VILLAGE OF KEY BISCAYNE

Office of the Village Manager

MEMORANDUM

Village Council
Robert L. Vernon, *Mayor*
Enrique Garcia, *Vice Mayor*
Michael Davey
Robert Gusman
Michael E. Kelly
Jorge E. Mendia
Thomas Thornton

Village Manager
Genaro "Chip" Iglesias

DATE: January 19, 2010

TO: Honorable Mayor and Members of the Village Council

FROM: Genaro "Chip" Iglesias, Village Manager

RE: Dock and Boat Variances: 500 S. Mashta Drive

RECOMMENDATION

It is recommended that the request be denied.

BACKGROUND

The applicant is requesting two (2) variances related to a dock that projects 40 ft. from a bulkhead when the code permits 25 ft. and a boat that is outside of the D - 5 triangle regulation. Based on the attached report from the Building, Zoning, and Planning Director, it is recommended that the Council deny the request because it is not consistent with the review criteria listed in the Zoning and Land Development Regulations.

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Village Manager
Genaro "Chip" Iglesias

DT: January 19, 2010

TO: Genaro "Chip" Iglesias, Village Manager

FR: Jud Kurlancheek, AICP, Director
Building, Zoning, and Planning Department

RE: Boat and Dock Variances: 500 South Mashta Drive

APPLICATION SUMMARY

Request	1.	To permit a dock to project 40 ft. from a bulkhead when the maximum projection is 25 ft. as set forth in Section 30-100(f)(3)(a)(3) of the Zoning and Land Development Regulations.
	2.	To permit a watercraft to project 8 ft. 6 in. outside of the triangle as set forth in Section 30-100(f)(3)(a)(5) of the Zoning and Land Development Regulations.
Applicant		Mijo KG, LLC
Site Address		500 South Mashta Drive, Key Biscayne, FL 33149
Comprehensive Plan		Single Family
Zoning District		IR Island Residential
File Number		RV - 31
Recommendation		Denial

EXPLANATION AND ANALYSIS

The Request: The applicant is requesting two variances associated with the construction of a new dock at 500 South Mashta Drive. The first request is to permit a dock to project 40 ft. from the bulkhead and the code permits a maximum projection of 25 ft. The second request is to permit a boat to be 8 ft. 6 in. outside of the triangle.

Applicant's Justification to Approve the Variance: The applicant's basis for the request is that Miami-Dade County DERM requires these specifications. The applicant is proposing a 30 ft. - 40 ft. boat. The owner purchased this property in May 2009. The applicant submitted plans for a single family home and the permit was ready to be picked up. Unfortunately, the applicant did not complete the process within six (6) months as required by the Florida Building Code. As such, the approval of the building permit application is not valid.

Variance Review Criteria: The Village's Zoning Ordinance provides for the granting of variance(s) subject to a finding that the petition meets the following criteria:

Criteria 1 Maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community.

Analysis: The triangle regulation is designed to place docks and boats near the center of the property thereby preserving views from the adjacent properties. As such, the regulation implements this criteria. Any application which deviates from this regulation is automatically inconsistent with this criteria.

Finding: Inconsistent.

Criteria 2 Is compatible with the surrounding land uses and would not be detrimental to the community.

Analysis: The adjacent properties have docks that project approximately 15 and 20 ft. from the bulkhead. Since the applicant is requesting a maximum projection of 40 ft. from bulkhead, it would be inconsistent with the adjacent docks.

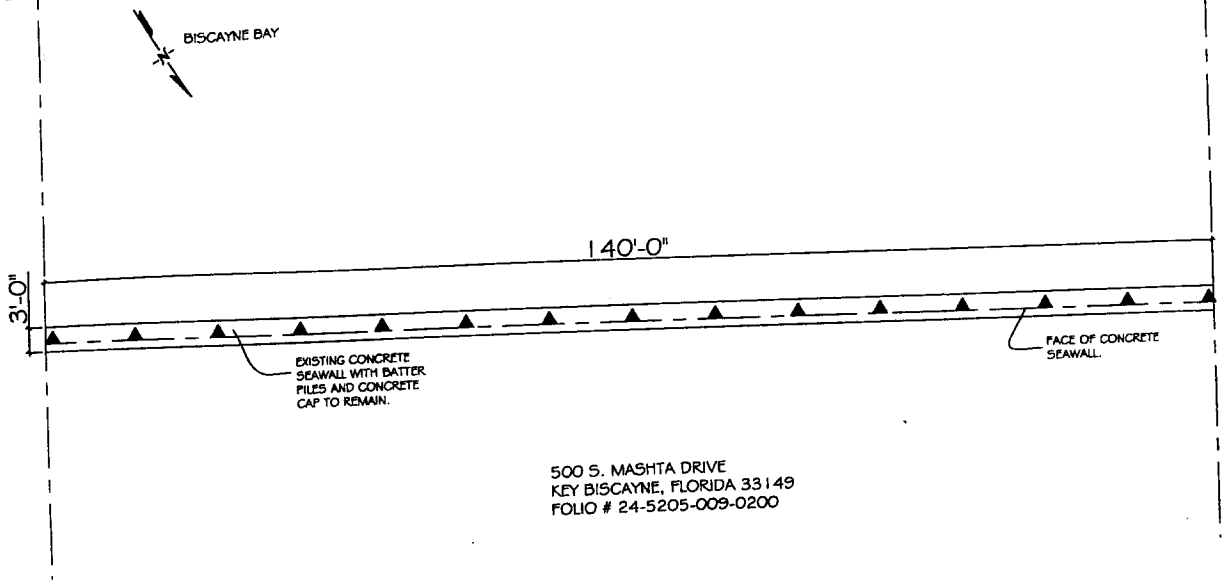
Finding: Inconsistent.

RECOMMENDATION

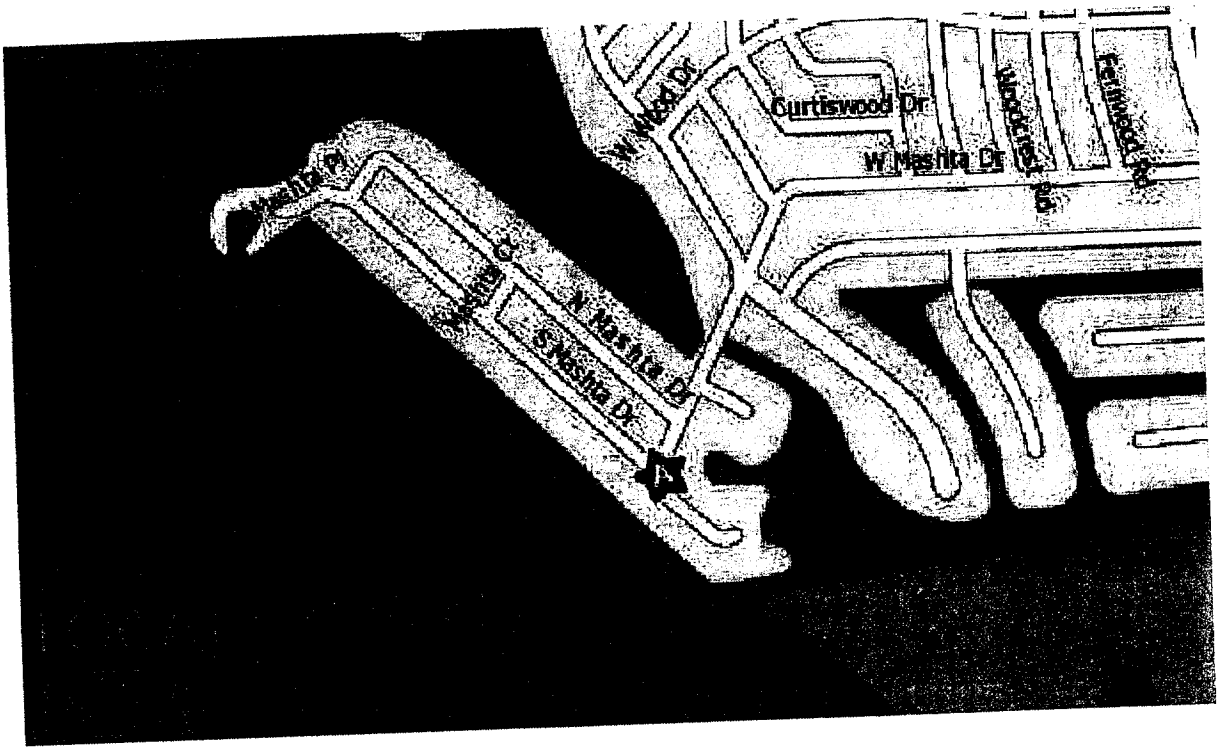
It is recommended that the request be denied as it is inconsistent with the review criteria.

SITE PLAN

SCALE: NTS.



500 S. MASHTA DRIVE
KEY BISCAYNE, FLORIDA 33149
FOLIO # 24-5205-009-0200



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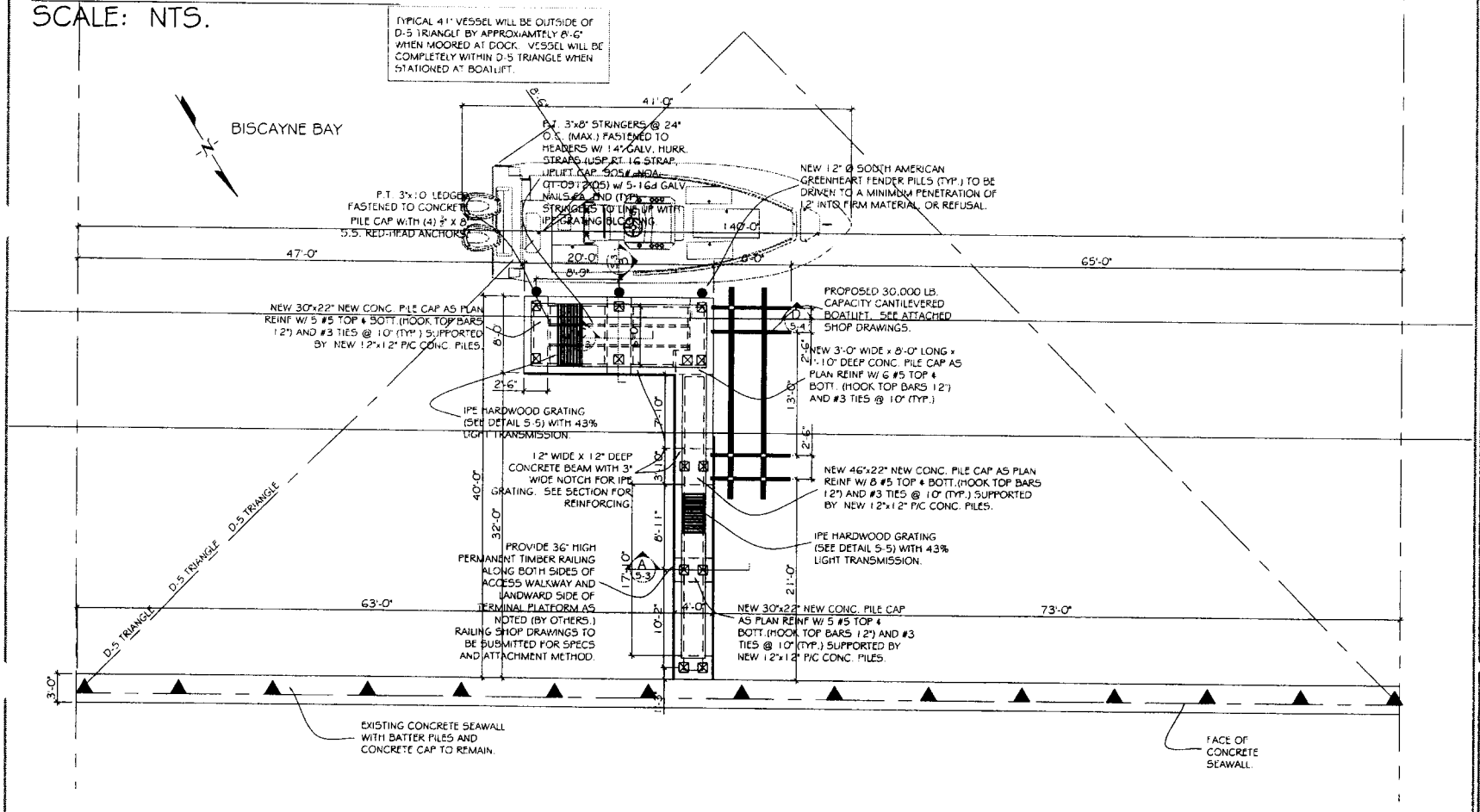
PROPOSED SITE PLAN

SCALE: NTS.



Solver Structural Partnership, Inc.
7500 NW 25 St. suite 212 Miami, Florida 33122
Phone:(305) 592 9396
Fax: (305) 591 3447
E-Mail: solverstruct@cs.com
DESIGN - INSPECTION - INVESTIGATION - REPORTS

Denis K. Solano
P.E. 56912
S.E. 21146
C.O.A. 00009095

TRIDENT environmental consultants, inc.
3051 NW 63rd Court (P.O. Box 650-0295 FL)
2345 NW 33rd Ave. Miami, Florida 33142

job name: VIERGUTZ RESIDENCE
5100 SOUTH MASHTA DRIVE
KEY BISCAYNE, FLORIDA

title: NEW CONCRETE BOAT DOCK WITH FENDER PILES AND 30K BOATLIFT

date
issued
drawn
checked
project no
reasons

sheet no
S-2
2 of 5

VILLAGE OF KEY BISCAYNE

Department of Building, Zoning and Planning

Village Council
Robert L. Vernon, Mayor
Michael Davey, Vice Mayor
Jorge Mendia
Enrique Garcia
Robert Gusman
Michael E. Kelley
Thomas Thornton

Jud Kurlancheek, AICP
Director

Eugenio M. Santiago, P.E.
Chief Building Official

PLANNING AND ZONING APPLICATION

Date Filed: 12-15-09

File # RV-31
To be completed by staff

1. REQUEST FOR:

( ) SUPERVISORY VARIANCE
( ) ADMINISTRATIVE VARIANCE
(X) REGULATORY VARIANCE
( ) APPEAL OF AN ADMINISTRATIVE DECISION
( ) SITE PLAN APPROVAL
( ) UNUSAL USE
( ) OTHER _____

( ) AMENDMENT TO ZONING ORDINANCE
( ) SPECIAL EXCEPTION
( ) AMENDMENT TO THE COMPREHENSIVE PLAN
( ) ZONING DISTRICT CHANGE

Explain your request:

We are requesting a Variance of the Village of Key Biscayne Zoning Code, Section 30-100 (3) Docks and Mooring Piles, Item 5, which states "No dock shall extend from a bulkhead into any canal, lake, or waterway a distance greater than ten feet, or ten percent of the width of the waterway, whichever is less. Notwithstanding the foregoing, no dock or mooring pile shall extend into Biscayne Bay a distance of more than 25 feet from the bulkhead" in order to construct a dock (including a boatlift) that projects 40' into Biscayne Bay. Due to the 40' projection of the dock, we are also requesting a variance of Item 3, to allow a portion of the vessel to be moored there to broach the D-5 triangle. This request is being made due to Miami-Dade County Code requirements which mandates a minimum of 4' mean low water within the entire slip area for any boat dock located within Biscayne Bay, or adequate water depth within the slip area defined as draft of vessel to be moored plus 12". At this specific property that depth is not reached until 18' water ward of the seawall. Dredging in order to achieve greater depth at this site is not allowed due to significant resources. This request is also being made due to Miami-Dade County Code requirements of the minimization of impacts to resources within proposed docks and slips. Resources at the site range from dense coverage of Thalassia testudinum, and Halodule wrightii, and moderate coverage of Syringodium filiforme. Total seagrass coverage at the site is 60 to 70% These seagrasses do not thin out in coverage until approximately 32' waterward of the seawall. The combination of dense resources, and

Var. 1

Var. 2

88 West McIntyre Street · Suite 250 · Key Biscayne, Fl 33149 · (305) 365-5512 · Fax (305) 365-5556

inadequate water depths provide limited design options, with the proposed design being the least impacting in terms of resources, providing adequate water depth, and maintaining the dock, and lift within the D-5 triangle. The proposed 30' to 40' vessel to be moored on the lift will be within the D-5 triangle, with a portion (approximately 10' to 15' will be outside the D-5 triangle when moored there.

2. Street Address of Property: **500 South Mashta Drive Folio # 24-5205-009-0200**

   Legal Description: Lot(s) **19** Block **3**

   Subdivision: **Mashta Island A Replat**

3. Name of Applicant: **Mijo KB, LLC**

   Mailing Address of Applicant: **PO Box 491410, Key Biscayne, Florida 33149**

   Business Telephone: **(305) 638-0266** Home: _____ Fax: _____

4. Name of Property Owner if Different from Applicant:

   Address of Property Owner if Different from Applicant:

   Business Telephone: Home: Fax:

5. Contact Person: Name **Alan Viergutz** Address **PO Box 491410, Key Biscayne, Fl 33149**

   Phone Number: **(305) 638-0266** Fax:

6. Name / address of anyone else who should receive notice of hearing?

   Trident Environmental Consultants, 2845 NW 35th Street, Miami, Florida 33142

7. If applicant is owner, indicate date purchased: **May 2009.**
8. If applicant is lessee, indicate date leased _____ Years _____
9. Is there an option to purchase the property ? Yes ( ) No (X)
10. Is the request the result of a violation notice ? Yes ( ) No (X) If yes, attach a copy of the violation.
11. Existing use of property: **Single Family Residence**. If residential, how many apartments ____ hotel units ____. If commercial, how many sq. ft. _____ in your space. Single family home ? Yes (X) No ( )

12. If this application pertains to an Appeal of an Administrative Decision, indicate the basis of the appeal. (If necessary attach additional explanation). **N/A.**

13. If this is a request for a variance, the Code requires that you substantiate why this request should be granted. In order to do this properly, please indicate how your request complies with the following standards:

    a. Maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community.

    The basic intent of the Zoning code as it pertains to docks is to provide to prevent view of the water ward extension of a dock to be a hazard to navigation, or impede boat traffic. The proposed concrete boat dock, projecting 40' from the seawall does not impede boat traffic in the area, and is consistent with other docks along this section of Biscayne Bay.

    The proposed dock is also in compliance with the proposed ZORC recommendation for docks on Biscayne Bay, as well as recent code change pertaining to properties along the 100 and 200 block of Harbor Drive, which face a similar situation.

    This request is being made due to Miami-Dade County Code requirements which mandates a minimum of 4' mean low water within the entire slip area for any boat dock located within Biscayne Bay, or adequate water depth within the slip area defined as draft of vessel to be moored plus 12". At this specific property that depth is not reached until 18' water ward of the seawall. Dredging in order to achieve greater depth at this site is not allowed due to significant resources. This request is also being made due to Miami-Dade County Code requirements of the minimization of impacts to resources within proposed docks and slips. Resources at the site range from dense coverage of Thalassia testudinum, and Halodule wrightii, and moderate coverage of Syringodium filiforme. Total seagrass coverage at the site is 60 to 70% These seagrasses do not thin out in coverage until approximately 32' waterward of the seawall. The combination of dense resources, and inadequate water depths provide limited design options, with the proposed design being the least impacting in terms of resources, providing adequate water depth, and maintaining the dock, and lift within the D-5 triangle. The proposed 30' to 40' vessel to be moored on the lift will be within the D-5 triangle, with a portion (approximately 10' to 15' will be outside the D-5 triangle when moored there.

    b. Is compatible with the surrounding land uses and would not be detrimental to the community.

    The proposed concrete boat dock, projecting 40' from the seawall does not impede boat traffic in the area, and is consistent with other docks along this section of Biscayne Bay.

The proposed dock is also in compliance with the proposed ZORC recommendation for docks on Biscayne Bay, as well as recent code change pertaining to properties along the 100 and 200 block of Harbor Drive, which face a similar situation.

14. If this is a request for any other type of application, please see staff for a listing of the evaluation criteria.

15. All supporting data and exhibits submitted with this application become a permanent part of the public records.

16. If you are a lobbyist as described in the Village Code, please contact the Village Clerk at 305-365-5506.

SUPERVISORY VARIANCES ONLY

The Supervisory procedure requires the nearest abutting property owner to approve your request and your certification that the work was not performed by you. Your signature on this application constitutes your certification that you did not perform the work. The next step is to request the nearest property owner to sign below or provide a letter approving your request Their signature certifies that they have read this application and approves of the request.

ABUTTING PROPERTY OWNER AFFIDAVIT

I, the undersigned, have read or have had read to me the information applicable for a request for a Supervisory Variance from the Zoning Regulations. I fully understand that by subscribing my name to the below consent form that I am waiving any objection to the proposed construction as outlined above and as shown on the plans accompanying this application. I further certify that I have subscribed my name freely and without any duress or apparent misrepresentation on the part of the applicant,

Date	Name (Type or Print)	Address	Signature

ADMINISTRATIVE VARIANCES ONLY

The Administrative Variance procedures require all abutting property owners to approve your request. The attached map wilt assist you in identifying who must sign the below petition. It is suggested you meet with staff prior to circulating your petition.

ABUTTING PROPERTY OWNER AFFIDAVIT

I, the undersigned, have read or have had read to me the information applicable for a request for a Supervisory Variance from the Zoning Regulations. I fully understand that by subscribing my name to the below consent form that I am waiving any objection to the proposed construction as outlined above and as shown on the plans accompanying this application. I further certify that I have subscribed my name freely and without any duress or apparent misrepresentation on the part of the applicant,

Date	Name (Type or Print)	Address	Signature
Date	Name (Type or Print)	Address	Signature
Date	Name (Type or Print)	Address	Signature

Date	Name (Type or Print)	Address	Signature
Date	Name (Type or Print)	Address	Signature
Date	Name (Type or Print)	Address	Signature
Date	Name (Type or Print)	Address	Signature

If you need additional signatures please use the above format.

CERTIFICATION OF COMPLIANCE WITH APPLICABLE REGULATIONS

(I)(We) certify that (I)(we) understand and will comply with the provisions and regulations of the Zoning Regulations. (I)(we) further certify that the above statements and drawings made on any paper or plans submitted herewith are true to the best of (my)(our) knowledge. (I)(we) understand that the application and attachments become part of the official records of the Village and are not returnable.

Signature of Applicant: _____ Date 11 DEC, 2009

Signature of Owner: _____ Date 11 DEC, 2009

Application Received by: _____ Date 12-15-09

Approved by: _____ Date _____

AFFIDAVITS

Complete one or more of the following that relates to your request.

Corporation Affidavit

I, Alan Viergutz, being first duly sworn, depose and say that I am the Manager of the aforesaid corporation, and as such, have been authorized by the corporation to file this application and all supplemental data attached to and made a part of this application are honest and true to the best of our knowledge and belief; that said corporation is the owner/tenant of the property described herein and which is the subject matter of the proposed hearing.

I, Alan Viergutz, hereby authorize the staff of the Village of Key Biscayne to enter my property for the purpose of inspecting the property and posting a NOTICE OF PUBLIC HEARING on my property and I take the responsibility of removing this notice after the date of hearing. I also authorize members of the Village Council to inspect my property. I understand these inspections are necessary to permit staff and members of the Village Council to perform their responsibilities as required by the Zoning Ordinance.

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

Signature of Manager (Corp. Seal)

Sworn to *(or affirmed)* and subscribed before me this 4 day of Dec, 2009, by Alain Viergutz

Name of person making statement.

BIBIANA VILLAZON
MY COMMISSION # DD 705397
EXPIRES: November 22, 2011
Bonded Thru Notary Public Underwriters

Signature of Notary Public – State of Florida

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ✓ OR Produced Identification _____

Type of identification Produced _____

(3) H09000088299

FILED

2009 APR 16 AM 7:56

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLES OF ORGANIZATION
FOR
MIJO KB INVESTMENTS, L.L.C.,
A FLORIDA LIMITED LIABILITY COMPANY

ARTICLE I - NAME

The name of the Limited Liability Company is: MIJO KB INVESTMENTS, L.L.C.

ARTICLE II - ADDRESS

The street address of the principal office of the Limited Liability Company is: 200 Crandon Blvd. #311, Key Biscayne, Florida 33149

The mailing address of the principal office of the Limited Liability Company is: PO Box 491410, Key Biscayne, Florida 33149

ARTICLE III - REGISTERED AGENT, REGISTERED OFFICE, & REGISTERED AGENT'S SIGNATURE

The name and the Florida street address of the registered agent are:

Lisette Pie Salazar, Esq.
200 Crandon Blvd., Suite 311
Key Biscayne, Florida 33149

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent as provided for in Chapter 608, F.S.

Lisette Pie Salazar, Esq.

This instrument prepared by:
Lisette Pie Salazar, Esq.
Florida Bar No. 0377410
200 Crandon Blvd., Suite 311
Key Biscayne, Florida 33149

H09000088299

H09000088299

ARTICLE IV - MANAGEMENT

The Limited Liability Company is to be managed by one or more manager(s) and is, therefore, a manager-managed company. The name and address of the person who will serve as the initial Manager is:

Alain Viergutz
PO Box 491410
Key Biscayne, Florida 33149

Lisette Pie Salazar, Esq.
Authorized Representative of a Member

(In accordance with section 608.408(3), Florida Statutes, the execution of this document constitutes an affirmation under the penalties of perjury that the facts stated herein are true.)

FILED
2009 APR 16 AM 7:56
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

H09000088299

MIAMI-DADE COUNTY
Carlos Alvarez, Mayor

Department of Environmental Resources Management
Environmental Resources Regulation Division
701 NW 1st Court, 6th Floor
Miami, Florida 33136-3912
T 305-372-6567 F 305-372-6407

miamidade.gov

October 30, 2009

Mijo KB Investments, LLC
c/o Alan Viergutz
500 S Mashta Drive
Key Biscayne, Florida 33149

Re: Class I Permit Application 2009-CLI-PER-00143: Mijo KB Investments, LLC – Installation of an L-shaped dock and boatlift located at 500 S Mashta Drive, Miami-Dade County, Florida. (Folio No. 24-5205-009-0200)

Dear Mr. Viergutz:

Please accept this letter to clarify the Department's concerns regarding the proposed dock and boatlift installation at the above referenced property. DERM staff has conducted a biological assessment and has the following recommendations.

Pursuant to Section 24-48.3(3) of the Code of Miami-Dade County, a minimum water depth of 4 feet N.O.A.A. mean low water (MLW) datum is required within boat slips created by the installation of structures including but not limited to piers, docks, and pilings prior to the issuance of a Class I permit. In addition, no permit shall be issued for a proposed slip or any other proposed work which is to be used for the mooring or securing of a vessel, unless adequate water depth exists, including when the vessel is fully loaded. Please be aware, the Code required water depth is reached 18.2 feet waterward of the seawall in the area of the proposed dock and boatlift.

The biological assessment revealed the presence of Submerged Aquatic Vegetation (SAV) within the area of the proposed dock and slips; specifically, dense coverage of the seagrass *Thalassia testudinum*, *Halodule wrightii*, and moderate coverage of *Syringodium filiforme*. Please be advised that pursuant to Section 24-48.4 of the Code of Miami-Dade County, potential adverse environmental impacts and cumulative adverse environmental impacts for a proposed project must be avoided and/or minimized. Please be aware, the proposed dock and boatlift must be installed a minimum of 65 linear feet from the northwest property line in order to comply with the aforementioned section of the Code. Furthermore, the Department intends to authorize the installation of an L-shaped dock where the most waterward edge of the proposed dock is located 40 feet waterward of the seawall cap in order to avoid and minimize impacts to dense benthic resources onsite. As the project site supports dense and high quality benthic resources, dredging may not be authorized by our Department.

If you have any questions concerning the above referenced application, please contact me at (305) 372-6578 or batism@miamidade.gov.

Sincerely,

Martha Batista, Biologist I
Coastal Resources Section

cc: Trident Environmental Consultants, Inc. – Applicant's Permit Agent (bibi@tridentenv.com)