been removed.

Solid Waste Facility:

1. This development require six (8) thirty three (33) gallon bins and an enclosure built to the department's requirements.
 - a. The enclosure should be located as closed to the curb as possible without impeding the flow of traffic.
 - b. The enclosure should be provided with a gate to allow removal of the bins without having to lift it over the enclosure.

Department of Environment (NCC)

This review is provided by the Director of the Department of Environment under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).

The application site is within a mangrove wetland area and is classified as man-modified

with regrowth as shown in figure 1. The regrowth is considered to consist of secondary mangrove vegetation, which provides ecological benefits such as providing habitat for native fauna. It also assists with the drainage functions of the wider wetland area, which have been altered by the subdivision to the north. Wetlands are also important carbon sinks, sequestering carbon dioxide from the atmosphere and storing it within its biomass.



Figure 1: DOE's 2018 Habitat Map Extract showing Application Site (Outlined in Blue)

From the 2018 Aerial Imagery (see Figure 2), it can be seen that the application site is low lying and wet. Therefore, it is strongly recommend that applicant only fill the development footprint and a storm water management plan is designed for the site. The stormwater management plan should ensure that all site derived storm water runoff (including any hydrocarbon runoff from the car park) can be handled on site without affecting the surrounding area. The applicant is also encouraged to utilise porous material for the car park instead of nonporous material such as asphalt and concrete, to assist with site drainage. It is also recommended that the applicant retains the existing native vegetation where possible and incorporates it into the landscaping of the development as existing native vegetation is best suited to the site's characteristics and is a cost effective option.



Figure 2: LIS 2018 Aerial Imagery Showing Application Site (Outlined in Blue)

Fire Department

Approved for Planning Permit Only (31 Aug 21)

APPLICANT'S LETTER

We are applying for lot size variances to construct LAVENDER PALM Apartments on Block 28C Parcel 547 which have a square footage of 24,364, Pool setback and (16) bedroom density

Based on the requirements to construct apartments we need additional 636 sq. ft. for lot to meet regulation, 4'-0" to meet pool setback requirements and we have 4 more bedrooms that is required. The design is compliant with all other requirements.

The applicant is Caymanian Developer hoping to construct apartments to help with the demanded housing in that area.

Our checks of Apartments in the area with similar issues, indicated that these apartments would not change the aesthetic of the area.

With respect Section 8(13) of the Development and Planning Regulations (2018 Revision).

- (i) The characteristics of the proposed development are consistent with the character of the surrounding area.*

(iii The proposal will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighbourhood, or to the public welfare.

We trust that the Department will grant the requested variances for this development.

PLANNING DEPARTMENT ANALYSIS

General

The application is for a (8) unit apartment complex with two buildings (10,653 sq. ft.) to be located on Will T Rd., Bodden Town.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Suitability

Section (8) states the following development is permitted in a Low Density Residential Zone.

- (a) Detached & semi-detached houses.
- (b) Duplexes
- (c) In locations considered as suitable by the Authority guest houses and apartments.

An overview of the surrounding area shows primarily residential homes and vacant parcels with apartments in the vicinity.

- 28C548 :- Savannah Gem (Four (4) Apartments) (Appvd 10-06-2020 CPA/09/20; Item 2.7)
- 28C531:- Country Side Estates
- 28C108:- B07-1005 (Change of Use to 4 Apartments) 5-8-09

2) Bedroom Density

Regulation 9(8)(c) states *“the maximum number of apartments is 15 per acre with a maximum of 24 bedrooms”*. The proposed lot allows for a maximum of 8 units with a maximum allowable 13 bedrooms. The applicant has proposed 8 units with a maximum of 16 bedrooms which will be 3 bedrooms over the maximum allowable.

3) Lot Size

Regulation 9(8)(f) states *“the minimum lot size for guest houses and apartments is 25,000 sq. ft.”*. The proposed lot is currently only 23,596.452 sq. ft. which will be 1,403.548 sq. ft. less than the required.

4) Rear Setback

Regulation 9(8)(i) states *“the minimum front and rear setbacks are 20 feet.”* The proposed pool and would be approximately 16'-3" from the rear boundary a difference of 3'-9".

2.11 ROGER SMALL (JBS Property Group) Block 14CF Parcel 97 (P19-0736) (\$120,000) (JP)

Application for a pool, fire pump room and perimeter wall.

FACTS

<i>Location</i>	McField Lane, George Town
<i>Zoning</i>	GC
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.2615 ac. (26,789.40 sq. ft.)
<i>Current use</i>	Vacant

BACKGROUND

December 12, 2019 (CPA/25/19; item 2.7) – application for eight apartments approved (P19-0670)

Recommendation: Discuss the application, **for the following reasons:**

- 1) Side setback variance (0’ and 3’ 10” v 6’);
- 2) Rear setback variance (5’ 8” v 6’);
- 3) Height of perimeter wall.

AGENCY COMMENTS

Comments from the National Roads Authority and Department of Environmental Health are noted below.

National Roads Authority

8th September 2020 comments:

The NRA has objections regarding the proposed wall as it is located on McField Lane that has an approval BP401, please have applicant revised the sidewall, landscape & wall to reflected BP401 widening.

Revised plans submitted and NRA re-consulted 28th July 2021 – no further comments provided.

Department of Environmental Health

11th August 2020 comments:

This review is incomplete and therefore not approved. This swimming pool will be classified as semi-public and as such, must conform to Sections 3 and 4 of the International Swimming Pool and Spa Code (ISPSC). 1. The applicant must submit the following as these documents were missing to complete the review: a. DEH swimming pool application form, inclusive of the hydraulic calculations 2. The specifications for the following equipment: a. Main drain b. Skimmer c. Pump, including the curve d. Filter, including the curve e. Flow meter f. Chlorine generator 3. The method for make-up water must also be indicated. A backflow

prevention device that conforms to Section 608 of the International Plumbing Code (IPC) is also required. 4. The drawing must also indicate the location of the emergency shut off switch.

APPLICANT'S LETTER

We are writing to request a variance with respect to the Pool Deck and Fire Pump Room setbacks in the Planning Application for JBS Properties Project on Block 14CF, Parcel 97, McField Lane, George Town District, Grand Cayman. Pool Application (P19-0736).

We have a planning approval for an 8 unit apartment flats (P19-0670) and subsequently applied for a pool application, with the introduction of the sprinkler system system in the requirement we needed to provide a Fire Pump Room adjacent the pool to be used as a standby water supply.

- 1. The pool falls within the prescribed property setbacks, however the pool deck which is raised 6 feet from the ground has to extend up to the property line wall (6 feet high wall). A 4 foot railing will also be provided on the pool deck at the boundary.*
- 2. One side of the Fire Pump Room extends to the north setback. The setback distance for the wall is @ 3'10 and 5'4. (The required is 6 feet). Please see attached reference drawing.*

The reason for elevating the pool deck is to avoid digging 6 feet below the bedrock for the pool foundation and that architecturally we find it ideal to elevate the pool deck in order to have an overlooking view of the parking. The adjoining property (14CF96) to the north is also owned by JBS Properties, with the existing adjacent building being used as an office now.

The characteristics of the proposed development is consistent with the character of the surrounding area and apartment building (see 3D view of the project) and we find it not detrimental to the other property owners in the area.

PLANNING DEPARTMENT ANALYSIS

General

The proposed development is located within the central George Town area of the Island. McField Lane forms the western boundary with occupied lots located to the north, south and east.

The application seeks Planning Permission for the creation of a pool, wall and pump room.

Zoning

The property is zoned General Commercial.

Specific Issues

1) Side setback variance (0' and 3' 10" v 6')

Regulation 8(8)(b) requires a minimum side setback of 6'.

The proposed pool deck extends up to the shared northern boundary.

Members are invited to consider the variance letter as part of their deliberations whilst noting the elevated nature of the deck.

2) Rear setback variance (5' 8" v 6')

Regulation 8(8)(b) also requires a rear setback of 6'.

The proposed pump room and deck would be sited 5' 8" from the rear boundary.

Members are invited to consider the variance letter as part of their deliberations whilst noting the elevated nature of the deck.

3) Height of perimeter wall

The application seeks Planning Permission for a 6' high wall and 4' glass railing along the pool deck. This is due to the pool deck being raised 6' above finished grade.

The proposal will result in a 10' high perimeter wall.

The Wall and Fence Guidelines (2014) paragraph 4.4.3 permits, in Commercial areas, a solid wall up to 32inches and the overall height must not exceed 6'. Where the solid portion exceeds 32inches the total height of the structure is limited to 4'.

Members are invited to consider the Wall and Fence Guidelines as part of their deliberations.

4) Wall along road

The applicant revised the plans per the comments from NRA to allow for a future road widening as shown on BP401. The Authority will note that the area for the widening has been provided, then there will be a 6' sidewalk and the 4' wall will be on the inside of the sidewalk.

2.12 MICHAEL WHITTAKER (Roland Boddin and Company) Block 59A Parcel 13 (P21-0532) (BES)

Application for a 4 lot subdivision.

FACTS

<i>Location</i>	Frank Sound Rd., Midland East
<i>Zoning</i>	LDR
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	3.79 ac. (165,092.4 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Vacant

BACKGROUND

No previous file history.

Recommendation: Discuss the application, **for the following reasons:**

- 1) Road parcel vs a vehicular right of way easement
- 2) Provision of infrastructure

AGENCY COMMENTS

Comments from the Water Authority, National Roads Authority and Department of Environment (NCC) are noted below.

Water Authority

Please be advised that the Water Authority's requirements for this development are as follows:

Water Supply:

The proposed development site is located within the Water Authority's piped water supply area.

- *The developer shall contact Water Authority's Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the piped water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority's supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority's web page: <http://www.waterauthority.ky/water-infrastructure>.*

The Authority shall not be held responsible for delays and/or additional costs incurred by the developer due to the developer's failure to provide sufficient notice to the Authority.

Wastewater Treatment:

- *The developer is advised that wastewater treatment and disposal requirements for built development are subject to review and approval by the Water Authority.*

National Roads Authority

No comments received.

Department of Environment (NCC)

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

The Department notes that the majority of the subject parcel is man-modified habitat with some remaining primary dry shrubland and dry forest habitat in the south-eastern area of the parcel, as shown in figure 1 below. Therefore it is recommended that native vegetation should be retained where possible until development is imminent and incorporated into the landscaping scheme for the project. Native vegetation is best suited for the habitat conditions of the site, requiring less maintenance and making it a cost-effective and sustainable choice for landscaping.



Figure 1: A habitat map showing the subject parcel landcover (DOE 2018).

PLANNING DEPARTMENT ANALYSIS

General

The applicant is seeking planning permission for a 4 lot subdivision at the above-captioned property. The site is located on Frank Sound Rd., Midland East.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Access

As indicated on the subdivision plan, the applicant proposes a 30-ft vehicular right of way to serve as access for the lots. The Authority needs to determine if a right-of-way is sufficient or if there should be a 30' wide road parcel.

2) **Infrastructure**

As only one of the proposed lots fronts on Frank Sound Road, the Authority needs to determine if the access road needs to be constructed as a condition of approval and likewise, a piped water supply needs to be provided as noted by the Water Authority.

2.13 **BEVERLEY NUNEZ (Caribbean Design Group) Block 22D Parcel 96 & 97 (P21-0580) (\$25,000) (MW)**

Application to convert an existing storage building to a maid’s quarters and storage room.

FACTS

<i>Location</i>	Abbey Way, George Town
<i>Zoning</i>	Low Density Residential
<i>Parcel size proposed</i>	0.99 ac. (43,124.4 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Existing Residence
<i>Proposed building size</i>	428.22 sq. ft.
<i>Total building site coverage</i>	13.1%

BACKGROUND

June 02, 1982 – House – (Applied)

November 28, 2019 – Addition to House; 1,184 sq. ft. – the application was considered and it was resolved to grant planning permission.

June 17, 2021 – ATF Gazebo; 249.66 sq. ft. – the application was considered and it was resolved to grant planning permission.

Recommendation: Discuss the application, **for the following reason:**

- 1) health/safety concerns

PLANNING DEPARTMENT ANALYSIS

General

The application is for a shed & maid’s Quarters (428.22 sq. ft.) to be located on Abbey Way., George Town.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Health/Safety Concerns

The applicant has proposed to convert an existing storage building to a maid’s quarters

and storage room. The existing building is situated over the existing septic tank which services the existing residence. The Department is not overly concerned with the storage room, but the maid's quarters may be subject to health and possible safety risks regarding odours and possible structural failure with the increased weight placed upon the top of the septic tank.

2.14 ANTHONY POWELL (Whittaker and Watler) Block 68A Parcel 28 (P21-0439) (JP)

Application for land clearing by mechanical means.

FACTS

<i>Location</i>	Sea View Road, East End
<i>Zoning</i>	LDR
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	1.5 ac. (65,340 sq. ft.)
<i>Current use</i>	Vacant

BACKGROUND

No Planning history

Recommendation: Discuss the application, **for the following reasons:**

- 1) Timing of the land clearing
- 2) Department of Environment comments

AGENCY COMMENTS

Department of Environment (NCC)

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

The Applicant proposes to clear 16 acres of primary habitat, namely dry forest and shrubland. No justification is provided from the applicant, and there is no development proposed to provide a benefit to set against the loss of primary habitat.

The National Biodiversity Action Plan (NBAP) for the Cayman Islands (2009) identifies "fragmentation" as a key factor negatively affecting forest and woodland in the Cayman Islands. The NBAP states: "Fragmentation: forest and woodland is highly susceptible to fragmentation. Fragmentation interrupts wildlife corridors, introduces invasive species and exposes extensive areas of forest to damaging edge effects, including wind shear, ingress of light, and modification".

The NBAP goes further to comment on the impact on forest environments of speculative clearance and states that: "Speculative clearance: the complete clearance of all vegetation from a saleable lot, to demonstrate its extent and topography, is a common practice in the Cayman Islands. This results in immediate and long-term damage to the ecological value of

the land. Regardless of whether a sale is forthcoming, invasive species colonise the cleared area, compromising both the cleared site and impacting neighbouring parcels. Speculative clearance removes any option for a prospective buyer to maintaining native vegetation outside of the footprint of any new development.” The proposed clearing of this property will result in fragmentation of the undisturbed primary forest and woodland in the surrounding area.

The Department does not support the speculative clearing of land and we encourage applicants to submit proposals for land clearing along with their proposals for development as there may be varying recommendations for vegetation retention depending on the form and nature of the development being proposed. Retaining vegetation provides benefits to the property owner and the surrounding area. For example, retaining vegetation can:

- *Affect soil development over time generally contributing to a more productive soil;*
- *Provide habitat and food for wildlife;*
- *Provide sound and privacy buffers from the road and neighbouring properties/developments;*
- *Provide mature vegetation which can enhance landscaping and immediately offer shade;*
- *Assist with the management of run-off and drainage;*
- *Reduce the amount of greenhouse gas emissions by avoiding the unnecessary clearing of land which releases carbon dioxide into the atmosphere.*

Therefore, we recommend that this application is refused.

PLANNING DEPARTMENT ANALYSIS

General

The application site is located in East End sited and accessed by a right of way across 68A 132 from the north of Sea View Road. An existing structure bounds the site to the south-west and vacant land surrounds all remaining perimeter.

The application seeks Planning Permission for land clearance using mechanical method.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Timing of the land clearing

There is no application at this time to develop the site and the Authority has typically expressed concern with the clearing of land in the absence of such an application.

2.15 ANTHONY POWELL (Whittaker and Watler) Block 52C Parcel 89 (P21-0457) (JP)

Land clearing by mechanical means

FACTS

<i>Location</i>	Sea View Road, East End
<i>Zoning</i>	LDR
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.79 ac. (34,412.40 sq. ft.)
<i>Current use</i>	Vacant

BACKGROUND

No Planning history

Recommendation: Discuss the application, **for the following reasons:**

- 1) Timing of the land clearing
- 2) Department of Environment comments

AGENCY COMMENTS

Department of Environment (NCC)

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

The Applicant proposes to clear primary habitat, namely dry shrubland, dry forest and seasonally flooded mangrove forest and woodland. There is no justification provided from the applicant, and there is no development proposed to justify the loss of primary habitat. Clearing this site in the absence of an approved development or use, is considered to be speculative clearing which is not a practice that the DoE supports. Speculative land clearing removes the option of retaining native vegetation outside the footprint of a prospective development. It also results in the fragmentation of undisturbed primary habitat in the surrounding area. It is important to note that fragmentation is continuing to affect primary habitat interrupting important ecological services, wildlife corridors and facilitating the introduction of invasive species on cleared land.

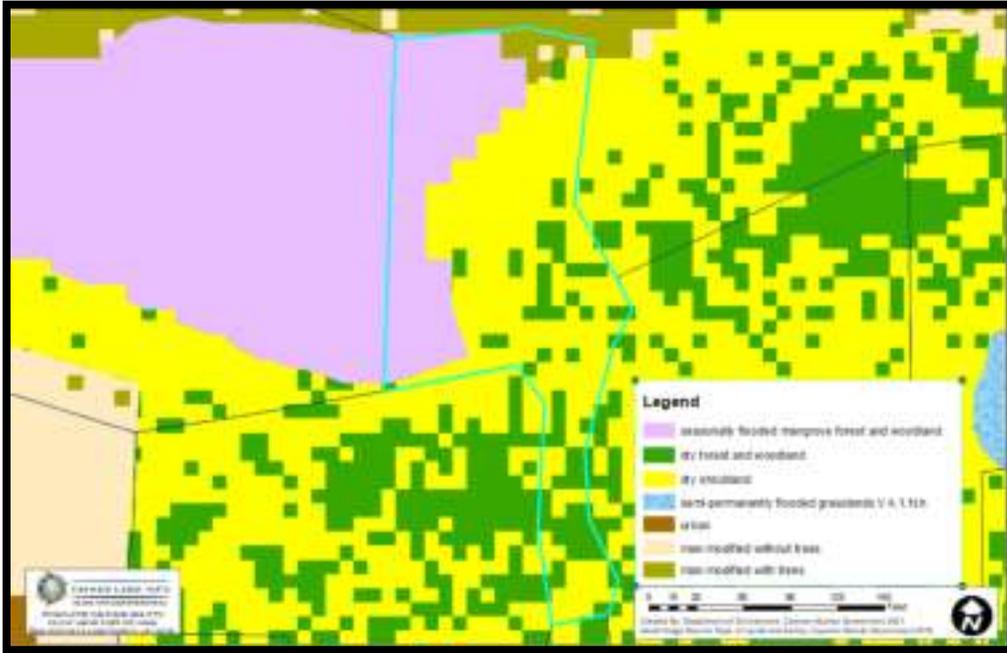


Figure 1: DOE's 2013 Habitat Map Extract showing Application Parcel Outlined in Blue
 Retaining vegetation can provide benefits to the property owner and the surrounding area, including:

- Generally contributing to a more productive soil;
- Provision of habitat and food for wildlife;
- Provision of sound and privacy buffers neighbouring properties/developments;
- Provision of mature vegetation which can enhance landscaping and immediately offer shade;
- Assisting with the management of run-off and drainage;

In conclusion we do not support this application for approval as there is no rationale provided for the clearing and therefore recommend this application for refusal.

PLANNING DEPARTMENT ANALYSIS

General

The application site is located in Bodden Town Road sited and accessed by a rights of way across 52C 27, 52C 30 and 52C 32 from the south. Vacant land surrounds the entire application site.

The application seeks Planning Permission for land clearance using mechanical method.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Timing of the land clearing

There is no application at this time to develop the site and the Authority has typically expressed concern with the clearing of land in the absence of such an application.

2.16 MAEVE ULETT-IVEY (LSG Designs) Block 15E Parcel 52 (P21-0791) (\$520,975) (JP)

Application for a house.

FACTS

<i>Location</i>	Coconut Drive, George Town
<i>Zoning</i>	LDR
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.2 ac. (8,712 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Vacant
<i>Proposed building size</i>	2977 sq. ft.
<i>Total building site coverage</i>	34.17%
<i>Required parking</i>	1
<i>Proposed parking</i>	2

BACKGROUND

None of relevance

Recommendation: Discuss the application, **for the following reason:**

- 1) Site coverage (34.17% v 30%)

APPLICANT’S LETTER

I write on behalf of Maeve Ulett-Ivey who has recently obtained a parcel of land in a low density residential zone. She has submitted architectural drawings to construct a structure which will have a footprint covering 34% of the property for approval to the Planning Department, this will mean that the structure will exceed the 30% as dictated by the Planning and Development Regulations by 4% (Section 9 (8) (h) detailed below). As such, the application will require a request for variance.

Regulation 9(8)(h) of the Development and Planning Regulations (2018 Revision) states “ (h) the maximum site coverage for detached and semi-detached houses, duplexes, guest houses and apartments is thirty per cent of the lot size;”

The structure in question will be 2,687.74 sq. ft. in total, which would mean it would exceed the allowed size by a bare minimum of 364 sq. ft. This additional square footage will not make the structure appear to be visibly bigger than the neighboring homes. All other requirements have been met and are within the required setbacks.

In fact, there will be ample enough room to completely maneuver around the entire property, as such we would like to request that the board grant a waiver for that regulation. It is further noted that the adjoining property owners have been notified of the application.

PLANNING DEPARTMENT ANALYSIS

General

The application site is located off Walkers Road in an established residential area which is characterised as a cul-de-sac. Coconut Drive, which serves the site, forms the northern boundary with existing residential properties located to the west, east, and south.

The application seeks Planning Permission for a house.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Site coverage (34.17% v 30%)

Regulation 9(8)(h) of the Development and Planning Regulations (2021 revision) sets a maximum site coverage of 30%.

The application seeks 34.17% and the variance letter addresses this aspect.

Members are invited to consider the content of the letter as part of their deliberations.

2.17 DEAN & KAREN WATSON (Johnson Design & Architecture) Block 15B Parcel 116 (P21-0773) (\$200,000) (MW)

Application for house addition.

FACTS

<i>Location</i>	Windermere St., George Town
<i>Zoning</i>	Low Density Residential
<i>Notification result</i>	No objections
<i>Parcel size proposed</i>	0.2700 ac. (11,761.2 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Existing Residence w/ Pool
<i>Proposed building size</i>	1,215 sq. ft.
<i>Total building site coverage</i>	33.65%
<i>Required parking</i>	1
<i>Proposed parking</i>	2

BACKGROUND

n/a

Recommendation: Discuss the application, **for the following reasons:**

- 1) Front (Road) Setback (16'-0" vs. 20'-0")
- 2) Side Setback (7'-0" vs 15'-0")
- 3) Site Coverage (33.65% vs. 30%)

APPLICANT'S LETTER

Kindly accept this letter requesting a side setback and a roadside setback variance for a proposed house Addition. Located in a Low Density Residential Zone, the proposed one story house addition is 7' from the side property boundary (10' setback) and 16' from the property boundary (20' setback).

Please consider the following sections of the Development and Planning Law:

- *Section 8(13)(b)(i) states an exception allowing for a breach of a setback if 'the characteristics of the proposed development are consistent with the character of the surrounding area'. Given that the setback variances are minimal, we ask that CPA consider the house addition.*
- *Also note that this application is not 'materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighbourhood, or to the public welfare' as stated in section 8(13)(b)(iii), and*
- *As per Section 8(13)(d), notification letters have been sent out to adjoining property owners regarding this setback variance and no objections have been made.*

PLANNING DEPARTMENT ANALYSIS

General

The application is for a house addition (1,215 sq. ft.) with a front (road) and side setback variances to be located on Windermere St., George Town.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Front (Road) Setback

Regulation 9(8)(i) states "the minimum front and rear setbacks are 20'-0". The proposed addition will encroach the fronting road boundary at 16'-0" a difference of 4'-0" respectively.

2) Side Setback

Regulation 9(8)(j) states “the minimum side setback is 15 feet for a building of more than one storey”, the proposed addition would encroach the side boundary at 7’-0” a difference of 8’-0”.

3) Site Coverage

Regulation 9(8)(h) states “the maximum site coverage for detached and semi-detached houses, duplexes, guest houses and apartments is 30%”. The proposed development will increase the site coverage to 33.7% a difference of 3.7% over the maximum allowed.

2.18 MICHAEL EBANKS (GMJ Home Plans Ltd) Block 14CF Parcel 40 (P21-0657) (\$740,000) (MW)

Application for five (5) apartments.

FACTS

<i>Location</i>	Rock Hole Rd., West Bay
<i>Zoning</i>	Neighbourhood Commercial
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	0.2096 ac. (9,130.176 sq. ft.)
<i>Parcel size required</i>	20,000 sq. ft.
<i>Current use</i>	Existing Residence to be demolished.
<i>Proposed building size</i>	3,688 sq. ft.
<i>Total building site coverage</i>	20.2%
<i>Allowable units</i>	CPA discretion
<i>Proposed units</i>	5 units
<i>Allowable bedrooms</i>	CPA discretion
<i>Proposed bedrooms</i>	5 bedrooms
<i>Required parking</i>	8 spaces
<i>Proposed parking</i>	8 spaces

BACKGROUND

N/A

Recommendation: Discuss the application, **for the following reasons:**

- 1) Zoning
- 2) Lot Size (9,130.176 sq. ft. vs. 20,000 sq. ft.)

AGENCY COMMENTS

Comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment (NCC) are noted below.

Water Authority

Please be advised that the Water Authority's requirements for this development are as follows:

Wastewater Treatment & Disposal

- *The developer shall provide a **septic tank(s)** with a capacity of at least **1,500 US gallons** for the proposed apartments.*
- *The septic tank shall be constructed in strict accordance with the Authority's standards. Each compartment shall have a manhole to allow for inspection and service. Manholes shall extend to or above grade and be fitted with covers that provide a water-tight seal and that can be opened and closed by one person with standard tools. Where septic tanks are located in traffic areas, specifications for a traffic-rated tank and covers are required.*
- ***Treated effluent from the septic tank shall discharge to an effluent disposal well constructed by a licensed driller in strict accordance with the Authority's standards.** Licensed drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.*
- ***To achieve gravity flow, treated effluent from the septic tank shall enter the disposal well at a minimum invert level of 4'5" above MSL.** The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.*

For Water Authority approval at BCU stage, a detailed profile drawing of the proposed wastewater treatment system is required. The drawing shall indicate:

1. *If the proposed septic tank will be site-built or precast. (You may use the Water Authority drawing for site-built tanks available from the Authorities website or a Precast septic tank drawing if you intend to use a Precast Tank).*
2. *All dimensions and materials shall be provided for any site-built tanks.*
3. *Manhole extensions are permitted up to a maximum of 24" below finished grade.*
4. *Detailed specifications including make and model for (H-20) traffic-rated covers for septic tanks proposed to be located within traffic areas.*
5. *A detailed profile cross-section of the wastewater system clearly showing the plumbing from building stub out to the effluent disposal well achieving the minimum invert connection specified above. (Alternatively details of proposed lift station shall be required)*
6. *The Water Authorities updated 2020 effluent disposal well specifications.*
7. *A 30ft horizontal separation between the effluent disposal well and any stormwater drainage wells.*

Water Supply

The proposed development site is located within the Water Authority’s piped water supply area.

- *The developer shall contact Water Authority’s Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the public water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority’s supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority’s web page: <http://www.waterauthority.ky/water-infrastructure> .*

The Authority shall not be held responsible for delays and/or additional costs incurred by the developer due to the developer’s failure to provide sufficient notice to the Authority.

National Roads Authority

None received at this time.

Department of Environmental Health

Solid Waste Facility:

1. *DEH has no objections to the proposed in principle.*
 - a. *This development require six (6) thirty three (33) gallon bins and an enclosure built to the department’s requirements.*
 - b. *The enclosure should be located as closed to the curb as possible without impeding the flow of traffic. The enclosure should be provided with a gate to allow removal of the bins without having to lift it over the enclosure.*

Table 1: Minimum Enclosure Dimensions

Number of Containers	Minimum Dimensions (feet)		
	Width	Length	Height
6	5.00	7.50	2.50

Note:

The drain for the enclosure must be plumbed to a garbage enclosure disposal well as per the Water Authority’s specifications.

Department of Environment (NCC)

This review is provided by the Director of the Department of Environment under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).

The Department notes that the applicant has submitted revised plans which depicts the proposed apartment complex and parking with a different layout. Nonetheless, the site is man-modified of low ecological value. Therefore we reiterate our previous comments of which we recommend the planting of native species. Native species are best suited for the habitat conditions of the site, requiring less maintenance and making them a very cost-effective choice. We have no further comments at this time.

Fire Department

Approved for Planning Permit Only 13 Aug 21

APPLICANT'S LETTER

We write on behalf of our clients, Mr. Michael Ebanks, with regards to the following variance;

- 1. A Lot size variance – To allow the proposed on a 9,130.17 sqft parcel.*

We request permission for the proposed development to remain as shown on the drawings provided and humbly give the following reasons:

- 1. Per section 8(13)(d) of the Planning Regulations, the owners of the adjacent properties were notified by register mail and there have been no objections to date;*
- 2. Per section 8(13)(b)(ii) of the Planning Regulations, the proposal will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighbourhood, or to the public welfare;*
- 3. The subject parcel was registered in year 1974 which was prior to the enactment of minimum lot size requirements outlined under the Development and Planning Regulations.*
- 4. The application complies with all other relevant planning requirements.*

We look forward to your favourable response to this variance request.

PLANNING DEPARTMENT ANALYSIS

General

The application is for a 3,688 sq. ft. (5) unit apartment building to be located on Rock Hole Rd., George Town.

Zoning

The property is zoned Neighbourhood Commercial.

Specific Issues

1) Zoning

Section (13)(1)(b) states “Neighborhood Commercial zones are zones in which the primary use is a less intense form of development of that permitted in a General Commercial zone and which cater principally for the needs of persons resident in, or in the vicinity of, the zone.”

Section 13(10) states “Notwithstanding subregulations (8) and (9), residential development may be permitted on any or all floors of a building in a General Commercial zone, a Neighborhood Commercial zone or a Marine Commercial zone if-

- (a) the development is a replacement or redevelopment of an existing residential development; or
- (b) the development forms part of a mixed – use development situated on one parcel of land and the planned development includes a mixture of commercial and residential uses proposed for close interaction.

In this instance, the applicant proposes to replace the existing house with the proposed 5 apartments. The Authority needs to determine if this proposal satisfies Regulation 13(10)(c).

1) Lot Size

Regulation 8(9) of the Development & Planning Regulations (2021 Revisions) states “after the 6th May, 2002, the minimum lot size in a Commercial zone or Industrial zone shall be 20,000 sq. ft.”. The proposed lot currently is 9,130.176 sq. ft. a difference of 10,869.824 sq. ft. less than the required 20,000 sq. ft, respectively, however the proposed parcel was registered on October 21 1974.

2.19 ALAN CORREIA (GMJ Home Plans Ltd) Block 32D Parcel 158 (P21-0910) (\$320,000) (JP)

Application for additions to an existing house.

FACTS

<i>Location</i>	Natures Circle, Lower Valley
<i>Zoning</i>	LDR
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.2967 ac. (12,924.25 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Residential
<i>Proposed building size</i>	3,316 sq. ft.
<i>Total building site coverage</i>	23.69%

BACKGROUND

February 24, 2006 (**Administrative Approval**) – Application for a house approved

Recommendation: Discuss the application, **for the following reasons:**

- 1) Rear setback variance (17'-3" v 20')
- 2) Side setback variance (7' v 15')

APPLICANT'S LETTER

We write on behalf of our client, Mr. Alan Correia with regards to the following variance;

- *A rear setback variance – to allow an expansion to the master bedroom and bedroom #2 to be built with a setback of 17'3" which is less than the required 20ft from the rear property line.*
- *A side setback variance – to allow the garage addition to be built with a side setback of 7'1" which is less than the required 10ft from the side property line.*

We request permission for the subject matter per the drawings provided and humbly give the following reasons:

1. *Per section 8(13)(d) of the Planning Regulations, the adjacent property owners have been notified and there were no objections;*
2. *Per section 8(13)(b)(iii) of the Planning Regulations, the proposal will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighborhood, or to the public welfare;*
3. *The proposed locations of the additions are deemed the most suitable areas of the parcel based on the built location of the existing house and natural site conditions. After walking through the parcel, it is apparent that the current location of the existing house, which differs from the original approval of year 2006, was selected to preserve the natural environment (cliff rock formations and natural vegetation being the main physical characteristics) and ambience (tropical forest) of the lot. The applicant also feels that the expansion, as proposed, is the most efficient use of the remainder of the parcel and it will provide the safest environment possible for his family having now lived there for 15 years.*
4. *The application complies with all other relevant planning requirements.*

We look forward to your favorable response to this variance request. Should you have any queries, please do not hesitate to contact us at 947-7020 or via email at gmj@candw.ky.

PLANNING DEPARTMENT ANALYSIS

General

The development site consists of an existing dwelling house located in a developing subdivision off Beach Bay. Neighbouring properties are sited to the north and south-east with an existing residential property to the west and Natures Circle, the access road, serving the site from the south.

The application seeks Planning Permission to extend the existing dwelling with a single storey addition to the north (rear) and a two storey addition to the side (west).

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Rear setback variance (17'-3" v 20')

Regulation 9(8)(j) requires a minimum side setback of the 20'.

The proposed single storey rear addition would encroach into the setback resulting in 17' 3" distance to the rear boundary.

Members are invited to consider the agents letter in determining the application.

2) Side setback variance (7' v 15')

Regulation 9(8)(i) requires a minimum side setback of 15' for two storey development.

The proposed two storey side addition would encroach into the setback resulting in 7' distance to the side boundary.

Members are invited to consider the agents letter in determining the application.

2.20 ANDERSON (JMP Construction) Block 21B Parcel 145 (P21-0698) (\$500,000) (NP)

Application for a house and pool.

FACTS

<i>Location</i>	Conch Drive, George Town
<i>Zoning</i>	LDR
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	0.2881 ac. (12,549.6 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Vacant

Recommendation: Discuss the application, **for the following reason:**

- 1) Rear setback to pool edge (17' 4" vs 20')

APPLICANT'S LETTER

JMP Construction is requesting a setback variance for a single-family residence on Block 21B Parcel 145. We are proposing a rear setback variance from 20'-0" to 17'-4" on the pool. We request permission for the subject matter per the drawings provided and humbly give the following reasons:

- 1. Per section 8(13)(b)(iii) of the Planning Regulations, the proposal will not be materially detrimental to persons residing or working in the vicinity, to the adjacent properties, to the neighborhood, or to the public welfare;*

2. Per section 8(13)(d) of the Planning Regulations, the adjoining property owners have been notified of the lesser setback associated with the application and they have not objected.

If you have any further questions, please do not hesitate to contact us

PLANNING DEPARTMENT ANALYSIS

General

The property is located on Conch Drive, which is located north of South Sound Road, and is presently vacant. The proposal is for a house and pool.

A review of aerial photography reveals that the majority of lots within this area are vacant.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Rear setback

Regulation 9(8)(i) requires a minimum rear yard setback of 20 feet. The applicant is proposing a rear setback of 17'4" to the edge of the pool. Abutting properties were notified and no objections have been received. The Authority should consider the merits of the applicant's letter.

2.21 CRAFTMAN'S TOUCH Block 28C Parcel 619 (P21-0191) (\$500,000) (AS)

Application for a duplex.

FACTS

<i>Location</i>	Jim Wood Drive
<i>Zoning</i>	LDR
<i>Notice Result</i>	No objections
<i>Parcel Size Proposed</i>	.2589 acres (11,277 sq. ft.)
<i>Parcel Size Required</i>	12,500 sq ft
<i>Current Use</i>	Vacant
<i>Proposed Use</i>	Duplex
<i>Building size</i>	2,022 sq ft
<i>Building Coverage</i>	17%
<i>Proposed Parking</i>	4
<i>Required Parking</i>	2

Recommendation: Discuss the application for the following reasons:

- 1) Minimum lot size (11,277 sq ft vs 12,500 sq ft)
- 2) Side Setback (7' 5" vs 10')
- 3) Parking design

Letter from the Applicant:

"With respect to our submission for a duplex on block 28C parcel 619 located on, we hereby request variances as follows:

1. Land square footage variance for proposed duplex to be on a property of of 11,277 square feet and the regulation requires 12,500 square feet.

2. Rare setback for landing where the landing is at 7'— 6" from the boundary line and the regulations requires 10ft setback.

In making the application for such a variance, our client is mindful of provisions of Regulations 8 (13) of the Development and Planning Regulations, and would submit that there is sufficient reason and exceptional circumstances that would permit such setback allowance, in that:

- (i) ***The characteristics of the proposed development are consistent with the character of the surrounding area.***
- (ii) *The proposed structures will not be materially detrimental to persons residing in the vicinity, to the adjacent properties, or to the neighboring public welfare."*

PLANNING DEPARTMENT ANALYSIS

General

The application is for a 2,022 sq ft duplex. Each unit will have 2 bedrooms.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Lot Size

Regulations 9 (8) (e) states that the minimum lot size for each duplex is 12,500 sq ft. The subject parcel is 11,277 sq ft.in size.

2) Side Setback

Regulation 9 (8) (j) states that the minimum side setback for a one storey building is 10 ft. The landings at the kitchen doors encroach into the side setback area for a total setback of 7 ft 6in.

3) Parking design

The site layout shows 4 parking spaces and a very long driveway connecting the two entry/exits. The Authority should determine if the amount of hard surface for the duplex is acceptable or if it is excessive and needs to be redesigned.

2.22 ARMANDO EBANKS (Whittaker & Watler) Block 1D Parcels 623 (P21-0649) (\$108,345) (MW)

Application for an after-the-fact house addition.

FACTS

<i>Location</i>	Windstar Dr., West Bay
<i>Zoning</i>	High Density Residential
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	0.1562 ac. (6,804.072 sq. ft.)
<i>Parcel size required</i>	5,000 sq. ft.
<i>Current use</i>	Existing Residence (1,538.50 sq. ft.)
<i>Proposed building size</i>	722.30 sq. ft.
<i>Total building site coverage</i>	33.2%

BACKGROUND

September 06, 2002 – Two Bedroom House – the application was considered and it was resolved to grant planning permission.

Recommendation: Discuss the application, **for the following reason:**

- 1) Rear setback (17'-5"/19'-6" vs 20'-0")

APPLICANT'S LETTER

On behalf of my client, I would like to request a rear setback variance on Mr. Armando Ebanks ATF House addition project on Block 1D Parcel 623.

The request is for a 60.00 Sq.ft. setback variance at the back of the property. Mr. Ebanks would like to add on one extra bedroom and family hall because his family is getting bigger.

We are looking forward for your good office for consideration and approval of the variance request.

Thank you in advance in this matter.

PLANNING DEPARTMENT ANALYSIS

General

The application is for an ATF house addition (722.30 sq. ft.) with rear setback variance located on Windstar Dr., West Bay.

Zoning

The property is zoned High Density Residential.

Specific Issues

2) Rear Setback

Regulation 9(6)(h) states “*the minimum front and rear setbacks are 20’-0”*”. The ATF structure is currently 17’-5” & 19’-6” from the rear boundary a difference of 2’-7” & 6” respectively.

The Authority should assess if there is sufficient reason and an exceptional circumstance in accordance with Section 8(13) to warrant granting the rear setback variances.

2.23 RANSFORD ANDERSON (CS Design) Block 31A Parcel 44 (P21-0546) (\$4,000,000) (MW)

Application for 12 apartments and a wall.

FACTS

<i>Location</i>	Will T Rd., Bodden Town
<i>Zoning</i>	Low Density Residential
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	1.04 ac. (45,302.4 sq. ft.)
<i>Parcel size required</i>	25,000 sq. ft.
<i>Current use</i>	Vacant
<i>Proposed building size</i>	19,776 sq. ft.
<i>Total building site coverage</i>	21.83%
<i>Allowable units</i>	15 units
<i>Proposed units</i>	12 units
<i>Allowable bedrooms</i>	24 bedrooms
<i>Proposed bedrooms</i>	24 bedrooms
<i>Required parking</i>	18 spaces
<i>Proposed parking</i>	28 spaces

BACKGROUND

August 4, 2021 – 16 Apartments with 4’ Wall (4’-8” – 5’-8”) Columns – the application was considered and it was resolved to adjourn the application for the following reasons:

- 1) The applicant is required to submit revised plans showing:
 - a) compliance with maximum allowable apartment and bedroom densities;
 - b) compliance with all minimum required setbacks; and
 - c) the driveway access gates swinging inward to the site.
- 2) The applicant shall obtain comments from the Department of Environmental Health regarding the location of the garbage dumpster and the site plan must be revised if needed to address those comments.

Recommendation: Discuss the application, **for the following reasons:**

- 1) plan revisions made by the applicant
- 2) DEH comments

AGENCY COMMENTS

Comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment (NCC) are noted below.

Water Authority

The Water Authority’s requirements for the proposed development are as follows:

Wastewater Treatment and Disposal

The developer, or their agent, is required to submit an Onsite Wastewater Treatment Proposal, per the attached Form, which meets the following requirements. Water Authority review and approval of the proposed system is a condition for obtaining a Building Permit.

- ***The proposed development requires Aerobic Treatment Unit(s) with NSF/ANSI Standard 40 (or equivalent) certification that, when operated and maintained per manufacturer’s guidelines, the system achieves effluent quality of 30 mg/L Biochemical Oxygen Demand and 30 mg/L Total Suspended Solids. The proposed system shall have a treatment capacity of at least 2,800 US gallons per day (gpd), based on the following calculations.***

BUILDING	UNITS/BLDG	GPD/UNIT	GPD/BLDG	GPD
<i>Building A</i>	<i>4 x 2-Bed Units</i>	<i>225gpd/2-Bed Unit</i>	<i>900gpd</i>	<i>900gpd</i>
<i>Building B</i>	<i>4 x 2-Bed Units</i>	<i>225gpd/2-Bed Unit</i>	<i>900gpd</i>	<i>900gpd</i>
<i>Building C</i>	<i>4 x 2-Bed Units</i>	<i>225gpd/2-Bed Unit</i>	<i>900gpd</i>	<i>900gpd</i>
TOTAL				2,800gpd

- ***Treated effluent from the ATU shall discharge to an effluent disposal well constructed by a licensed driller in strict accordance with the Authority’s standards. Licensed drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.***
- ***To achieve gravity flow, treated effluent from the ATU must enter the disposal well at a minimum invert level of 5’0” above MSL. The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.***

Water Supply:

The proposed development site is located within the Water Authority’s piped water supply area.

- *The developer shall contact Water Authority’s Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the public water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority’s supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority’s web page: <http://www.waterauthority.ky/water-infrastructure> .*

The Authority will not be held responsible for delays and/or additional costs incurred by the developer due to the developer’s failure to provide sufficient notice to the Authority.

Stormwater Management

This development is located over the Lower Valley fresh water lens or within the 500m buffer zone of the lens. In order to protect the fresh water lens, the Water Authority requests that stormwater drainage wells are drilled to a maximum depth of 60ft instead of the standard depth of 100ft as required by the NRA.

National Roads Authority

None received at this time.

Department of Environmental Health

Solid Waste Facility:

This development requires (1) 8 cubic yard container with twice per week servicing.

Table 1: Specifications for Onsite Solid Waste Enclosures

Container size (yd3)	Width (ft)	Depth (ft)	Height (ft)	Slab Thickness (ft)	Requirements
8	10	10	5.5	0.5	Water (hose bib), drain, Effluent Disposal well; guard rails

NOTE:

The drain for the enclosure must be plumbed to a garbage enclosure disposal well as per the Water Authority’s specifications. Contact development.control@waterauthority.ky for deep well details.

Department of Environment (NCC)

This review is provided by the Director of the Department of Environment (DoE) under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).

The application site is predominately man-modified. However, the western-most section of the parcel contains wetland habitat with some vegetation regrowth as shown in Figure 1 below.



Figure 1: Aerial imagery showing the subject parcel (LIS 2018).

We note that the majority of the parcel and the surrounding area to the west are low lying and therefore susceptible to stormwater flooding. We recommend that all stormwater drainage capacity for the development is retained and stormwater is managed on-site to avoid impacting and/or flooding the surrounding parcels.

We recommend that mature vegetation is retained where possible in accordance with the phasing scheme for the development and incorporated into the landscaping scheme. Wetland vegetation outside of the development footprint can be retained to assist with drainage on the site. We also recommend that the applicant plants and utilizes native vegetation throughout the landscaping scheme. Native vegetation is best suited for the habitat conditions of the Cayman Islands, resulting in vegetation that requires less maintenance which makes it a very cost-effective choice.

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

Fire Department

Approved for Planning Permit Only (11 Aug 21)

APPLICANT'S LETTER

On behalf of our client, Ransford Anderson, we are requesting the following variances for the Proposed Townhouses on the above-mentioned property.

- Number of units proposed = 16 (max. allowed is 15.6)*
- Number of bedrooms proposed = 32 (max. allowed is 25)*

- Encroachment of the 20-foot rear setback:

- Building D- Encroaching by approximately 3'-3" (16'-9" from rear boundary)
- Sewage Treatment Plant- encroaching by approximately 11'-2" (8'-10" from the rear boundary)

As per Development and Planning Regulations 2021, Sections 8 (13)(B)(ii) & (iii), we would like to note that the size and shape of the land (long, narrow and tapered at the end), limits the development's potential and therefore minimal encroachment of the rear setback was necessary. We also note that overage in unit and bedroom densities are only less than 1% and 3%, respectively, with ample parking spaces provided to sustain the extra bedrooms. Therefore, we do not foresee the proposed development being materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighbourhood, or to the public welfare.

Given the above, we ask that you consider our request. Should you need further information, please do not hesitate to contact us.

PLANNING DEPARTMENT ANALYSIS

General

The application is for 12 apartments with a wall to be located on Will T Rd., Bodden Town.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Suitability

Regulation 9(8) states the following development is permitted in a Low Density Residential Zone.

- (d) Detached & semi-detached houses.
- (e) Duplexes
- (f) In locations considered as suitable by the Authority guest houses and apartments.

An overview of the proposed site shows the surrounding area to be primarily residential homes and vacant parcels with apartments within the nearby vicinity.

- 31A62 :- Valley Villas (Appvd 03-19-2008 CPA/10/08; Item 2.32)
- 31A59:- Bougainvillea Homes (Appvd 10-23-02 CPA/25/02; Item 3.09)
- 31A61:- Proposed 8, 2 Bedroom Apartments (Appvd 10-25-06 CPA/33/06; Item 2.11)
- 31A65:- ATF Apartments (Appvd 7-6-11 CPA/14/11; Item 2.3)
- 37E199:- Duplex
- 37E200:- Duplex

2) Apartment Density

Regulations 9(8)(c) states “*the maximum number of apartments is 15 per acre with a maximum of 24 bedrooms.*” The proposed development is proposing a total of 16 units which is 1 unit over the maximum allowed 15 units.

3) Bedroom Density

Regulations 9(8)(c) states “*the maximum number of apartments is 15 per acre with a maximum of 24 bedrooms*”. The proposed development is proposing a total of 32 bedrooms which is a difference of 8 bedrooms more than the maximum allowable of 24 bedrooms.

4) Rear Setback

Regulation 9(8)(i) states “*the minimum front and rear setbacks are 20 feet*”. The proposed WWTP, Building D & Garbage Enclosure would be 8’-9 ½”, 15’-5” & 5’-4” from the rear property boundary a difference of 11”-2 ½”, 4’-7” & 14’-8”.

5) Gate design

The proposed entrance gate is setback 20’, which is typically supported by the Authority to allow for vehicle stacking. In this instance, the gates will swing outward thereby reducing the stacking area by half. The Authority should consider whether the gates should be redesigned to swing inward.

6) Wall column height

The applicant has proposed a 4’ fronting road fence with columns varying in height from 4’-8” to 5’-8”. The Authority should determine if the height is acceptable.

SUPPLEMENTAL ANALYSIS

The applicant has submitted revised plans that comply with adjournment reason 1) above. Essentially, the applicant reduced the number of buildings from four to three, thereby reducing the number of units and bedrooms.

Regarding adjournment reason 2), the applicant did obtain comments from DEH and they have not specified any particular concern with the location of the garbage dumpster.

2.24 IRMA ARCH (EKT Architecture) Block 20B Parcel 423 (P21-0633) (\$1,000,000) (MW)

Application for a warehouse building.

FACTS

<i>Location</i>	Kingbird Dr., George Town
<i>Zoning</i>	Light Industrial
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	0.5973 ac. (26,018.388 sq. ft.)
<i>Parcel size required</i>	20,000 sq. ft.
<i>Current use</i>	Vacant
<i>Proposed building size</i>	8,750 sq. ft.
<i>Total building site coverage</i>	74.2% (Building + Parking)
<i>Required parking</i>	9 spaces
<i>Proposed parking</i>	19 spaces

BACKGROUND

N/A

Recommendation: Discuss the application, **for the following reason:**

- 1) Garbage enclosure setback (9'-0" vs. 20'-0")

AGENCY COMMENTS

Comments from the Water Authority, National Roads Authority, Department of Environmental Health and Department of Environment (NCC) are noted below.

Water Authority

Please be advised that the Water Authority's requirements for this development are as follows:

Wastewater Treatment & Disposal

- *The developer shall provide a **septic tank(s)** with a capacity of at least **2,500 US gallons** for the proposed warehouse.*
- *The septic tank shall be constructed in strict accordance with the Authority's standards. Each compartment shall have a manhole to allow for inspection and service. Manholes shall extend to or above grade and be fitted with covers that provide a water-tight seal*

and that can be opened and closed by one person with standard tools. Where septic tanks are located in traffic areas, specifications for a traffic-rated tank and covers are required.

- **Treated effluent from the septic tank shall discharge to an effluent disposal well constructed by a licensed driller in strict accordance with the Authority's standards.** Licensed drillers are required to obtain the site-specific minimum borehole and grouted casing depths from the Authority prior to pricing or constructing an effluent disposal well.
- **To achieve gravity flow, treated effluent from the septic tank shall enter the disposal well at a minimum invert level of 4'5" above MSL.** The minimum invert level is that required to maintain an air gap between the invert level and the water level in the well, which fluctuates with tides and perching of non-saline effluent over saline groundwater.

For Water Authority approval at BCU stage, a detailed profile drawing of the proposed wastewater treatment system is required. The drawing shall indicate:

1. If the proposed septic tank will be site-built or precast. (You may use the Water Authority drawing for site-built tanks available from the Authorities website or a Precast septic tank drawing if you intend to use a Precast Tank).
2. All dimensions and materials shall be provided for any site-built tanks.
3. Manhole extensions are permitted up to a maximum of 24" below finished grade.
4. Detailed specifications including make and model for (H-20) traffic-rated covers for septic tanks proposed to be located within traffic areas.
5. A detailed profile cross-section of the wastewater system clearly showing the plumbing from building stub out to the effluent disposal well achieving the minimum invert connection specified above. (Alternatively details of proposed lift station shall be required)
6. The Water Authorities updated 2020 effluent disposal well specifications.
7. A 30ft horizontal separation between the effluent disposal well and any stormwater drainage wells.

Potential High-Water Use

The plans submitted do not indicate the types of tenants to be included; therefore, the above requirements are based on low-water-use tenants; i.e., those where wastewater generation is limited to employee restrooms/breakrooms. The developer is advised that any future change-of-use applications to allow for a high-water-use tenant will require an upgrade of the wastewater treatment system which, depending on the use, may include an in-the-ground interceptors for grease, oil-grit or lint, and depending on the volume, an upgrade to an Aerobic Treatment Unit. Given that after-the-fact upgrades can be disruptive and costly, the developer is advised to build in the flexibility for their range of desired tenants at this stage. Contact development.control@waterauthority.ky to discuss requirements to accommodate potential high-water use tenants.

Water Supply

The proposed development site is located within the Water Authority's piped water supply area.

- *The developer shall contact Water Authority's Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the public water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority's supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority's web page: <http://www.waterauthority.ky/water-infrastructure>.*

The Authority shall not be held responsible for delays and/or additional costs incurred by the developer due to the developer's failure to provide sufficient notice to the Authority.

National Roads Authority

None received at this time.

Department of Environmental Health

The revised drawings meets the requirements of DEH.

Department of Environment (NCC)

This review is provided by the Director of the Department of Environment (DoE) under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Act, 2013).

The Department has no comments as the site is man-modified and of limited ecological value.

Fire Department

Approved for Planning Permit only 11 Aug 21.

APPLICANT'S LETTER

Please be advised that as per planning regulations 8. (13), my client is requesting a variance for planning permission for the location of the garbage dumpster and its enclosure.

As the board will note from the site plan, the proposed location is ideal for easy access by the private and/ or the public solid waste collection vehicles. It allows for minimal interferences with the day-to-day operation of the facility. This configuration currently exists on multiple properties within one hundred yards of this proposed development. The point was made only to underscore that precedence has been established, but more

importantly, it clearly allows for safer and easier access and operation for solid waste vehicles.

I trust that the board understands my client's position and request for variance. We look forward to your favorable reply.

PLANNING DEPARTMENT ANALYSIS

General

The application is for a warehouse (7 units) to be located on Kingbird Dr., George Town.

Zoning

The property is zoned Light Industrial.

Specific Issues

1) Garbage enclosure setback

The minimum roadside setbacks for developments within a Light Industrial zone are 20'-0", however the applicant has proposed that the garbage dumpster be approximately 9'-0" from the fronting road boundary.

2.25 LETICIA POWELL-HUBER (MKS INTERNATIONAL) Block 32C Parcel 466H2 (P21-0673) (\$60,000) (BES)

Application for swimming pool and pergola

FACTS

<i>Location</i>	Corinne Drive, Lower Valley
<i>Zoning</i>	LDR
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	0.1274 ac. (5,549.54 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Residential
<i>Proposed building size</i>	170sq. ft.

Recommendation: Discuss the application, **for the following reasons:**

- 1) Rear setback (5'-6" vs 20')
- 2) Side setback (5' vs 10')

APPLICANT'S LETTER

We are seeking Planning approval for a proposed pool as per site plan submitted, on the basis that the proposed structure meets the Development and Planning Regulations (2017 Revisions) Section 8 (11) criteria. We are also seeking a setback variance of 5'-6" from the rear boundary line (vs. 20').

Attached with this application is the site plan showing proposed pool along with consent letters from adjoining properties 32C 466H3 owned by Georg Henry McKenzzie (there is an existing pool at this parcel), 32C 466 H1 owned by Aparil Cummings and Eric Frick, and email correspondence from Altee Thompson Owner of 32C 356.

We feel that having the Department grant the requested setback varience will not be materially detrimental as noted under section 8 (13) in the Development and Planning Regulations:

8. (13) (b) (i) the characteristic of the proposed development are consistent with the character of the surrounding area;

8. (13) (b) (iii) the proposal will not be materierly detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighborhood, or to the public welfare.

We thank you for your kind consideration, and please let us know if you require any additional information.

PLANNING DEPARTMENT ANALYSIS

General

The application is for a swimming pool and pergola (170 sq ft) at the above-captioned property. The property is located on Corinne Drive, Lower Valley.

Zoning

The property is zoned Low Density Residential.

Specific Issues

1) Rear Setback

Per Regulation 9(8)(i), the minimum rear setback is 20', whereas the proposed setback is 5'-6" or a shortfall of 14.5' The Authority needs to determine if the applicant has demonstrated there is sufficient reason and exceptional circumstance for allowing the lesser setback per the provisions of Regulation 8(13).

2) Side Setback

Per Regulation 9(8)(j), the minimum side setback is 10', whereas the proposed setback is 5'-0". The Authority needs to determine if the applicant has demonstrated there is sufficient reason and exceptional circumstance for allowing the lesser setback per the provisions of Regulation 8(13).

2.26 STEVEN ROGERS (Eric Cronier) Block 75A Parcel 32 (P21-0187) (\$8000) (JP)

Application for three lot subdivision and after-the-fact land clearing.

FACTS

<i>Location</i>	Old Crewe Road, George Town
<i>Zoning</i>	BRR
<i>Notification result</i>	No Objectors
<i>Parcel size proposed</i>	1.5 ac. (65,340 sq. ft.)
<i>Parcel size required</i>	10,000 sq. ft.
<i>Current use</i>	Vacant

BACKGROUND

February 8, 1984 – House approved

Recommendation: Discuss the application for the following reason:

- 1) ATF nature of the application

AGENCY COMMENTS

Comments from the Water Authority, National Roads Authority and Department of Environment (NCC) are noted below.

Water Authority

Please be advised that the Water Authority’s requirements for this development are as follows:

Water Supply:

The proposed development site is located within the Water Authority’s piped water supply area.

- *The developer shall contact Water Authority’s Engineering Services Department at 949-2837, without delay, to be advised of the site-specific requirements for connection to the piped water supply.*
- *The developer shall submit plans for the water supply infrastructure for the development to the Water Authority for review and approval.*
- *The developer shall install the water supply infrastructure within the site, under the Water Authority’s supervision, and in strict compliance with the approved plans and Water Authority Guidelines for Constructing Potable Water Mains. The Guidelines and Standard Detail Drawings for meter installations are available via the following link to the Water Authority’s web page: <http://www.waterauthority.ky/water-infrastructure>.*

The Authority shall not be held responsible for delays and/or additional costs incurred by the developer due to the developer's failure to provide sufficient notice to the Authority.

Wastewater Treatment:

- *The developer is advised that wastewater treatment and disposal requirements for built development are subject to review and approval by the Water Authority.*

National Roads Authority

The NRA has no objections or concerns regarding the above proposed subdivision.

Department of Environment (NCC)

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

We have no objection to the proposed subdivision. However, we note from a review of aerial imagery that the application site has been cleared. Vegetation is present in Lands and Survey 2018 imagery but is cleared in 2021 Google imagery. We trust that the necessary planning permission was received prior to clearing.

APPLICANT'S LETTER

The clearing was just cleaning up in front of the house when they did it in 2019. We were not thinking of developing the property at that time

PLANNING DEPARTMENT ANALYSIS

General

Located in East End and accessed by Austin Conolly Drive from the west with the Caribbean Sea forming the eastern boundary. Vacant land bounds the site to the north and south.

The application site previously consisted of a house set in significant grounds. The house has recently been demolished and the site cleared.

The application seeks Planning Permission to subdivide the site into three and to regularise after-the-fact land clearing.

Zoning

The property is zoned Beach Resort Residential.

Specific Issues

1) ATF Land clearing

The Authority may wish to consider the after-the-fact nature of the application for land clearing and determine if any remediation measure are required.

2.27 BLACKBEARD’S (DDL) Block 13E Parcel 25 (P21-0857) (\$500,000) (JP)

Application for four signs (total 133 sq ft).

FACTS

<i>Location</i>	Eastern Avenue, George Town
<i>Zoning</i>	GC
<i>Notification result</i>	No objectors
<i>Current use</i>	Commercial

BACKGROUND

June 18th, 2021 (**Administrative Approval**) – application for external alterations and installation of entrance awning approved (P21-0516)

May 20th, 2021 (**Administrative Approval**) – application for external alterations approved (P21-0472)

April 10th, 1984 – application for business/retail building approved (P84-005679)

Recommendation: Discuss the application, **for the following reason:**

- 1) Size of existing sign

PLANNING DEPARTMENT ANALYSIS

General

The development site is located in George Town on the corner of Eastern Avenue and Courts Road, opposite Kirks Supermarket. Previously the property was occupied by Cox Lumber, the new tenants, Blackbeards, wish to install advertising for the company.

The application seeks Planning Permission for four signs:

- 3x fascia signs;
- 1x freestanding sign (using existing structure – replacing just the sign).

The total area of the signs is 133 sq ft.

Zoning

The property is zoned General Commercial.

Specific Issues

1) Size

The fascia signs fully comply with the Sign Guidelines (2014) whereby the total area of all fascia and window signs does not exceed 10% of the building façade. The proposed fascia signs cover 9.53%

The freestanding signs should not exceed 32 sq ft. The area of the upper sign is 40 sq ft. Members should note the structure is already in situ and the proposed advertisement is simply replacing existing.

2.28 MITZI MERCEDES CALLAN (MJM Design Studio) Block 14D Parcel 65 (P21-0797) (\$5000) (JP)

Application for 30 sq. ft. sign.

FACTS

<i>Location</i>	Huldah Avenue, George Town
<i>Zoning</i>	NC
<i>Notification result</i>	No objectors
<i>Parcel size proposed</i>	0.3484 ac. (15,176.30 sq. ft.)
<i>Current use</i>	Commercial

BACKGROUND

March 4, 2020 (CPA/05/20; Item 2.30) – CPA approved the enclosure of existing walkway balconies (P19-1433)

Recommendation: Grant Planning Permission

PLANNING DEPARTMENT ANALYSIS

General

The application site is located on the corner of Huldah Avenue and Smith Road and consists of recently renovated commercial premises.

Planning Permission is sought for the installation of a 30 sq ft directory totem sign located adjacent to Huldah Avenue.

The Sign Guidelines (2014) provides a maximum of 32 sq ft and 12’ high for a sign.

Zoning

The property is zoned Neighbourhood Commercial.

2.29 UCCI (Tropical Architectural Group Ltd.) Block 15B Parcel 391 (P21-0489) (\$647,250) (BES)

Application for an addition (4,315 sq ft) to college library and floor plan layout changes.

FACTS

<i>Location</i>	Olympic Way, UCCI Campus
<i>Zoning</i>	INS
<i>Notification result</i>	No Objectors
<i>Parcel Size Proposed</i>	5.59 ac. (243,500.4 sq. ft.)
<i>Parcel Size Required</i>	CPA discretion
<i>Current Use</i>	College Library
<i>Proposed Use</i>	Same as above
<i>Building Size</i>	4,315 sq. ft.
<i>Building Site Coverage</i>	20.9%

BACKGROUND

February 19, 2021, four cabanas and modification to the workshop was granted admin planning permission.

Recommendation: Grant planning permission

AGENCY COMMENTS

Comments from the Water Authority, National Roads Authority, Department of Environmental Health, Fire Service and Department of Environment (NCC) are noted below.

Water Authority

The following are the Water Authority's requirements for this development proposal:

Wastewater Treatment:

The existing development is served by an onsite aerobic wastewater treatment system with a design treatment capacity of 61,000 gpd.

The design capacity of the existing wastewater treatment system can accommodate the wastewater flows from the proposed library addition, given that the treatment system is being operated and maintained as designed to produce an effluent that meets the Authority's discharge limits.

Fire Service

The CFO approved the site plan layout.

National Roads Authority

As per your memo dated May 24th, 2021 the NRA has reviewed the above-mentioned planning proposal. Please find below our comments and recommendations based on the site plan provided.

Stormwater Management Issues

The applicant is encouraged to implement state-of-the-art techniques that manage stormwater runoff within the subject parcel and retain existing drainage characteristics of the site as much as is feasible through innovative design and use of alternative construction techniques. However, it is critical that the development be designed so that post-development stormwater runoff is no worse than pre-development runoff. To that effect, the following requirements should be observed:

- The applicant shall demonstrate, prior to the issuance of any Building Permits, that the Stormwater Management system is designed to embrace storm water runoff produced from a rainfall intensity of 2 inches per hour for one hour of duration and ensure that surrounding properties and/or nearby roads are not subject to stormwater runoff from the subject site.*
- The stormwater management plan shall include spot levels (existing and finished levels) with details of the overall runoff scheme. Please have applicant provide this information prior to the issuance of a building permit.*
- Roof water runoff should not drain freely over the parking area or onto surrounding property. Note that unconnected downspouts are not acceptable. We recommend piped connection to catch basins or alternative stormwater detention devices. Catch basins are to be networked, please have applicant to provide locations of such wells along with details of depth and diameter prior to the issuance of any Building Permits.*

At the inspection stage for obtaining a Certificate of Occupancy, the applicant shall demonstrate that the installed system will perform to the standard given. The National Roads Authority wishes to bring to the attention of the Planning Department that non-compliance with the above-noted stormwater requirements would cause a road encroachment under Section 16 (g) of The Roads Law (2005 Revision). For the purpose of this Law, Section 16(g) defines encroachment on a road as

"any artificial canal, conduit, pipe or raised structure from which any water or other liquid escapes on to any road which would not but for the existence of such canal, conduit, pipe or raised structure have done so, whether or not such canal, conduit, pipe or raised structure adjoins the said road;"

Failure in meeting these requirements will require immediate remedial measures from the applicant.

Department of Environmental Health

- 1. The department has no objections to the proposed in principle.*

Department of Environment (NCC)

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

*Parcel 15B/392 located to the east of the subject parcel is a Crown-owned area of primary undisturbed forest known as Ironwood Forest. This forest is a very biodiverse ecosystem and is home to critically endangered plant species such as Ghost Orchid (*Dendrophylax fawcettii*) and Old George (*Hohenbergia caymanensis*). These plant species are listed in Part 1 of Schedule 1 to the National Conservation Act, 2013, as being ‘protected at all times’. These species are endemic to Grand Cayman meaning they are uniquely Caymanian and do not naturally occur anywhere else in the world. The Ironwood Forest is the last remaining ancient forest in the George Town area making it an extremely important area for conservation.*

The Department has no objection to the proposed addition as the building addition appears to be located within a man-modified area. However, the setback from the boundary of the Crown-owned parcel is very limited and as such there is a risk that clearing and construction works may be in close proximity to the parcel boundary. To protect the existing forest vegetation all works must take place within the applicant’s parcel. There shall be no incursion, clearing or stockpiling of materials in the adjacent Crown-owned parcel.

PLANNING DEPARTMENT ANALYSIS

General

The application is for an addition (4,315 sq ft) to the college library and floor plan layout changes at the above-captioned property. The site is located on Olympic Way, UCCI Campus.

As indicated on the plans, the ground floor layout changes would include a computer area, an office, a new conference room, a Director’s office, testing rooms, and stocking area. The second floor plan provides for conference rooms and restrooms.

Zoning

The property is zoned Institutional and there are no concerns with the application.

3.0 DEVELOPMENT PLAN MATTERS

3.1 CLYDE AND MICHELE SMITH (RZ20-0006) Block 1D Parcel 160 (RM)

Application for Amendment to Development Plan 1997 from High Density Residential to Neighbourhood Commercial.

FACTS

Location:	Miss Daisy Lane / Hell Road, West Bay
Parcels:	1D160, 1D161 and 4E10
Current Zoning:	High Density Residential
Proposed Zoning:	Neighbourhood Commercial
Ownership:	Private
Total Parcel Size:	5.01 acres
Subject Zoning Area:	5.01 acres

DEPARTMENT OF PLANNING RECOMMENDATION

The Authority is being asked to consider this request for an amendment to the Development Plan in light of the now expired public comment period in which no objections or representations were received, and if so minded to forward the file onto the Ministry of Planning, Agriculture, Housing and Infrastructure for onward transmission to Cabinet and Parliament for consideration.

UPDATE

The Central Planning Authority heard the request (RZ20-0006) during meeting 7 on March 31st 2021 (CPA/07/21; Item 3.1) and it was resolved to include parcels 1D161 and 4E10 into the proposal and forward the rezoning application from High Density Residential to Neighbourhood Commercial, not Light Industrial, for 60 day notification and advertising per Section 11(2) in the Development and Planning Law (2017 Revision).

The notice period commenced on May 5th 2021 and concluded on July 4th 2021, during which time no letters of objection were received by the Department of Planning.

DEPARTMENT OF PLANNING ANALYSIS

The original application sought an amendment to the Development Plan from High Density Residential to Light Industrial. The applicant identified the subject parcel – which in the initial application was block and parcel 1D160 only – as being located within a ‘mixed use’ neighbourhood on account of the range of activities currently operating nearby. The applicant suggested that there is no land suitably zoned for light industrial activities. The details are outlined in the applicant’s letter below:

“...the 14 different activities operating within the area has contributed to the area being developed as a “mixed use” neighbourhood. There are also two churches in close proximity. Therefore, area residents and others can live, eat, attend school, church, purchase fuels, have vehicles repaired, buy fresh meats, vegetables, fruits, groceries, collect/send mail, enjoy entertainment, visit an elderly one in the senior citizens home or a loved one at Hope Foundation, purchase souvenirs, and visit Hell. This all happens on/off Hell Road between Town Hall Road and Watercourse Road (less than ½ mile). However, residents or non-residents cannot find any land suitably zoned for activities such as warehousing, tire repairs, vehicle repairs (mechanical and body), light manufacturing (furniture, food products, consumer electronics, etc.), small engine repairs, etc., etc. This inability has stifled entrepreneurship and prevented centres of local employment from developing. The rezoning of the subject parcel to Light Industrial could address both of these issues.

The applicants are applying to rezone the site from HDR to Light Industrial (LI). Their reasons for applying to rezone the parcel are:

- (i). A residential project would most likely fail due to the stigma associated with “logwoods”*
- (ii). There is no land zoned Light Industrial in West Bay*
- (iii). Rezoning the site LI the applicants would create an employment hub in the district,*
- (iv). Rezoning the site LI would provide a venue for entrepreneurship, and*
- (v). To construct buildings for individuals and entities to conduct light industrial activities.*

The creation of a LI zone in West Bay and the other districts is long overdue as it was discussed in 2002/03 during a Development Plan Review process. Also, there are not many parcels this size and located on a main road in West Bay that could be rezoned to LI. We therefore submit that it is imperative and urgent to act on this proposal because not only do we need a LI zone within the district, but this LI zone will also create an employment hub and provide a venue for entrepreneurship.

The applicant will retain ownership of the site and the buildings thereon thus be able to ensure that future developments do “...not cause detriment to the amenity of that

area including detriment by reason of noise, vibration, smell, fumes, electrical interference, smoke, soot, ash, dust or grit;” and that they are reasonably integrated into the surroundings. In this manner the applicants will retain management control of the site.

We trust that the Department, other relevant agencies, and the Authority all concur with the need to create a Light Industrial zone within the district of West Bay, and by extension support this application. We believe that we have demonstrated that the site is a suitable candidate for this type of zoning due to its location, surrounding land uses, and how possible future impacts will be mitigated. However, if you require any additional information, documentation or have questions please advise and we will address them post haste.”

Site details:

The revised subject property now consists of 3 parcels; 1D160, 1D161 and 4E10 which have a combined size of 5.01 ac and are located to the east of Miss Daisy Lane in West Bay. The combined property has a considerable frontage (approximately 390ft) onto Hell Road.

The original subject property; Parcel 1D160 (3.50 ac), is occupied by two small residential buildings, situated in close proximity to the western boundary. The majority of the parcel however is vacant and occupied by mature vegetation.

Parcel 1D161 (0.29 ac) is occupied by two buildings; a single-storey residential property and a small single-storey retail/commercial/professional building occupied by ‘Margene’s Jerk’ stand.

Parcel 4E10 (1.22 ac) is vacant and predominantly occupied by mature vegetation. The easternmost portion of the parcel has a private access road leading to the north.

The topography of the land is relatively even at around 5ft above sea level.

Character and Land Uses of Surrounding Area

In total there are 5 different land use zoning categories within a 1,000ft radius of the subject property. The subject property itself is located within a large area zoned High Density Residential while to the south, across Hell Road, is a large area which is zoned Low Density Residential. Adjacent to the east of the subject property are a number of Neighbourhood Commercial zoned parcels while further to the south and east are areas zoned Public Open Space and Institutional.

As noted in the applicant’s cover letter, the subject parcel is located in close proximity to a range of commercial, civic, and residential uses. The areas to the north and west of the subject property are largely occupied by residential land uses with a combination of single-family and multi-family units. Hell Road however, to the south of the subject property, has a variety of commercial and tourism premises, including those associated with the Hell

tourism attraction, and a gas station. Also located nearby are the Sir John A Cumber Primary School, to the east, and a Heavy Equipment compound, to the north.

Figure 1 displays the proposed rezone area, as amended following the Central Planning Authority meeting on March 31st 2021, and the surrounding land-use context.

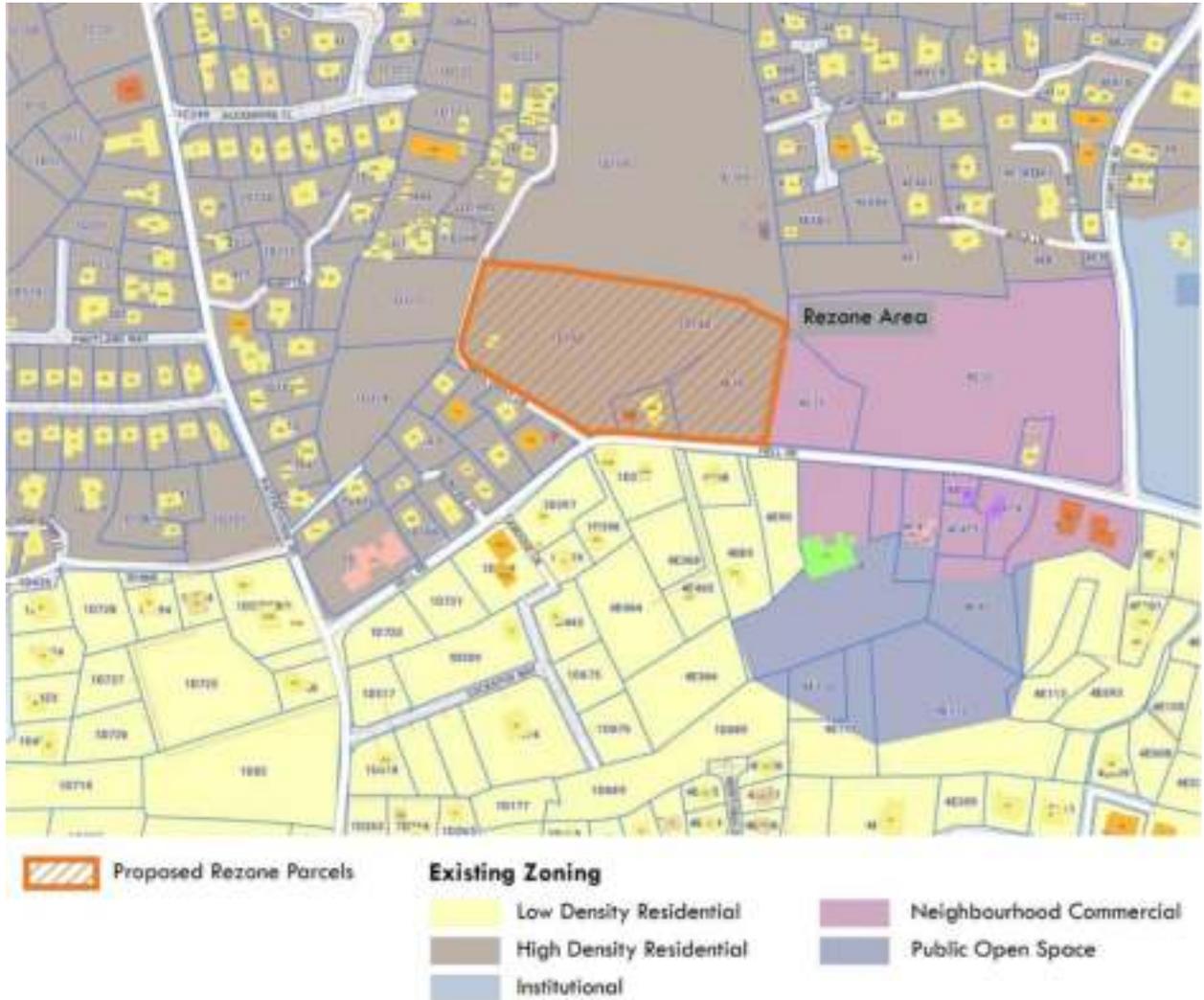


Figure 1: Zoning and location map (Source: www.caymanlandinfo.ky)

The initial application sought a rezone of Block and Parcel 1D160 from High Density Residential to Light Industrial. In Grand Cayman just 302.8 acres (or 0.63% of Grand Cayman as a whole) is currently zoned for Light Industrial uses, and these areas are all located in the district of George Town, within the ‘industrial park’ to the north of Owen Roberts International Airport. Rezoning the subject parcel to Light Industrial could therefore be considered “spot zoning” since it would not adjoin to any existing Light Industrial land in the locality.

At its meeting on March 31st 2021 the Central Planning Authority resolved to include Block and Parcels 1D161 and 4E10 into the proposal and for the rezone to be from High Density

Residential to Neighbourhood Commercial, not Light Industrial. The Authority stated that they didn't want to create an 'island' of Light Industrial when a Neighbourhood Commercial zoning would be more in keeping with the area.

AGENCY COMMENTS

Department of Environmental Health

*"DEH has no objections the rezone in principle.
Any built development must be submitted to DEH for review and approval".*

Cayman Islands Fire Service

"The fire Department have no objection at this time."

National Roads Authority

Comments requested on 14 October 2020 – None received

Water Authority

"Please be advised that the Water Authority has no objection to the proposed rezone. Requirements for water and wastewater will be determined when built development of the parcel is proposed."

Department of Environment

"Under delegated authority from the National Conservation Council (section 3 (13) of the National Conservation Law, 2013), the Department of Environment confirms that we have no comments.

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

4.0 PLANNING APPEAL MATTERS

5.0 MATTERS FROM THE DIRECTOR OF PLANNING

6.0 CPA MEMBERS INFORMATION/DISCUSSIONS

Appendix A

The Chairman
C/O the Executive Secretary
Central Planning Authority
Government Administration Building
Elgin Avenue, George Town
Cayman Islands

BY EMAIL

20 September 2021

Dear Sir,

Re: Application for Planning Permission Block 5B Parcel 151

We act and write on behalf of Cayman Property Investments Ltd. (our "client"), the registered proprietor of Block 5B Parcel 151, the applicant in respect of the captioned matter.

In light of the recent adjournment of our client's application, which we are made to understand was due to the Authority requiring further detailed information in respect of our client's application, our client has taken account of the discussions with the Authority at the 21 July 2021 hearing and has made some meaningful amendments to the Application and has instructed us to assist in providing the following submissions which we believe will assist the Authority in making its decision.

The Planning Department's submissions from the 21 July 2021 hearing of the Application provided a number of recommendations for discussion to the Authority. We will address each of these discussion points as follows.

1. Zoning

The subject parcel is located in neighbourhood commercial zoning. Pursuant to regulation 13(10) (a) of the Development and Planning Regulations (2020 Revision) (the "D&PR"),

"...residential development may be permitted on any or all floors of a building in... a Neighbourhood Commercial zone... if the development is a replacement of an existing residential development."

The subject development is replacing an existing residential building and therefore falls within the legal exemption provided pursuant to regulation 13(10)(a) D&PR. There is no requirement that the development is replaced in substance, merely that an existing residential development is being replaced by another. We therefore submit that the proposed development can be permitted without commercial development on the ground floor, as is usually required.

2. Building Height

Regulation 13(7)(a) D&PR provides that buildings in Neighbourhood Commercial zoning may be forty feet or three storeys, whichever is the greater.

It should be noted that the provisions for height of buildings within a Neighbourhood Commercial zone (and Marine Commercial zone) is set out specifically under regulation 13 D&PR, whereas the heights of buildings for all other zones is provided under regulation 8 (2) D&PR which is subject to the exemptions provided by regulation 8 (4) D&PR, which includes certain rooftop structures and below grade storeys. Under those provisions, the basement garage and the rooftop structures would be expressly exempt from the measurement of height of the building. Therefore, given the somewhat disjointed structure of the regulations, the exemptions under regulation 8 (4) D&PR do not apply to the Neighbourhood Commercial zone, which our client would submit seems somewhat unfair. That being the case, we are constrained to seek the necessary variances for those structures which would ordinarily be exempted in other zones.

Regulation 8(13) provides that, notwithstanding regulation 13 D&PR, "the Authority may grant planning permission to carry out development that does not comply with regulation 13 D&PR, if:

*"...(b) there is sufficient reason to grant a variance and an exceptional circumstance exists, which may include that-
... (iii) the proposal will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighbourhood, or to the public welfare..."*

The amended plans for the proposed development now provides for 3 residential floors and one basement parking garage.

Firstly, it is submitted that the variances being sought will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property,

to the neighbourhood, or to the public welfare. We would pray in aid in this regard the fact that none of the surrounding landowners who have been served with a Section 15 (4) DPL notice has objected to the proposed development.

The only structures (with enclosed walls and roofing) on the rooftop of the building are the stairway and bathroom. It is submitted that the stairway cannot constitute another storey as it is open from the ground level to the roofline of the stairway structure, so the entire structure only constitutes one storey. If the Authority deems that the bathroom on the rooftop actually constitutes an additional story, our client hereby respectfully requests that a variance in respect of that rooftop structure so that permission can be granted by the Authority for the same. Both the stairway and the bathroom are strictly required pursuant to the building control provisions of the International Building Code and the International Fire Code, and therefore, without these structures any approval would be an exercise in futility as the Building Control Unit would require these to be added upon their review. Our client therefore submits that this also constitutes an exceptional circumstance and sufficient reason for the Authority to grant a variance pursuant to regulation 8(13) D&PR to permit the stairway and bathroom.

In respect of the basement parking garage, our client hereby requests a variance in respect of this storey. It is submitted that as per the Authority's decision in respect of a previous similar planning applications, underground parking is a desirable development feature as it prevents visible concrete sprawling that is inherent in ground level parking thereby making the development more aesthetically pleasing for the general public and environmentally friendly. Furthermore, due to the shape of the parcel, the placement of ground level parking would be virtually impossible. On 7 February 2018, in the matter of the application of 5 Points Investments in respect of the "Grove" development, the Authority determined that basement parking in Neighbourhood Commercial zoning is sufficient reason and exceptional circumstance to allow an additional underground storey. In that decision, the Authority stated:

"... The Authority also determined that pursuant to Regulation 8(13)(b) there is sufficient reason and exceptional circumstance to allow an additional storey as follows: (a) The basement storey allows almost 25% of the required number of parking spaces to be below grade and not on the surface... (b) The proposed basement storey will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighbourhood, or to the public welfare."

It is therefore submitted that the same considerations are applicable to our client's proposed development, and our client therefore respectfully submits that, based on this precedent, there is sufficient reason and exceptional circumstances which warrant that the variance sought in respect of the basement parking lot can be granted by the Authority.

Finally, our client submits that it is the duty of the Authority to secure consistency in its approach to planning control, as the essence of consistency is fairness. That being the case, we would respectfully submit that the Authority can properly grant the variances sought for the relevant elements of the proposed development on the basis that it would be consistent to take a similar approach to the proposed development as that which regulation 8 (4) D&PR would implement by way of exemption if the development was being built in any other zone. Simply put, we would submit that there is sufficient reason for the Authority to grant a variance for any element of a structure that it would ordinarily treat as exempt in any other zone, on the basis that those exemptions are not available to our client, simply because of the exceptional circumstance that the provisions for heights of buildings in the Neighbourhood Commercial zones are provided separately in the regulations, thereby depriving the applicant of the exemptions under regulation 8 (4) D&PR that would ordinarily apply in any other zone.

3. Parking area

Pursuant to the comments provided by the Department of Planning, our clients have made amendments to the one-way driveway in the underground parking area such that the same is not 21' feet wide and provides for ample space for cars to maneuver.

4. Road Side Setback

As per the amended submitted plans, pursuant to the comments provided by the Department of Planning, our client has now reduced the building length by 3'-9 ½" to comply entirely with 20' road setback along Boggy Sand Road. In order to do this our client has significantly reduced the floorplan of the proposed development in order to strictly comply with the necessary setback requirements.

5. Fence Height

In respect of the commentary provided by the Department of Planning as the same relates to the height of the retaining wall it is submitted that classifying the same as a "fence" is inappropriate when in fact it is not a fence, but merely a

retaining wall. Furthermore, our client submits that as a matter of law "fencing guidelines" are not legally binding as they are not provided pursuant to the applicable law or regulations. In any event, our client submits that the retaining wall is necessary due to the structural requirements of the development. The idea that the same should be treated as a "fence", of sorts, is not appropriate under the circumstances.

6. Fire Access

Following the previous meeting with the Authority, our client conferred with the Fire Service in respect of the amended proposed Application and is pleased to inform the Authority that after a detailed review of the Application and all proposed considerations, the Cayman Islands Fire Service has confirmed that they can support the subject Application with two fire truck access. Our client has ensured that the development includes the necessary fire egresses and has included a sprinkler system and the necessary requirements pursuant to the International Fire Code. A copy of our client's correspondence with the Fire Service is attached hereto at Appendix A.

7. Trash

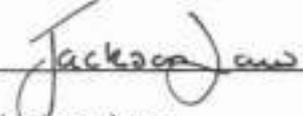
Furthermore, following the previous adjourned meeting with the Authority, our client has now relocated the solid waste enclosure to the basement parking level of the development and has secured a private waste removal services to be provided by Island Waste Carriers.

In all of the circumstances, it is submitted that following the previous adjourned hearing before the Authority, our client has taken onboard the comments raised by the Department of Planning and the Authority and has made significant amendments to the proposed development in order to address these matters in the form the amended application which is now presented to the Authority.

In the premises, we would therefore respectfully request that the Authority approve the Application, as amended.

Our clients have requested an appearance before Authority, in order that we can answer any questions that members may have, and explain any aspect of the foregoing as is necessary.

Respectfully submitted,



JacksonLaw

Appendix A

Michael Meghoo

From: Ebanks, Tiffany (Fire Services) <Tiffany.Ebanks2@gov.ky>
Sent: Wednesday, May 19, 2021 8:27 AM
To: Michael Meghoo
Subject: RE: [EXTERNAL] RE: Fire Truck access - Request for alternate means / method

Good Day, Mr. Michael,

After review of code and if all proposed considerations stated below are met the Fire prevention unit support your requested application of an exception for the access to a third side if the Planning Department / BCU does.

Kind Regards,

TIFFANY EBANKS
Acting Station Manager- Fire Marshall | Cayman Islands Fire Prevention Unit
Cayman Islands Fire Service
P. O. Box 1804
148 Owens Roberts Dr.
Grand Cayman KY1-1109
Cayman Islands
Ph. 345-244-3908
Cell: 345 926-8176
Fax: 345-949-0268
Email: tiffany.ebanks2@gov.ky



Safety is key and it up to you and me.

From: michael@mjmdesignstudio.com [mailto:michael@mjmdesignstudio.com]
Sent: Monday, May 17, 2021 12:57 PM
To: Gipson, Russell <Russell.Gipson@gov.ky>; Ebanks, Tiffany (Fire Services) <Tiffany.Ebanks2@gov.ky>
Cc: Pandohie, Haroon <Haroon.Pandohie@gov.ky>; Whittaker, Marco <Marco.Whittaker@gov.ky>
Subject: RE: [EXTERNAL] RE: Fire Truck access - Request for alternate means / method

Thanks Tiffany,

Appreciate your clarification. This was indeed our misunderstanding.

We look forward to Mr. Walkers reply and stand by for any clarifications he may need for us to provide.

Best regards,

MICHAEL I. MEGHOO
PRINCIPAL

Appendix 'B'

MEMORANDUM

TO: Director of Planning **YOUR REF:** P21-0193
ATTN: Burton Schneider
FROM: Director of Environment **DATE:** 6 April 2021

**SUBJECT: Pro Plus Construction
68,840sqft 2 Storey Apartments; 31,324sqft 2 Storey Townhouses; 1,804 sqft 2 Storey Clubhouse/Gym/Cabana; Swimming Pool; 2 Signs less than 30sqft and 4' Wall with 6' Gate
Block 20D Parcel 171**

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 application site consists of primary habitat, classified as seasonally flooded mangrove forest and woodland, as shown on Figure 1. Mangroves are listed as Schedule 1, Part 2 protected species under the National Conservation Law (NCL) (2013) and there is a Mangrove Conservation Plan which came into effect in April 2020.

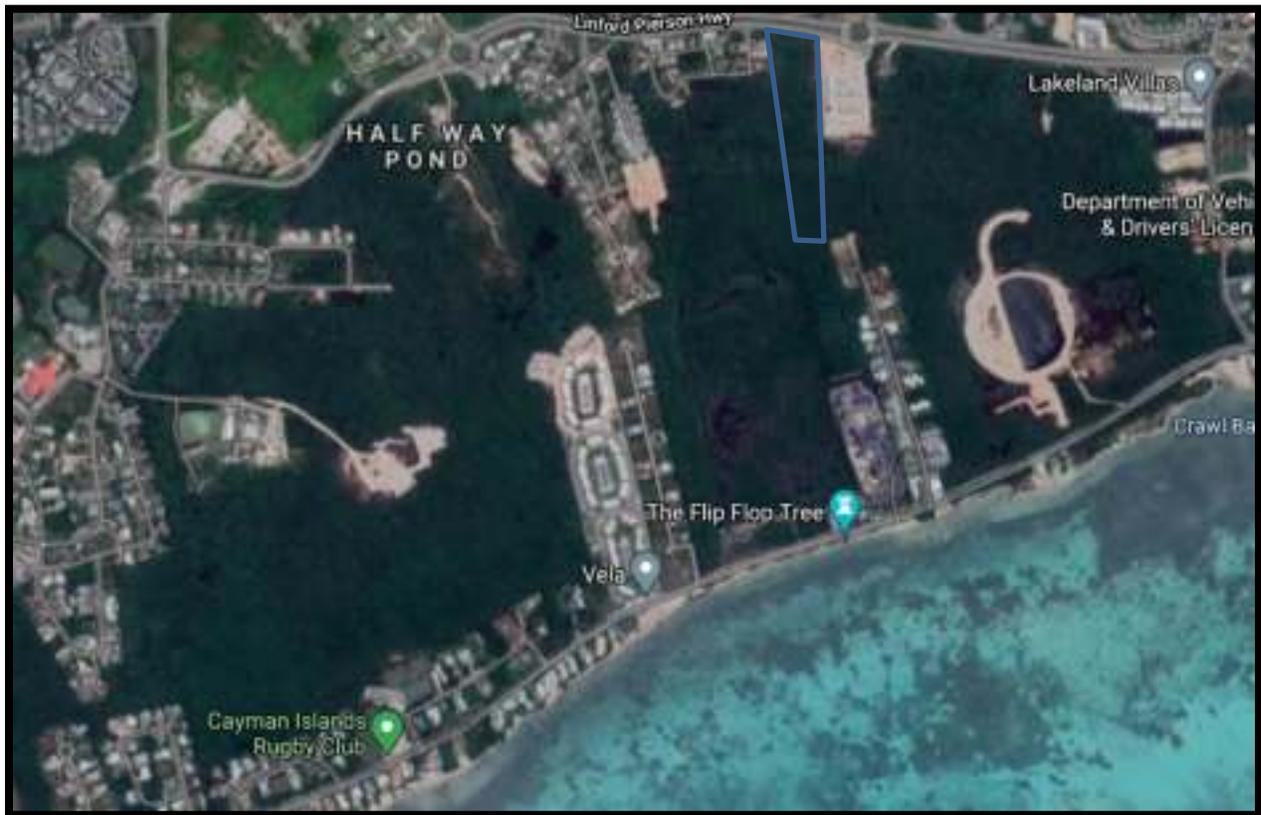


Figure 1: Google Map screenshot showing application site location outline in blue in 2021

Mangrove loss over recent decades has been so extensive that it triggers local Red-Listing criteria. In 2008, the Cayman Islands national IUCN Red List status of Black Mangrove was assessed as

Endangered, White Mangrove and Buttonwood both as Vulnerable, and Red Mangrove as Near-Threatened.

The Ramsar Convention (1971) has been extended to the Cayman Islands, requiring a commitment to work towards the wise use of our mangrove and other wetlands through national plans, policies and legislation, management actions and public education. All of the four mangrove species are protected species under Part 2 of Schedule 1 of the NCL.

Mangrove forests are a critical part of our natural environment, providing important ecosystem services, which include assisting to mitigate the effects of climate change. Mangrove forests are extremely effective at sequestering carbon from the atmosphere and serve as carbon sinks/stores. Mangrove roots trap carbon-rich plant material in their water-logged soil sealing it off from the atmosphere. Removing significant tracts of mangrove habitat not only reduces the island's natural carbon sequestration potential but the physical act of removing the mature mangroves and de-mucking the site releases captured carbon back into the atmosphere adding to ever-increasing greenhouse gas emissions.

Mangroves forests are also one of the most productive terrestrial ecosystems, being extremely biodiverse and provide habitat and food for an immense variety of species. They also function as natural sponges that trap and slowly release surface water. Inland wetlands in urban areas are particularly valuable, counteracting the greatly increased rate and volume of surface-water runoff. Trees, root mats and other wetland vegetation also slow the speed and distribution of storm waters. This combined water storage and braking action lowers flood heights and reduces erosion. Inland wetlands also improve water quality filtering, diluting, and degrading toxic wastes, nutrients, sediments, and other pollutants.

The site is located within the South Sound drainage basin (see Figures 1 & 2). The South Sound basin functions as a water catchment and storage basin which provides flood controls and storm-water retention. Surface water is stored in the wetlands, which provides a natural mechanism for reducing flow velocity and flooding. This basin also contributes to the maintenance of water quality in the South Sound Lagoon.

Unfortunately, the South Sound drainage basin has become severely fragmented by current and future developments (see Figure 3) impacting the overall capacity of the remaining wetland area to accommodate drainage for the whole basin. Therefore, we reiterate our concerns regarding potential flooding and drainage issues and the need for a regional stormwater management plan is now even more critical given how much of the basin is committed for development, as shown in Figure 3.



Figure 2: Elevation model showing the South Sound drainage basin (outlined in red) and the approximate location of the application site within the blue outline.



Figure 3: LIS 2018 aerial imagery showing the South Sound Drainage Basin and areas approved for development

The area of the South Sound drainage basin delineated in red in Figure 3 is approximately 620 acres. Of this, approximately 500 acres has been granted approval for development or is already developed. Therefore, over 80% of the mangrove wetland area has been lost to development.

The DoE has consistently raised concerns about the lack of a comprehensive stormwater management strategy and the relevant studies for the South Sound drainage basin over the years. These concerns has been highlighted in the attached Memo dated 30 January 2015 from the DoE, Water Authority and National Roads Authority, to the Ministry of PLAHI.

In conclusion, even though the application site has been slated for development, the above should be taken into consideration when considering this application for approval. Therefore if the CPA is minded to grant approval for the residential development the following conditions should be included at a minimum as part of planning permission

- Only the development footprint should be cleared and filled.
- Land clearing should not take place until commencement of each phase of development is imminent, i.e. Clear only the footprint of each phase when construction is commencing.
- A stormwater management plan for the development should be designed in a way that all site derived run-off is handled on site and does not impact the surrounding area.
- Retain as much native mangrove vegetation as possible as well as incorporating it along with other native vegetation species into the landscaping and stormwater management plan.

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

Director of Environment
Under Delegated Authority of the National Conservation Council



MEMORANDUM

To: Chief Officer – Ministry PLAHI

Copy To: Chief Officer – Ministry FSC&E

From: Director – Department of Environment
Director – National Roads Authority
Director – Water Authority Cayman

Date: 30 January 2015

Subject: South Sound Drainage Basin Stormwater Management

Summary and Recommendation

A meeting took place on 10 December 2014 between the Department of Environment, the National Roads Authority and the Water Authority (the Planning Department did not respond to the invitation to attend). The purpose of the meeting was to discuss the impact that planned developments within the South Sound drainage basin, including a four-lane highway, will have on stormwater management in this area.

There was a consensus amongst those in attendance that construction of the proposed road and a number of proposed major developments within the basin will have serious implications for flooding of properties within the basin and South Sound environs if not planned in the context of a regional strategy for stormwater management.

As the agencies do not have a specific mandate, power or resources to effectively resolve this issue, it was agreed to bring this matter to the attention of the ministries of PLAHI and FSCE for consideration. **Our recommendation is to issue an RFP to select a suitably qualified consultant to undertake a hydrological assessment of the South Sound drainage basin and devise a regional stormwater management plan, which will include drainage engineering specifications for the proposed road and future development and Best Management Practices to minimise the impacts of stormwater flooding.**

The Request for Proposals (RFP) for the consultancy can be jointly developed by the NRA, Water Authority, DoE and Planning, to select a consultant to work with our agencies to prepare a regional stormwater management plan. We estimate that the cost of the plan would be in the order of \$200,000 and these funds will have to be requested in the 2015/16 budget currently being prepared.

Background

Proposed and existing developments including new roads in the South Sound drainage basin are shown in Figure 1 and Figure 2.



Figure 1: Topography of South Sound drainage basin (outlined in red) and location of proposed road (outlined in yellow)

A number of existing developments in the basin become inundated with rainwater during the wet season; most notably Randyke Gardens. Several new residential subdivisions have been granted CPA approval in the past 3 years and, most recently, the agencies have been contacted by Cayman Enterprise City regarding a 50 acre development in the basin and an application has been received from Exeter Development Ltd for a 30-35 acre general commercial development to the south of Linford Pearson highway (comprising a large anchor grocery/retail outlet, with supporting ancillary retail and commercial development); see Figure 2.

Unless the drainage and flooding issues in the area are addressed in a comprehensive manner, prior to these developments and the road coming forward, the agencies have grave concerns regarding the impacts of seasonal flooding on existing developments and on the quality of the receiving waters; i.e., the South Sound lagoon.



Figure 2: Aerial image showing permitted developments (highlighted in red) and proposed developments (highlighted in blue) within the South Sound drainage basin.

The South Sound mangrove basin is a blocked non-tidal mangrove wetland which is impounded by the beach ridge and South Sound road to the south, and higher elevation, drier land as well as the Linford Pearson highway to the north. The beach ridge and roads are relatively impermeable to sea water and the mangrove swamp is flooded principally by rainwater. Historically, excess rainwater not retained by the extensive mangrove wetland basin gradually percolated through the beach ridge and mangrove coastlines along the length of South Sound lagoon. Following the construction of South Sound Road and the beginning of developments which reclaimed portions of the mangrove wetland, a series of MRCU physical control canals installed in the 1970's helped to alleviate storm waters and, more recently, a series of culverts were installed by PWD/NRA under South Sound road to drain the mangrove basin to the South Sound lagoon. However, the recent filling along the eastern end of the shoreline in South Sound has resulted in many of these culverts being blocked. The one remaining culvert, in close proximity to the Red Bay dock, is normally blocked by the NRA with a sheet of metal placed in front of the culvert; this culvert is made operational when required (see figures 3 & 4). Seasonal flooding of Randyke Gardens and other low-lying developments in the basin has become a normal occurrence and without a regional stormwater management plan, this flooding will get worse.



Fig 3: Closed Culvert in South Sound



Fig 4: Landward End of South Sound Culvert

Detailed water level measurements in South Sound have shown that the mean surface water level within the swamp is higher than the mean sea level in South Sound (Davies, J.E. and Giglioli, M.E.C, 1977). Accordingly, during the wet season, impounded rain water remains within the basin and has limited means of escape. As more and more development is brought forward, the implications of removing the stormwater retention capacity of the basin becomes increasingly significant and problematic, not only from the perspective of flood risk for properties within the basin but also for the health of the South Sound lagoon which forms part of the Cayman Islands Marine Park system and is therefore considered a protected area under the National Conservation Law. The previous system of culverts draining waters into the South



Fig 5: Red tannin stained water flowing into South Sound at the present culvert (2008).

Sound was problematic in that it created concentrated discharge points for fresh and tannin rich waters to enter the Replenishment Zone; this solution did not mimic the natural drainage patterns of the mangrove basin as previously described.

The rapid and concentrated discharge of stagnant storm water presents a number of environmental and aesthetic issues. Most marine communities, including the seagrass flats, patch reefs and fringing reefs of South Sound, are not tolerant to the large shifts in salinity brought on by the introduction of large pulses of freshwater. Additionally mangrove basin storm water contains large amounts of nutrients and is typically low in oxygen due to high biological oxygen demand of mangrove peats which adds to its detrimental impacts to marine communities.

Aesthetically, concentrated mangrove storm water impacts the ordinarily clear waters of South Sound and can result in strong odours due to the presence of hydrogen sulphide.



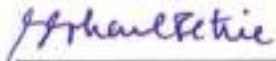
Fig 6: Red tannin stained water near shore South Sound – note the striking transition between the clear water and the stained near shore water.

Rather than continuing with the current practice of requiring each development to deal with storm water management in isolation, we believe a basin-wide approach to managing storm water in this location is urgently required. In fact this area was prioritised by the former Roads Division of PWD for the development of a storm water management plan about 10 years ago. As new developments are constructed on sites filled to higher elevations than existing properties in the South Sound drainage basin, the older existing properties are going to suffer from increased intensity and duration of flooding, as the retention capacity of storm water will be reduced as the basin is developed. We believe that a more appropriate mechanism in addition to the traditional means of storm water drainage (disposal wells) may be to have a series of retention basins for storm water to drain to for holding and filtration, before being dispersed into the South Sound lagoon in a controlled way. However, in order to engineer a regional solution, a detailed understanding of the hydrology of the basin and the implications of various developments is required.

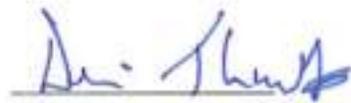
The NRA, the Water Authority and the Department of Environment are therefore bringing this matter to your attention as we believe that the correct approach to tackling this issue is to instruct a suitably qualified consultant to undertake a hydrological assessment of the South Sound drainage basin and devise a regional stormwater management plan, which will include drainage engineering specifications for the proposed road and future development, and Best Management Practices to minimise the impacts of storm water flooding.

If the approach outlined in this Memorandum is agreeable to your Ministry, the next step would be to formulate a Request for Proposals (RFP) in order to seek consultants who would work with our agencies to prepare a storm water management plan. This RFP can be prepared jointly by the NRA, Water Authority, DoE and Planning. We estimate that the cost of the plan would be in the order of \$200,000 and these funds will have to be requested in the 2015/16 budget currently being prepared.

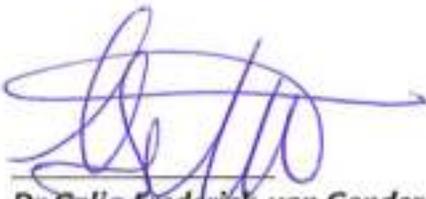
We look forward to your feedback on this matter at your earliest convenience. Please do not hesitate to contact us should you wish to discuss this further.



Gina Ebanks-Petrie
Director, Department of Environment



Denis Thibeault
Assistant Director, National Roads Authority



Dr Gelia Frederick-van Genderen
Director, Water Authority

Appendix C

FORMAL OBJECTION TO PROJECT NO. P21-0193 TO BUILD ON BLOCK & PARCEL NO: 20D 171 SUBMITTED BY YARLCAY LTD. ON BEHALF OF ADJOINING OWNERS AND OTHER CONCERNED MEMBERS OF THE SOUTH SOUND COMMUNITY

26 March 2021

By Email Only: haroon.pandohie@gov.ky; burton.schneider@gov.ky; ron.sanderson@gov.ky;

Planning Department
Government Administration Building
George Town Grand Cayman, KY1-9000
CAYMAN ISLANDS

ATTN: Mr Haroon Pandohie

CC: Hon. Roy McTaggart, JP MLA for George Town East (By Email Only: roy.mctaggart@gov.ky)

CC: Gina Petrie-Ebanks, Director Department of Environment (By Email Only: gina.petrie@gov.ky)

CC: News Media ie Compass, CNS and Marl Road (By Email Only: signatures redacted)

Dear Mr. Pandohie

RE: Reference: Appic and procedural concerns in regards to Rezoning, Mangrove Clearing application and Planning application for affordable housing

Please find below the collective Objections to the application for 80 1-Bed Apartments, 24 Townhouses, Pool and Gym in relation to an application for YARL town shown on Block & Parcel No: 20D 171, on behalf of the adjacent owners and the neighbouring properties who are individually listed next to their respective signatures at the end of this letter. Please also note that these objections are supported by certain members of the wider South Sound community (who are not adjacent owners) whose signatures also appear at the end of this letter.

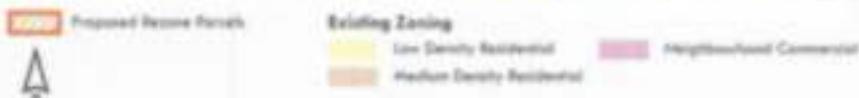
1. Rezoning

The applicant has applied for 10.48 acres to be rezoned from Low Density Residential to High Density Residential. The rezone application was approved for rezone advertisement 3 February 2021 which also included 20+ acres of mangrove forest that has recently been acquired by Government for the National Housing Development Trust. Submissions from the DOE were provided on 4 November 2020 outlining concerns which are attached. Please take this as notice of OBJECTION to said rezone notice YARLCAY LTD Block 20D Parcel 171 (RZ20-0007) and Block 20E Parcel 213REM3 for the reasons outlined herein.

PUBLIC NOTICE

REQUEST FOR ALTERATION TO THE DEVELOPMENT PLAN 1997

The Central Planning Authority (CPA) is considering a request for alteration to the Development Plan 1997 (RZ20-0007) for the following: Block 20D Parcel 171 and Block 20E Parcel 213REM3 from Low Density Residential to High Density Residential. These parcels are located to the south of the Linford Pierson Highway.



The electronic file can be inspected at the Department of Planning, Government Administration Building, 133 Elgin Avenue, George Town between 8:30 am and 4:00 pm, Monday to Friday. Anyone wishing to comment on this proposal must do so in writing within 60 days of the final advertisement (March 10th 2021) or by May 9th 2021. Please remit all correspondence to the attention of the Director of Planning, P.O. Box 113, KY1-9000 Grand Cayman, Cayman Islands; or by email to planning_dept@gov.ky. CPA meeting minutes pertaining to this application can be found on the Department's website at www.planning.ky (Meeting CPA/03/21; Item 3.3)

2. Land Clearing

The area is primary mangrove habitat in an area known for flooding. The Department of Environment laid out concerns in their letter dated 19 February 2021, a copy of which is attached. Members of the wider South Sound community also provided the attached letter of concern to Planning in objection to premature land clearing, which has not been formally acknowledged.

Significant concerns need to be addressed in regards to this site which sits within a stormwater drainage basin. The lack of an overall stormwater management plan for a high density development must not be disregarded.

- (a) Section 18 of the Constitution requires Protection of the Environment to be considered in all decision making:

"Protection of the environment

18.— (1) Government shall, in all its decisions, have due regard to the need to foster and protect an environment that is not harmful to the health or well-being of present and future generations, while promoting justifiable economic and social development.

(2) To this end government should adopt reasonable legislative and other measures to protect the heritage and wildlife and the land and sea biodiversity of the Cayman Islands that—

- 1. (a) limit pollution and ecological degradation;*
- 2. (b) promote conservation and biodiversity; and*
- 3. (c) secure ecologically sustainable development and use of natural resources."*

- (b) Section 25 (1) of the Development and Planning Law 2017 gives authority to the CPA to set aside lands for Trees and Woodlands. This section also sets out requirements for retention of mangrove buffers.
- (c) Local Ornithologist, Patricia Bradley in a recent planning submission confirmed that *"Freshwater habitat is the most threatened ecosystem on Grand Cayman. It has declined over 95% in the western half of the Island due to intense development pressure in the last 20 years."*

The National Conservation Law (2013) (the "Conservation Law"), amongst other things, protects and conserves endangered, threatened and endemic wildlife and their habitats. S.41 of the Conservation Law provides: *"41. (1) Subject to subsections (2), (3) and (4), every entity shall comply with the provisions of this Law and shall ensure that its decisions, actions and undertakings are consistent with and do not jeopardise the protection and conservation of a protected area or any protected species or its critical habitat as established pursuant to this Law."*

This water habitat supports a breeding population of the endemic West Indian Whistling Duck which live mostly in swamps and marshes surrounded by abundant tree cover,

particularly mangroves, but also other shallow, freshwater, brackish or saline ponds. The West Indian Whistling Duck is classed as a "near threatened" species on the Red List of threatened species held by the International Union for Conservation of Nature ("the IUCN"), whose range is now confined to the Cayman Islands, the Greater Antilles and the Bahamas, where only small populations exist. The IUCN estimates that in 2013 there were 360 – 650 breeding pairs on Grand Cayman¹. A significant cause for its reduced numbers in Cayman, and elsewhere, is habitat destruction and the loss of mangroves, fresh and saline water bodies. One of the threats specifically identified by the IUCN to the West Indian Whistling Duck is residential and commercial development. Section 15 of the Conservation Law designates the West Indian Whistling Duck as a protected species.

3. Proposed residential housing development

Given the lack of time available and the unavailability and transparency of the Planning Department it has not been possible to do an in depth study of the plans.

- (a) But a cursory view of what is available online shows that:
- i. This is a very high density development in an area that is flanked by single family homes to the West and far lower density middle income apartment housing to the East which is part of a larger 20+ acre application waiting on rezoning.
 - ii. The applicant has attempted various loopholes in order to secure high density development by using a piecemeal approach. This is not a low density development when compared with the existing development in the area.
 - iii. The applicant has applied for a variation in zone density which has not yet been approved;
 - iv. The applicant has not applied for a subdivision or strata lands parcel subdivision for the creation of the initial development;
 - v. There is no road access to the site and the developer intends to create and access the site through the residential sub-division to the east with a long-term provision to exit to the west;
 - vi. The volume of traffic will add congestion to the sub-division and the Lindford Pearson Highway. The long-range view of connector roads are not guaranteed.
 - vii. Significant development of other projects already approved is going to add significant stress to existing traffic with no mitigating factors proposed for this development;
 - viii. Emergency access is not sufficient for high density development;
 - ix. By the use of stark tenement architecture, there has been no attempt to preserve the character of the land or community neighbourhood except to temporarily hide the development behind a mangrove buffer to the Lindford Pearson HWY which is marked for future development as part of the site;
 - x. The siting of the driveway and utilities, road access and walls means that no attempt has been made to preserve any section of mangrove forest within the development area;

- xi. No mangrove swales, a known mitigator for flooding, have been retained as a buffer to the site between the West and East boundaries.
 - xii. The importance of mangrove is reflected in the NCC's Species Conservation Plan for Mangroves (which are also protected by Part 2 of Schedule 1 of the Conservation Law). Coastal and inland mangroves throughout the Cayman Islands continue to capture and store greenhouse gasses through deposition of peat while sea level and groundwater levels rise and are important to retain to combat climate change affecting these Islands. Detailed legal submissions in regards to the protection of both coastal and inland mangroves and associated species protection, including humans, are more clearly defined in the recent legal submissions for the ERGUN BEKSOY (Whittaker and Walker) Block 22D Parcel 141REM12 and 320 (P20-0800) CPA/06/21 pgs 130-143.
<https://www.planning.ky/wp-content/uploads/meetings/Acpa0621.pdf>
 - xiii. Public comments on the Rezoning to High Density Residential are open until 9 May 2021 so the application is premature.
 - xiv. Procedural matters for public service notification and information have been less than satisfactory and more public consultation and education for such significant development is warranted prior to the approval process.
- (b) The project has not considered Goal 2 of the National Planning Framework to ensure residential subdivision is well designed and protects natural resources. Residential subdivision design shall embrace Grand Cayman's natural environment by retaining natural vegetation, key landscape features, and environmentally significant elements while controlling and retaining storm-water runoffs and protecting property from flood damage. Furthermore, the submission of a tree, native plant, and habitat survey is absent from the application.
- (c) Section 9 (1) (2) of the 2015 Development Planning Law says that planning must have regard for (a) the compatibility of any building with the landform and (f) the presence of natural vegetation (such as protected mangrove species).

Section 9 (5) goes on to say- "no land use should be dangerous...or cause annoyance or nuisance to others." The land is a protected species mangrove forest and such deforestation (which will ultimately include a further 20 acres of housing trust lands), with no overall stormwater management plan, should be subject to an Environmental Impact Assessment to ensure that there is no danger of flooding or polluting surrounding lands and communities.

- (d) The Cayman Islands Environment Charter, a legal document, states:

Guiding Principle 1:

"That we must recognise that all people need a **healthy environment** for their well-being and livelihoods and that all can help to conserve and sustain it."

Guiding Principle 3;

"To identify environmental opportunities, costs and **risks** in all policies and strategies."

Guiding Principle 4:

"To seek expert advice and **consult openly** with interested parties on decisions affecting the environment."

- (e) Section 43 of the Conservation Law provides that in any consultations pursuant to s.41(3), the National Conservation Council may, in its discretion and within such times as it may specify, require an environmental impact assessment to be carried out of the proposed action. Where required, s.43(2) of the Conservation Law provides that an environmental impact assessment shall (**emphasis added**): "(a) assess the proposed action having regard to its direct, indirect and cumulative impact and the need to – (i) protect and improve public health and social and living conditions; (ii) preserve natural resources, ecological functions and biological diversity; (iii) protect and conserve protected areas and conservation areas; (iv) protect and conserve protected, endemic and migratory species and their habitats; and (v) avoid any adverse effects of climate change on the quality of the environment;

Screening criteria for an EIA are included under s.3(12(j)) of the Conservation Law. Schedule 1 to the Directive includes "Large scale residential developments" as being activities which will be considered against the screening criteria in order to determine whether environmental assessment is required. The combined acreage of 30+ acres of high density development in low lying flood zone would likely warrant such a screening.

Conclusion

We desire solutions which benefit both the environment and development. We respectfully request that the Planning department maintain their public office responsibilities in properly addressing the public concerns as required constitutionally but as also directed by the Planning Regulations.

The Planning Department receives over one hundred reported violations of the Development and Planning Law per year. Government officials, Government staff, and the public report these violations to the department. Grand Cayman, which is developing at a rapid rate is experiencing both intentional and unintentional violations of Planning Law and Regulations. **Violations range from serious health and safety issues to minor infractions.**

There is no explicit 'rush' to race this application through to CPA approval to build high density accommodations with lack of proper infrastructure planning that could result in multiple violations. The responsibility of planning to do a proper assessment, obtain responses from the relevant infrastructure authorities and protection agencies, obtain and review concerns and objections from surrounding property owners, and compile a detailed report and most likely an

EIA, is paramount to ensuring sustainable development and due process and address significant environmental concerns at this particular site. The jumping through hoops to get this application before the CPA requires some scrutiny by the department.

For all of the reasons detailed above and in the attached we, the undersigned, representing neighbouring properties as well as the other concerned members of the South Sound community as a whole who have added their name and signature to this Objection, vehemently object to the proposed development and clearing of protected mangrove species without an environmental impact assessment.

Given that there are many mitigating factors in regards to errors in public process, we submit that the application should be pulled for review and not be set for CPA decision.

For the avoidance of any doubt, we OBJECT to the Rezoning, Land Clearing and Development of 20D171 and 20E213REM3 and ask that we be given the opportunity for further comment and to be heard in any meetings, hearing, or any other decision making process that may be engaged to determine the development of the mangrove wetlands basin which is also subject to the Area Plan goals set out in the National Planning Framework.

Thank you for your consideration of our objection.

Yours sincerely
Signature pages follow

_____	_____	_____
FULL NAME	BLOCK & PARCEL # OR CONTACT DETAILS	SIGNATURE

Encs:

Objection letter dated 12 March 2021 (10 pgs)
DOE email and submissions (12 pgs)



TROPICAL ARCHITECTURAL GROUP LTD.

#1 BERTHAZE COURT
GODFREY NIXON WAY
P.O. BOX 12218 KY1-1010
GRAND CAYMAN
CAYMAN ISLANDS
TEL: (345) 947-5849
E-MAIL: INFO@TAG.KY
WEB: HTTP://WWW.TAG.KY

General Notes

1. This drawing is the exclusive property of Tropical Architectural Group Ltd. and cannot be reused nor reproduced without prior written consent. Computer files revised by others except Tropical Architectural Group sub-consultants shall not be issued bearing this title block.

2. Drawings, specifications and other documents prepared by Tropical Architectural Group are instruments used solely with respect to this project and the Architect shall retain all common law, statutory and other reserved rights including copyright. The owner shall be permitted to retain copies of the Architect's drawings, specifications and other documents for information and reference in connection with Owner's use and occupancy of project. The Architect's documents shall not be used by anyone for other projects, changes to this project, or for completion of this project by others except by explicit agreement of the Architect. Upon any unauthorized use, reuse or modification to Architect's documents, the Owner agrees to indemnify, defend and hold the Architect harmless from and against claims, suits, demands, losses and expenses resulting from such unauthorized use.

3. All written dimensions shall take precedence over scaled drawings. The contractor shall check all dimensions before and during construction. Any discrepancies found must be reported to the Architect immediately. All drawings must be read in conjunction with each other. For clarification of dimensional information or discrepancies with specifications, contact Tropical Architectural Group.

Project Name:

Proposed Yarl Townhouse & Apartment

Client Name:

Thevasadan, Sam

Block/Parcel:

20D 171

Location:

George Town

Drawn by:

KMA

Date of issue:

2/12/2021

Drawing Title:

Site Plan

ID	DATE	BY



Privacy - Terms



THE DEVELOPMENT AND PLANNING LAW
SECTION 15(4)
THE DEVELOPMENT AND PLANNING REGULATIONS
REGULATIONS 8(12A), 8(12B), 8(12C) AND 8(13)(d)

NOTICE OF APPLICATION FOR PLANNING PERMISSION

TO: NAME&ADDRESS

1. [REDACTED]
[REDACTED]
[REDACTED]

FROM: Tropical Architectural Group Ltd. P.O. Box 12218 KY1-1010
(Name of Applicant - Please Print)

I hereby certify that a copy of this notice was served by Registered Mail on all the above registered properties on the Monday, 08 March 2021
Date

Signed: [Signature] Date: Monday, 08 March 2021

You are hereby notified that an application for planning permission for the purpose of Proposed (10) 2-Storey Apartments; (4) 2-Storey Townhouses; Proposed 2-Storey Clubhouse, Gym, Cabana; Swimming Pool; (2) Development Signs; 4' High Wall with 6' High Gate; Proposed Strata Lots (24 Individual + 1 Common) on Block and Parcel 20D171 and owned by Yarl Towers Ltd. has been submitted to the Central Planning Authority (CPA), Grand Cayman.

Site Plans and Elevations related to this application can be inspected **the Department's website** at: <http://planning-notices.planning.ky/> or at the Department of Planning, located at the Government Admin. Building, 133 Elgin Avenue, George Town, Grand Cayman.

If you wish to object or support the application, you should do so in writing stating your precise grounds within 21 CALENDAR DAYS of the DATE OF POSTING. Your comments should be addressed to the Director of Planning, P.O. Box 113, Grand Cayman KY1-9000, Cayman Islands, or e-mail to planning.dept@gov.ky. Please include your return address (typically a PO Box number).

NOTE: Notice must be sent not more than three days prior to the date upon which the application is accepted by the Department of Planning.

Thank you for your consideration of our objection.

Yours sincerely

BRIAN EBANKS

FULL NAME

20E 231

925-0431
BLOCK & PARCEL # OR
CONTACT DETAILS

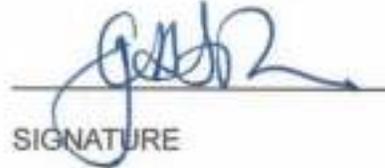

SIGNATURE

JEAN SPORN

FULL NAME

20E 232

BLOCK & PARCEL # OR
CONTACT DETAILS


SIGNATURE

Ellio Solomon

FULL NAME

20E 235

923-6844
BLOCK & PARCEL # OR
CONTACT DETAILS

SIGNATURE

Maxine Gibson

FULL NAME

20E 234

BLOCK & PARCEL # OR
CONTACT DETAILS

Maxine Gibson

SIGNATURE

Euleta Flores

FULL NAME

20E 233

939-0870 (medivac)
BLOCK & PARCEL # OR
CONTACT DETAILS

Euleta Flores

SIGNATURE

LEROY GOULDBOURNE

FULL NAME
916-301 SNR.

20E 283

BLOCK & PARCEL # OR
CONTACT DETAILS


SIGNATURE

Linda Gouldbourne

FULL NAME
926-2989

20E 283

BLOCK & PARCEL # OR
CONTACT DETAILS


SIGNATURE

Thank you for your consideration of our objection.

Yours sincerely

Melanie Carmichael 21E 151

FULL NAME

BLOCK & PARCEL # OR
CONTACT DETAILS



SIGNATURE

Berna Cummins 21E 95896

FULL NAME

BLOCK & PARCEL # OR
CONTACT DETAILS



SIGNATURE

Anna Peccasino 23B 106

FULL NAME

BLOCK & PARCEL # OR
CONTACT DETAILS

via email copy

SIGNATURE

Judy Bullmore 23B 105

FULL NAME

BLOCK & PARCEL # OR
CONTACT DETAILS

via email copy

SIGNATURE

Karen Luitjens 21C 112

FULL NAME

BLOCK & PARCEL # OR
CONTACT DETAILS

via email copy

SIGNATURE

Janet Walker 15D 162

FULL NAME

BLOCK & PARCEL # OR
CONTACT DETAILS

via email copy

SIGNATURE

Jeri Bovell 15D 15

FULL NAME

BLOCK & PARCEL # OR
CONTACT DETAILS

via email copy

SIGNATURE

Thank you for your consideration of our objection.

Yours sincerely

LORI ADAMS

FULL NAME

21E 78

BLOCK & PARCEL # OR
CONTACT DETAILS

lori.marie.adams@gmail.com

via email

FELICITY JONES

FULL NAME

21E 80

BLOCK & PARCEL # OR
CONTACT DETAILS

felicity@ajones.ty

SIGNATURE

SUSANNA DE SARAW

FULL NAME

21E 79

BLOCK & PARCEL # OR
CONTACT DETAILS

[Signature]

SIGNATURE

[Signature]

FULL NAME

21E 99

BLOCK & PARCEL # OR
CONTACT DETAILS

[Signature]

SIGNATURE

Dinara Pinera

FULL NAME

Mangrove Rangers
BLOCK & PARCEL # OR
CONTACT DETAILS

via email copy

SIGNATURE

FULL NAME

BLOCK & PARCEL # OR
CONTACT DETAILS

SIGNATURE

FULL NAME

BLOCK & PARCEL # OR
CONTACT DETAILS

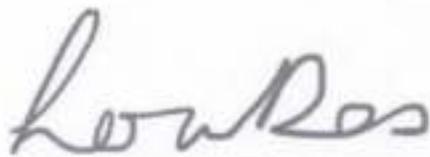
SIGNATURE

Thank you for your consideration of our objection.

Yours sincerely

Louise Desrosiers

137 15 D



FULL NAME

BLOCK & PARCEL # OR
CONTACT DETAILS

SIGNATURE

Benjamin Desrosiers

137 15D



FULL NAME

BLOCK & PARCEL # OR
CONTACT DETAILS

SIGNATURE

FULL NAME

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FULL NAME

BLOCK & PARCEL # OR
CONTACT DETAILS

SIGNATURE

MELANIE A C A R M I C H A E L
#803 SOUTH SOUND • GEORGE TOWN •
PO BOX 61 • GRAND CAYMAN KY1-1102
PHONE: 926 7735 • EMAIL: MELODYC2010@GMAIL.COM

12 March 2021

Via Email: planning.dept@gov.ky

Mr. Haroon Pandohie
Director of Planning, Government Administration Building
133 Elgin Ave, George Town, Grand Cayman

Dear Sirs,

Re: Yarlcaj Ltd / Proplus Block 20D Parcel 171 - Land Clearing and Rezoning Application now subject to a Planning Application P21-0066 / Ergun Berksoy

We write with reference to the Land Clearing and Rezoning Application in relation to Block 20D Parcel 171 which is due to be considered on 17 March 2021. We wish to bring to your attention the following considerations in relation to (1) the proposed rezoning application; (2) the proposed land clearing.

1. The Proposed Rezoning

It is worth noting three things which are of paramount importance in relation to any rezoning applications from the outset:

- (1) According to the Department of Planning's website and in particular the Zoning Guidelines (http://www.plancayman.ky/wp-content/uploads/dlmuploads/Zoning_Guidelines_2017_rev_2.pdf), *"The Zoning Map for Grand Cayman will be reviewed as part of the process for preparing PlanCayman. This will take place at a later date once Goals and Objectives have been agreed and Area Plans have been prepared."*
- (2) The Zoning Guidelines on the Planning Department website are based on the Development & Planning Regulations (2016 Revision) and the Development Plan 1997 (2017 Rev) which has not been updated so far. Therefore, it would be inappropriate to consider and determine any applications for rezoning which essentially and very substantially alter the development plan that is currently in force before the said "Goals and Objectives have been agreed and Area Plans have been prepared".
- (3) A 108 page National Planning Framework ("NPF") completed in November 2018 was presented to Cabinet in November 2019 which is a good start for putting together

comprehensive area development plans, based on feasibility studies and environmental impact assessments and with public consultation in order to ensure that any rezoning and/or development in the area does not have an adverse impact on the area, the infrastructure or the existing community. Specifically, this land falls within the George Town catchment and given the completion of the 7-mile beach phase, will be the next sector or zone to be considered under the NPF.

The proposed rezoning would have serious adverse impacts on (1) the already failing infrastructure of the area – traffic congestion is a serious problem along South Sound Road already and there are serious concerns about road safety all along South Sound Road which would be severely exacerbated by any additional high density developments that would result from a rezoning of the relevant areas; and (2) the drainage basin - the local area is already prone to severe flooding and rezoning and land clearing would adversely affect the South Sound drainage basin (this is dealt with in more detail below).

It would be inappropriate to allow the proposed rezoning without first obtaining a feasibility study to ensure that the proper infrastructure is in place to support the additional development that is being proposed, and an environmental impact assessment to ensure that what is being proposed is also feasible and would not damage the area from an environmental perspective.

No feasibility studies nor any environmental studies have been submitted with the application. It is doubtful that any were carried out. No comments were provided from the National Roads Authority or the Water Authority because the application was mischaracterised as a rezoning and a land clearing application with 'no immediate plans to develop' which pushed it under the radar of the NRA and Water Authority. In the circumstances, it would be inappropriate to consider the application in the absence of any such studies and/or reports. There is no urgency in determining the rezone application of 20 October 2020 given that it explicitly stated '**at this point in time we do not have the future development of the parcel planned' (emphasis added)**'. Therefore, there can be no justification for rushing through the application without first considering: (1) a feasibility study; (2) an environmental impact assessment; (3) NRA comments; (4) Water Authority comments; and (5) public consultation in the context of putting together an Area Development Plan – **as expressly stated on the Planning Department Website would be done before changing the Zoning Plan.**

2 The Proposed Land Clearing

This application has been filed piecemeal. The application to rezone on 3 February 2021 under the name of Yarlcaj Ltd was handled by Richard Mileham but the application before the board on 17 March 2021 to apply to have the land cleared is being handled by Burton Schneider; whereas a further separate planning application for 105 units is mentioned in the Agenda which has not yet been reviewed- all in a period of only 5 weeks. When looked at individually they have separate context but when looked at collectively they are considerably more impactful.

- (a) The application for high density low income housing is concerning without a proper business plan or a capacity plan.
- (b) With elections around the corner it is interesting to hear what candidates representing residents in this high traffic and flood zone have to say (see Prospect Chamber forum: <https://www.youtube.com/watch?v=TQhiNz7e20c>). Irrespective that the CPA is a government appointed board, the board has a duty to act in good faith in the interests of the country as a whole at all times, including leading up to elections and despite any political pressure that may be exerted upon it. As expressly stated on the Department of Planning website, there should be no alteration of the zoning map unless and until a comprehensive area development plan is in place. We need to revisit the lessons learnt and talked about after Hurricane Ivan for the South Sound drainage basin. There needs to be a sustainable plan in relation to any further development in this area.

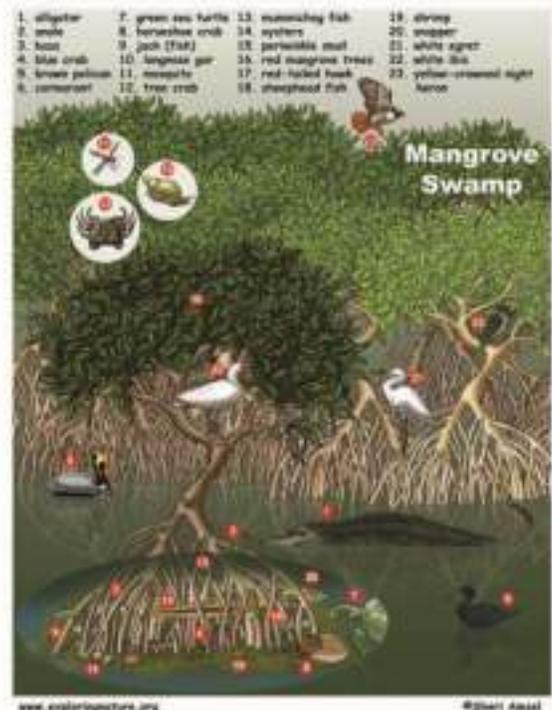
3 Environmental concerns

Under authority given by NCL s.17 (3) (b) (iii) mangroves may not be taken, meaning they may not be killed, collected, destroyed, damaged, or harmed, except under the following conditions:

*1. Planning Permission has been granted for a project impacting mangroves, by the Central Planning Authority or Development Control Board, and any conditions which must be met before this permission is valid or implementable, have been met. **To my knowledge, no rezoning or planning permission for development has been granted.***

Although the application sits entirely in a large zoned area of Low Density Residential south of the Lindford Pearson Highway, the existing area is "natural" in terms of character under the current development planning law. Under the new guidelines of the draft NPF and Zoning requirements, as approved by the CPA and yet to be passed into law, natural land character, neighbourhood goals and objectives and the preservation of our eco-systems is considered a matter of high importance following national consultation. In fact, a recent data report conducted by Amplify Cayman <https://bit.ly/3ca5aEA> noted that *99% feel that the protection of mangrove wetlands is either important or very important*, highlighting the need to strengthen protection for such areas within national and neighbourhood plans.

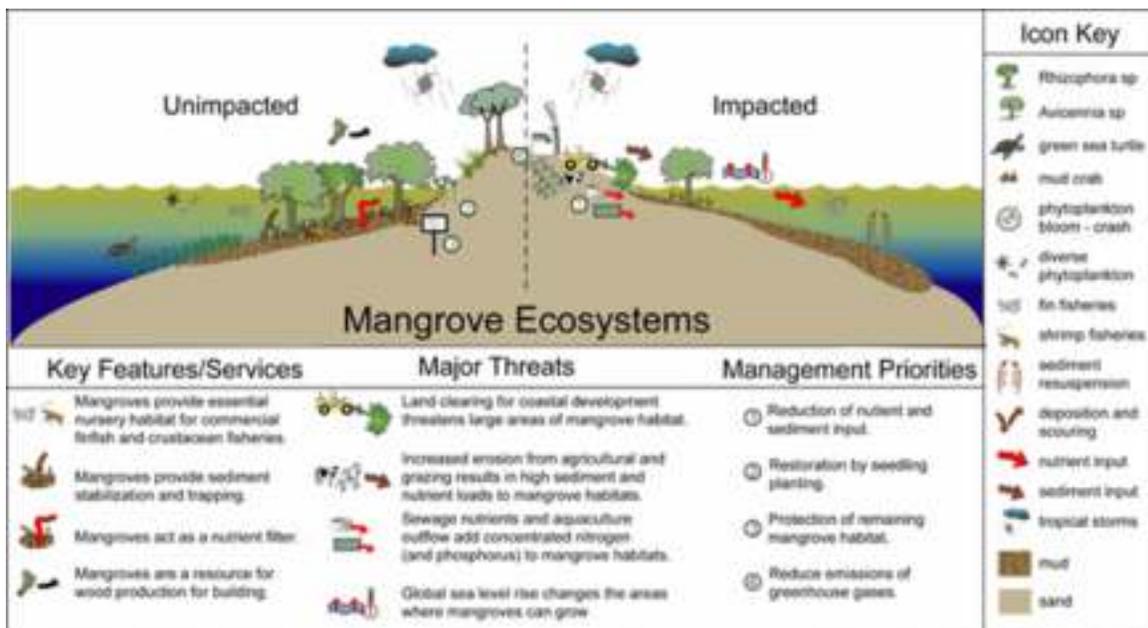
The proposed land consists of primary habitat uninfluenced by human activity which is a critical ecosystem that helps mitigate climate change. Removing mangroves reduces our ability to offset



carbon naturally, and the South Sound catchment basin acts as a natural water catchment, storage and flood control zone failing any national stormwater management plan.

Mangrove loss to our islands has been so extensive it has triggered local Red-listing criteria. In 2008, the CI national IUCN Red List status of Black Mangrove was assessed as Endangered, White Mangrove and Buttonwoods both as Vulnerable and Red Mangrove as Near-Threatened. The Ramsar Convention (1971) has been extended to the Cayman Islands, requiring a commitment to work towards the wise use of our mangrove and other wetlands through national plans, policies and legislation, management action and public education. All of the four mangrove species are protected species under Part 2 of Schedule 1 of the National Conservation Law.

Perhaps more easily put, mangrove communities support diverse species and afford flood protection (see diagrams).



Consideration has not been given to retain a significant mangrove buffer and stormwater swale; **this opportunity will be lost if land clearing approval is granted.**



Consideration for mangroves to be retained as LPP and adapted for public use and wellness (walking trails and bicycle paths) within both the Yarlcy footprint and the National Housing Development parcel must be strongly considered in the context of a district wide Area Development Plan, BEFORE, any rezoning is allowed and even before any land clearing is allowed, as once mangroves and other indigenous vegetation are removed, **this opportunity will be lost.**

Please see following document for additional benefits of protecting and conserving: <https://www.nature.org/media/oceansandcoasts/mangroves-for-coastal-defence.pdf>

4. Lack of Neighbourhood Plan

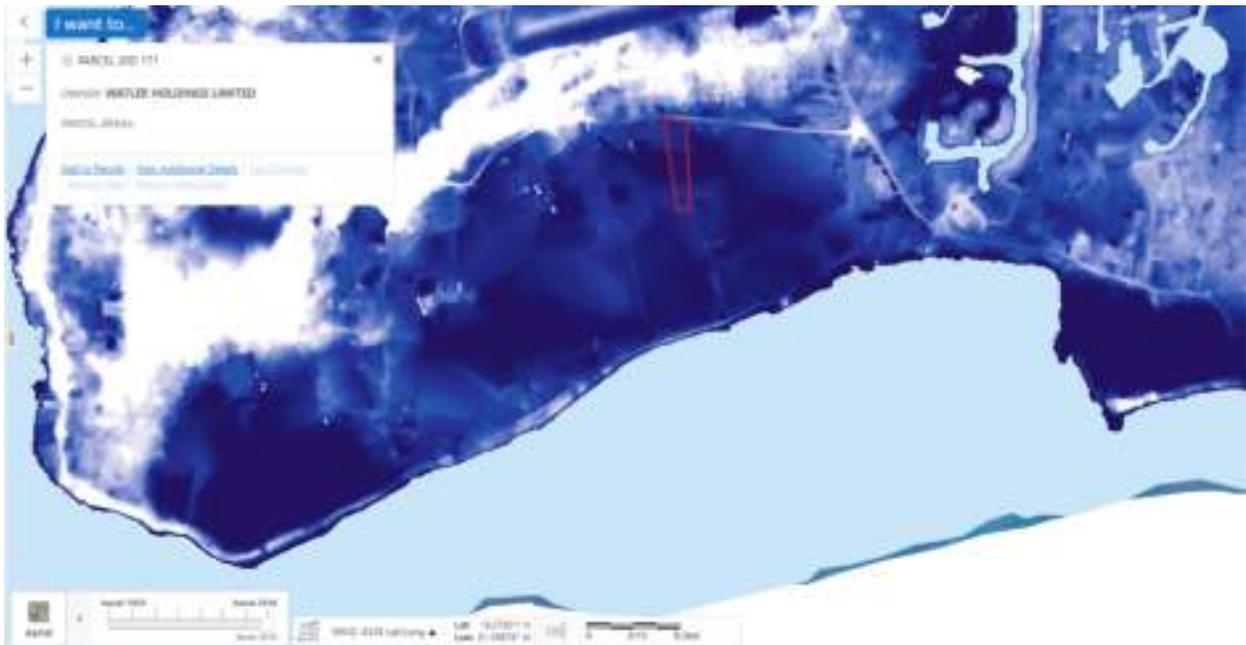
There can be no argument that we need an updated development plan before allowing any rezoning and that we need to address infrastructure before approving more development. The bottleneck traffic leading into the Hurley's roundabout and heavy congestion all along South Sound Road that local residents have to suffer on a daily basis, with the road safety issues and concerns that entails, needs to be resolved before adding several thousands additional vehicles into the equation, and a comprehensive and feasible roads and infrastructure plan needs to be urgently developed – with extensive public consultation – before adding any additional burden to the already clogged system and infrastructure. The traffic policy needs to be addressed holistically and not piecemeal for each development to include safe connected sidewalks, bicycle paths and pedestrian crossings that are also sensitive to the environment and quality of life eg trees and friendly lighting.

The lack of a storm water management system in which the 2015 authority directive memo outlined that a basin-wide approach is urgently needed and was to issue an RFP to undertake a hydrological assessment and devise a management plan for the proposed S26 road and future development goes unanswered. Yet we have funding for other less prioritized projects in the district such as the proposed upgrading of Smith Barcadere.

Concerns regarding increased density of hardstanding in an ecologically sensitive and fragmented area that provides hydrological functions are being ignored. Determining the suitability of HDR in this location based on the surrounding low density development, it is not clear if or how the developer proposes to implement a thorough and costly stormwater management system for the development site. Given the potential runoff and flooding impacts, there are numerous factors yet to be considered and acceptable proposals need to be presented together with any application for clearing or rezoning. The application that has been presented so far is lacking in these and many other respects.

The sanitation issue is enormous with septic tanks and sewage contamination in flood events as we have no plan to manage human waste.

The request for the adjacent parcel owned by National Housing Trust has been added to the application for rezoning without any consideration of the habitat location or flood area.



Hurricane Ivan 2004 flood map

Application Process

In the short time available to me to identify the above I provide the below timeline. Although I have been advised that I may be out of time to Object, I do not concur with this given all that I have outlined above and the attempts made on my part to raise concerns in the community. Clearly my urgent submission on 29 January 2021 was received by the Planning dept as I received a response from Planning on 26 February 2021.

Under Part 2 of the 1997 Development Plan Statement, the Central Planning Authority has the discretion and authority to review and determine that the plan is unsuitable for clearing or rezoning at this time given the entire context now set out in the points above.

20 Oct 2020

Rezone application submitted by Cayman Survey Associates Ltd on behalf of Yarlcaj Ltd.

4 Nov 2020

DOE comments and concerns raised in regards to rezoning in South Sound drainage basin.

11 Dec 2020

Application to clear lands received- not public. As there are no occupied neighbouring parcels no notice required.

29 Jan 2021

Writer became aware of rezone application and wrote urgent email to my GTE MP raising issues about lack of consultation with the district and requesting a meeting with Minister Hew. Although acknowledged no response to the points raised were received from either Cabinet member.

3 Feb 2021

CPA03/21, item 3.3 agenda and meeting to consider and approve rezone by Yarlcaj Ltd:
<https://www.planning.ky/wp-content/uploads/Acpa0321.pdf>

26 Feb 2021

email from Haroon Pandohie providing link to minutes that approve the rezone application:
<https://www.planning.ky/wp-content/uploads/meetings/Mcpa0321.pdf>

5 Mar 2021

met with Richard Mileham, discussed the application status and obtained copy of 60day public notice from newspaper.

RE: [EXTERNAL] Planning Hearing Agenda - 3 February



McTaggart, Roy <Roy.McTaggart@gov.ky>
2/3/2021 9:58 AM

To: Melanie C

Good morning Melanie,

Thank you for your message.

I have reached out to Minister Hew for information about the issues you raise, and will share this when I receive a response. Regarding the PlanCayman review, my understanding is that it will move to the George Town area next. However, for obvious reasons, it has fallen behind schedule.

Environmental and sustainability issues will be a part of the Progressives Re election platform.

Best regards,



Ray M. McTaggart, JP MP | Minister for Finance and Economic Development
Ministry of Finance & Economic Development | Cayman Islands Government
Government Administration Bldg, PO Box 131 | Grand Cayman KY1-9000 | Cayman Islands
Tel: (345) 264-3185 | Mobile: (345) 324-1942 | E-mail: roy.mctaggart@gov.ky

From: Melanie C [<mailto:melodyc2510@gmail.com>]

Sent: Friday, January 29, 2021 8:18 AM

To: McTaggart, Roy

Subject: [EXTERNAL] Planning Hearing Agenda - 3 February

Dear Roy,

I refer to the attached rezoning application from Yarlcaj Ltd.

As my local representative and referring to our meeting last year, I am bringing this to your attention with the following concerns.

- 1) There has been no comment from the NRA. Given the situation with rush hour traffic there should be relevant comments in the matter of public interest.
- 2) The NRA made it clear at our meeting that the proposed East/West bypass road to the South was a very long way away from becoming a reality whereas planning continue to approve housing developments, or rezoning in this case. Rather than a piecemeal approach there needs to be a long-term traffic capacity and safety review done for this priority route.
- 3) Do we know where the new connector road will be to South Sound Road? It was originally gazetted to be through the Vela development. Like we have done with Picote Cove Estates, if a large community park green zone with retained mangrove drainage parkland on either side of the North/South connector road could be reserved and acquired with running/cycling paths it will be hugely beneficial for the community. To be clear, I am not suggesting a paved urban reserve but a natural scape to preserve biodiversity, offset carbon pollution, offset man off

10 Mar 2021

received follow up to confirm land clearing application from Pro Plus Construction item 2.8 will be heard 17 Mar 2021 and that the applicant has recently submitted a planning application, which has been assigned to Burton Schneider.

<https://www.planning.ky/wp-content/uploads/meetings/Acpa0621.pdf>

11 Mar 2021

reached out to Burton Schneider to obtain details of date of land clearing application (noted above) and planning application. He correctly advised that only adjacent landowners would have received notice.

In closing, this letter outlining concerns is supported by a growing number of residents in the South Sound coastal community area. Some of their names are listed below as party to this objection. Others support the objection but wish to remain anonymous (but will no doubt be influenced by how this and similar applications are dealt with when exercising their vote next month).



NB: Much of the aforementioned information is relevant to the Ergon Berksoy development application which has applied to remove some 50 acres of mangrove and will be discussed at the same board meeting next week.

If all approved without mitigation or consideration of the facts, with the future development of Cayman Enterprise City - the entire South Sound wetlands basin will be decimated putting the Government at risk of legal action in the future.

I look forward to receiving your acknowledgement of receipt.

Sincerely,
Melanie Carmichael
signed electronically

Cc: Roy McTaggart MP | Joey Hew MP | Aiden McLaughlin MP
Chairman of the Central Planning Authority
Planning Officers | Dept of Environment

Objectors:

Berna Cummin 21E 95 & 96
Anna Peccarino 23B 106
Judy Bullmore 23B 105
Karen Luitjens 21C 112
Melanie Carmichael 21E 151
Janet Walker and family 15D 162 etc.
Jeri Bovell 15D 15
Shirley Roulstone
Tiffany Polloni

Ben Strangeway

P.O. Box 309, Grand Cayman, KY1-1104 - (345) 526-5351 - ben.strangeway@gmail.com

25th June 2021

Director of Planning
P.O. Box 113
Grand Cayman
KY1-9000

Dear Director of Planning,

I am writing with regards to the application for planning permission on block and parcel 20D171 by Yarl Towers Ltd. As a Downtown Reach home owner, I would like to submit the following objections covering wildlife, aesthetics, ambience and privacy.

The plan proposes a 10ft swale along the back of the town houses at Downtown Reach where I reside. Herein lies my issue. It does not indicate the nature of this swale; whether the existing mangrove and trees will be left intact, extracted or replaced. At best, it would be left intact, however, some areas already have 10ft clearings from previous development which would leave no trees as a buffer between the two developments. It is my opinion that a larger buffer of undisturbed mangrove should remain in place for the following reasons:

1. At present many different species of birds can be heard and observed from my property including Cayman Parrots(!), Whistling Ducks, Herons, Woodpeckers and Bananaquits. There would not be enough habitat for them to remain in the area. It must be possible to leave pockets of mangrove between developments.
2. I purchased this precise location because of its serene setting (trees and wildlife). The removal or thinning of the mangrove and natural trees will have a significant negative impact on the enjoyment of the property and consequently its value.
3. Without an adequate buffer, the new development will directly onlook my garden, master bedroom and en-suite, porch and living space; all of which are currently private.
4. I believe both developments would enjoy the benefit of a larger buffer.

Furthermore, the plan shows the perimeter of the new development running at an increasing angle with the appearance of cutting into the back yards of Downtown Reach townhouses. That may just be an inaccuracy on the plan; presumably the existing Downtown Reach boundary will remain as is.

Thank you for considering my comments; I'm happy to discuss this subject via phone or email. Please find an appendix of supplementary images attached below.

Yours sincerely
Ben Strangeway



Ben Strangeway

P.O. Box 309, Grand Cayman, KY1-1104 - (345) 526-5351 - ben.strangeway@gmail.com

Appendix

Appendix A – Existing natural view

Trees and birdsong at risk of being replaced by a carpark, homes and engines.

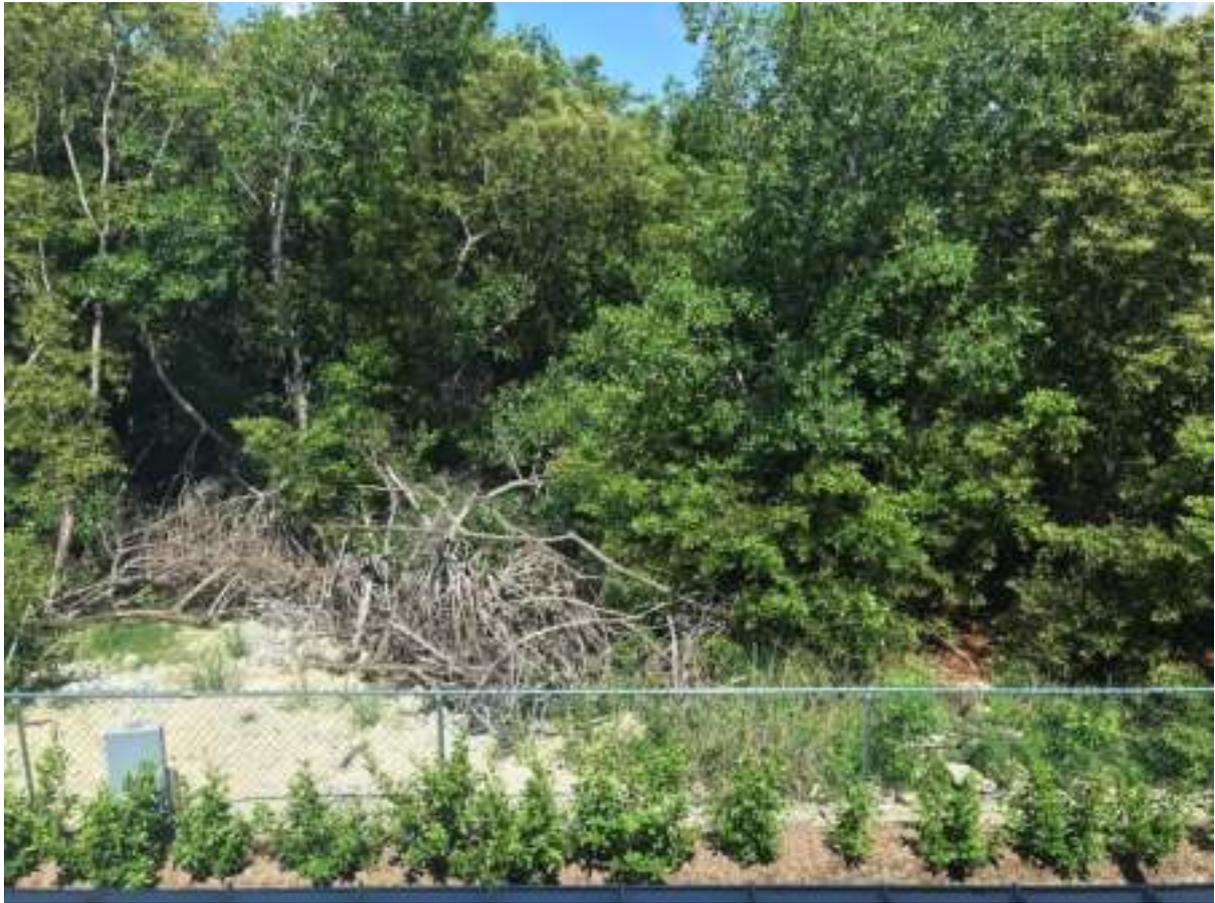


Ben Strangeway

P.O. Box 309, Grand Cayman, KY1-1104 - (345) 526-5351 - ben.strangeway@gmail.com

Appendix B – Thinning

There are examples of this all along the perimeter. A 10ft swale would result in a gap between developments.



Ben Strangeway

P.O. Box 309, Grand Cayman, KY1-1104 - (345) 526-5351 - ben.strangeway@gmail.com

Appendix C – Privacy at stake

A quiet and enjoyable space will be ruined. Key living areas will be overlooked.

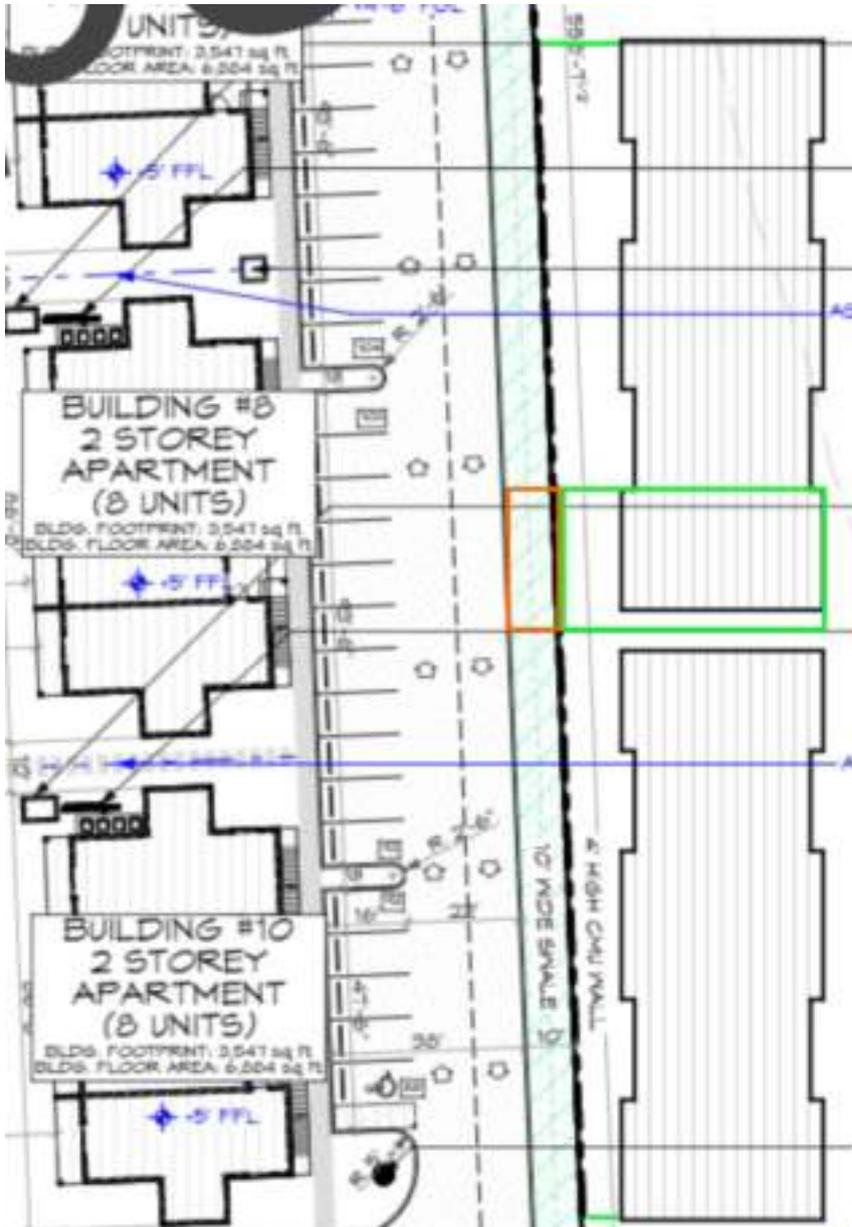


Ben Strangeway

P.O. Box 309, Grand Cayman, KY1-1104 - (345) 526-5351 - ben.strangeway@gmail.com

Appendix D – Affected areas

I have highlighted my property and my direct area of concern. Also showing gradual change in boundary angle cutting across yards.



From: Schneider, Burton
Sent: Thursday, July 1, 2021 8:40 AM
To: admin (admin@tag.ky)
Subject: FW: [EXTERNAL] Fwd: Planning letter
Attachments: MPIHA SS S26 roads corridor.png

Good morning,

Please note below an objection regarding the above application.

Kind regards,

Burton E. Schneider

Planning Officer | Current Planning



Government Administration Building
133 Elgin Avenue | George Town
P.O. Box 113 | Grand Cayman KY1-9000 | CAYMAN ISLANDS
☎ +1 345 244-6501 (Main) | ☎ +1 345 244-6548 (Direct)
✉ burton.schneider@gov.ky | 🌐 www.planning.gov.ky

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From: M. Gibson [<mailto:maxgib27@gmail.com>]
Sent: Tuesday, June 29, 2021 7:20 AM
To: Schneider, Burton
Cc: Melanie C
Subject: [EXTERNAL] Fwd: Planning letter



Good Morning Burton,

Please see attached letter drafted by Mrs. Carmichael. This is to confirm that I am in complete agreement with her and that I have appointed her to have full authorization in making decisions relating to this matter on behalf of my mother Euleta (Haughton/Flores) and myself.

Regards,

Maxine

----- Forwarded message -----

From: **Melanie C** <melodyc2010@gmail.com>

Date: Mon, Jun 28, 2021 at 8:03 PM

Subject: Re: Planning letter

To: maxgib27 <maxgib27@gmail.com>

Dear Maxine,

I sent the below to the National Roads Authority and I will try to meet with Marion as she has asked for a meeting.

I'm not sure if you still wish to object to the application. If you agree to concerns about use of the road, you can object by forwarding the below to Burton.schneider@gov.ky.

Kind regards,

Melanie 🙋

reflect reimagine and reset our world

----- Forwarded message -----

From: **Sustainable Cayman** <sustainablecayman@gmail.com>

Date: Mon, Jun 21, 2021 at 1:59 PM

Subject: Planning Application | YARL 20D 171

To: <marion.pandohie@nra.ky>

Cc: Ebanks-Petrie, Gina <Gina.Ebanks-Petrie@gov.ky>, Hydes, Tristan <Tristan.Hydes@gov.ky>, <Haroon.Pandohie@gov.ky>

Dear Marion,

The subject application has been resubmitted for consideration. The Minutes of the last planning meeting are now available online: <https://www.planning.ky/wp-content/uploads/meetings/Mcpa1121.pdf> and this is the link to the revised agenda: https://www.planning.ky/site_plans/p21-0193/

We note the NRA comments on pgs 9/10/11 of the Minutes and would like to enquire about the following which are also the subject of a general FOI:

1) In regards to BP600- please confirm if this is a public road? If it is not a public road, please advise what arrangements are in place for access across this road to the proposed Yarl development. The road is currently incomplete so who would be responsible for building and completing the road? (see photo 1).

2) I note the recommendation regarding neighbourhood streets. In theory this is a welcome concept but in regards to BP600 this is not what has occurred (see pics 2 a/b/c). The purpose of the complete street is to provide for pedestrian and cyclist safety and to blend with the natural

landscape using existing or locally sourced endemic shade trees to meet sustainable community goals. I was provided with a useful resource for this as being the Standards for Highways UK *Sustainability and Environment* section - <https://www.standardsforhighways.co.uk/dmrb/>. Is there an intent to request for the road to meet the neighbourhood street requirement? Perhaps important if this road is to form part of a larger neighbourhood street network. The neighbourhood street principle does not appear to have been applied to the YARL development along the south entry boundary with no space for treescaping, perhaps this could be identified.

3) Our understanding from the last meeting was that there is to be no traffic access onto Halifax Road from the Yarl development but there was some discussion that the developer wished to use the subdivision parcel on Halifax Road for construction access. Is or has permission been sought or granted for construction access to the site via the Halifax sub-division? Is this safe? The developer has brought and stored large amounts of quarry stone on the residential house lot which has disrupted the neighbourhood (see pic 3). Previously a dump truck broke down and blocked the road access. Should construction access be via Downton Reach, especially as they too have ongoing site works?

4) There are critical concerns from the residents along Halifax Road and surrounding areas about drainage, pollution and flood mitigation given the low lying developed areas surrounding the site. Furthermore, the conditions on Halifax Road do not provide adequate infrastructure rain or flood drainage as a public amenity. We note that a green boundary swale is now incorporated in the revised Yarl plan. Existing swales alongside the east boundary are degraded and littered and also likely on the west boundary (see pic 4). We suggest these swales be tidied up and replanted with mangroves so as to filter run off and prevent pollution and dumping of materials and to ensure the drainage and flow of water. We note there is no culvert or underpass shown on the public access road to Yarl which would provide connectivity for drainage as well as wildlife habitat rather than fragmenting the parcel (see pic 5). Hopefully, these culverts together with a robust storm-water management plan will provide adequate measures given the characteristics of the wetland basin and the problems that exist in areas like Randyke Gardens.

5) Downton Reach is commencing phase 3. Would it be possible to see their stormwater management plan as the boundary of phases 1 and 2 is pitched to drain into the surrounding swale (see photo 6). I'm not sure what drains are provided for in their roads infrastructure.

Section 26 Corridor

You will note that at the end of the CPA11/21 minutes is a master roads plan for the area introduced at the meeting by the developer. The proposed S26 road corridor calls for a 50 foot allowance. However, the new plan and other references in the minutes allude to a 100 foot allowance which directly impacts the entire area from a residential, commercial, private and environmental perspective. Such a significant change should call for a recommendation for an EIA and given the wider impacts, the need for an overall area plan for the South Sound basin. Kindly provide clarification as to the plans, public consultation, draft gazettal and whether this is to be considered a primary or secondary arterial road.

On Jun 15, 2021, 9:32 PM -0500, maxgib27 <maxgib27@gmail.com>, wrote:

Please see attached.

Sent from my Galaxy

--

Maxine A. Gibson

Sender notified by
[Mailtrack](#).....

Appendix D

Schneider, Burton

From: Obi, Uche
Sent: Wednesday, March 24, 2021 4:35 PM
To: samtheva@gmail.com
Cc: Krizelle Atlas; Schneider, Burton
Subject: RE: [EXTERNAL] Fwd: DETAILS OF ACCESS TO 20D 171 VIA BP600
Attachments: BP600 gazette plan.pdf

Hi Sam,

Following our conversation today, the NRA have confirmed that as part of the compensation for the land acquired for the widening of Linford Pierson Highway, the subject parcel will be permitted access onto Boundary Plan 600 which is attached to this email

If you have any questions, please let me know.

Uche Obi

Uche Obi, MA FRICS
Chief Valuation Officer
Lands and Survey Department
133 Elgin Avenue | Government Administration Building
Box 120 Grand Cayman, KY1-9000 | CAYMAN ISLANDS
Direct: (345) 244 3644 | Mobile: (345) 926 2131
Email: uche.obi@gov.ky | Website: www.caymanlandinfo.ky



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From: Samuel Thevasaeyan [<mailto:samtheva@gmail.com>]
Sent: Wednesday, March 24, 2021 3:47 PM
To: Obi, Uche
Cc: Krizelle Atlas; Schneider, Burton
Subject: [EXTERNAL] Fwd: DETAILS OF ACCESS TO 20D 171 VIA BP600

Dear Mr. Uche,

Further to our communication and email correspondence below, please send a copy of the Gazette notice confirming that I have legal access to my parcel 20D 171 over the neighbouring property located at Downtown Reach. As the road has been built and I settled the property on the promise that I have the legal access.

Please send me the contact at NRA who can confirm the above. Let me know if you have any questions.

Thanks

Sam

Thanking you in advance.

----- Forwarded message -----

From: **Michael Binckes** <Michael.Binckes@remax.ky>

Date: Fri, Sep 4, 2020 at 4:33 AM

Subject: Fwd: DETAILS OF ACCESS TO 20D 171 VIA BP600

To: samtheva <samtheva@gmail.com>

Hi Sam, please see below, a further email from Lands and Survey.

Michael Binckes

Commercial and Residential Leasing & Sales

<http://www.michaelbinckes.com>

Cell:(345) 938-3269

Tel: (345) 945-2011

Fax (345) 949-9743

Begin forwarded message:

From: "Turner, Spencer" <Spencer.Turner@gov.ky>

Date: September 3, 2020 at 1:18:44 PM EST

To: Michael Binckes <Michael.Binckes@remax.ky>

Cc: Oliver Williams <oliver.williams@ddlstudio.com>

Subject: DETAILS OF ACCESS TO 20D 171 VIA BP600

Sir

I have checked with the NRA officials, and am able to confirm as follows:

The NRA advises that it began construction works of BP600.

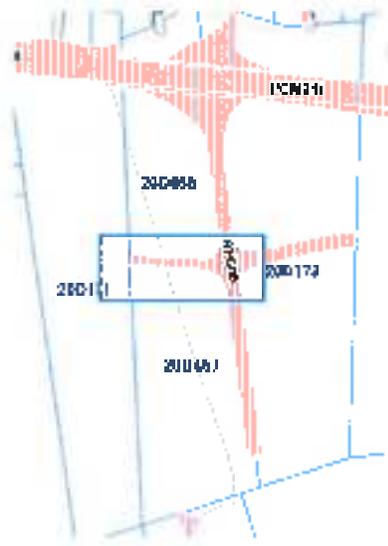
The construction works is from the LPH and includes the section

that is highlighted below (between 20D466 and 20D467)

and as far as parcel 20D171 – the works in current progress

will not include the section that bisects 20D173

The construction works are anticipated to be done by early October 2020.



I trust that this resolves this matter.

You are free to distribute this, as appropriate

Spencer Turner

Valuation Officer

Lands & Survey Department

Cayman Islands Government

Box 120, 133 Elgin Avenue

Grand Cayman KY1-9000

CAYMAN ISLANDS

Email: spencer.turner@gov.ky

Tel: +1 (345) 244 3508

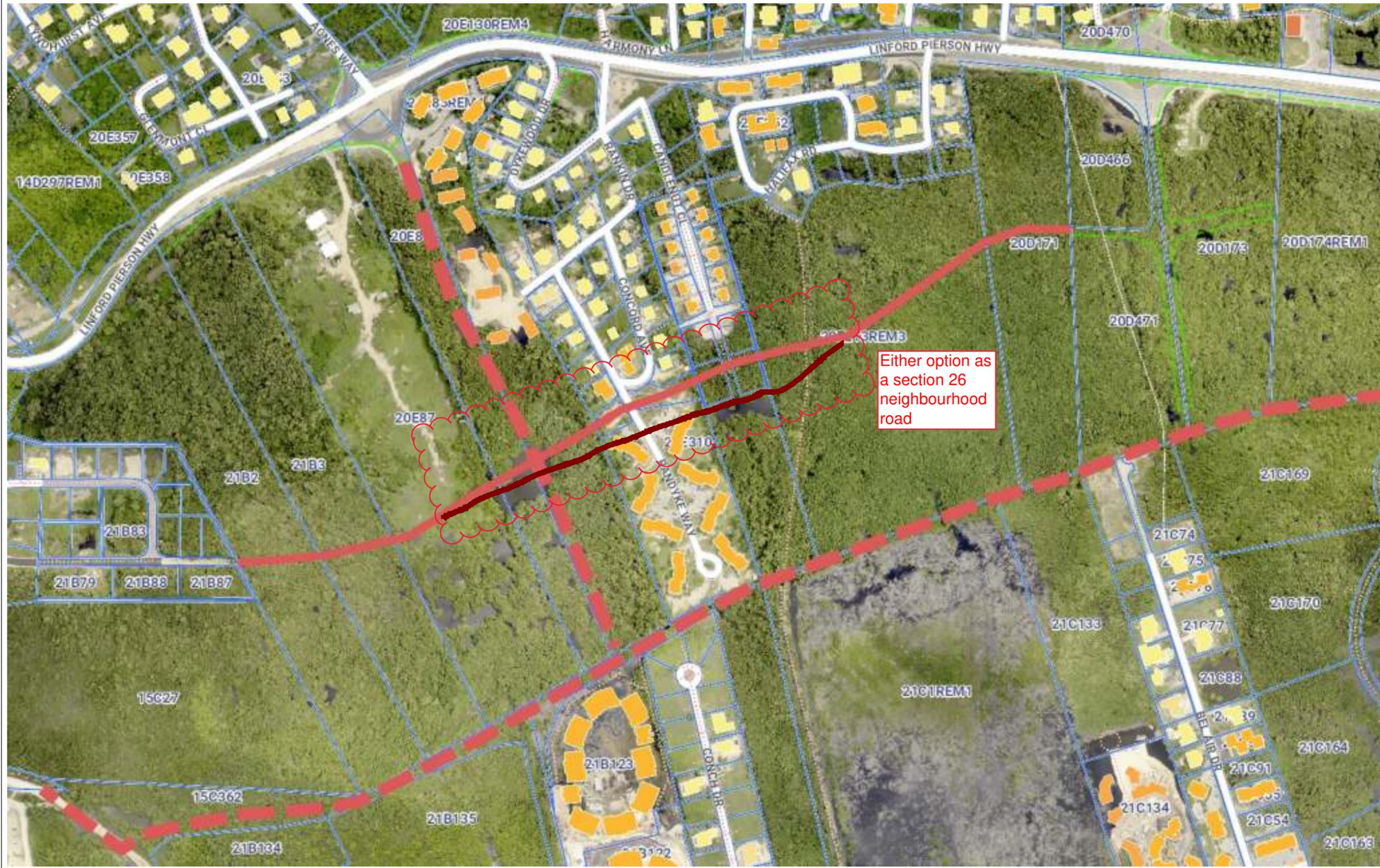
Fax: +1 (345) 949 2187

Web: www.caymanlandinfo.ky

Southlands Connector



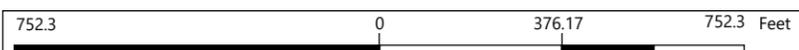
Legend
Proposed Roads



Either option as a section 26 neighbourhood road

4/20/21 12:12 PM
1:4,514

Notes



Krizelle Atlas

From: Hydes, Tristan <Tristan.Hydes@gov.ky>
Sent: Friday, June 4, 2021 4:29 PM
To: samtheva@gmail.com
Cc: Krizelle Atlas; waidedacosta@yahoo.com; Darrel Ebanks; Brown, Charles; Obi, Uche
Subject: RE: Yar1 20D171 Updated Site Plan

Follow Up Flag: Follow up
Flag Status: Flagged

Afternoon Sir,

Thanks for your email. You can use the road at this time. The Government is in the process of creating a "PCM" (prescribed composite map) which schedules the road as a Public Road; however, the road has been defined in a Boundary Plan (BP600) under Section 3 & 6 of the Roads Act, 2021 Rev., and as such, can be used by anyone (i.e. the public).

The Ministry, on the 25th May 2021 advised the Planning Dept. that we support Yar1 having access through BP600.

CaymanKind Regards,

Tristan S. Hydes | B. Arch.
Deputy Chief Officer | Ministry of Planning, Agriculture, Housing & Infrastructure (PAHI)
Government Administration Building | Box 107 | 133 Elgin Ave | George Town | Grand Cayman | KY1-9000
t: 345 244 2089 | c: 345 916 8124

From: Samuel Thevasaeyan [mailto:samtheva@gmail.com]
Sent: Friday, June 4, 2021 2:40 PM
To: Obi, Uche <Uche.Obi@gov.ky>
Cc: Krizelle Atlas <Krizelle@tag.ky>; waidedacosta@yahoo.com; Darrel Ebanks <Darrel@tag.ky>; Brown, Charles <Charles.Brown@gov.ky>; Hydes, Tristan <Tristan.Hydes@gov.ky>
Subject: Re: Yar1 20D171 Updated Site Plan

Thanks Uche.

Also I need confirmation in writing that it is a public road and we have access to that road. As of now I don't have legal access to my parcel. If there is going to be delay please grant access through the top section of Halifax Road.

If you have any questions please let me know.

Thanks
Sam

On Sat, Jun 5, 2021 at 5:27 AM Obi, Uche <Uche.Obi@gov.ky> wrote:

Hi Ms. Krizelle,

I confirm receipt of your email.

Charles and Tristan, may you please review and confirm that this meets your requirement

Thanks

Uche Obi

Uche Obi, MA FRICS

Chief Valuation Officer

Lands and Survey Department
133 Elgin Avenue | Government Administration Building

Box 120 Grand Cayman, KY1-9000 | CAYMAN ISLANDS
Direct. (345) 244 3644 | Mobile. (345) 926 2131

Email: uche.obi@gov.ky | Website: www.caymanlandinfo.ky



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From: Krizelle Atlas [mailto:Krizelle@tag.ky]
Sent: Wednesday, June 2, 2021 5:48 PM
To: Samuel Thevasaeyan; waidedacosta@yahoo.com
Cc: Darrel Ebanks; Brown, Charles; Hydes, Tristan; Obi, Uche
Subject: Yarl 20D171 Updated Site Plan

Hi Everyone,

Please find attached updated site plan for Yarl 20D171.

We pushed all the development towards North and 10ft wide swale is provided previously discussed.

Don't hesitate to let us know if you have any comments.

Many thanks.

Kind regards,

Krizelle Atlas | Project Administrator

TROPICAL ARCHITECTURAL GROUP, LTD.

Unit #1 Berthaze Court, Godfrey Nixon Way, George Town | P.O. Box 12218 Grand Cayman KY1-1010

Phone: (345) 947-5849 | E-mail: krizelle@tag.ky | Website: <http://www.tag.ky>



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Appendix E

BEFORE THE PLANNING APPEALS TRIBUNAL

IN THE MATTER OF THE DEVELOPMENT AND PLANNING ACT (2021 REVISION)

**AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF THE CENTRAL
PLANNING AUTHORITY DATED 11 NOVEMBER 2020 IN RESPECT OF DEVELOPMENT
OF BLOCK 33E PARCELS 133 TO 138 IN REGISTRATION SECTION RUM POINT**

BETWEEN HARRY LALLI APPELLANT

AND CENTRAL PLANNING AUTHORITY RESPONDENT

CORAM

Travis A. Ritch (Chairperson)

Andrew Gibb

Nickolas DaCosta

APPEARANCES	PARTY
Kyle Broadhurst	Appellant
Laura Stone	Appellant
Harry Lalli	Appellant
Celia Middleton	Respondent
Haroon Pandohie	Respondent
Jessica Peacey	Respondent

DATE OF HEARING: 5 MARCH 2021

DECISION AND REASONS

1. The Appellant submitted an application on 17 August 2020 to the Respondent Central Planning Authority (“CPA”). The application seeks planning permission to combine Parcels 133 – 138 located in Registration Section Rum Point, Block 33E (“Existing Lots”), and to subdivide the combined parcel into nine lots (“Proposed Lots”). The Existing Lots are located at the southern terminus of an undeveloped, man-made peninsula within the Rum Point area to the east of Water Cay Road.
2. The application first came before the Respondent on 28 October 2020. The Appellant submitted a letter in advance of that hearing (“the Variance Letter”) which requested a variance from the Development and Planning Regulations (2020 Revision) (“the Regulations”) to which we will turn later. The Department of Planning (“DoP”) analysis identified proposed lot widths and raised the question of whether the proposed development would be an overdevelopment, as specific issues for the Respondent to consider. The application was then adjourned to allow the Appellant to appear before the Respondent to address the application and these issues.
3. The Appellant then attended a CPA hearing on 11 November 2020 with their legal counsel Mr. Broadhurst, who also appears for the Appellant before us. The minutes of the hearing (“Minutes”) reflect that there was some discussion of the issues identified by the DoP and concerns held by the Respondent.
4. The Respondent resolved to refuse the application following the hearing. The Appellant was notified of this decision by letter dated 23 November 2020 (the “Decision”). The Decision recorded the reasoning of the Respondent in refusing planning permission:

At a meeting of the Central Planning Authority held on November 11, 2020 your application was considered and it was resolved to refuse planning permission for the following reasons:

- 1) *Regulation 9(8)(g) requires a minimum lot width of 80’. The Authority acknowledges that the Regulations do not define where the width of a lot is to*

be measured so has undertaken the following analysis of the proposed subdivision:

- a) Proposed lot 9 does comply with the required 80' lot width.*
- b) The concept of wedge shaped lots around a cul-de-sac is not unique to this application and the Authority has previously approved many such lots, including the underlying lots of this proposal that will be combined and re-subdivided.*
- c) The road frontages of the existing lots, excluding Parcel 138, range approximately from 32' to 38'. The road frontages of the proposed lots, excluding lot 9 (which is essentially Parcel 138) range approximately from 18' to 26'.*
- d) The applicant has indicated on the plan where each proposed lot achieves a minimum lot width of 80'. With the exception of lot 9, the percentage of the area of each proposed lot that complies with the required 80' width ranges approximately from 17' to 45' [sic] with 8 lots less than 40%.*

Given this analysis, the Authority is of the view that the proposed lots are not consistent with the intent of the minimum required lot width and represents an over-intensification of development that is not consistent with the expected character of development in a residential subdivision in the Low Density Residential zone.

5. The Appellant filed a Notice of Appeal dated 8 December 2020, followed by Grounds of Appeal dated 28 December 2020 and Written Submissions dated 12 February 2021. The Respondent, represented by Ms. Middleton, filed Written Submissions dated 26 February 2021.
6. The appeal was heard before the Tribunal on 5 March 2021. At the hearing, it was disputed whether a document was put to the CPA showing the Proposed Lots with building outlines that would be in compliance with applicable setback regulations. Subsequent to the hearing, on 18 March 2021, the Appellant filed an affidavit to the effect that the document was distributed to the members of the Respondent and considered by them. On 26 April 2021, the Tribunal was informed that the Respondent conceded that the document was before it at the hearing of the application.

SUBMISSIONS OF THE PARTIES

7. The Appellant argues that the Decision was erroneous in law, unreasonable, and contrary to the principles of natural justice. For the sake of completeness, the Appellant's Memorandum of Grounds also referred to the Decision being at variance with the Development Plan, but this ground was not pursued. Ms. Middleton for the CPA reminds us that if the Appellant has not satisfied the Tribunal that one of the three grounds has been met, their appeal must be denied.

8. The Existing Lots are zoned Low Density Residential ("LDR"). The Existing Lots and Proposed Lots are located off of a turning circle at the end of the peninsula and are therefore wedge-shaped: narrowest at the boundary with the road, widening toward the water boundary, where the Proposed Lots have a roughly 100' frontage. According to the Regulations, in a LDR zone, the minimum lot width is 80' for lots intended for detached and semi-detached houses and duplexes.¹ It is common ground that this requirement is certainly relevant to the application. DoP analysis reveals that the required 80' width is only achieved in the last quarter or third of Lots 1 – 8 (regarding the water frontage as the 'end' of a lot). The wedge shape also creates narrow 18' street frontages. The DoP had therefore advised the CPA that its task was to consider whether the subdivision as proposed represented overdevelopment.

9. As the CPA conceded in its Decision, regulation 9(8)(g) does not say where the width of a lot is to be measured. The CPA decided to perform alternative percentage calculations (the workings of which are not disclosed in the Decision) on the basis of which it concluded that an insufficient part of each Proposed Lot met the required minimum width, and therefore the proposed development represented an over-intensification not consistent with the expected character of development in a residential subdivision in a LDR zone.

¹ Regulation 9(8)(g)

GROUND 1 – ERRONEOUS IN LAW

10. The Appellant argues that the CPA approached this application incorrectly in law:

5. *As the Property is located in low density area, the relevant regulation relating to it is regulation 9(8) of the Development and Planning Regulations (2020 Revision) (the “Regulations”). The application complied with all requirements within regulation 9(8) with the possible exception of 9(8)(g) which states:*

“the minimum lot width for detached and semi-detached houses and duplexes is 80 feet...”

6. *That regulation while stating a requirement for a 80 foot minimum lot width, fails to identify if the minimum lot width is of application to the entire lot or whether it is acceptable for a portion of the lot to have that minimum width. It is submitted that as a matter of common sense the position must be the latter as, given the various shapes of parcel of lands and in particular the frequency of pie shaped parcels, to prohibit any parcel which at any point fails to meet a minimum width of 80 feet is unreasonable. In this respect it is noted that the CPA when considering this matter itself noted that:*

“The concept of wedge shaped lots around a cul-de-sac is not unique to this application and the Authority has previously approved many such lots, including the underlying lots of this proposal that will be combined and re-subdivided”

7. *In light of the uncertainty concerning regulation 9(8)(g), Mr. Lalli wrote a letter in which he requested a variance in accordance with regulation 8(13)(b)(iii). In that letter, Mr. Lalli cogently explained why the application should be allowed. Those reasons included the fact that the lots exceeded the required lot sizes, had 100 feet of water frontage due to their pie shape and that homes could easily be constructed which would comply with all requirements including setbacks. The letter further attached letters of support for the project from surrounding landowners.*

8. *Regulation 8(13)(b)(iii) specifically permits the Authority to grant permission to carry out development that does not comply with regulation 9(8) provided the Authority is satisfied that sufficient reason exists to grant a variance and that the proposal will not be materially detrimental to persons residing [sic] or working in the vicinity, to the adjacent property, to the neighbourhood or to the public welfare.*

9. *In light of the foregoing when the matter came before the CPA it needed to determine two questions. First, whether a variance from 9(8)(g) was required at all, given that the minimum lot size was complied with for a sufficient area of the property that development could occur in compliance with all regulations. Second, if regulation 9(8)(g) was not complied with, whether a variance should be granted in accordance with regulation 8(13)(b)(iii). Neither of those two things occurred.*

- ...

11. *Failure to properly consider regulation 9(8)(g). The CPA in approaching the matter in the way it did failed to comply with the requirements of the regulations. As noted above, in considering regulation 9(8)(g) the CPA needed to consider two matters. First, whether the application complied with that regulation. In considering this point the CPA acknowledged that the Regulations do not define where the width of a lot is to be measured. In the absence of that definition, the CPA sought to apply a test which was based [on] the consideration of what percentage of the land is 80 feet wide. That test is not contained within the regulations nor in the Law and is both arbitrary and fundamentally flawed. What percentage of the land meets the 80 foot requirement is irrelevant without there being consideration of the size of the land itself. If, as is the case here, the parcel of land meets all other requirements and is capable of being developed without the need for any variations, the percentage of it which meets the 80 foot requirement is, with respect, irrelevant. The failure of the CPA to properly consider regulation 9(8)(g) is an error of law.*

12. *Failure to consider regulation 8(13). Further and in any event, even if the CPA were correct to reach the conclusion that the application did not satisfy the*

requirements of regulation 9(8)(g), the next step was for the CPA to address the request for a variance sought by Mr. Lalli in accordance with regulation 8(13). As Mr. Lalli correctly identified in his letter, he was entitled to request a variance in accordance with regulation 8(13)(b)(iii) which allows for permission to be given where any aspect of regulation 9(8) has not been met, provided it will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighbourhood or to the public welfare. The CPA wholly failed to consider this regulation despite Mr. Lalli's request and instead, based upon its own test which was not contained [within] the regulations, refused permission. The failure of the CPA to consider regulation 8(13)(b)(iii) is an error of law.

11. In summary, the Appellant's main submissions on this point are that the CPA was wrong in law in the following ways:
 - i) The CPA acknowledged that regulation 9(8)(g) did not say where the width of a parcel was to be measured, and acknowledged that wedge-shaped lots were not uncommon and the CPA had approved "*many such lots*". The only reasonable interpretation of 9(8)(g) therefore, is that only a portion of a lot must reach 80' width, because lots are of so many shapes and sizes that requiring 80' width to be achieved at every measurable point defies common sense and is unreasonable. Accordingly, the percentage of the Proposed Lots that is 80' wide or more is irrelevant, so the CPA misinterpreted regulation 9(8)(g).
 - ii) Howsoever the CPA interpreted sub-regulation 9(8)(g), it still had to decide whether sub-regulation 9(8)(g) was complied with or not. It had to make this decision, if for no other reason then because the Appellant was entitled to request a variance from 9(8)(g) if not met.
 - iii) Having failed to declare non-compliance with 9(8)(g), the CPA then failed to take up the Appellant's application for a variance under sub-regulation 8(13). The Appellant was entitled to make the application for a variance, and the CPA had a corresponding

obligation to consider that variance application and grant or refuse it if it found 9(8)(g) had not been met.

- iv) Instead of considering and applying those provisions in order, the CPA applied its own alternative tests, calculating the percentage of each lot meeting 80' width and concluding that the Proposed Lots, so analysed, would be inconsistent with the intent behind the minimum lot width requirement and the expected character of a LDR zone.

12. The Respondent argued that the Decision was not wrong in law:

8. *Paragraph 11 of the written submission the Appellant indicates that the Respondent failed to properly consider Regulation 9(8)(a) [sic] based on a consideration of what percentage of the land was 80 feet wide and on that basis the decision made was an "error in law".*

9. *The Application indicates that the properties are zoned low density residential with a private canal access and public 50ft road access. Regulation 9(8) deals specifically with residential areas zoned low density and provides:*

(8) *In low density areas, detached and semi-detached houses, duplexes, and, in suitable locations, guest houses and apartments are permissible provided –*

...

(g) *the minimum lot width for detached and semi-detached houses and duplexes is 80 feet and for guest houses and apartments is 100 feet...*

10. *There is no need to look beyond the ordinary meaning of the sub-regulation, the sub-regulation provides that the minimum width is to be 80 feet. There is no ambiguity in the requirements as to what the minimum width of a property zoned residential which will be used for a detached or semi-detached house.*

11. *The Appellant goes further in paragraph 12 to aver that the Respondent having correctly found that the application would result in lot sizes that are contrary to the Regulation 9(8)(g) the Respondent failed in law to grant the requested variance pursuant to Regulation 8(13)(b)(iii).*

12. *Regulation 8(13) provides as follows:*

*(13) Notwithstanding subregulations (1), (2), (5), (7), and (9) and regulations 9(6), (7) and (8), 10, 12, 13, 14, 15, 23, 26 and 27, the Authority **may** grant planning permission to carry out development that does not comply with all or any of those provisions, with the exception of the number of permitted storeys in subregulation (2), if the Authority is satisfied that –*

(a) the development is a Government-approved low-cost housing programme;

(b) there is sufficient reason to grant a variance and an exceptional circumstance exists, which may include the fact that –

(i) the characteristics of the proposed development are consistent with the character of the surrounding area;

(ii) unusual terrain characteristics limit the site's development potential; or

(iii) the proposal will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property to the neighbourhood, or to the public welfare; or

(c) the development is a planned area development pursuant to regulation 24(1),

and, in the case of an application where lesser setbacks are proposed for a development or a lesser lot size is proposed for a development, the Authority shall in addition be satisfied that the adjoining property owners have been notified of the application.

13. *Firstly, the wording of Regulation 8(13) above is crucial, the Regulation provides that the Respondent MAY grant planning permission if a proposed development does not meet the requirements of Regulation 9(8) if the Authority is satisfied that certain criteria as set out in 8(13)(a), 8(13)(b) or 8(13)(c) are met.*
14. *The Regulation gives the Respondent the sole discretion to grant the variance and if the Respondent is minded to grant the variance, the variance should fall within one of the specific criteria. The Regulation does not mandate the Respondent to grant a variance if one is requested.*
15. *As the proposed development does not meet the criteria of 8(13)(a) or 8(13)(c), the Respondent is required to determine first if the requested variance falls within 8(13)(b) and then decides if it wishes to exercise its discretion to grant the variance.*
16. *In order to do that exercise, the Respondent must look at the request being made. The appellant in response to comments made by the assigned planner Ms. Jessica Peacey on September 1, 2020, submitted an undated letter detailing the reasons the variation was being sought.*
17. *In order to convince the Respondent, the Appellant had to demonstrate **there is sufficient reason to grant a variance and an exceptional circumstance exists**. The letter submitted by the Appellant fails to demonstrate that there is any reason save an economic one, and did not indicate that there were any exceptional circumstances which existed which warranted the variance being granted.*
18. *Secondly, the Appellant indicates that the application for the variance fell within **[8(13)(b)(iii)]**, while on the face of it that might be true. However, if one looks at buffer map owners listing and on the Land Register of parcels 133 to 139 only 2 of*

the affected properties in the buffer zone are owned by persons other than the owner of the properties which is the subject of the proposed development. Therefore, lack of objections in and of itself where the majority of the affected parcels are owned by the same proprietor is not enough to demonstrate that there is sufficient reason to grant a variance as required by Regulation 8(13)(b)(iii).

19. *Moreover, as the Regulation gives the sole discretion as to whether or not to grant a variance to the Respondent and that discretion allows the Respondent to either grant or refuse the variance, by refusing to grant the variance is within the Respondent's discretion.*

20. *Based on the foregoing, it is clear that the Respondent's decision was not wrong in law. Consequently, this ground must fail.*

13. In summary, the Respondent's main submissions on this point are that the CPA was not wrong in law because:

- i) Sub-regulation 9(8)(g) has no ambiguity – lots in a LDR zone intended for detached or semi-detached houses must have a minimum width of 80 feet.
- ii) The CPA found correctly that sub-regulation 9(8)(g) was not complied with.
- iii) The CPA was not obliged to grant the requested variance. It had the discretion to grant the requested variance if persuaded there was sufficient reason and an exceptional circumstance existed. The Variance Letter failed to demonstrate that there was any reason except for an economic one, and did not indicate that there were any exceptional circumstances which warranted the variance being granted.
- iv) Even though the variance application might appear to 'fall within' 8(13)(b)(iii), the Appellant could not rely on the absence of objections from the only two other proprietors within the notification area to establish that the development will not have a materially detrimental effect on persons residing or working in the vicinity, adjacent property, the neighbourhood, or public welfare.

- v) Whether to grant a variance is in any event, at the sole discretion of the CPA.

GROUND 2 – UNREASONABLE

14. The Appellant argues that the CPA reached an unreasonable decision:

13. *Failure to consider relevant matters. It is a basic and longstanding principle that a public body should take into account all relevant considerations and no irrelevant ones. The CPA in reaching its Decision failed to take into account the following relevant considerations:*

- a. *There were no objectors to the application. In fact, there was support from nearby landowners;*
- b. *The lots meet the size requirements and were shown by Mr. Lalli to be capable of easily supporting development of single-family homes of the requisite size in compliance with all setbacks without the requirement of any variances;*
- c. *The lot sizes requested were larger than any other developments in other high value areas such as South Sound and in Crystal Harbour;*
- d. *Mr. Lalli's specific request that the CPA consider granting him a variation pursuant to regulation 8(13).*
- e. *There was no evidence whatsoever that the proposed lots would be materially detrimental to anyone.*

The failure of the CPA to consider the above matters renders the decision unreasonable. Further, or alternatively the failure to consider the above matter [sic] is an error of law.

14. *Consideration of irrelevant matters.* As noted above the CPA embarked upon a test which was not contained with the regulations or the law concerning what percentage of the Property met the 80 foot width requirement. Such a test, apart from being outside the regulations, is deficient as without consideration of the size of the Property the test becomes meaningless. The key consideration must logically be whether the parcel is large enough and contains enough width at the required 80 foot requirement in order to allow for development to occur. The CPA failed to consider this and instead focused entirely upon the percentage. In applying and considering that test the CPA acted unreasonably and also erred in law.
15. The Appellant's concise submissions on this point do not require summary here.
16. The Respondent argued that the Decision was not unreasonable:

Ground 2A – Decision was unreasonable – failing to consider relevant material

21. *The Appellant in its written submission indicate at paragraph 13 that the Respondent failed to consider relevant matters and detailed the matters the Respondent allegedly failed to take account of inter alia developments in South Sound and Crystal Harbour, granting a variance pursuant to Regulation 8(13) and that the proposed lots would not be materially detrimental to anyone.*
22. *Again, the Appellant appears to be misguided, had the Respondent considered developments that had been approved in any location on the island outside of the Rum Point area of the North Side district, the Respondent would have been acting contrary to the law in considering matters which were unrelated to the instant application before it.*
23. *Further, each application has to be examined by the Respondent solely on the material submitted and not made on a basis that other applications on other parcels of lands in other districts whose zoning is unknown were granted planning permission under different circumstances.*

24. *Moreover, a determination that the proposed lots would not be “materially detrimental to anyone” is not what is required under Regulation 8(13) to grant a variance, the Regulation requires the Respondent to access if there is sufficient reason **and** if exceptional circumstances exist when granting a variance. On the Appellant’s application there was only one reason advanced and nothing which indicated that exceptional circumstances existed.*

Ground 2B – Decision was unreasonable – considering irrelevant material

25. *The Appellant in paragraph 14 of its written submissions avers that by the Respondent examining the percentage of the property which could meet the minimum 80 ft requirement was considering irrelevant material and thus unreasonable.*

26. *While the Respondent agrees that if it arrived at its decision making having taken into account irrelevant material this prima facie could lead to such a decision being deemed unreasonable; however, contrary to the Appellant’s submission, the Respondent in arriving at the challenged decision, only considered relevant factors.*

27. *In arriving at a reasonable decision, the 1st Respondent must follow the Act and the Regulations thereunder, consider both the Appellant’s written application with supporting documentation, reports from the Authorities and exercise the skill and knowledge of the members of the Respondent.*

28. *Looking at the minutes from the application, it is clear that the Respondent had concerns and allowed the Appellant to address the concerns, however the averment made concerning a diagram showing how “every thing will fit” as stated by Mr. Eddie Thompson was never provided to the Respondent and only stated on the day.²*

² We noted above that it has since been conceded that the diagram was before the Respondent.

29. Section 15 of the Act provides as follows:

*“15(1) Subject to this section and section 5(1), where application is made to the Authority for outline planning or permission to develop land or permission for a planned area development, **the Authority may grant permission either unconditionally or subject to such conditions as it thinks fit, or may refuse permission.**”*

30. *The Respondent has therefore been given sole discretion to grant permission for development on whatever terms it chooses or to refuse permission. Having regard to the minutes of the meeting of November 11, 2020 it is clear that the Respondent considered all the relevant information which was before it. The Respondent had the Appellant’s application, the Appellant’s representatives were allowed to present oral arguments and questions were asked of the persons who appeared before the Respondent.*

31. *The Tribunal might find useful guidance in the well-known leading case of **Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 K.B. 223 (2RP 4)** where Lord Greene M.R. said (at 228):*

...The courts must always, I think, remember this: first, we are dealing with not a judicial act, but an executive act; secondly, the conditions which, under the exercise of that executive act, may be imposed are in terms, so far as language goes, put within the discretion of the local authority without limitation. Thirdly, the statute provides no appeal from the decision of the local authority.

What, then, is the power of the courts? They can only interfere with an act of executive authority if it be shown that the authority has contravened the law. It is for those who assert that the local authority has contravened the law to establish that proposition. On the face of it, a condition of the kind imposed in this case is perfectly lawful. It is not to be assumed prima facie that

responsible bodies like the local authority in this case will exceed their powers; but the court, whenever it is alleged that the local authority have contravened the law, must not substitute itself for that authority. It is only concerned with seeing whether or not the proposition is made good. When an executive discretion is entrusted by Parliament to a body such as the local authority in this case, what appears to be an exercise of that discretion can only be challenged in the courts in a strictly limited class of case. As I have said, it must always be remembered that the court is not a court of appeal. When discretion of this kind is granted the law recognizes certain principles upon which that discretion must be exercised, but within the four corners of those principles the discretion, in my opinion, is an absolute one and cannot be questioned in any court of law.

32. *The Tribunal has no jurisdiction to set aside a decision of the 1st Respondent unless the Appellants have demonstrated that the 1st Respondent failed to consider the proper evidence or that the decision is patently unreasonable, was at variance with the development plan, arrived at by a breach of natural justice or was erroneous in law,; see Lord Greene M.R. in **Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 K.B. 223** at 233-4:*

...I will summarize once again the principle applicable. The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think

the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in them. The appeal must be dismissed with costs.

33. *In Frank Renard Moxam v Central Planning Authority and A.L. Thompson Jr (11 June 2002), a decision of this Tribunal, the application of the Wednesbury test in appeals of this nature was confirmed, by the Tribunal when directing itself as to the issue of unreasonableness first by referring to the following remarks made in the earlier decision of National Trust and Adams v CPA (July 2001) at p. 8:*

...Unless this tribunal is able to conclude that the decision of the CPA is so unreasonable that no reasonable body could ever come to it or that it took into account matters which it should not have taken into account or conversely failed to take into account matters that it ought to take into account then it cannot properly be set aside.

34. *As there is nothing before the Tribunal which indicates that the no reasonable authority could ever have decided as the 1st Respondent did, further, there are no facts whether overwhelming or otherwise which indicates that the Respondent's decision was unreasonable in law. One's mere disagreement with a decision does not make it unreasonable in law.*
35. *The 1st Respondent gave due consideration to all the material before it and all the representations made and therefore arrived at a reasonable decision in the circumstances.*
36. *Based on the foregoing, it is clear that the Respondent's decision was neither unreasonable nor wrong in law. Consequently, this ground must fail.*

17. In summary, the Respondent's main submissions under this ground are that the CPA did not reach an unreasonable decision because:

Failing to take into account relevant material

- i) The CPA could not take into account developments in any area other than Rum Point when considering the application; had it done so, the CPA would have considered a matter which was "*unrelated*" to the instant application before it. The CPA therefore properly excluded the Appellant's arguments about other areas.
- ii) The CPA is required to examine each application on the material submitted, and does not make its decisions on the basis that previous applications relating to land in other districts with different zoning were granted under the circumstances of those other applications.
- iii) A determination (such as the contention by the Appellant) that the Proposed Lots would not be "*materially detrimental to anyone*" was not something the CPA was required to take into account, because the absence of material detriment to those in the vicinity of the Proposed Lots is only part of the test for the grant of a variance.

Taking into account irrelevant material

- iv) The CPA is required to follow the applicable legislation, consider the application and supporting documents, consider input from the appropriate consultees, and exercise the skill and knowledge of its members.
- v) The CPA had concerns about the Proposed Lots which it allowed the Appellant to address. The Appellant's submissions in that regard were considered together with all of the other relevant material recorded in the Minutes.

Wednesbury unreasonableness

- vi) The CPA has sole discretion to grant or refuse planning permission on the terms it thinks fit. This discretion is delegated by Parliament and engages the *Wednesbury* precedent and principles. The Tribunal has no power to interfere with the decision of the CPA on the basis that the decision was unreasonable unless the CPA:
 - a) failed to take relevant matters into account; or
 - b) took irrelevant matters into account; or
 - c) reached a decision so unreasonable no CPA could have reached it.
- vii) This Tribunal has long accepted that the *Wednesbury* test applies to planning appeals, as Ms. Middleton reminded us at paragraph 33 of her Submissions.
- viii) There is no material before the Tribunal indicating that the CPA reached a decision so unreasonable no CPA could have reached it. Disagreement with a decision of the CPA does not make it unreasonable.
- ix) The CPA therefore arrived at a reasonable decision in the circumstances.

GROUND 3 – NATURAL JUSTICE

18. The Appellant argues that the CPA breached the principles of natural justice:

- 15. *Principles of natural justice not met. Mr. Lalli was entitled to know and have notice of what test would be applied to his application. In applying a test falling outside the regulations without notice to Mr. Lalli, the CPA did not give Mr. Lalli any proper opportunity to respond. Further, the CPA failed to consider the application that was before it by Mr. Lalli, namely the application for a variance pursuant to regulation 8(13). As a result of the foregoing, Mr. Lalli*

did not have proper notice nor was he given a fair hearing. This is a breach of natural justice.

19. The Respondent argues that the CPA did not breach the principles of natural justice:

37. *The Appellant in his written submission avers that the Respondent failed to indicate what test would be applied to his application and thus his right of natural justice was breached.*

38. *On the contrary to the Appellant's averment, the Appellant was first informed by the planning officer in September that there were concerns with the parcel size, in response to her concerns a letter was submitted.*

39. *Subsequent to the letter being submitted the assigned planner continued to express her concerns. Further when the matter was first listed for hearing in October the agenda of the meeting clearly stated that the parcel widths as an issue. Further still when the application was adjourned it was also clear that the reason was the parcel widths.*

40. *Natural justice requires that the Appellant is given an opportunity to respond to the case against him, [from] September 1, 2020 the Appellant was made aware by the assigned planner that proposed parcel widths were an issue. He had full knowledge that the proposed widths of the proposed subdivided parcels was the reason his application was adjourned, therefore it is disingenuous to now state that he had no notice that the Respondent would be examining the parcel widths.*

41. *While the Appellant may claim that he was unaware that the Respondent would be examining the drawings to determine how much of the property met the minimum requirements, this is not a factual representation of the state of the affairs. The assigned planner requested further drawings which illustrate where the minimum lot width was met "**likely set back half way in the site**" on September 1st and we see where additional drawings were uploaded.*

42. *Therefore, the Appellant cannot at this stage state that his rights to natural justice have been breached as he was at all material times aware of what issue the Respondent was examining and was given several opportunities to state his case, both via documents prior to the meeting and on the day of the meeting. Consequently, this ground must fail.*

20. In summary, the Respondent’s submissions on this ground are that the Appellant was made aware of the concerns of the assigned planner, including “*how much of [the Proposed Lots] met the minimum requirements*”, which it is implied, is essentially a ‘test’ that is materially identical to the percentage test the Respondent applied, and the Appellant was given adequate opportunities to state their case in relation to the issue.

21. Mr. Broadhurst and Ms. Middleton made further submissions at the Tribunal hearing, to which we have referred where relevant to our decision.

ANALYSIS AND FINDINGS

GROUND 1 – ERRONEOUS IN LAW

22. As the Tribunal was not referred to authorities on the specific point of what constitutes an error in law, the Tribunal directs itself that a public body such as the Respondent errs in law if it:

acts in breach of fundamental human rights; misinterprets a statute or any other legal document, or a rule of common law; frustrates the purpose of a statute or otherwise acts for an improper purpose; takes a decision on the basis of secondary legislation, or any other act or order, which is itself ultra vires; takes legally irrelevant considerations into account, or fails to take relevant considerations into account; admits inadmissible evidence, rejects admissible and relevant evidence, or takes a decision on no evidence or on the basis of a material mistake of fact; misdirects itself as to the burden of proof; fails to follow the proper procedure required by law; fetters its discretion or

*improperly delegates the decision; fails to fulfil an express or implied duty to give reasons; acts arbitrarily or discriminately; or otherwise abuses its power.*³

23. The Appellant argues that the Respondent misinterpreted the Regulations, misdirected itself, and rendered an unlawful decision that should be reversed.
24. The original point of contention is the interpretation of sub-regulation 9(8)(g). The Appellant argues that because the sub-regulation does not state where a lot intended for a detached or semi-detached house is to be measured, it is acceptable for a portion of such a lot to measure 80 feet wide; any other interpretation would be unreasonable as lots come in all shapes and sizes. Ms. Middleton, arguing for the Respondent, states that there is no ambiguity in the words of the sub-regulation, so there is no need to look beyond the ordinary meaning of the words – in other words, 80 feet wide means 80 feet wide. When considering the application however, the Respondent conceded that there was an ambiguity, stating in the Decision that “*the Authority acknowledges that the Regulations do not define where the width of a lot is to be measured...*” It was this concession that led the Respondent to take a purposive approach to the interpretation and application of the Regulations, instead of the literal approach which Ms. Middleton argued was possible because there was no ambiguity in the sub-regulation. This Tribunal proceeds on the basis that the Respondent conceded that there was an ambiguity, namely, where to measure the width of a lot.
25. We are asked to find that the Respondent was wrong to sidestep this ambiguity and then adopt a framework of alternative tests to inform its decision. We agree with the Appellant’s submissions in this regard.
26. The Respondent was required to make a finding as to whether regulation sub-regulation 9(8)(g) was met. The Respondent could not grant the application without finding that sub-regulation 9(8)(g) was met or otherwise. The Appellant was entitled to request a variance from the provisions of the sub-regulation in the event the Respondent found that the sub-regulation was not met. In this instance, the Appellant had requested a variance in the event the Respondent was not persuaded that sub-regulation 9(8) was met. Since the Appellant had requested a

³ *Halsbury’s Laws* (5th edn. 2018) vol. 61A, para. 13

variance, the Respondent could not refuse the planning application without considering the request for the variance. The Respondent erred in law when it did not consider the variance application, much less determine it against the Appellant, before their application for planning permission was refused. The Appellant submits that the Decision falls on this point alone. We agree.

27. The Respondent fell further into error when – having failed to direct itself to consider and make decisions on sub-regulation 9(8) and then (if necessary) sub-regulation 8(13) – it directed itself to calculate and consider the percentage of each Proposed Lot that would be 80’ wide, and on the basis of that consideration, then concluded that the Proposed Lots were “*not consistent with the intent of the minimum required lot width and represents an over-intensification of development that is not consistent with the expected character of development in a residential subdivision in the Low Density Residential zone*”.
28. The reasoning of the Respondent amounts to two tests which the Respondent applied to the application: the “percentage test”, and the ‘expected character of the zone’ test or “purpose test”. The Respondent had no authority under the Development and Planning Act and Regulations to take into account and rely upon either of these tests, especially without informing the Appellant (as applicant) about the nature of these tests and the way in which the Respondent would use them to consider the planning application. We are guided by the judgment of Smellie CJ in *In re Hutchinson-Green* [2015 (2) CILR 85]. In that case, when hearing an appeal by way of rehearing, the Immigration Appeals Tribunal (“IAT”) adopted the use of the Caymanian Status and Permanent Residency Board’s “points calculation chart” to award points under one of the ten factors used to score applications by persons seeking permanent residence in the Islands. The appellant had not been notified of the existence of the chart and the fact that it would be relied upon to score her application for the relevant factor. The chart was not authorised for use in considering applications by legislation. Smellie CJ held that the IAT acted *ultra vires* – erred in law – in applying the chart, and directed the IAT to decide the rehear the appeal according to the merits and not according to the chart or any other “*unauthorised policy document*”. Similarly in this appeal before us, the Respondent has adopted and applied unsanctioned tests without prior notice to the Appellant and relied upon those tests when making its decision.

29. This Tribunal is satisfied that the Respondent erred in law in further respects, which will be discussed below.

GROUND 2 – UNREASONABLE

30. The Appellant’s submissions on this point are focused on the Respondent taking into account irrelevant factors, and failing to take into account certain relevant factors. One of the relevant factors, which the Record of this appeal does not disclose the Respondent ever considered let alone decided, is the variance application. The variance application was not merely relevant – it had to be decided before the application could be rejected.
31. The Tribunal notes the arguments put forward for the Respondent on this point. Ms. Middleton argued that the Respondent has no obligation to grant a variance if requested, pointing out that the Respondent has to be satisfied certain criteria are met and the power is a discretionary one in any event. This is of course, correct. However, the fact that the Respondent could have considered the variance application and rejected it, does not absolve the Respondent of the failure to consider it. The merits of the variance application were not considered, the statutory criteria were not applied, and a decision was not made. Even if the Tribunal accepted the argument advanced that the application proceeded on the basis that a variance was necessary, so it was not necessary for the Respondent to state that it was not granting a variance or give reasons for that decision, the Respondent would then have made an unreasonable decision about the variance, having omitted the statutory criteria from its consideration. With respect to Ms. Middleton and the arguments she made on the Respondent’s behalf, it is plain that the Respondent simply did not take up the variance application, and so failed to take into account the satisfaction or otherwise of any of the statutory criteria applicable to the application, as well as its decision on the variance application in the context of the planning application as a whole. The decision to refuse planning permission is thereby rendered unreasonable.
32. We have already found that the Respondent erred in law by applying alternative percentage and purpose tests (and not disclosed to the Appellant in advance) to the application instead of applying sub-regulations 9(8)(g) and 8(13)(b)(iii) in sequence. However, in doing so, we are not circumscribing the potential range of matters the Respondent can consider when dealing with planning matters generally. The nature of the Respondent’s delegated authority to determine

planning applications is such that the range of matters it can potentially take into account is very wide, in light of the particular features of each application, and consistent with its discretion to grant or refuse planning permission as it thinks fit. The case law is also to this effect. This Tribunal would err in law if it held that the Respondent was limited always to considering only the factors identified in its enabling legislation, as a matter of principle. What makes the percentage and purpose tests irrelevant matters taken into account, in the context of this appeal, is the fact that they were used instead of the statutory tests in the Regulations.

33. As for the other matters which the Appellant complains were not demonstrably considered, at pages 65-66 of the Record, the summary notes of the substantive hearing of the application show that the absence of objectors and possibility of development in compliance with setback requirements were both drawn to the Respondent's attention. The Decision does not reflect or demonstrate that the Respondent considered the lack of 'material detriment' to nearby landowners or the large size of the Proposed Lots, though these were drawn to the Respondent's attention in the Variance Letter. There is no evidence that the Respondent considered these factors.
34. We find this ground of appeal to be met.

GROUND 3 – NATURAL JUSTICE

35. The Appellant's identify the following alleged breaches of natural justice by the Respondent in hearing the planning application:
- i) Applying tests falling outside the Regulations without notice to the Appellant and depriving the Appellant of a proper opportunity to address the appropriateness and intended application of those tests to the planning application.
 - ii) Failing to consider and decide the variance application.
36. Accordingly, it is argued that Mr. Lalli did not, in sum, receive a fair hearing.

37. Natural justice was found to have been breached by the IAT in the case of Hutchinson-Green, referred to above. In that case, the IAT used a ‘points calculation chart’, not authorised by legislation, to score the appellant on one of the permanent residence application factors, without notice to the appellant. Smellie CJ set out the requirements of natural justice:

“60. *The modern case law provides a clear guide to the application of the rules of natural justice in this regard.*

61. *In Lloyd v. McMahon (10) ([1987] A.C. at 702–703), Lord Bridge of Harwich explained:*

“My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.”

62. *To similar effect, in Wiseman v. Borneman (16), Lord Guest declared ([1971] A.C. at 310):*

“It is reasonably clear on the authorities that where a statutory tribunal has been set up to decide final questions affecting parties’ rights and duties, if the statute is silent upon the question, the courts will imply into the statutory provision a

rule that the principles of natural justice should be applied. This implication will be made upon the basis that Parliament is not to be presumed to take away parties' rights without giving them an opportunity of being heard in their interest. In other words, Parliament is not to be presumed to act unfairly. The dictum by Byles J. in Cooper v. Wandsworth Board of Works, 14 CBNS 180, 194 is clear to this effect and has been followed in many subsequent cases."

63 *This well-known line of judicial reasoning was more recently affirmed by the English Court of Appeal in R. v Home Secy., ex p. Doody (11).*

64 *There, it was decided that the principles of natural justice endowed a prisoner serving a mandatory life sentence with the right to make representations in writing to the Secretary of State as to the period he should serve for the purposes of retribution or deterrence before the date for first review of his sentence, and, before giving him the opportunity to make such representations, the Secretary of State was also required to inform the prisoner of the period recommended by the judiciary as the tariff period and any other opinion expressed by the judiciary which was relevant to the Secretary of State's decision as to the appropriate tariff period.*

65 *In other words, and in terms that would be more generally applicable to a case such as the present, the settled case law is to the effect that the requirements of natural justice entail giving a party the opportunity to make representations, and the relevant information known to the decision-maker which would be pertinent to the party's ability to do so, before an adverse conclusion contrary to the party's interests is arrived at by the decision-maker.*

66 *This broad and fundamental principle of administrative law is also illustrated by the local case law.*

67 In [Ford v. Immigration Appeals Tribunal \(8\)](#), in a context similar to the present, this court, in returning a matter to the I.A.T. for its reconsideration, provided specific guidance in relation to further questions (interrogatories) which the I.A.T. required that applicant to answer, going beyond any concerns which had been raised by the Board, in these terms ([2007 CILR 258, at paras. 40–41](#)):

“40 In conclusion, I would only add that whatever the underlying concern of the interrogatories may be, the Tribunal will be sure to allow the appellant the fullest opportunity to address them. This will involve notifying, in the clearest terms, the real nature of the remaining concerns, if that be the case after the interrogatories are answered, and allowing him to respond to the concerns.

41 Only then could it be said that ‘the appellant has in fact been dealt with fairly when the proceedings as a whole are considered,’ to adopt the further views expressed in *Lloyd v. McMahon* above. With that caution given, I conclude that the interrogatories are not unlawful.”

68 In effect then, it can be said that the [Ford](#) decision stands, among other things, for the proposition that where on a rehearing the factual determinations may be at large, there has to be proper regard to the rules of natural justice.

69 In its reliance upon the logistical materials without affording the applicant the opportunity of responding to its intended application of them to her detriment, the I.A.T. clearly failed to satisfy the requirements of procedural fairness imposed by the foregoing principles of natural justice.

38. Applying these principles to this appeal, we are compelled to agree with the Appellant's submissions.
39. We are unable to accept Ms. Middleton's submission that it was sufficient for the Appellant to know that the reason the application had been adjourned was that the Respondent would be "*examining the parcel widths*" and would seek their appearance at a new hearing, and because the assigned DoP planner had identified lot width as an issue and had requested drawings from the Appellant showing where the minimum lot width was to be achieved in each lot. The percentage of each lot achieving the minimum width was not drawn to the Appellant's attention as something the Respondent would be examining, before or during the hearing. It was something the Respondent decided to do after the second (and ultimately final) hearing. Having performed the calculations – which the Appellant also never saw, and this Tribunal has not seen – the Respondent proceeded to conclude that the application did not comply with the intent of the relevant legislation. As the authorities above show, natural justice requires that a party be given notice and sight of the materials and pertinent information possessed by the decision-maker, including the preliminary view of the decision-maker itself where relevant, to enable the party to make representations before the decision-maker comes to an adverse conclusion. That did not happen in this instance and the Appellant had no opportunity to question the tests the Respondent had set for itself in order to decide the application. This is a breach of natural justice.
40. An equally serious breach of natural justice was committed by the Respondent in failing to 'take up' the variance application at the hearing or to determine the variance application before refusing to grant the planning application. The Appellant recognised that the Respondent might not find that their application complied with the 80' width requirement in sub-regulation 9(8)(g) and had written the Variance Letter in the event that the Respondent concluded that a variance under regulation 8(13) would be required to grant their planning application. That letter appeared in the Respondent's meeting agenda as the "Applicant Letter" when the application was considered on 28 October and then again on 11 November 2020. This Tribunal is satisfied that there was an application for a variance pursuant to sub-regulation 8(13) before the Respondent.
41. As the authorities above show, what natural justice requires in each case will vary depending on, as Lord Bridge said, "*the character of the decision-making body, the kind of decision it has*

to make and the statutory or other framework in which it operates...in particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.”

42. We consider the character of the Respondent as a decision-making body, the kind of decision it has to make, and the statutory framework in which it operates. The Respondent has been delegated sole authority to determine applications for permission to develop property in Grand Cayman. Sub-regulation 8(13) allows the Respondent to “*grant planning permission to carry out development that does not comply with all or any of*” a long list of requirements that apply to different types of development. Variances are commonly requested and commonly granted to enable development that does not comply with one or more requirements nevertheless to proceed on account of other relevant factors. If an application does not comply with a regulation and the Respondent is minded to reject it, but may approve it if a requested variance is granted, the variance request becomes the last hope for the application. Finally, the nature of a planning application is such that the property rights of the applicant may be affected as a consequence of a refusal to grant planning permission, and the right of appeal from the Respondent’s decisions is limited to the right of appeal to this Tribunal.
43. Accordingly, in the finding of this Tribunal, natural justice requires that if a variance has been requested, the Respondent must consider and determine the request before determining the planning application as a whole. The Respondent breached natural justice and committed an error in law proceeding with the application as it did. It follows that failure to ‘take up’ the variance application at the substantive hearing deprived the Appellant of their opportunity to make representations to the Respondent which would have been relevant to the Respondent’s discretion and the applications which the Appellant had made, resulting in a further breach of natural justice.

CONCLUSION

44. Mr. Broadhurst argued at the hearing of this appeal that the Tribunal can and should not merely set aside the Decision, but should reverse it and grant planning permission to the Appellant. It

was specifically argued that the Tribunal could adopt a purposive interpretation of sub-regulation 9(8) that the purpose of the 80' width requirement is to ensure compliance with setbacks, and since development within setback requirements is possible, grant permission. Alternatively, he argued that the Tribunal could decide to grant the variance which the Respondent failed to consider. In support of these arguments, Mr. Broadhurst noted that Ms. Middleton in her written submissions had conceded that "*while on the face of it, [it] might be true*" that the variance application "*fell within*" sub-regulation 8(13)(b)(iii), indicating that the variance application had enough merit to fall within an identified ground upon which the Respondent could have relied to grant the variation if it was so minded. In summary, it was argued the Tribunal should either interpret sub-regulation 9(8) in the Appellant's favour, or grant a variance pursuant to sub-regulation 8(13)(b)(iii), and grant planning permission.

45. The Tribunal is of the view that the substantive planning application should be decided by the Respondent, as the questions which the application raises are best considered by the Respondent.

46. This appeal is allowed. We summarise our conclusions as follows:
 - i) The Respondent has erred in law by misdirecting itself; failing to consider the planning application in accordance with the Regulations; failing to consider the variance application at all; taking into account the irrelevant percentage and purpose tests; not taking into account factors that are relevant or would have been relevant if the Respondent had directed itself correctly; and breaching the Appellant's right to natural justice.

 - ii) The Respondent's Decision is unreasonable because irrelevant factors were considered and relevant factors were not.

 - iii) The Respondent breached the Appellant's right to natural justice by applying alternative tests to determine their application, without giving to the Appellant notice or a proper opportunity to address the Respondent as to the appropriateness and intended application of these tests.

- iv) The Decision of the Respondent is set aside and the application of the Appellant is remitted to the Respondent for reconsideration.



Travis A. Ritch

Chairperson