

This instrument prepared by:  
Jerry Buckley, Principal Planner  
Islamorada Village of Islands  
Planning and Development Services Dept.  
PO Box 568  
Islamorada, FL 33036

**Doc# 1761116 09/30/2009 3:19PM**  
**Filed & Recorded in Official Records of**  
**MONROE COUNTY DANNY L. KOLHAGE**

After recording return to:  
Jerry Buckley, Principal Planner  
**Islamorada Village of Islands**  
Planning and Development Services Dept.  
PO Box 568  
Islamorada, FL 33036  
RE #s 00401340-000000  
00401340-000601 through 757

**Doc# 1761116**  
**Bk# 2433 Pg# 2462**

### **RESOLUTION NO. 09-05-25**

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING THE REQUEST BY CHEECA HOLDINGS, LLC FOR AN ADMINISTRATIVE VARIANCE TO REPLACE NONCONFORMITIES PURSUANT TO SECTIONS 30-222 AND 30-741 OF THE VILLAGE CODE OF ORDINANCES ON PROPERTY LOCATED AT 81801 OVERSEAS HIGHWAY AS LEGALLY DESCRIBED IN EXHIBIT "A"; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Cheeca Holdings, LLC (the "Applicant") submitted an application for an administrative variance (the "Variance Request") pursuant to sections 30-222, 30-738 and 30-741 of the Code of Ordinances of Islamorada, Village of Islands, Florida (the "Village Code") for property with the Real Estate Numbers 00401340-000000 and 00401340-000601 through 757, and further described in Exhibit "A" (the "Property"); and

**WHEREAS**, the Property is located within the Tourist Commercial (TC) Zoning District; and

**WHEREAS**, on December 31, 2008, the hotel lodge building of Cheeca Lodge and Spa was destroyed by fire; and

**WHEREAS**, the fire-damaged structure was 62 feet in height from existing grade and the proposed replacement structure will be 57 feet in height from grade; and

**WHEREAS**, Comprehensive Plan Policy 1-2.2.7 allows for the reduction of any applicable regulations upon a finding that the reduction is consistent with the intent of the Plan; and

**WHEREAS**, the fire-damaged structure was a legally established non-conforming structure; and

**WHEREAS**, the proposed replacement structure will reduce the non-conformity by reducing the cubic volume of development over 35 feet and further the intent of the Plan to protect the vested rights of property owners pursuant to Comprehensive Plan Policy 1-3.1.5; and

**WHEREAS**, the Development Review Committee (the "DRC") reviewed the variance request at a special call meeting on April 23, 2009 and recommended approval to the Director of Planning and Development Services (the "Planning Director"); and

**WHEREAS**, the Islamorada, Village of Islands, Village Council (the "Village Council") conducted a duly noticed public hearing regarding the request on May 14, 2009.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:**

**Section 1. Findings of Fact.**

The Village Council, having considered the testimony and evidence presented by all parties, including Village Staff, does hereby find and determine:

(1) The Applicant does meet the requirements set forth in Sections 30-222 and 30-741 of the Village Code and has demonstrated through competent substantial evidence the criteria for the granting of the Variance Request; and

(2) The Village Council approves the Variance Request submitted by the Applicant.

**Section 2. Conclusions of Law.**

Based upon the above Findings of Fact, the Village Council does hereby make the following Conclusions of Law:

(1) The Variance Request has been processed in accordance with the Village Comprehensive Plan and Village Code; and

(2) In rendering its decision, as reflected in this Resolution, the Village Council has:

- (a) Accorded procedural due process; and
- (b) Observed the essential requirements of the law; and
- (c) Supported its decision by competent substantial evidence contained within the record.

**Section 3. Variance Approval:** Pursuant to Section 30-222 “Administrative Variance Review” and Section 30-741 “Criteria for administrative variance for specified changes to nonconformities” of the Village Code, the Variance Request is hereby approved subject to the following conditions:

(1) The Variance Request is only approved for the footprint of the structure indicated on the site plan signed and sealed by Robert Barnes and Associates, dated February 29, 2009.

- (2) The maximum height of the hotel lodge shall not exceed 57 feet from average adjacent grade as defined in Section 30-32 of the Village Code.

**Section 4.** **Effective Date.** This Resolution shall not take effect until after both thirty (30) days following the date it is filed with the Village Clerk, during which time the Request herein shall be subject to appeal as provided in the Village Code; and following the thirty (30) days, this Resolution shall not be effective or acted upon by the Applicant until forty-five (45) days following its rendition to the Department of Community Affairs (DCA), pursuant to Chapter 9J-1 of the Florida Administrative Code. During those forty-five (45) days, the DCA may appeal this Resolution to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

**Section 5.** **Term.** This Development Order shall become null and void, with no further notice required by the Village, unless a complete building permit application for site preparation and building construction with revised plans, as required herein, is submitted to the Village Building Official within the time frame specified in the LDRs. All required Certificates of Occupancy shall be procured within three (3) years of the date of this Development Order unless a time extension is granted by the Director or the Village Council. If the Development Order is appealed under the LDRs or by the DCA, the above time limits shall be tolled until the appeals are resolved.

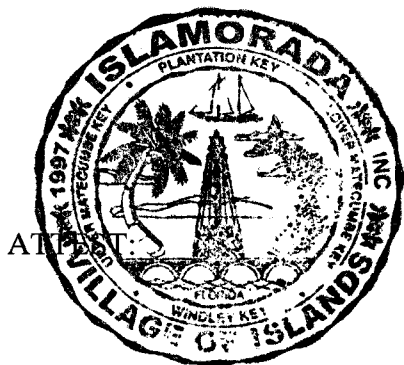
The foregoing resolution was offered by Councilwoman Hill, who moved for its adoption on reading. This motion was seconded by Vice Mayor Reckwerdt, and upon being put to a vote, the vote is as follows:

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS:

Mayor Don Achenberg	YES
Vice Mayor Michael Reckwerdt	YES
Councilman Dave Boerner	YES
Councilwoman Jill Zima Borski	YES
Councilwoman Cathi Hill	YES

PASSED AND ADOPTED THIS 14TH DAY OF MAY, 2009.



*Don Achenberg*  
 \_\_\_\_\_  
 DON ACHENBERG, MAYOR

*Beverly Raddatz*  
 \_\_\_\_\_  
 VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF ISLAMORADA, VILLAGE OF ISLANDS ONLY:

*[Signature]*  
 \_\_\_\_\_  
 VILLAGE ATTORNEY

This Resolution was filed in the Office of the Village Clerk on this 18 day of MAY, 2009.

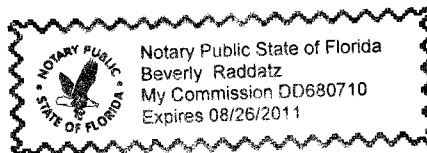
Sworn to and subscribed before me this 18 day of MAY, 2009

*Beverly Raddatz*  
 \_\_\_\_\_  
 (Signature of Notary Public - State of Florida)

Beverly RADDATZ  
 \_\_\_\_\_  
 (Print or Type Commissioned Name of Notary Public)

Personally Known  OR Produced Identification

Type of ID Produced \_\_\_\_\_



## LEGAL DESC

That certain tract of land lying in Government Lots 1 and 2 of Section 32, Township 63, South Range 37 East, more particularly described as follows:

Beginning at a point where the Easterly line Main Highway, running East of and approximately parallel to the right of way of the Florida East Coast Railway, intersects the Northeast boundary line of the tract of land known as Lot 1 of McDonald's Subdivision of part of Government Lots 1, 2 and 3 of the aforesaid Section 32; thence run in a Southerly direction on the aforesaid Northeasterly line of the said McDonald's Subdivision to the high water line of the Atlantic Ocean; thence run in a Northeasterly direction along the high water line of the Atlantic Ocean one hundred seventy and one-half (170-1/2) feet, more or less, to the most Southerly corner of the tract of land heretofore conveyed to Preston B. Pinder, Jerome B. Pinder and William H. Parker as Trustees of the Matecumbe Methodist Episcopal Church South, which tract will be hereinafter referred to as "The Church Tract"; thence run in a Northwesterly direction along the Southwesterly boundary of the said Church Tract 124 feet, more or less to the most Westerly corner of the said Church Tract; thence run in a Northeasterly direction along the Northwesterly line of the said Church Tract, eight four and one-tenth (84-1/10) feet; thence run Northwesterly parallel to the Northeast boundary line of the aforesaid Lot 1 of McDonald's subdivision of Part of Government Lots 1, 2 and 3 of the aforesaid Section 32 to the East line of the aforesaid Main County Highway; and thence run in a Southwesterly direction along the Southeasterly line of said Main Highway to the Point of Beginning.

ALSO

## PARCEL II:

The Northeasterly one-half (1/2) of Lot 1 and Lots 5 and 6 in Block 7, and Lots A and B, of Stratton's Subdivision, according to Plat thereof, recorded in Plat Book 2, Page 38 of the Public Records of Monroe County, Florida; ALSO

## PARCEL III:

A parcel of submerged land in Sections 32 and 33, Township 63 South, Range 37 East, Upper Matecumbe Key, Monroe County, Florida, more particularly described as follows:

From the most Northerly corner of Lot A, according to Plat of Stratton's Subdivision as recorded in Plat Book 2 at Page 38, Public Records of Monroe County, Florida; run Southeasterly along the Northeasterly boundary of Lot A, a distance of 855 feet to the high water line to the shore of the Atlantic Ocean and the Point of Beginning of the parcel hereinafter described; thence meandering said high water line in a Southwesterly direction and shown on said Plat of Stratton's Subdivision, a distance of 1,077 feet more or less to the Northeasterly boundary line of Lot 1, as shown on Plat of "Part of Government Lot 1 and all of Lot 2 and 3 of Section 32, Township 63 South, Range 37 East, and all of Lot 1, Section 5, Township 64 South, Range 37 East, As surveyed for Lee Pinder by George McDonald, C.E." and recorded in Plat Book 1 at Page 41, Public Records of Monroe County, Florida; thence Southeasterly along the Southeasterly prolongation of the Northeasterly boundary line of said Lot 1, according to Plat Book 1, Page 41, a distance of 100 feet; thence Northeasterly 100 feet Southeasterly from and parallel to said high water line, to a point of intersection with the Southeasterly prolongation of the Northeasterly boundary line of said Lot A; thence Northwesterly along said Southeasterly prolongation of the Northeasterly boundary line of Lot A, a distance of 100 feet to the Point of Beginning; excepting from the above described property, that portion thereof which is included between the prolongation of the Northeasterly and Southwesterly boundary line of the tract having a frontage of 114.1 feet in the Atlantic Ocean and owned by the Matecumbe Methodist Church; AND

## PARCEL IV:

Lot 2, Block 7, "Stratton's Subdivision", according to the plat thereof recorded in Plat Book 2, at Page 38, of the Public Records of Monroe County, Florida.