

**REGULATORY ISSUES CONCERNING THE RIU HOTEL PROJECT AT  
MAHOE BAY, ST. JAMES**

In early 2007, RIU Jamaicotel Ltd. was granted planning and building approval and an environmental permit for the construction of a 701-room hotel at Mahoe Bay in St. James.

2. The building approval provided for the construction of a resort development consisting of six (6) three-storey room blocks with other facilities that include a series of smaller buildings for spa services, mini-club, games area, beach restaurant, water sports station, wedding kiosk, laundry, utility and maintenance services, staff accommodation, staff offices, recreational facilities including a multi-purpose court and a tennis court and other hotel services totaling 57,298.28m<sup>2</sup> on a total lot area of 87,393.40m<sup>2</sup>. It further stipulated that the maximum height above ground level and above mean sea level for buildings constructed on the site is 14.89 meters and 16.89 meters, respectively. These height restrictions were imposed on the advice of the Jamaica Civil Aviation Authority taking into account the clear-way requirements for the nearby Sangster International Airport to meet international aviation safety standards.

3. Between December 2007 and March 2008 it was detected and confirmed that a number of breaches of the conditions of approval had been committed. These included the following:

- Four buildings were constructed with four instead of three floors as specified in the approved building plans. (Despite these variations, the total number of rooms conformed to the 701 rooms for which approval was granted);
- Basement areas constructed were not included in the approved building plan;
- The four buildings with the fourth floor addition inclusive of blocks 2, 5, 6 and the main building exceeded the maximum approved height by 1.4m, 1.1m, 1.4m and 1.65m respectively.



- A sea wall was erected in breach of the minimum prescribed distance from the shoreline;
- Two sea groynes exceeded the approved dimensions.

4. A Stop Order and the appropriate Enforcement Notices were served on the developers on May 2<sup>nd</sup> 2008 and May 12<sup>th</sup> 2008, respectively.

5. Following a series of meetings between the developers and the relevant authorities, the following actions were taken:

- (1) Sections of all buildings which exceeded the maximum approved height have been demolished or modified. The works included the reduction and redesign of the decorative facades and the slab roofs and an entire 4<sup>th</sup> floor of the main building had to be demolished. Rooms were redistributed across the site resulting in a net loss of 20 rooms and a reduction in the total number of hotel rooms from 701 to 681. The building area has also been reduced from 57,298.28m<sup>2</sup> to 55,568.95m<sup>2</sup>.
- (2) The sea wall which violated the setback requirements has been demolished.
- (3) The two groynes which exceeded the approved dimensions were modified to conform to the approved specifications.

6. In late May 2008 RIU Jamaicotel submitted an application to the St. James Parish Council pursuant to Section 15 of the Town and Country Planning Act seeking approval for variations to the approved plan, reflecting the changes as built and the corrective works detailed above. Copies of the revised plans were forwarded to the Town and Country Planning Authority on May 19<sup>th</sup>, 2008.

Section 15(1) of the Town and Country Planning Act states that “the power to grant permission to develop land shall include power to grant permission for the retention on land of any building or works constructed or carried out thereon before the date of the application or for the continuance of any use of land instituted before that date.....”.

Such approvals have been granted in numerous instances including other hotels where the amended plans meet the conditions which would normally have been imposed on such developments.



7. It is to be noted that neither the Parish Development Order for St. James which has been in effect since 1982 nor any other applicable Regulation prohibits the erection of 4-storey buildings on this site. The proximity of the Sangster International Airport requires that buildings erected at that location, should not exceed a specified height. With the demolition that has been carried out, the buildings that were in breach are now within the maximum height as determined by the Jamaica Civil Aviation Authority. These height restrictions also take into account the planned extension of the existing runway by 600 feet. **The Jamaica Civil Aviation Authority has certified that the structures as modified do not in any way impair the mandated clear-way specifications and pose no threat to aircraft landing or taking off from the Sangster International Airport.**

8. The Town and Country Planning Authority on August 5<sup>th</sup> 2008 approved the variations to the original plans to reflect the “as built” changes to individual structures and the corrective works that have been carried out. The developers have been required to pay the costs associated with the inspection and certification entailed in the approval of the modification and the monitoring of the project through to completion.

9. The application for amendment of the original building plans was approved by the St. James Parish Council on August 20<sup>th</sup> 2008, three months after submission and after the appropriate inspections were carried out and height measurements certified by Jamaica Civil Aviation Authority.

10. A further condition of approval is that the basement area not included in the original approved plan is to be used only for housing electrical and plumbing services and the pump for the swimming pool.

11. It would have been within the power of the authorities to order the demolition of those sections of the buildings that were at variance with the approved building plan even where they did not breach or were modified to conform to the applicable height and other restrictions. However, this would not have precluded the developers from applying under Section 15 of the Town and Country Planning Act, for a modification of the approved plan to accommodate the 4<sup>th</sup> floor and there is no legal basis on which the government would be obliged to deny such an application. The reasonableness of the authorities' decision in such circumstances, would have been open to judicial review.



12. The government has had reason to be concerned about the construction practices engaged on a number of sites being developed by investors, some of whom have displayed a misunderstanding or lack of understanding of the regulatory process and the obligation on the part of developers to comply. Breaches have been dealt with where they have occurred and increased monitoring and inspection are being carried out to ensure full compliance on these projects.

13. It is also the government's intention to increase the monetary penalties for breaches of approved building plans which, with a current maximum of J\$25,000 and J\$5,000 for each day that the breach continues, are currently much too low to serve as an effective deterrent. The authorities will also require, as it has done in this instance, corrective works to be undertaken, where the breaches involve violation of specifications or restrictions that are applicable to development at any particular location.

14. The issue regarding the appearance on plans presented by RIU Jamaicotel of the seal of the St. James Parish Council and the signature of an officer of the Council, without the appropriate authorization, is the subject of investigation by the Police and an early ruling is expected. The officer involved has been suspended from duty by the Parish Council Services Commission.

Bruce Golding  
Prime Minister

August 26, 2008



Pictures Taken on May 21, 2008 at the RIU4 Development Site



Photo 1: Entrance to basement area on main building

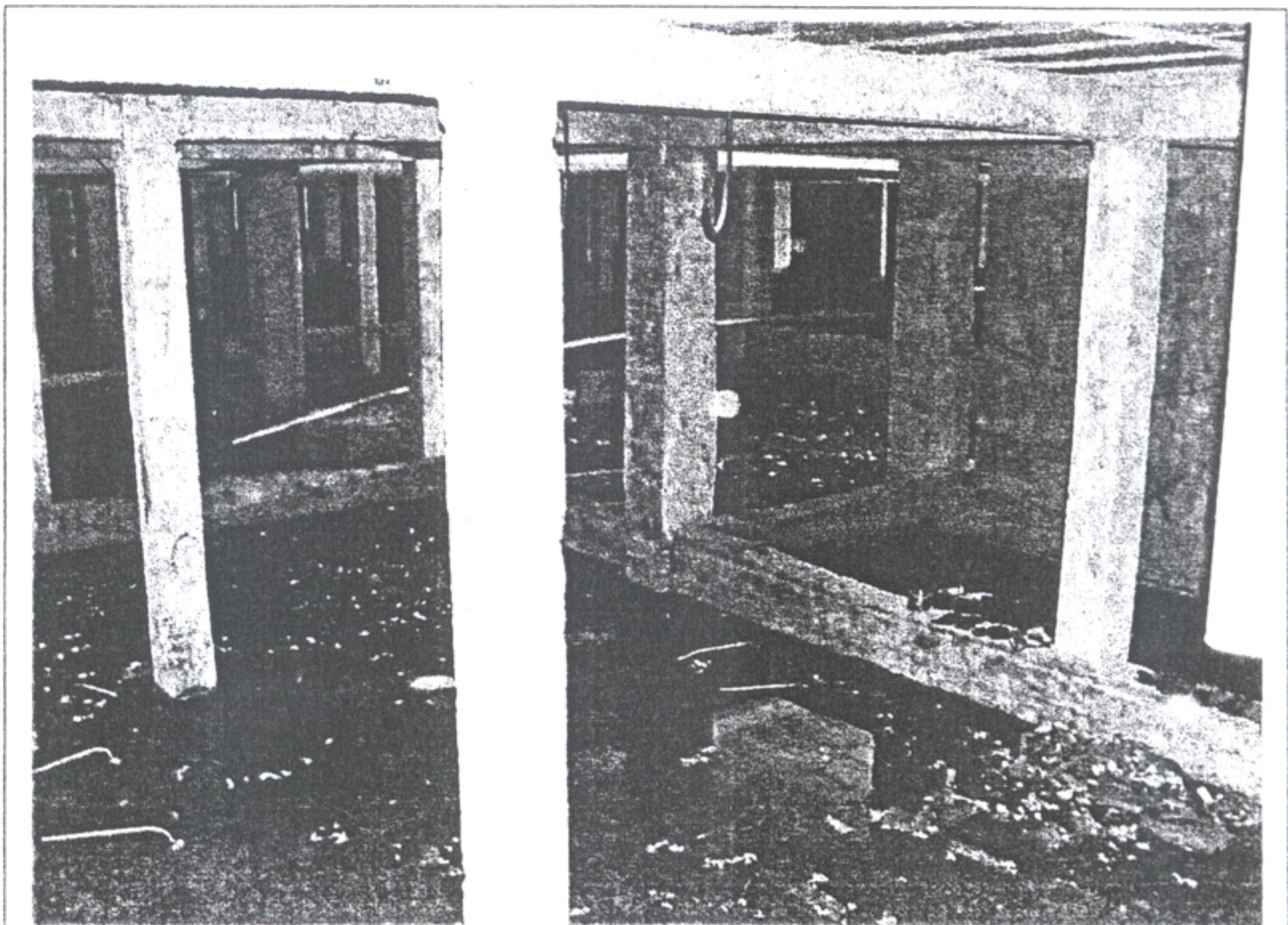
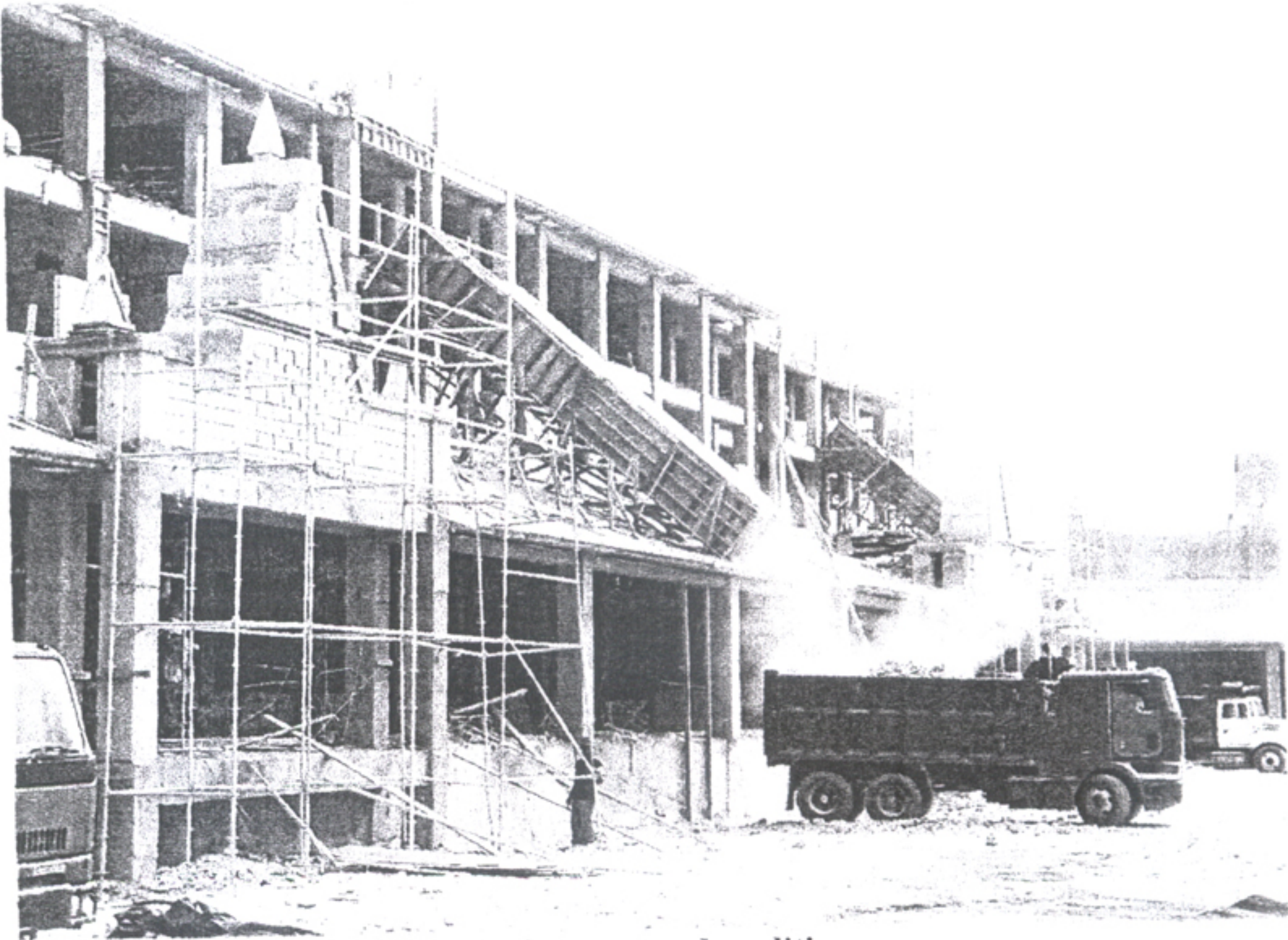


Photo 2: Basement area under main building





**Photo 3: Trucks receiving debris from room demolition**



**Photo 4: Trucks receiving debris from room demolition**



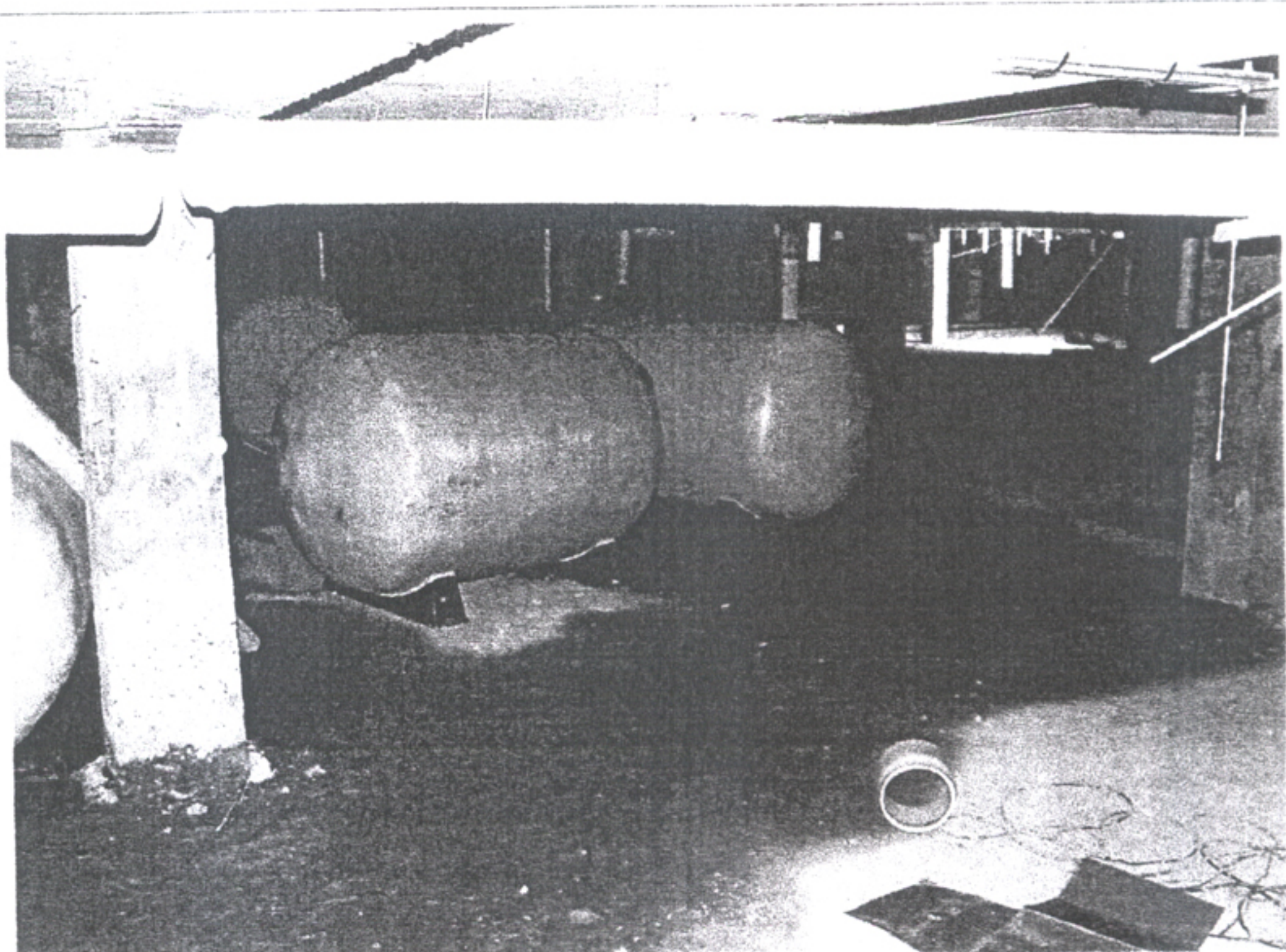


Photo 5: Four (4) story building 2 with ornamental facade being demolished



Photo 6: Construction workers demolishing ornamental facade on building 2





**Photo 7: Equipment and piping in basement area under Restaurant Building**



**Photo 8: Demolished wall that was located within 30 metre setback**





Photo 9: Three story building on property



Photo 10: 4 story building on left and 3 story building on right





**Photo 11: 4 story building with facade demolished in foreground. 3 story building in background**



**Photo 12: Buildings 5 and 6 - both 4 stories with ornamental facades being demolished.**



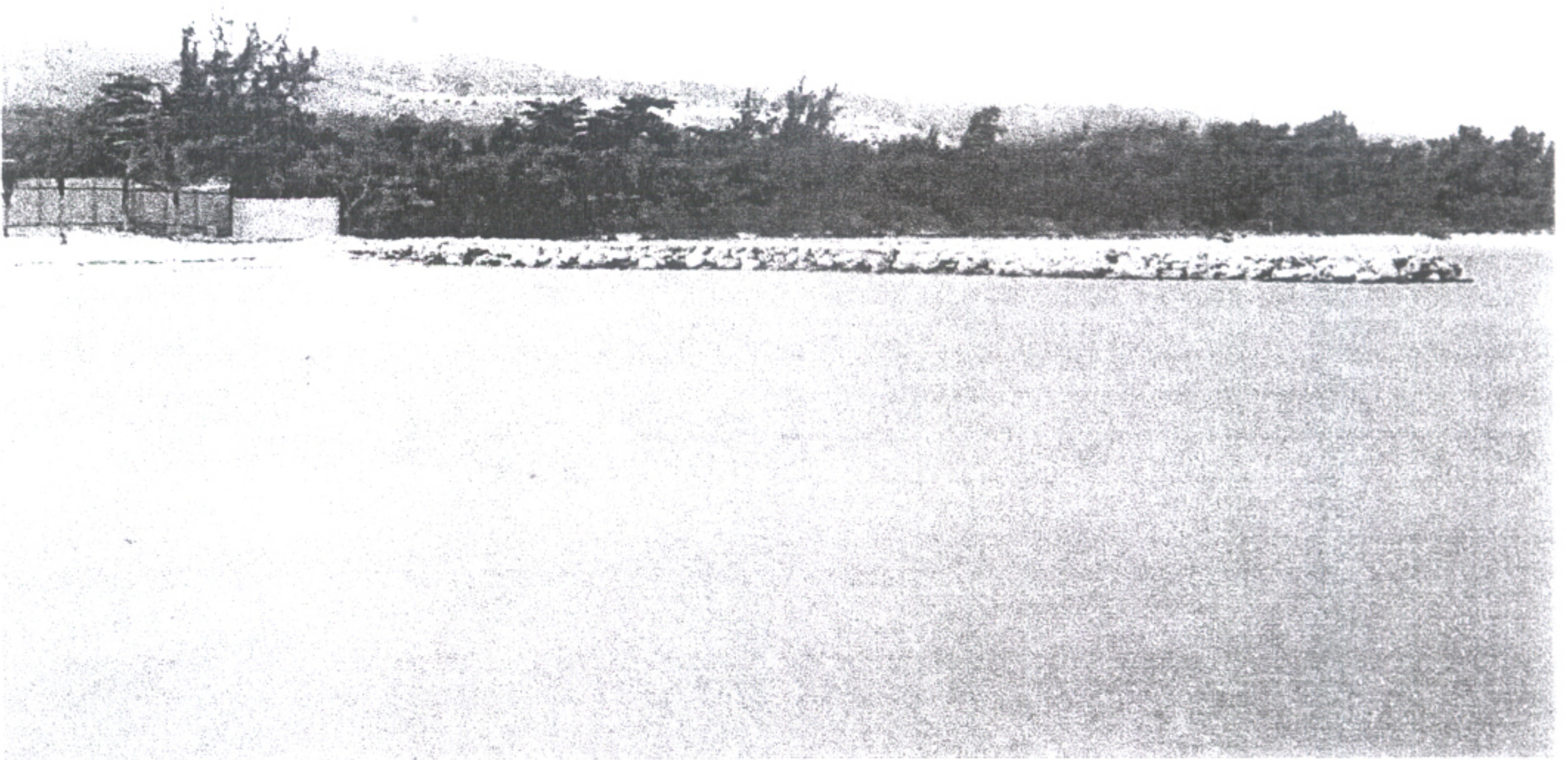


**Photo 13: Close up of construction workers on building 6**



**Photo 14: Groyne being realigned. Silt screen in place to prevent excess sedimentation**





**Photo 15: Pre existing groyne**