



TOWN OF PALM BEACH

Town Manager's Office

TOWN COUNCIL MEETING DEVELOPMENT REVIEW

**TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD**

AGENDA

JULY 13, 2016

9:30 AM

Welcome!

For information regarding procedures for public participation at Town Council Meetings, please refer to the end of this agenda.

I. CALL TO ORDER AND ROLL CALL

Mayor Gail L. Coniglio
Michael J. Pucillo, President
Richard M. Kleid, President Pro Tem
Bobbie Lindsay
Danielle H. Moore
Margaret A. Zeidman

II. INVOCATION AND PLEDGE OF ALLEGIANCE

III. RECOGNITIONS

IV. COMMENTS OF MAYOR GAIL L. CONIGLIO

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

VII. APPROVAL OF AGENDA

VIII. DEVELOPMENT REVIEWS

A. Appeals

1. ARCOM Appeal from Palm Beach Atlantic Association, Inc. (PBAA)
224 Atlantic Avenue / New Plant Material
John S. Page, Director of Planning, Zoning and Building Page 6
2. Appeal of Administrative Decision that MacKenzie Childs Cannot
Operate a Subordinate Accessory Use to a Permitted Principal Use in a
Separate and Distinct Commercial Tenant Space from the Principal Use
"Staff Recommendation: Refer the Issue of Accessory Storage Space
to the Planning and Zoning Commission for Review and
Recommendation of Potential Zoning Code Change
Deferred from the June 15, 2016, Town Council Meeting
John S. Page, Director of Planning, Zoning and Building Page 24

B. Time Extensions and Waivers

1. Request for One-Year Time Extension, Variance No. 17-2015, 201
Bahama Lane
John S. Page, Director of Planning, Zoning and Building Page 26

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

- a. **SPECIAL EXCEPTION #17-2016 WITH SITE PLAN REVIEW AND VARIANCES** The application of Terry R. Taylor; relative to property commonly known as **780 S. Ocean Blvd.**, described as lengthy legal description on file; located in the B-A Zoning District. The applicant is requesting a Special Exception with Site Plan Review to modify an existing 500 sq. ft. beach cabana with a 500 sq. ft. addition (1,000 sq. ft. total) in the Beach Area Zoning District. The following Variances are being requested in order to expand and modify the existing beach cabana: 1) to allow a front yard setback of 22.5 feet in lieu of the 35 ft minimum setback required; 2) to allow a 16.25 ft roof height in lieu of 16 ft maximum allowed, 3) to retain the existing 43 inch wall in lieu of a wall at the required height of 30 inches in the beach vista area. The vista is required to be 75% of the lot width in this case. [Attorney: Peter S. Broberg, Esq.]
[Landmark Commission Recommendation - Implementation of the proposed variances will not cause negative architectural impact to the subject landmark property. Carried 7-0]
Deferred from the June 15, 2016, Town Council Meeting
John S. Page, Director of Planning, Zoning & Building

2. New Business

- a. **VARIANCE #12-2016** The application of Mitchell and Victoria Evans; relative to property commonly known as **168 East Inlet Dr.**, described as lengthy legal description on file; located in the R-B Zoning District. The applicant is proposing to add a 1,595 square foot second story addition onto the existing one story residence. Page 30

The proposed addition will not require the demolition of more than 50% cubic footage of the existing house. The following variances are being requested: 1) lot coverage of 37.8% in lieu of the 30% maximum allowed for a two story structure.; 2) cubic content ratio ("CCR") of 4.92 in lieu of the 3.21 existing and 3.99 maximum allowed. [Attorney: Maura Ziska, Esq.]

[Architectural Commission Recommendation: Implementation of the proposed variance will cause negative architectural impact to the subject property. Carried 4-3.]

Request for Deferral to the August 16, 2016, Town Council Meeting Per Letter Dated July 5, 2016, from Maura Ziska

John S. Page, Director of Planning, Zoning & Building

- b. **VARIANCE #14-2016** The application of Gary Pohrer, Managing Member of 412 Brazilian Partners LLC; relative to property commonly known as **412 Brazilian Ave.**, described as lengthy legal description on file; located in the R-C Zoning District. The applicant is requesting to construct a new 5,098 square foot, two story residence on a lot with a width of 50 feet in lieu of the 75 minimum required and a lot area of 8,560 sq. ft. in lieu of the 10,000 sq. ft. minimum required. [Attorney: Maura Ziska, Esq.]
[Architectural Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject property. Carried 7-0.]

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John S. Page, Director of Planning, Zoning & Building

- c. **VARIANCE #15-2016** The application of Molly and Patrick Ryan; relative to property commonly known as **341 Brazilian Ave.**, described as lengthy legal description on file; located in the R-C Zoning District. The applicant is proposing to demolish a 750 square foot one story garage/cabana in the rear of the property and construct a new 1,836 square foot two story cabana/guest house/garage addition in the same general location. The following variances are being requested: 1) rear yard setback of 8 feet in lieu of the 15 foot minimum required for a two story structure; 2) west side yard setback of 5.3 feet in lieu of the 15 foot minimum required for a two story structure; 3) lot coverage of 35.5% in lieu of the 33.4% existing and the 30% maximum allowed for two story structures; 4) a drive aisle width to the garage to be 18.2 feet in lieu of 25 foot minimum for back up space. [Attorney: Maura Ziska, Esq.]
[Architectural Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject property. Carried 7-0.]

John S. Page, Director of Planning, Zoning & Building

3. Other

- a. Planning & Zoning Commission Record and Report: Proposed Modifications and Changes to Chapter 134, Zoning
John S. Page, Director of Planning, Zoning and Building

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IX. ORDINANCES

X. ANY OTHER MATTERS

XI. ADJOURNMENT

PLEASE TAKE NOTE:

- Note 1:** No written materials received after 5:00 p.m. on the Thursday immediately prior to a monthly Town Council meeting will be included in the back-up binders distributed to the Mayor and Town Council in preparation for that meeting. Written materials received after 5:00 p.m. on Thursday will be separately distributed to the Mayor and Town Council; however, depending upon the length of the materials, the time of submittal, and other circumstances, the Mayor and Town Council may not be able to read and consider such late submittals prior to acting upon the policy matter(s) which they address.
- Note 2:** The progress of this meeting may be monitored by visiting the Town's website (townofpalmbeach.com) and clicking on "Meeting Audio" in the left column. If you have questions regarding that feature, please contact the Office of Information Systems (561) 227-6315. The audio recording of the meeting will appear within 24 hours after the conclusion of the meeting.
- Note 3:** If a person decides to appeal any decision made by this Council with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings. For such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.
- Note 4:** Disabled persons who need an accommodation in order to participate in the Town Council Meeting are requested to contact the Town Manager's Office at 838-5410 or through the Florida Relay Service by dialing 1-800-955-8770 for voice callers or 1-800-955-8771 for TDD callers, at least two (2) working days before this meeting.
- Note 5:** Items listed on the Consent Agenda will be approved by one motion of the Town Council, unless the Mayor or an individual Council Member requests that any item(s) be moved to the Regular Agenda and individually considered.
- Note 6:** All back-up material for the items listed on the agenda are posted to the Town's website and emailed to all Stay Informed subscribers on the Friday before the Town Council meeting. To access the back-up materials and/or subscribe to the Stay Informed list, please visit the Town's website (townofpalmbeach.com).

PROCEDURES FOR PUBLIC PARTICIPATION

Citizens desiring to address the Town Council should proceed toward the public microphones when the applicable agenda item is being considered to enable the Town Council President to acknowledge you.

PUBLIC HEARINGS: Any citizen is entitled to be heard on an official agenda item under the section entitled "Public Hearings," subject to the three minute limitation.

COMMUNICATIONS FROM CITIZENS: Any citizen is entitled to be heard concerning any matter under the section entitled "Communications from Citizens," subject to

the three minute limitation. The public also has the opportunity to speak to any item listed on the agenda, including the consent agenda, at the time the agenda item comes up for discussion.

OTHER AGENDA ITEMS: Any citizen is entitled to be heard on any official agenda item when the Town Council calls for public comments, subject to the three minute limitation.

Town Council Meetings are public business meetings and, as such, the Town Council retains the right to limit discussion on any issue.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: July 13, 2016

Section of Agenda

Appeals

Agenda Title

ARCOM Appeal from Palm Beach Atlantic Association, Inc. (PBAA)

224 Atlantic Avenue / New Plant Material

Presenter

John S. Page, Director of Planning, Zoning and Building

ATTACHMENTS:

- ▣ **Memorandum Dated June 17, 2016 From John S. Page, Director of Planning, Zoning and Building**
- ▣ **Letter Dated June 8, 2016 From Edward A. Dicker**
- ▣ **Letter Dated June 2, 2016 From John R. Sheppard, Jr**
- ▣ **Landscape Plan Presented at April 27, 2016 ARCOM Meeting**
- ▣ **Landscape Plan Presented at May 25, 2016 ARCOM Meeting**
- ▣ **ARCOM Minutes Excerpt April 27, 2016**
- ▣ **ARCOM Minutes Excerpt May 25, 2016**

TOWN OF PALM BEACH

Information for Town Council Meeting on: July 13, 2016

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

From: John S. Page, Director of Planning, Zoning & Building

Re: ARCOM Appeal from Palm Beach Atlantic Association, Inc. (PBAA)
224 Atlantic Avenue / New Plant Material

Date: June 17, 2016

STAFF RECOMMENDATION

Staff recommends that the Town Council consider and rule upon the appeal of PBAA (north side of street at 223 Atlantic Avenue), objecting to ARCOM's decision of May 25, 2016, approving landscaping changes at 224 Atlantic Avenue (opposite, south side of street).

GENERAL INFORMATION

Applicant "224 Atlantic LLC" made initial application to ARCOM for landscape changes which were considered on April 27th this year. ARCOM members were not satisfied with the thoroughness of the presentation and deferred the matter to their next meeting of May 25, at which time the application was approved. Per the attached appeal letter (6/8/16) from attorneys Dicker, Krivok & Stoloff, PBAA requests that the Town Council revoke/deny the project, or in the alternative, require a new properly noticed ARCOM hearing to occur.

There are repeated references in the appeal letter to the terms, proper notice, major vs. minor project, due process, etc. In order to sort through any confusion about what transpired at ARCOM, as well as what transpired with submittal of the appeal, staff has highlighted recent history as follows:

1. Town Code specifies that appeals from an ARCOM action must be submitted within 10 days of its meeting. PZB did receive a timely appeal letter (with \$320 fee) dated 6/2/16. The appeal letter erred in stating that the project was denied in April (it was actually deferred for a month), prompting staff to instruct attorney John Sheppard (signatory) to make corrections. Both the original and revised appeal letters are attached.
2. The application qualifies as a "Minor Project With Notice" in keeping with the ARCOM Project Designation Manual.

3. The project was never denied. Following initial consideration in April, it was deferred for one month to May due to lack of visual appeal and design. No new application, nor new notices, were required because the application was correctly noticed and deferred to a date certain.
4. At time of first consideration in April, one person from the public addressed the Commission. Mr. Shankman, President of the PBAA, disclosed that his Association is in litigation with the applicant and objected to the proposed landscape alterations. **NOTE:** Litigation is specific to Unity of Title and shared-facilities tying the properties at 224 and 223 Atlantic Avenue to one another. Staff does not believe that the approved landscaping improvement has any legal nexus to said litigation.
5. The project currently being appealed does not include any new structure, nor does it hinder or alter access between the 224 and 223 Atlantic Avenue properties. The applicants applied to ARCOM simply for landscaping changes to screen the existing residential structure from the street. Although the applicant erred by installing landscaping at or near the front lot line prior to obtaining ARCOM approval, it's purpose was to beautify the site, and the revised plan was indeed approved by ARCOM on May 25.
6. The application was heard again on May 25. No person was present to address the Commission, nor were any written objections received. The Commission acknowledged that the plan was much improved, and thereafter approved the application unanimously.

Attachments

cc: John C. Randolph, Town Attorney
Andres Paradelo, Landscape Architect
Edward Dicker, PBAA Attorney
Rich Shankman, Public Objector
Maura Ziska, Esquire
Architectural Commissioners

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2016 JUN 8 AM 10:48 TOWN CLERK

DICKER, KRIVOK & STOLOFF, P.A.

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JAMES N. KRIVOK
SCOTT A. STOLOFF
LAURIE G. MANOFF
JOHN R. SHEPPARD, JR.

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June 8, 2016

Via Email: JLindgren@TownofPalmBeach.com

Via Regular Mail

John Lindgren, AICP, Planning Administrator
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

Via Hand Delivery

Susan A. Owens, MPA, MMC, Town Clerk
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

Re: A-014-2016
Address: 224 Atlantic Avenue
Applicant: 224 Atlantic LLC
Revised Appeal

Dear Ms. Owens & Mr. Lindgren:

The undersigned counsel represents Palm Beach Atlantic Association, Inc. ("PBAA"), the multi-condominium association which governs both condominium properties located at 223 Atlantic Avenue, and 224 Atlantic Avenue, Palm Beach, Florida.

PBAA, through its Board of Directors, on behalf of its constituent owners, and on its own behalf, hereby files this **APPEAL** of the approval of the 224 Atlantic Ave. landscape plan by the Town of Palm Beach Architectural Commission (ARCOM) at the recent May 25, 2016 hearing. This Appeal, being related to the aforementioned "plan approval", designated as item C on page 6 of the Tentative Agenda enclosed herein, as referenced above and pursuant to §18-177, Palm Beach, Florida Code of Ordinances.

On April 27, 2016, this same item came up for review by ARCOM. The PBAA, and its constituent members were provided proper and appropriate notice in accordance with §18-202 of the Palm Beach, Florida Code of Ordinances. PBAA's President, Rick Shankman, appeared at the

ARCOM hearing on behalf of the Association. At that hearing, and based in part upon Mr. Shankman's stated objections that the plan was "*monochromatic and anemic*", the Commission properly **DENIED** approval of the 224 Atlantic LLC (as-constructed) landscape plan.

As revealed below, the ARCOM Commission commented and ruled in pertinent part during the aforementioned April 27, 2016 hearing as follows [emphasis added]:

Mr. Garrison: Well, I . . . *I've heard enough. We need to have a plan that we can look at and approve. Obviously, something has happened. I don't know what happened.* We have a site plan that has no trees [unintelligible]. Apparently, there were trees before. *Why don't we come back next month with a landscape plan that is proper. I don't understand how we get to this point but we're at a point.* I make a motion that we defer this to next month. *The applicant brings back a landscape plan that is proper for this site.*

Ms. Ziska: Not just the as-built that the -

Mr. Garrison: *Oh no, absolutely not the as-built! A plan that we would have approved if it was submitted from the beginning.*

Mr. Paradelo: Do you want at least a front elevation, a landscape elevation?

Mr. Garrison: *We want the normal [unintelligible] landscaping for this project. A normal submission plan for this project showing all four sides [unintelligible] what the landscape should be as if this was a brand new application.* Thank you.

* * * * *

Ms. Vanneck: There's been a lot of improvements made. And I think at this stage and because of *what has happened that should have been before us a long time ago*, it's not your fault - you just got it tossed in your lap. So take the time, *make a proper plan that we can approve.*

* * * * *

As such, the Commission stated that such extensive change to the premises, as has occurred to date, will require 224 Atlantic LLC to submit an *entirely new landscape plan as if it were new*

construction. Despite the Commission's demands for an entirely new landscape plan to be submitted, and "*absolutely not*" the previous "*as-built*" plan already submitted, the following occurred at the May 25, 2016 ARCOM hearing [emphasis added]:

Mr. Sammonds: Okay. ***Minor Projects Old Business.*** We have 014-2016 additions ***modifications*** to 224 Atlantic Avenue. 224 Atlantic Avenue LLC Applicant. Architect is Andres Paradelo. Okay. ***New plant material.*** Motion carried in April to defer it to May for further studies. . . .

* * * * *

Mr. Paradelo: Good afternoon Board. I'm here to- Andres Paradelo for the record. Paradelo Design. I'll keep this brief since we are so late in the day. I was here last month and it was deferred for ***further study of the landscape architectural planting plan that was installed originally once modifications were done to the building and some improvements to the existing landscape.*** And just to keep this brief, there were only, there was only a hedge along the back, along the front of Atlantic Avenue that separated the street from the remainder of the property. In addition to the hedge, ***we have added seven palm trees***, coconut palms, 15 foot grey wood to help buffer and mask the building from the adjacent building that's on the south side, I'm sorry, on the north side of the road. In addition to that we also did the same thing on the south side of the property where there is an existing hedge which is about 13 to 14 feet tall, and ***we added six coconut palm trees on that as well*** a 15 foot grey wood to help conceal the building and further buffer. . . . And on the east property line ***we're basically leaving that as*** [is,] there're several shade trees that mitigate the buffer of the building. ***So we haven't done anything there.*** And lastly, as more of an anterior aesthetic was some existing bougainvillea that was on an existing fence. . . . And the three palm trees that are on the pool terrace area in order to get those in we're having to remove some ***existing pavers*** to be able to put those palm trees in ***and add some greenery and kind of liven up the fence that is existing.*** It's kind of an unattractive wood fence. ***That concludes the presentation.*** . . .

* * * * *

Ms. Vanneck: I think given *what you started with*, it's a vast improvement and knowing what you could work with I'd make a motion to approve as presented. . . .

* * * * *

Mr. Sammonds: You're approved.

* * * * *

As can be seen from the transcript excerpts above, the Applicant returned to the May 25, 2016 ARCOM hearing with the same "as built" landscape plan, requesting "minor modifications" to said plan by virtue of "*new plant material*." This was NOT a "new" ("normal") submission, as if it were new construction, together with proper public notice required for same. As Commissioner Garrison pointed out at the previous April 27, 2016 hearing, the Applicant has gotten the Town to "*a point*" that Mr. Garrison is not sure how. Neither is the Appellant.

The point, as Appellant sees it, is that the Applicant has misleadingly listed the original plans as a modification to an existing single-family home. What has actually occurred is the wholesale change of a condominium annex building into a purported single family residence; such transformation occurring without proper ARCOM approval or oversight. Further, with respect to the landscape plan submitted, such wholesale changes to the property landscape (removal of numerous existing mature multi-storey shade trees) occurred without ARCOM approval or oversight and the Applicant is now attempting to retroactively seek approval for the "as-built" results - now encompassing the addition of some palm trees thereto.

Further, with respect to any previous or ongoing ARCOM approval of the exterior and interior structural modifications already accomplished, it is respectfully submitted that 224 Atlantic Ave. is in fact a condominium annex building (with exposed plumbing in the parking area ceiling, a commercial metal access ladder on the side of the building, roof-mounted A/C equipment, etc.) and NOT a single family residence. It is the position of my client that the 224 Atlantic Ave. Annex Building completely lacks any architectural merit as a "single family home" and would never past ARCOM muster if examined in the proper course of business of the Commission. As such, the 224 Atlantic Ave. project clearly violates the following:

Sect. 18-205. – Criteria for building permit.

(a)(1) *The plan for the proposed building or structure is in conformity with good taste and design and in general contributes to the image of the town* as a

place of beauty, spaciousness, balance, taste, fitness, charm and high quality.

- (a)(3) *The proposed building or structure is not, in its exterior design and appearance, of inferior quality such as to cause the nature of the local environment to materially depreciate in appearance and value.*
- (a)(4) *The proposed building or structure is in harmony with the proposed developments on land in the general area*, with the comprehensive plan for the town, and with any precise plans adopted pursuant to the comprehensive plan.
- (a)(6) *The proposed building or structure is not excessively dissimilar in relation to any other structure existing or for which a permit has been issued* or to any other structure included in the same permit application within 200 feet of the proposed site in respect to one or more of the following features:
 - a. Height of building or height of roof.
 - b. *Other significant design features including, but not limited to, materials or quality of architectural design.*
 - c. Architectural compatibility.
 - d. *Arrangement of the components of the structure.*
 - e. Appearance of mass from the street or from any perspective visible to the public or adjoining property owners.
 - f. Diversity of design that *is complimentary with size and massing of adjacent properties.*
 - g. Design features that will avoid the appearance of mass *through improper proportions.*
 - h. *Design elements that protect the privacy of neighboring property.*
- (a)(8) *The proposed building or structure is appropriate in relation to the established character of other structures in the immediate area or neighboring areas in respect to significant design features* such as material or quality or architectural design as viewed from any public or private way (except alleys).

- (a)(9) ***The proposed development is in conformity with the standards of this Code*** and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved.

The landscaping project, as proved on May 25, 2016, also does not comply with the requirements of §66-261 and §66-262, Palm Beach, Florida Code of Ordinances, in that it does not meet the specific and detailed requirements for a “plan”, nor does it identify and contain the required details for a “landscaping plan.” Additionally, the project does not comply with the requirements of §66-211(1), as it fails to promote the health, safety, and welfare of the community, §66-211 (2) as it does not provide proper landscaping and irrigation techniques, and §66-211 (3) in that it does not provide positive aesthetic value to the Town. The project, additionally, fails to comply with the requirements of §66-212(2), Palm Beach, FL Code of Ordinances, in that it does not maintain and approve the aesthetic appearance of the Town and §66-212(3) in that it does not improve the environmental quality of the Town. The Project does not comply with the water conservation requirements of §66-286, Palm Beach, Florida Code of Ordinances. ***Finally, the project involves removal of vegetation conducted without a permit as required by section 66-236, as well as not in compliance with the criteria for that Section for removal of vegetation.***

With regard to the recent May 25, 2016 ARCOM meeting, Applicant 224 Atlantic LLC, completely failed to provide any proper notice pursuant to §18-202, Palm Beach, Florida Code of Ordinances, to either the PBAA or any of its constituent members or owners, as required by that Section. Consequently, the PBAA and its constituent owners had no notice of the May 25, 2016, ARCOM hearing at which the required “*new construction*” 224 Atlantic LLC landscape plan was to be addressed. As stated above, ARCOM told the Applicant to submit a “*proper plan*” as if it was being submitted for “*new construction.*” As such, this was improperly listed as “*Minor Old Business*” and should have been listed and noticed as a new submission, and major business. Had proper notice been provided to the PBAA, approval would have been opposed by the PBAA, as the proposal heard at the May 25, 2016 meeting suffers from the same infirmities as argued at the April 27, 2016 meeting.

The PBAA and its constituent (property owner) members have thereby been denied their fundamental due process right by the conduct of the Applicant in failing to provide the required notice under §18-202, Palm Beach, Florida Code of Ordinances, and Florida law.

Fundamental requirement of due process in any proceeding is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them opportunity to present their objections. Quay Development, Inc. v. Elegante Bldg. Corp., 392 So.2d 901, 903 (Fla. 1981). Whether a particular method of notice is reasonably calculated to provide adequate notice of an administrative proceeding is determined on a case-by-case basis after considering the particularities of the facts presented in each individual case. Bates v. Wynn, 162 So.3d 1111 (Fla. 1st DCA 2015). Here, failure to provide any notice whatsoever to the clearly

John Lindgren, AICP, Planning Administrator
Susan A. Owens, MPA, MMC, Town Clerk
Town of Palm Beach
June 8, 2016 – ARCOM Appeal Letter
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interested parties (PBAA and its constituent members) of the May 26, 2016, ARCOM hearing cannot meet the minimum fundamental requirements of due process.

It is hereby respectfully requested that the Town of Palm Beach Town Council **REVOKE** any approval of 224 Atlantic LLC landscape plan and exterior construction plan, deny the plan **AND PROJECT** *in toto*, or in the alternative, require a new properly noticed ARCOM hearing to occur regarding the aforementioned landscape plan approval.

Respectfully submitted,



EDWARD A. DICKER
For the Firm and Appellant

EAD/dm

Enclosure

cc: Board of Directors, PBAA
Maura Ziska, Esq., Counsel for Applicant 224 Atlantic LLC
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401

DICKER, KRIVOK & STOLOFF, P.A.

ATTORNEYS AT LAW

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June 2, 2016

Via Hand Delivery

Susan A. Owens, MPA, MMC, Town Clerk
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

Re: A-014-2016
Address: 224 Atlantic Avenue
Applicant: 224 Atlantic LLC
Appeal

Dear Ms. Owens:

The undersigned counsel represents Palm Beach Atlantic Association, Inc. ("PBAA"), the multi-condominium association which governs both condominium properties located at 223 Atlantic Avenue, and 224 Atlantic Avenue, Palm Beach, Florida.

PBAA, through its Board of Directors and on its own behalf, hereby files this **APPEAL** of the approval of the 224 Atlantic Ave. landscape plan by the Town of Palm Beach Architectural Commission (ARCOM) at the recent May 25, 2016 hearing. This Appeal, being for the aforementioned plan approval, designated as item C on page 6 of the Tentative Agenda enclosed herein, as referenced above and pursuant to §18-177, Palm Beach, Florida Code of Ordinances.

On April 27, 2016, this same item came up for review by ARCOM. The PBAA, and its constituent members were provided proper and appropriate notice in accordance with §18-202 of the Palm Beach, Florida Code of Ordinances. PBAA's President, Rick Shankman, appeared at the ARCOM hearing on behalf of the Association. At that hearing, and based in part upon Mr. Shankman's stated objections, the Commission properly **DENIED** approval of the 224 Atlantic LLC (as constructed) landscape plan as "*monochromatic and anemic*." Further, the Commission stated that such extensive change to the premises as has occurred to date would require 224 Atlantic LLC to submit and entirely new landscape plan as if it were new construction. It is respectfully submitted that 224 Atlantic Ave. is a condominium annex building and NOT a single family residence, and completely lacks any architectural merit as a "single family residence."

Susan A. Owens, MPA, MMC, Town Clerk
Town of Palm Beach
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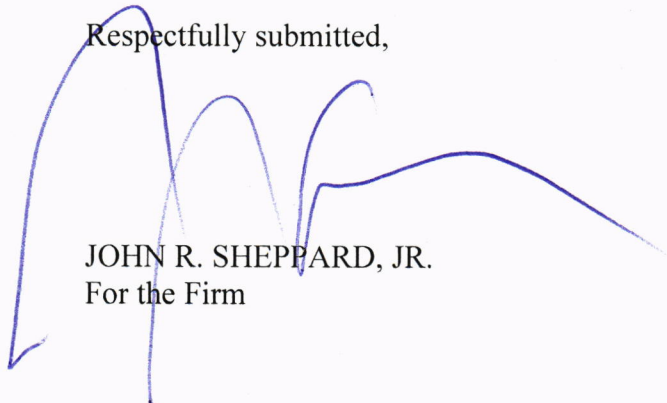
With regard to the recent May 25, 2016 ARCOM meeting, Applicant 224 Atlantic LLC, completely failed to provide any proper notice pursuant to §18-202, Palm Beach, Florida Code of Ordinances, to either the PBAA or any of its constituent members or owners, as required by that Section. Consequently, the PBAA and its constituent owners had no notice of the May 25, 2016, ARCOM hearing at which the 224 Atlantic LLC landscape plan was addressed. Had proper notice been provided to the PBAA, approval would have been opposed by the PBAA, as the proposal heard at the May 25, 2016 meeting suffers from the same infirmities as argued at the April 27, 2016 meeting.

The PBAA and its constituent (property owner) members have thereby been denied their fundamental due process right by the conduct of the Applicant in failing to provide the required notice under §18-202, Palm Beach, Florida Code of Ordinances, and Florida law.

Fundamental requirement of due process in any proceeding is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them opportunity to present their objections. Quay Development, Inc. v. Elegante Bldg. Corp., 392 So.2d 901, 903 (Fla. 1981). Whether a particular method of notice is reasonably calculated to provide adequate notice of an administrative proceeding is determined on a case-by-case basis after considering the particularities of the facts presented in each individual case. Bates v. Wynn, 162 So.3d 1111 (Fla. 1st DCA 2015). Here, failure to provide any notice whatsoever to the clearly interested parties (PBAA and its constituent members) of the May 26, 2016, ARCOM hearing cannot meet the minimum fundamental requirements of due process.

It is hereby respectfully requested that the Town of Palm Beach (ARCOM) **REVOKE** any approval of 224 Atlantic LLC landscape plan and exterior construction plan, deny the plan **AND PROJECT** *in toto*, or in the alternative, require a new properly noticed ARCOM hearing to occur regarding the aforementioned landscape plan approval.

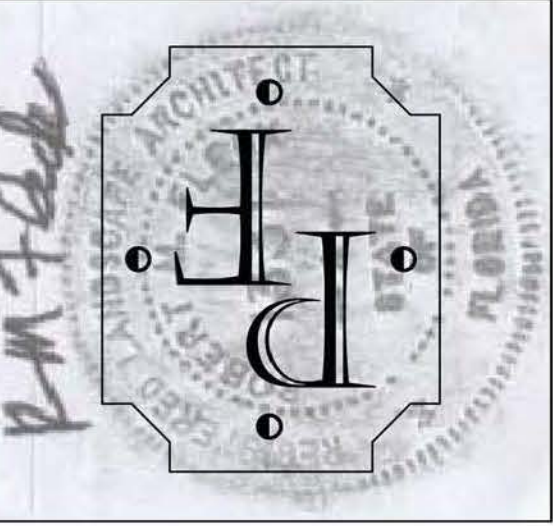
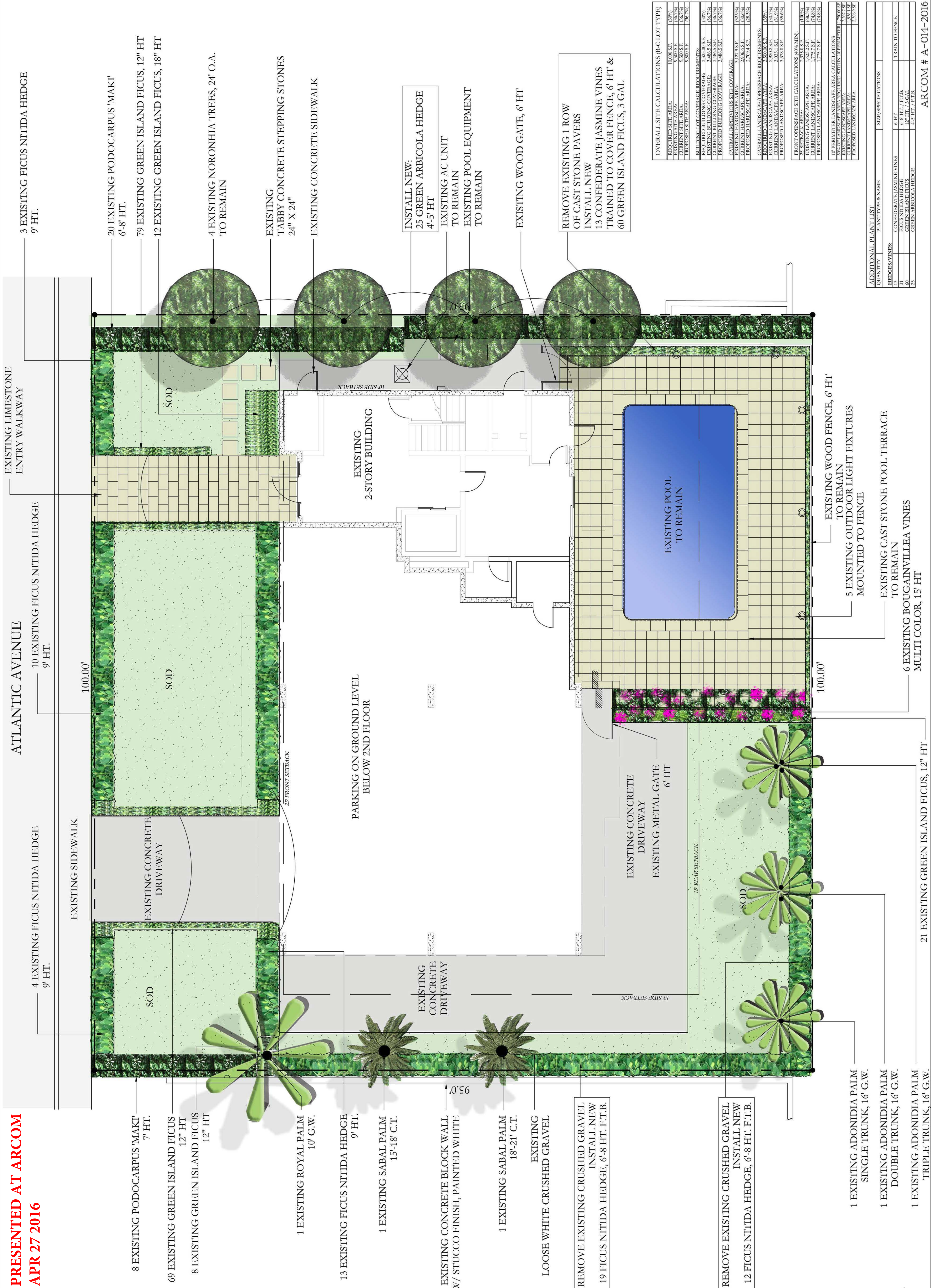
Respectfully submitted,



JOHN R. SHEPPARD, JR.
For the Firm

JRS/dm
Enclosure

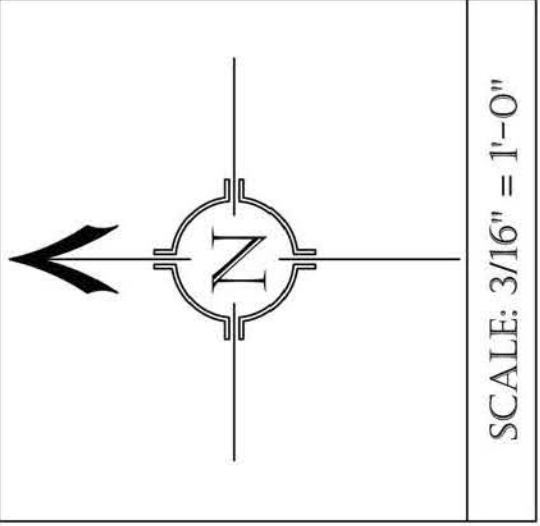
cc: Board of Directors, PBAA
Ed Dicker, Esq.
Maura Ziska, Esq., Counsel for Applicant 224 Atlantic LLC
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401



~ PARADELO ~
~ FLECK ~
LANDSCAPE ARCHITECTURE
FLORIDA - ISLANDS - HAMPTONS
HARDSCAPE - LANDSCAPE - LIGHTING
WEST PALM BEACH, FLORIDA
ANDRESPARADELO@GMAIL.COM 561.951.7525
BOFL55@HOTMAIL.COM 561.301.7298

PROPOSED LANDSCAPE MODIFICATION PLAN
PRIVATE RESIDENCE
224 ATLANTIC AVENUE
PALM BEACH, FLORIDA

DATE ISSUED:
APRIL 1, 2016



LPI

OVERALL SITE CALCULATIONS (R-C LOT TYPE)	
REQUIRED SITE AREA:	10,000 S.F. (0.99%)
EXISTING LANDSCAPE AREA:	9,500 S.F. (0.96%)
PROPOSED SITE AREA:	9,500 S.F. (0.96%)
BUILDING LOT COVERAGE REQUIREMENTS	
REQUIRED BUILDING COVERAGE:	3,325.00 S.F. (0.99%)
EXISTING BUILDING COVERAGE:	3,486.5 S.F. (0.96%)
PROPOSED BUILDING COVERAGE:	3,486.5 S.F. (0.96%)
OVERALL IMPERVIOUS SITE COVERAGE	
REQUIRED IMPERVIOUS COVERAGE:	3,325.00 S.F. (0.99%)
EXISTING IMPERVIOUS COVERAGE:	3,486.5 S.F. (0.96%)
PROPOSED IMPERVIOUS COVERAGE:	3,486.5 S.F. (0.96%)
OVERALL LANDSCAPE COVERAGE REQUIREMENTS	
REQUIRED LANDSCAPE COVERAGE:	2,920.12 S.F. (0.91%)
EXISTING LANDSCAPE COVERAGE:	2,920.12 S.F. (0.91%)
PROPOSED LANDSCAPE COVERAGE:	2,920.12 S.F. (0.91%)
FRONT YARD/REAR YARD/POUR SITE CALCULATIONS (400' MIN.)	
FRONT YARD/REAR YARD/POUR SITE AREA:	1,023.2 S.F. (0.83%)
EXISTING LANDSCAPE AREA:	1,023.2 S.F. (0.83%)
PROPOSED LANDSCAPE AREA:	1,023.2 S.F. (0.83%)
IF PERMITS LANDSCAPE AREA REQUIRED WITHIN 10' PERIMETER	
EXISTING LANDSCAPE AREA:	2,967.5 S.F. (0.96%)
PROPOSED LANDSCAPE AREA:	2,967.5 S.F. (0.96%)

ADDITIONAL PLANT LIST		
QUANTITY	PLANT TYPE & NAME	SIZE/SPECIFICATIONS
HEDGES/VINES:		
13	CONFEDERATE JASMINE VINES	6' HT. / F.T.B.
5	GREEN ISLAND FICUS	12' HT. / 1/2\"
25	GREEN ARBICOLA HEDGE	4-5' HT. / F.T.B.

ARCOM # A-014-2016

PRESENTED AT ARCOM
MAY 25 2016

INSTALL NEW:
7 COCONUT PALMS, 15' G.W.

8 EXISTING PODOCARPUS 'MAKI'
7' HT.

69 EXISTING GREEN ISLAND FICUS
12" HT

8 EXISTING GREEN ISLAND FICUS
12" HT

1 EXISTING ROYAL PALM
10' G.W.

13 EXISTING FICUS NITIDA HEDGE
9' HT.

1 EXISTING SABAL PALM
15'-18" C.T.

EXISTING CONCRETE BLOCK WALL
W/ STUCCO FINISH, PAINTED WHITE

1 EXISTING SABAL PALM
18'-21' C.T.

EXISTING
LOOSE WHITE CRUSHED GRAVEL

REMOVE EXISTING CRUSHED GRAVEL
INSTALL NEW
19 FICUS NITIDA HEDGE, 6'-8 HT. F.T.B.

RELOCATE 3 EXISTING
ADONIDIA PALMS

20 GREEN ISLAND FICUS, 12" HT

INSTALL 3 NEW COCONUT PALMS
15' G.W.

ATLANTIC AVENUE

4 EXISTING FICUS NITIDA HEDGE
9' HT.

10 EXISTING FICUS NITIDA HEDGE
9' HT.

EXISTING SIDEWALK

EXISTING CONCRETE
DRIVEWAY

EXISTING LIMESTONE
ENTRY WALKWAY

PARKING ON GROUND LEVEL
BELOW 2ND FLOOR

EXISTING
2-STORY BUILDING

EXISTING
CONCRETE
DRIVEWAY

EXISTING CONCRETE
DRIVEWAY

EXISTING METAL GATE
6' HT

EXISTING POOL
TO REMAIN

9 SMALL LEAF CLUSIA HEDGE
5' HT/ F.T.B.

REMOVE 1 ROW OF EXISTING
CAST STONE PAVERS & INSTALL NEW
6 CONFEDERATE JASMINE VINES, 6' HT
TO COVER FENCE &
20 GREEN ISLAND FICUS, 3 GAL

EXISTING CAST STONE POOL TERRACE
MODIFY AS NECESSARY

REMOVE 3 ROWS OF EXISTING
CAST STONE PAVERS
INSTALL NEW
3 COCONUT PALMS, 15' G.W.
& 60 GREEN ISLAND FICUS, 3 GAL

EXISTING WOOD FENCE, 6' HT
TO REMAIN

3 EXISTING FICUS NITIDA HEDGE
9' HT.

20 EXISTING PODOCARPUS 'MAKI'
6'-8" HT.

79 EXISTING GREEN ISLAND FICUS, 12" HT

12 EXISTING GREEN ISLAND FICUS, 18" HT

4 EXISTING NORONHIA TREES, 24' O.A.
TO REMAIN

EXISTING
TABBY CONCRETE STEPPING STONES
24" X 24"

EXISTING CONCRETE SIDEWALK

INSTALL NEW:
25 GREEN ARBICOLA HEDGE
4'-5' HT

EXISTING AC UNIT
TO REMAIN

EXISTING POOL EQUIPMENT
TO REMAIN

EXISTING WOOD GATE, 6' HT

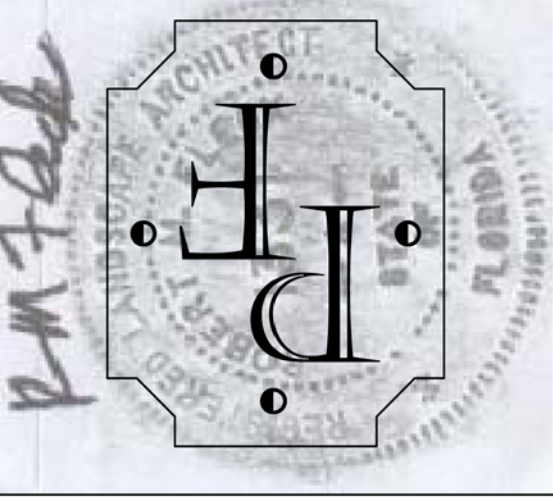
REMOVE EXISTING 1 ROW
OF CAST STONE PAVERS
INSTALL NEW
13 CONFEDERATE JASMINE VINES
TRAINED TO COVER FENCE, 6' HT &
60 GREEN ISLAND FICUS, 3 GAL

5 EXISTING OUTDOOR LIGHT FIXTURES
MOUNTED TO FENCE

OVERALL SITE CALCULATIONS (R-C LOT TYPE)		
REQUIRED SITE AREA	10,000 S.F.	(100%)
EXISTING SITE AREA	9,500 S.F.	(95.0%)
CURRENT SITE AREA	9,500 S.F.	(95.0%)
PROPOSED SITE AREA	9,500 S.F.	(95.0%)
BUILDING LOT COVERAGE REQUIREMENTS		
REQUIRED BUILDING COVERAGE	3,325.00 S.F.	(33.25%)
EXISTING BUILDING COVERAGE	3,486.5 S.F.	(34.86%)
PROPOSED BUILDING COVERAGE	3,486.5 S.F.	(34.86%)
OVERALL ADIRASITE SITE CALCULATIONS		
REQUIRED ADIRASITE SITE COVERAGE	17,175 S.F.	(171.75%)
EXISTING ADIRASITE SITE AREA	2,096.6 S.F.	(20.96%)
PROPOSED ADIRASITE SITE AREA	2,709.4 S.F.	(27.09%)
OVERALL LANDSCAPE / OPENSPACE REQUIREMENTS		
REQUIRED LANDSCAPE AREA	3,500.00 S.F.	(35.00%)
EXISTING LANDSCAPE AREA	2,920.2 S.F.	(29.20%)
PROPOSED LANDSCAPE AREA	3,055.1 S.F.	(30.55%)
PROPOSED LANDSCAPE AREA	3,055.1 S.F.	(30.55%)
FRONT OPENSPACE SITE CALCULATIONS (40% MIN):		
25' SETBACK AREA	2,975.0 S.F.	(29.75%)
EXISTING LANDSCAPE AREA	1,623.2 S.F.	(16.23%)
PROPOSED LANDSCAPE AREA	1,775.2 S.F.	(17.75%)
PROPOSED LANDSCAPE AREA	1,775.2 S.F.	(17.75%)
10' PERIMETER LANDSCAPE AREA CALCULATIONS		
50% OF LANDSCAPE AREA REQUIRED WITHIN 10' PERIMETER	1,750.00 S.F.	(17.50%)
EXISTING LANDSCAPE AREA	1,438.1 S.F.	(14.38%)
PROPOSED LANDSCAPE AREA	2,300.9 S.F.	(23.00%)

ADDITIONAL PLANT LIST	
QUANTITY	SIZE / SPECIFICATIONS
HEDGES / VINES:	
5	COCONUT PALM 15' G.W.
5	ARBICOLA PALM 15' G.W.
19	CONFEDERATE JASMINE VINES 6' HT
31	FICUS NITIDA HEDGE 6'-8' HT / F.T.B.
160	GREEN ISLAND FICUS 12" HT / 3 GAL
25	GREEN ARBICOLA HEDGE 4'-5' HT / F.T.B.

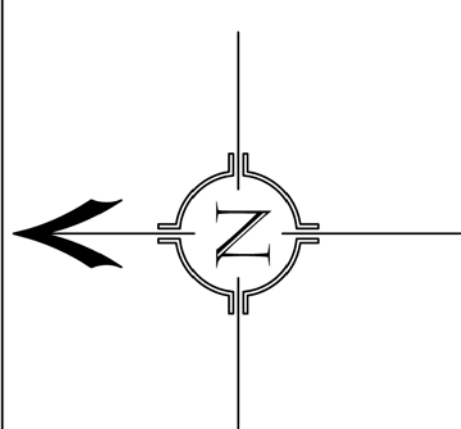
ARCOM # A-014-2016 REV1



~ PARADELO ~
~ FLECK ~
LANDSCAPE ARCHITECTURE
FLORIDA · ISLANDS · HAMPTONS
HARDSCAPE · LANDSCAPE · LIGHTING
WEST PALM BEACH, FLORIDA
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BOFL55@HOTMAIL.COM 561.301.7298

PROPOSED LANDSCAPE MODIFICATION PLAN
PRIVATE RESIDENCE
224 ATLANTIC AVENUE
PALM BEACH, FLORIDA

DATE ISSUED:
MAY . 25. 2016



SCALE: 3/16" = 1'-0"

LPI

Project Description: Revisions to previously approved project B-042-2016. Revisions include modification of driveway, removal of plant material, addition of plant material.

Call for disclosure of ex parte communication: Disclosure by Mr. Small and Ms. Vanneck.

Ms. Vanneck stated that the changes to be presented have already been completed.

Mr. Skowron presented the history of the project as well as the proposed landscaping.

Commission Comments: Some of the members were upset that the changes were not brought to the Commission before they were made.

A discussion ensued between Ms. Vanneck and Mr. Skowron about the possible landscape choices that would be successful on the property.

Mr. Skowron presented the proposed driveway for the residence.

Motion made by Mr. Corey and seconded by Mr. Garrison to approve the project as presented. Motion carried 6-1 with Mr. Knowles opposed.

[A-014-2016 Additions/Modifications](#)

Address: 224 Atlantic Avenue

Applicant: 224 Atlantic LLC

Architect: Andres Paradelo

Attorney: Maura Ziska

Project Description: New plant material.

Call for disclosure of ex parte communication: Disclosure by Ms. Vanneck.

Mr. Paradelo stated that the owner did renovations to the existing landscape without obtaining an approval and he was here to present the landscape changes. Mr. Paradelo provided pictures of the streetscape and of the improvements. He stated he is seeking approval of the completed changes.

Rich Shankman, President of the Palm Beach Atlantic Association and neighbor to the applicant, stated his association is in litigation with the applicant for the construction and modifications to the property. He stated his opposition to the landscaping presented.

Ms. Ziska stated the reasons for the changes that were made prior to approval.

Commission Comments: It was noted that the landscape presented lacks appeal and design. The Commission wanted to see more of a fully developed landscape plan for the property.

Motion made by Mr. Garrison and seconded by Mr. Gruss to defer this project for one month for restudy. Motion passed with all in favor.

[A-015-2016 Additions/Modifications](#)

Address: 1900 S. Ocean Blvd.

Applicant: Keith Frankel

Architect: Mark Marsh/Bridges, Marsh & Associates, Inc.

Project Description: Minor changes to the Guest House fenestration and roof and a minor window change to the main house.

Call for disclosure of ex parte communication: Disclosure by Ms. Vanneck.

Mr. Marsh presented the change to the roof of the guest house as well as a window change to the main house.

Commission Comments: Many of the Commission members thought the proposed changes were better.

Motion made by Mr. Small and seconded by Mr. Small to approve the project as presented. Motion approved with all in favor.

[A-016-2016 Additions/Modifications](#)

Address: 1 S. County Rd. (Breakers Spray Cottage)

Applicant: Breakers Palm Beach, Inc.

Architect: Rene Tercilla/Harvard Jolly Architecture

Project Description: Demolition of Chimney stack above the roof line due to structural safety conditions that occurred during the project.

Call for disclosure of ex parte communication: Disclosure by Ms. Vanneck.

Mr. Tercilla presented the history of the project at the Breakers cottage and the need to take down the chimney that was structurally unsafe.

Motion made by Mr. Garrison and seconded by Mr. Small to approve as presented. Discussion ensued among the Commission.

Commission Comments: Many of the Commission members were upset that the chimney was not being replaced, especially for such an old structure.

Mr. Garrison withdrew his motion. Mr. Lindgren stated the Commission could either approve the project as presented or ask them to rebuild the fireplace.

Mr. Janssen presented the plans for demolition of the existing structure.

Motion made by Ms. Vanneck and seconded by Mr. Knowles to approve the demolition as presented with the usual caveats to sod and irrigate within 30 days. Motion carried 6-1 with Mr. Sammons opposed.

Mr. Janssen presented the proposed plans for the new residence. He stated this was a large lot with water on both sides of the property. Mr. Janssen talked about the design of the home and trying to take advantage of the water views. He showed the proposed floor plans and elevations of the home as well as a few pictures he used for inspiration in designing the home. Mr. Janssen stated he has been speaking with the representative for the neighbor to the south, Keith Williams, and indicated he will work with him on the landscape buffer. Mr. Janssen turned the presentation over to Mr. Lang. Mr. Lang presented the hardscape plan, including the many water features around the proposed home. He also presented the landscape plan for the property. He reiterated that he will work with Keith Williams for the landscape buffer between the project and the Hickox's property.

Ms. Vanneck asked Mr. Lang to keep the historical palm tree where it exists today. Mr. Lang stated he would keep the tree in its current location.

Keith Williams on behalf of the Hickox's who live at 528 Island Drive, stated that Ms. Hickox's concerns were the size and location of the house, the lack of landscaping in the front of the home and the south screening buffer.

Brittain Bardes Damgard, 555 Island Drive, stated she was also representing some of the neighbors on the street. She said that she believes the house is too large for the lot, there is not enough landscaping and it does not fit in the neighborhood. She read the opposition letter written by Linda and Charles Hickox.

Page Lee Hufty, 340 Island Road, stated that many of the larger homes being built lack curb appeal, charm and mystery.

Commissioners Comments: Some felt the massing needed to be reduced, especially on the east elevation. It was stated that this house was too sterile and needed character. There were comments regarding the many different materials being used, that it was not cohesive and some questioned the choices. A few members felt that the west elevation lacked character. Mr. Garrison sternly requested more details in the next presentation.

Motion made by Ms. Vanneck and seconded by Mr. Garrison to defer the project for complete restudy of architecture and landscape to the July 27th meeting. Motion carried 6-1 with Mr. Knowles opposed.

C. [MINOR PROJECTS - OLD BUSINESS](#)

[A-014-2016 Additions/Modifications](#)

Address: 224 Atlantic Avenue

Applicant: 224 Atlantic LLC

Architect: Andres Paradelo

Project Description: New plant material.

A motion carried at the April meeting to defer this project to May for further study.

Call for disclosure of ex parte communication: Disclosure by Mses. Vanneck and Shiverick.

Mr. Paradelo presented the landscaping that existed previously and then presented the proposed landscaping.

Ms. Vanneck stated it was a vast improvement. **Motion made by Ms. Vanneck and seconded by Mr. Garrison to approve the project as presented. Motion carried with all in favor.**

[A-021-2016 Additions/Modifications](#)

Address: 870 S. Ocean Blvd.

Applicant: Invest Komfort FL LLC

Architect: Randall Stofft/Randall Stofft Architects, P.A.

Project Description: Change all exterior windows & doors including necessary changes to openings for a consistent top of window elevation. Re-roof to flat cement tile roof.

A motion carried at the April meeting to defer this project to May for further study.

Call for disclosure of ex parte communication: Disclosure by Messrs. Small and Gruss.

Mr. Stofft stated that this project is mainly window replacement with surrounds and detailing. Since the last presentation to the Commissioners, he indicated that he has eliminated a fair amount of glass. He also indicated he is replacing the roof from a barrel tile to a flat cement tile roof. He also said he restudied the railings. He presented the new proposed plans.

Commissioners Comments: Mr. Stofft was asked about the history of the house. Some of the members didn't like the light sconces next to the windows. It was suggested that the three windows on the front where the living room and dining room are located could be made into two larger windows. Many of the Commissioners liked the barrel tile roof rather than the flat cement tile. It was noted that the balcony on the east side of the home is unsupported. Mr. Sammons asked that the north elevation be restudied.

Motion made by Ms. Vanneck and seconded by Mr. Ives for a one month deferral for restudy. Motion carried with all in favor.

D. [MINOR PROJECTS-NEW BUSINESS](#)

[A-019-2016 Additions/Modifications](#)

Address: 301 Polmer Park Rd

Applicant: Brenda Axelrod

TOWN OF PALM BEACH

Town Council Meeting Development Review on: July 13, 2016

Section of Agenda

Appeals

Agenda Title

Appeal of Administrative Decision that MacKenzie Childs Cannot Operate a Subordinate Accessory Use to a Permitted Principal Use in a Separate and Distinct Commercial Tenant Space from the Principal Use "Staff Recommendation: Refer the Issue of Accessory Storage Space to the Planning and Zoning Commission for Review and Recommendation of Potential Zoning Code Change

Deferred from the June 15, 2016, Town Council Meeting

Presenter

John S. Page, Director of Planning, Zoning and Building

ATTACHMENTS:

- **Memorandum Dated July 1, 2016 From John S. Page, Director of Planning, Zoning and Building**

TOWN OF PALM BEACH

Information for Town Council Meeting on: July 13, 2016

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

From: John S. Page, Director of Planning, Zoning & Building

Re: Appeal of Administrative Decision that MacKenzie Childs Cannot Operate a Subordinate Accessory Use to a Permitted Principal Use in a Separate and Distinct Commercial Tenant Space from the Principal Use "Staff Recommendation: Refer the Issue of Accessory Storage Space to the Planning and Zoning Commission for Review and Recommendation of Potential Zoning Code Change."

Date: July 1, 2016

STAFF RECOMMENDATION

Staff recommends that the Town Council refer the following issue to the Planning & Zoning Commission for study of a potential Zoning Ordinance revision(s): clarification of permissible accessory uses in commercial zoning districts.

GENERAL INFORMATION

In April this year, the Town's Zoning Administrator was presented with a land use question involving the MacKenzie Childs retail store at 238 Worth Avenue. He determined that accessory uses, subordinate to a principal retail use, cannot be located in a separate and distinct tenant space from the principal use. MacKenzie Childs operates with an accessory storage space nearby to the store and away from window shoppers, but separate from the retail shop. The appeal originally appeared on your June 15, 2016 meeting, but was deferred at the suggestion of the Town Attorney in order for additional consultation with staff to occur.

Staff (including the Zoning Administrator and the Town Attorney) met with the property owner and representatives from MacKenzie Childs in the week following last month's Town Council meeting. It was the consensus of all that this issue would be best resolved by amending the Zoning Ordinance to allow accessory uses in remote locations, provided safeguards are devised to ensure that such uses will not adversely affect pedestrian retail activity. In order to proceed forward, therefore, staff recommends that this issue be referred to the Planning & Zoning Commission for its review and recommendation.

cc: John C. Randolph, Town Attorney
John Eubanks, Attorney for Property Owner
Planning & Zoning Commissioners

TOWN OF PALM BEACH

Town Council Meeting Development Review on: July 13, 2016

Section of Agenda

Time Extensions

Agenda Title

Request for One-Year Time Extension, Variance No. 17-2015, 201 Bahama Lane

Presenter

John S. Page, Director of Planning, Zoning and Building

ATTACHMENTS:

- ▣ **Memorandum Dated July 1, 2016 from John S. Page, Director of Planning, Zoning and Building**
- ▣ **Letter dated May 13, 2016 from Maura Ziska**

TOWN OF PALM BEACH

Information for Town Council Meeting on: July 13, 2016

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

From: John S. Page, Director, Planning, Zoning & Building Department

Re: Request for One Year Time Extension, Variance No. 17-2015, 201 Bahama Lane

Date: July 1, 2016

STAFF RECOMMENDATION

Staff recommends that the Town Council approve a six month time extension of Variance No. 17-2015 in order to provide the applicant time to obtain a building permit for the approved swimming pool.

GENERAL INFORMATION

On August 11, 2015, the property owner was granted a Variance (Variance #17-2015) to construct an 8 foot x 38 foot swimming pool in the east side yard of the residence with a 12 foot street side yard setback in lieu of the 15 foot minimum setback required. The property owner's contractor has not applied for a building permit and has until August 11th to obtain a permit (before the variance expires).

Maura Ziska, attorney for the property owner, has submitted the attached letter requesting a one year time extension because, as she states, "the owner has been focused on the interior improvements and needs more time to focus on the exterior of the property." Our records indicate that there has been no interior renovation building permit for the subject property. The only building permit that has been issued on the property in the last year (September 2, 2015) is a permit to replace windows and an opening. That permit is still open and incomplete.

Staff does not believe that the extent of ongoing work should have delayed the swimming pool construction. Therefore, Staff recommends that the Council allow the property owner only a six month time extension to obtain a building permit for the swimming pool. Once approved, the applicant will have until February 15, 2017 to obtain a building permit and complete the pool within the specified time allowed by Building Code.

If you have any questions, please contact Paul Castro, Zoning Administrator, at 227-6406.

Attachment

cc: Jay Boodheshwar, Deputy Town Manager

Susan Owens, Town Clerk
Paul W. Castro, AICP, Zoning Administrator
pf & zf

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

Marvin S. Rosen, *Counsel*

*Also admitted in New York

*Also admitted in Michigan

Esperanté

222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

VIA EMAIL

May 13, 2016

John Page, Director of Planning, Zoning & Building
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

**Re: 201 Bahama Lane, Palm Beach, Florida
Variance 17-2015**

Dear Mr. Page:

On August 11, 2015, Town Council granted the above referenced zoning application to allow the property owner to construct a 8 foot by 38 foot swimming pool in the east side of the residence with a 12 foot street side yard setback in lieu of the 15 foot minimum setback required. The project approval will expire on August 11, 2016. The owner has been focused on the interior and needs additional time to focus on the exterior of the property. On behalf of the property owner, I am requesting a one year extension of the project approval until August 11, 2017. Please place this matter on the next Town Council Agenda so I may request the extension. Please let me know if you require any additional information.

Thank you for your attention to this matter.

Sincerely,



Maura Ziska

cc: Paul Castro
client

00031492

TOWN OF PALM BEACH

Town Council Meeting Development Review on: July 13, 2016

Section of Agenda

Development Review - New Business

Agenda Title

VARIANCE #12-2016 The application of Mitchell and Victoria Evans; relative to property commonly known as **168 East Inlet Dr.**, described as lengthy legal description on file; located in the R-B Zoning District. The applicant is proposing to add a 1,595 square foot second story addition onto the existing one story residence. The proposed addition will not require the demolition of more than 50% cubic footage of the existing house. The following variances are being requested: 1) lot coverage of 37.8% in lieu of the 30% maximum allowed for a two story structure.; 2) cubic content ratio ("CCR") of 4.92 in lieu of the 3.21 existing and 3.99 maximum allowed. [Attorney: Maura Ziska, Esq.]

[Architectural Commission Recommendation: Implementation of the proposed variance will cause negative architectural impact to the subject property. Carried 4-3.]

Request for Deferral to the August 16, 2016, Town Council Meeting Per Letter Dated July 5, 2016, from Maura Ziska

Presenter

John S. Page, Director of Planning, Zoning & Building

ATTACHMENTS:

- ▣ **Letter Dated July 5, 2016, from Maura Ziska**

KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska
Marvin S. Rosen, Counsel*

*Also admitted in New York
*Also admitted in Michigan

Esperanté
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401

Telephone: (561) 802-8960
Facsimile: (561) 802-8995

VIA E-MAIL

July 5, 2016

Paul Castro
Kelly Churney
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: VAR 12-2016 – 168 E Inlet Drive

Dear Paul and Kelly:

Please defer the above referenced matter from the July 13, 2016 Town Council agenda to the August 16, 2016 Town Council agenda. The reason for the deferral is because ARCOM deferred the matter at the June 22, 2016 meeting. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely,



Maura A. Ziska

MAZ/jch
cc: Architect
00032503

TOWN OF PALM BEACH

Town Council Meeting Development Review on: July 13, 2016

Section of Agenda

Development Review - New Business

Agenda Title

VARIANCE #14-2016 The application of Gary Pohrer, Managing Member of 412 Brazilian Partners LLC; relative to property commonly known as **412 Brazilian Ave.**, described as lengthy legal description on file; located in the R-C Zoning District. The applicant is requesting to construct a new 5,098 square foot, two story residence on a lot with a width of 50 feet in lieu of the 75 minimum required and a lot area of 8,560 sq. ft. in lieu of the 10,000 sq. ft. minimum required. [Attorney: Maura Ziska, Esq.]

[Architectural Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject property. Carried 7-0.]

Presenter

John S. Page, Director of Planning, Zoning & Building

ATTACHMENTS:

- ▣ **Letter Dated June 16, 2016, from Daniel Doorakian**

RECEIVED

JUN 17 2016

Town of Palm Beach
PZB Dept

KATZ & DOORAKIAN LAW FIRM, P.L.
ATTORNEYS AT LAW

Office Address:
625 N. Flagler Drive – Suite 605
West Palm Beach, FL 33401

Telephone: (561) 721-6770
Facsimile: (561) 721-6733

DANIEL DOORAKIAN
Direct Line: (561) 721-6730
E-mail: ddoorakian@katzlawpl.com

CC: TMD
PG
KC
JP
PF
2F

Wellington Office:
(561) 227-1560

June 16, 2016

Sent via Federal Express to:

Town of Palm Beach – Architectural Commission
360 South County Road
2nd Floor
Palm Beach, FL 33480

**RE: 412 Brazilian Avenue
Zoning Application**

Variance #14-2016

To Whom It May Concern:

This office represents the 330 Coconut Row Condominium Association, Inc. (the “Association”). The Association governs the condominium building located at 330 Coconut Row, Palm Beach, Florida (the “Building”).

The Association is in receipt of a Notification to Property Owner per Section 18-202(1) of the Town Architectural Review Ordinance (the “Notice”) regarding proposed construction at 412 Brazilian Avenue (the “Subject Property”). The Notice was sent to the Association because the Building is located within three hundred (300) feet of the Subject Property.

The Subject Property is located within the R-C medium density residential district. Pursuant to the Palm Beach Code of Ordinances, Section 134-948, the minimum lot area for single-family uses in the R-C- district is 10,000 square feet, and the minimum lot width is 75 feet. The owner of the Subject Property, 412 Brazilian Partners LLC (the “Owner”), submitted a Zoning Application that requests a variance to enable the Owner to build a new 5,098 square foot, two story residence on the Subject Property. The variance is needed because the Subject Property is nonconforming in that it has a width of only 50 feet (in lieu of the 75 foot required minimum), and a lot area of only 8,560 square feet (in lieu of the 10,000 square foot required minimum).

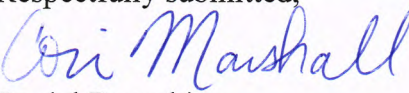
The Association hereby advises the Town Architectural Commission that it disapproves of the variance requested in the subject Zoning Application submitted by the Owner. According to Section 134-941 of the Code of Ordinances, the purpose of the R-C medium density residential

district is to maintain a generally spacious environment for residential uses. The construction of the new proposed residence on the Subject Property will be contrary to the intent and purpose of the R-C medium density district in that the residence will impair the visibility and marketability of the Building, which is situated directly to the east of the Subject Property. While the Association acknowledges that the Owner was not the cause of the nonconformity in that the Subject Property was originally platted in this matter, the Owner is exacerbating the problem by intending to demolish an existing one-story residence and replace it with a larger and taller residence.

The Association submits that the requested variance should not be granted. Notwithstanding, if the variance is granted, the Association believes that the Owner should be required to construct a residence that is similar in size, height and scope to the existing structure so as not to further impair the visibility and marketability of the units located within the Building.

Should you have any questions, please feel free to contact me at (561) 721-6730. Thank you for your attention to this matter.

Respectfully submitted,


for Daniel Doorakian

cc: Association Board of Directors

John Randolph, Esq.,
Jones Foster et. al.
Flagler Center Tower
505 South Flagler Drive, Suite 1100
West Palm Beach, FL 33401
jrandolph@jonesfoster.com

TOWN OF PALM BEACH

Town Council Meeting Development Review on: July 13, 2016

Section of Agenda

Development Review - Other

Agenda Title

Planning & Zoning Commission Record and Report: Proposed Modifications and Changes to Chapter 134, Zoning

Presenter

John S. Page, Director of Planning, Zoning and Building

ATTACHMENTS:

- ▣ **Memorandum Dated June 24, 2016 From John S. Page, Director of Planning, Zoning and Building**
- ▣ **Memorandum from John Page dated April 29, 2016**
- ▣ **Memorandum from John Page dated June 2, 2016**

TOWN OF PALM BEACH

Information for Town Council Meeting on: July 13, 2016

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

From: John S. Page, Director of Planning, Zoning & Building

Re: Planning & Zoning Commission Record & Report
Proposed Modifications and Changes to Chapter 134, Zoning

Date: June 24, 2016

STAFF RECOMMENDATION

Staff recommends that the Town Council continue forward with its consideration of recommendations from the Planning & Zoning Commission and provide further direction on possible amendments to the Zoning Ordinance.

GENERAL INFORMATION

Council initiated review of Commission's Record & Report in May of this year. After completing discussion about potential changes to Sea-Street recommendations, the remainder of the Record & Report was deferred until July. As a refresher of remaining code items to be discussed, please refer to the Memo and the Record & Report from your May 11 meeting (attached). Recommendations remains unchanged, with the exception of the Council-directed additions to the Sea-Streets recommendations that were amended by Council consensus in May and June (also attached).

Once all study items have been duly considered with Council direction, staff will prepare any necessary Ordinance amendments for official action at subsequent meetings.

Attachments

cc: John C. Randolph, Town Attorney
Planning & Zoning Commissioners

TOWN OF PALM BEACH

Information for Town Council Meeting on:

May 11, 2016

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

From: John S. Page, Director, Planning, Zoning & Building Department

Re: Planning and Zoning Commission Record and Report: Proposed Modifications and Changes to Chapter 134, Zoning

Date: April 29, 2016

STAFF RECOMMENDATION

Staff recommends that the Town Council consider the Planning and Zoning Commission Recommendation and Report (EXHIBIT A) and provide further direction on possible amendments to the Zoning Ordinance. Study items appear in "BOLD" print, and are numbered in accordance with the 15 ongoing Code review assignments directed by the Town Council to the Commission in October of 2015 and January and March of this year (Study Item List attached). Newly proposed text is in add/delete format for ease of identification. Staff recommendations follow recommendations from the Commission.

See further explanation in EXHIBIT A.

PLANNING AND ZONING COMMISSION RECOMMENDATION

The Planning and Zoning Commission, at its January 19, February 16, March 22, and April 19 meetings, recommended approval of proposed Zoning Code modifications as identified below.

GENERAL INFORMATION

With the exception of one remaining task (review of off-street parking requirements), the Planning & Zoning Commission has completed its review of the 15 study items as directed from the Town Council last October. The Commission has met monthly since that time. Nine of the study items were presented to the Council in February and have subsequently been left unchanged or modified per final Council determination (Ordinance #04-2016 approved on February 10 and March 9). The attached Record and Report from the Commission includes recommendations on the remainder of the assigned study item list with the exception of off-street parking regulations (yet to be considered).

In summary, the recommendations included within this report consist of:

- Preserving the character of the “Sea-Streets” by allowing for existing, nonconforming homes to be rebuilt at the same approximate footprints as presently exist in character with other nearby dwellings.
- Leaving point of measurement requirements unchanged (measured from highest street elevation in front of the lot rather than natural grade).
- Eliminating the maximum linear dimension of a structure, if the structure lies entirely below grade (a sub-basement not visible above grade).
- Clarifying that open greenspace situated at grade above underground structures (sub-basements) shall count in the calculations for landscape open space requirements, and further that underground structures shall count toward lot coverage.
- Require that utility boxes be properly screened with landscaping.
- “Clean-up” the Zoning Code to reference on-street parking fees as contained within the Town’s Master Fee Resolution, rather than spelling out a specific fee within the Code itself.

The Commission instructed Staff to draft the attached recommendations for consideration by the Town Council. Staff is requesting that the Council consider the proposed changes in the Record and Report (see EXHIBIT A) and provide direction for drafting an ordinance for subsequent Town Council action. The Commission will proceed forward with review of off-street parking regulations, yet the Council earlier directed that all study item work be completed during “season.” For that reason, the review of off-street parking regulations will be placed “on hold” until a later date this year. Please contact Paul Castro at 227-6406 if you have any questions about these recommendations.

cc: Planning and Zoning Commissoin
Jay Boodheshwar, Deputy Town Manager
John C. Randolph, Town Attorney
Paul W. Castro, AICP, Zoning Administrator
Veronica B. Close, Asst. Director, Planning, Zoing & Building Department

EXHIBIT A: PLANNING AND ZONING COMMISSION RECORD AND REPORT

7. Review varying side yard setback requirements and possible related Zoning Code requirements on smaller lots on Seaview Avenue, Seaspray Avenue and Seabreeze Avenue in the R-B zoning district for consistency and appropriateness. (Based on last Commission meeting, provide draft language for limiting the maximum lot size on the "Sea Streets" to prevent the combination of existing lots in order to build larger homes.)

Recommendation:

The Commission recommended the following changes by a vote of 7-0. Staff concurs with the proposed changes.

Sec. 134-893. - Lot, yard and area requirements—Generally.

(a) In order to protect the unique, residential character of Seaview Avenue, Seaspray Avenue and Seabreeze Avenue (Sea Streets), partial or complete demolition and reconstruction of a single-family dwelling on a lot 75 feet or less in width is exempt from the lot, yard and area requirements as set forth in this Section if redeveloped on the same footprint, or at greater setbacks, as existed prior to demolition provided the following conditions are met:

1. The proposed single-family dwelling is of an architectural style consistent with the architecture of the single-family dwellings within the R-B zoning district on both sides of the subject street, between the intersecting streets in both directions, where the dwelling is situated, as determined by the Architectural Commission.

2. The proposed single-family dwelling shall meet the requirements in Sec. 134-893(c).

3. The height and overall height from the point of measurement of the proposed single-family dwelling is no higher than the dwelling being demolished.

4. Square footage added to the proposed single-family dwelling shall meet all lot, yard and bulk zoning requirements in the Code.

(ab) Schedule of regulations. In the R-B low density residential district, the schedule of lot, yard and area requirements is as given in this section:

1) *Lot area.* The minimum lot area is 10,000 square feet. Subsequent to _____, 2016, residential lots, or portions thereof, on Seaview Avenue, Seaspray Avenue and Seabreeze Avenue (Sea Streets) may not be combined to create a larger single family dwelling than that which can be built on each independent lot prior to the properties being combined. This shall not preclude the combination of lots, or portions thereof, on the Sea Streets for the purpose of constructing accessory structures or providing more landscape open space. However, this

combination of lots, or portions thereof, shall preclude future use of the additional land in order to build a larger single-family dwelling. This provision shall not apply to lots which are contiguous to each other which are under single ownership or control prior ? ,2016. For lots of 20,000 or more square feet in the R-B district, except for those lots between Dunbar Road and Reef Road which are adjacent to the waters of Lake Worth, the following shall apply:

a. When the width of a lot in the R-B district is equal to or greater than the minimum required for a lot in the R-A district, development of the lot shall be subject to the minimum side yard setback and angle of vision provisions of the R-A district.

b. When the width of the lot is equal to or greater than the minimum required for a lot in the R-AA district, development of the lot shall be subject to the angle of vision provisions of the R-AA district, and lots of 150 feet or more in width shall have the following side yard setbacks: Lots of 150-154 feet in width are required to have a 17.5 foot setback; lots of 155-159 feet in width are required to have a 20-foot setback; and for lots of 160 feet or more in width the setback shall be 22 feet plus two feet for each additional ten feet in width in excess of 169 feet, to a maximum side yard setback of 30 feet.

c. When the depth of a lot in the R-B district is equal to or greater than the minimum required for a lot in the R-A district, development of the lot shall be subject to the minimum front and rear yard setbacks and building height plane provisions of the R-A district.

d. When the depth of the lot is equal to or greater than the minimum required for a lot in the R-AA district, development of the lot shall be subject to the minimum front and rear yard setbacks and building height plane provisions of the R-AA district.

e. When the area of a lot in the R-B district is equal to or greater than 20,000 square feet, development of the lot shall be subject to the maximum coverage and minimum open space provisions of the R-A district, except that the maximum allowable lot coverage for single-story development shall be 30 percent.

f. When the area of the lot is equal to or greater than 60,000 square feet, development of the lot shall be subject to the maximum coverage and minimum open space provisions of the R-AA district, except the minimum allowable lot coverage for single-story development shall be 30 percent.

g. The provisions in subsections (1) a through f above do not apply to lots 20,000 square feet or greater in area between Dunbar Road and Reef Road which are adjacent to the waters of Lake Worth.

(2) *Lot width.* The minimum lot width is 100 feet.

(3) *Lot depth.* The minimum lot depth is 100 feet.

(4) *Density.* The maximum density is four dwelling units per acre.

(5) Front yard.

- a. The minimum front yard setback for the first story is 25 feet, however the front yard setback may be reduced to a minimum of 20 feet, or portion thereof, provided the required rear yard setback for the first story is increased by the amount of reduction in the front yard.
- b. The minimum front yard setback for the second story is 30 feet, however the front yard setback may be reduced to a minimum of 25 feet, or portion thereof, provided the required rear yard setback for the first and second story is increased by the amount of reduction in the front yard.

(6) Angle of vision.

- a. The building angle of vision (front setback) for one-story buildings is 100 degrees.
- b. The building angle of vision (front setback) for two-story buildings is 100 degrees.
- c. Building angle of vision is not applicable to lots fronting on cul-de-sacs.
- d. No portion of any individual building shall extend beyond a line drawn from the front property line 50 degrees either side of a line drawn perpendicular or radial to the front yard property line. For lots exceeding the minimum required width, the base angle of vision (50 degrees on either side of the line) shall be increased by two degrees for each ten feet of increased lot width over the minimum up to a maximum additional width of 40 feet in the R-B district.
- e. In the case of corner lots or through lots with frontage on the following primary north-south roadways, the building angle of vision shall be applied only to the frontage along the designated primary north-south roadway: North Ocean Boulevard; South Ocean Boulevard; North County Road; South County Road; and North Lake Way.
- f. In the case of other corner or through lots, the building angle of vision shall be applied only to the front yard as determined by the orientation of the building.
- g. For exceptions to these regulations, see section 134-895.
- h. For the purposes of determining application of the building angle of vision, an accessory structure shall be considered part of the principal structure when it is separated from the principal structure by a distance of less than 25 feet. When an accessory structure is separated by a distance of 25 feet or more from the principal structure, it shall be treated as separate structure and individually subject to the building angle of vision.

(7) Side yard.

- a. The minimum side yard setback for the first story shall be 12½ feet.

b. The minimum side yard setback for the second story shall be 15 feet.

(8) *Rear height plane setback.* 25 feet.

(9) *Rear yard.*

a. The minimum rear yard setback for the first story is ten feet except as provided for in subsection (5)a.

b. The minimum rear yard setback for the second story is 15 feet except as provided for in subsection (5)b.

(10) *Height and overall height.*

a. For one-story buildings, the maximum building height is 14 feet.

b. For two-story buildings, the maximum building height is 22 feet.

c. Maximum overall height of a building in the R-B district shall be the maximum allowable building height plus three feet for a flat roof and eight feet for all other roof styles. When a parapet is used above the maximum building height, as defined in section 134-2, the building overall height will be calculated based on the flat roof style identified above. Parapet walls extending above the maximum allowable building height shall have appropriate architectural treatment.

d. The vertical distance to the top of the beam or plate as described in the building height definition in section 134-2 shall not be more than 18 feet (one story) or 26 feet (two stories) above the crown of street at its highest elevation abutting the lot or the average elevation (taken at the crown of the street) of each of the two streets abutting the lot in the case of corner or through lots.

(11) *Lot coverage.*

a. The maximum lot coverage for one-story buildings is 40 percent.

b. The maximum lot coverage for two-story buildings is 30 percent.

(12) *Landscape open space.*

a. The minimum landscaped open space is 45 percent, of which 50 percent of that percentage is required to be perimeter landscaping within ten feet of the property line. The perimeter landscaped open space requirement shall not apply to lots 20,000 square feet or more in area.

b. Additionally, not less than 40 percent of the required front yard must be landscaped open space in the R-B district.

(13) *Cubic content ratio.*

a. The maximum cubic content ratio shall be as follows:

1. For lots of less than 10,000 square feet, the maximum allowable CCR shall be calculated as follows: $4.00 + [(10,000 - \text{the lot size}) \div 10,000]$.

2. For lots between 10,000 and 60,000 square feet which are not identified in subsection 4 of this section, the maximum allowable CCR shall be calculated as follows: $3.50 + [(60,000 - \text{the lot size}) \div 50,000] \times 0.5$.

3. For lots of greater than 60,000 square feet which are not identified in subsection 4 of this section, the maximum allowable CCR shall be 3.50.

4. For lots of 20,000 square feet or greater which are adjacent to the waters of Lake Worth from Dunbar Road to Reef Road, the maximum allowable CCR shall be 4.50. For purposes of determining whether a lot is adjacent to the waters of Lake Worth, the traversing of all or a portion of the lot by Lake Trail shall not be considered when determining that adjacency.

5. Exceptions. One architectural tower feature involving no habitable space, as otherwise permitted under subsection 134-896(b), shall not be counted in calculating the cubic content of the structure. Unenclosed covered patios, loggias, balconies, porches or terraces located on the first floor of the structure shall not be counted in calculating the cubic content of a structure, provided the aggregate cubic content of such appurtenances does not exceed five percent of the total cubic content of the structure. Such appurtenances so erected may not in the future be enclosed or converted to permanent additions to the structure if such conversion would increase the cubic content of the structure beyond that allowed by the applicable CCR.

b. For purposes of calculating the cubic content ratio, lot size shall be rounded to the nearest 100 square feet. For purposes of computing the resultant cubic content, the cubic content ratio shall be rounded to two decimal places. A table illustrating the cubic content ratio and associated cubic content for varying lots sizes resulting from the application of the above formulas is provided as Attachment A to this chapter. This table also provides approximations of the likely floor areas achievable at varying average building heights.

(bc) *Existing building lots.* A single-family structure may be constructed on any existing nonconforming lot at the time of adoption of the ordinance from which this section derives in the R-B zoning district if the lot is less than the minimum area and/or dimension required for building lots in this district; provided, however, that a special exception with site plan review would be required for an unplatted lot and site plan review would be required for a platted lot. In addition, all new construction must comply with all other provisions of the schedule of lot, yard and bulk requirements in subsection (a) of this section and provided, further, the owner of such lot shall not own any adjacent vacant land which would create a conforming lot if the vacant land were combined with the lot deficient in area.

Sec. 134-446. - Development and redevelopment of nonconforming residential lots.

(a) Vacant land located in any zoning district which does not conform to the minimum requirements of lot dimension or lot area as required by the schedule of lot, yard and bulk regulations for the district as given in article VI of this chapter may be developed or redeveloped as allowed in subsections (b) and (c) provided that multi-family residential use and single-family residential use does not exceed the maximum density allowed for the site, as identified in the future land use element in the town's comprehensive plan. Development of a single-family residential dwelling unit on a vacant residentially zoned lot which has existed in the same configuration for a minimum of 30 years is allowed subject to subsection (b) or (c), whichever is relevant.

(b) The development or redevelopment of land which does not conform to the requirements of lot dimension or lot area requirements in the R-C, R-D(1), R-D(2), C-TS, C-WA, C-OPI, C-PC, C-B and PUD zoning districts shall be subject to an application to the town council for a variance.

(c) The development or redevelopment of land which does not conform to the requirements of lot dimension or lot area requirements in the R-AA, R-A and R-B zoning districts shall be subject to an application to the town council for special exception and/or site plan review as provided for in subsections 134-793(b), 134-843(b) and 134-893(~~bc~~).

-
- 8. Study the point of measurement requirements to determine if the measurement of height, overall height, building height plane, and cubic content ratio (R-B District) should be measured from the natural grade of a lot rather than the highest street elevation in front of a lot.**
-

RECOMMENDATION:

The Commission recommended that the Town Council make no changes to the regulations related to the point of measuring the height, overall height, building height plan and cubic content ratio of buildings or structures by a vote of 7-0. Staff concurs with the recommendation.

-
9. Review language governing maximum linear building dimensions and lot coverage to prevent same from applying to underground structures (in sub-basements not visible aboveground).
 10. Review minimum landscaped open space requirements, clarifying how same is to be calculated when “greenspace” exists above underground structures.
-

Recommendation Related to only linear building dimension in Study Item 9:

The Commission recommended the following changes related to linear building dimension in Study Item 9 by a vote of 6-1 (Mr. Scharf dissenting). Staff concurs with the proposed changes.

Maximum linear building dimension for sub-basements:

Sec. 134-1113. - Lot, yard and area requirements—Generally.

In the C-TS town-serving commercial district, the schedule of lot, yard and area requirements is as given in this section:

(1)...

(10) *Length.*

- a. For one-story buildings, the maximum building length is 150 feet.
- b. For two-story buildings, the maximum building length is 150 feet.
- c. Sub-basements are exempt from the maximum building length requirement.

Sec. 134-1163. - Lot, yard and area requirements—Generally.

In the C-WA Worth Avenue district, the schedule of lot, yard and area requirements is as given in this section:

(1)...

(10) *Length.*

- a. For one-story buildings, the maximum building length is 150 feet.
- b. For two-story buildings, the maximum building length is 150 feet.
- c. For multi-family building maximum dimensions, see section 134-1871 et seq.

d. Refer to the Worth Avenue Design Guidelines for special exception requirements providing for special allowances to coverage, height, building length and gross floor area limitations

e. Sub-basements are exempt from the maximum building length requirement.

Sec. 134-1213. - Lot, yard and area requirements—Generally.

In the C-OPI office, professional and institutional district, the schedule of lot, yard and area requirements is as given in this section:

(1)...

(10) *Length.*

a. For one-story buildings, the maximum building length is 150 feet.

b. For two-story buildings, the maximum building length is 150 feet.

c. For three-story buildings, the maximum building length is 150 feet.

d. Sub-basements are exempt from the maximum building length requirement.

Sec. 134-1308. - Lot, yard and area requirements—Generally.

In the C-B commercial district, the schedule of lot, yard and area requirements is as given in this section:

(1)...

(10) *Length.*

a. For one-story buildings, the maximum building length is 150 feet.

b. For two-story buildings, the maximum building length is 150 feet.

c. Sub-basements are exempt from the maximum building length requirement.

Recommendations Related to only Lot Coverage in Study Item 9 and Study Item 10:

The Commission recommended the following changes related to lot coverage for sub-basements in Study Item 9 by a vote of 6-1 (Mr. Scharf dissenting). Staff concurs with the proposed changes.

The Commission recommended the following changes related to landscape open space in Study Item 10 by a vote of 6-1 (Scharf dissenting). Staff concurs with the proposed changes.

Sec. 134-1611. - Sub-basement exception.

(1) For residential and time-share development or redevelopment, and for commercial development within the C-PC, Planned Commercial District, No portion of a sub-basement may be located beyond the confines of the outer walls of the first floor above it except under the following conditions:

(1a) The sub-basement shall have at least 51% of its floor area within the confines of the outer walls of the main portion of the building located above the sub-basement.

(2b) ~~The portion of the sub-basement outside of the outside walls of the main portion of the building located above the sub-basement shall have no physical appearance and be entirely hidden from view from any elevation of the building.~~

(3c) The developed grade outside the walls of that portion of the sub-basement that is outside the walls of the main portion of the building located above the sub-basement shall not be raised or altered in order to be hidden from view, more than two feet above the natural grade.

(4d) The portion of the sub-basement outside of the outside walls of the main building above the sub-basement shall not be allowed to count in the calculations for landscape open space requirements and shall count toward lot coverage, and,

(e) The sub-basement shall be setback a minimum of five feet from a property line.

(2) For development or redevelopment in commercial zoning districts with the exception of the C-PC, Planned Commercial District, a sub-basement shall be allowed under the following conditions:

(a) The maximum lot coverage for a sub-basement shall not exceed 70%.

(b) The sub-basement shall be entirely hidden from view from any elevation of the building.

(c) The developed grade outside the walls of that portion of the sub-basement that is outside the walls of the main portion of the building located above the sub-basement shall not be raised or altered in order to be hidden from view, more than two feet above the natural grade.

(d) The portion of the sub-basement outside of the outside walls of the main building above the sub-basement shall be allowed to count in the calculations for landscape open space requirements and shall count toward lot coverage.

(e) The sub-basement shall be setback a minimum of five feet from a property line.

14. Study Potential revisions to the Zoning Code to require transformers for underground electric utilities to be screened.

Recommendation:

The Commission recommended the following changes by a vote of 6-1 (Mr. Scharf dissenting). Staff concurs with the proposed changes.

Sec. 134-1516. - Underground location of utility service lines.

1. Boxes housing essential services in the front, street side and street rear yard setbacks shall be screened from view from the street in so much as possible by either a wall or hedge planted and maintained at a height the same as or greater than said essential service box. An essential service is defined in Sec. 134-2 of the Code.
2. At the time that any new buildings or structures are being constructed or located on any privately owned property or at the time that any existing buildings or structures on privately owned property are being reconstructed, substantially extended and enlarged or structurally altered, such buildings or structures shall have an entirely underground location for all utility service lines, electrical distribution systems, wires and cables, which connect to and service such buildings or structures.

Sec. 134-2. - Definitions and rules of construction. Modified

(a) Rules of construction. For the purpose of this chapter, the regulations are structured so as to be strictly permissive. As such, only those uses and structures which are specifically permitted in the Code of Ordinances are allowed. If there is no specific language in the Code which addresses a use or a structure, then said use or structure is not permitted.

The term "used for" shall include the term "designed for", the term "structure" shall include the term "building", the term "lot" shall include the terms "plot" or "tract", and the term "shall" is mandatory and not permissive.

In the interpretation or application of any provision of this chapter, it shall be held to be the minimum requirement adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision imposes greater restrictions upon the subject matter than the general provision imposed by the Code, the provision imposing the greater restriction or regulations shall be controlling.

(b) Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

...

Essential services means public utility facilities related to water supply, telephone, cable television, gas and electrical distribution systems, and town-owned and town-operated services such as sanitary sewer, stormwater drainage, and solid waste collection and disposal systems, including any necessary appurtenant structures serving the town, but not including buildings housing employees.

15. Change Chapter 134 related to on-street parking fee to cross reference the schedule of fees for on-street parking rather than have the specific fee in the Zoning Regulations.

Recommendation:

The Commission recommended the following changes by a vote of 7-0. Staff concurs with the proposed changes.

Sec. 134-2327. - Issuance.

Under this division, parking permits may be granted to persons as follows:

(1) *Resident permits.* To persons who are residents of any particular area in which parking is so restricted, to be limited to that particular area in which parking is so restricted for every vehicle owned by those persons.

(2) *Visitor/service permits.* Upon application by such owner, up to two visitor/service permits may be issued, which permits may be used by such owner for the sole purpose of providing parking on a temporary basis to service vehicles which are conducting work at such owner's premises or for visitors of such owner's residence. These permits shall be used only for the period of time during which business is to be conducted by the service vehicles or for the duration of stay of a visitor to the residence for which the permit is issued.

The application for a visitor/service permit or permits shall be filed by such owner. A fee is hereby authorized for issuance of said permit ~~of \$20.00~~, payable to the finance department ~~shall be charged~~ for each visitor/service permit. The amount of the fee shall be established by resolution of the town council and may be amended from time to time by resolution of the town council. These permits shall not be affixed to the vehicle, but shall be placed in a clearly visible place on the inside of the visitor's or service vehicle observable through the front windshield of the vehicle. The permits shall be valid only for the period of time during which the service vehicle is conducting work at the premises or for the period of time a visitor is at the premises.

(3) *Temporary group permits.* To residents as provided in section 134-2328.

(4) *Adjacent resident permits.* To persons who are residential users in a commercially zoned area immediately adjacent and contiguous to the residential area in which parking is restricted, to be limited to that particular area in which parking is so restricted, for not more than two vehicles

owned by that person and upon proof shown that on-site parking is not available to that person on the property in which he resides within the commercially zoned area.

cc: Planning & Zoning Commissioners
Jay Boodheshwar, Deputy Town Manager
John C. Randolph, Town Attorney
Veronica B. Close, Asst. Director of Planning, Zoning & Bldg.
zf

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 15, 2016

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

From: John S. Page, Director of Planning, Zoning & Building

Re: Sea-Street Zoning Changes
Updated Draft Ordinance

Date: June 2, 2016

STAFF RECOMMENDATION

Staff recommends that the Town Council consider the attached verbiage changes to potential Sea-Street zoning changes, per feedback and direction provided at the May 11, 2016 Town Council meeting. No immediate action is necessary.

GENERAL INFORMATION

Time prevented the entire Planning & Zoning Commission Record & Report from being considered during the Council's recent meeting of May 11. Considerable discussion and feedback, however, was provided to staff in regard to the Sea-Streets. It was requested by Council that staff provide an updated draft of Sea-Street changes during the June Developmental Review meeting, and that the remainder of study items be deferred until the month of July. The verbiage that follows reflects the changes that were approved by consensus on May 11, 2016.

Section 134-893. – Lot, yard and area requirements – Generally.

- (a) In order to protect the unique, residential character of Seaview Avenue, Seaspray Avenue and Seabreeze Avenue (Sea Streets), partial or complete demolition and reconstruction of a single-family dwelling on a lot 75 feet or less in width is exempt from the lot, yard, and area requirements as set forth in this Section if redeveloped **substantially** on the same footprint, or at greater setbacks, as existed prior to demolition provided the following conditions are met:
1. The proposed single-family dwelling is of an architectural style consistent with the architecture of the single-family dwellings within the R-B zoning district on both sides of the subject street, between the intersecting streets in both directions, where the dwelling is situated, as determined by the Architectural Commission.

2. The proposed single-family dwelling shall meet the requirements in Section 134-893(c).
3. **If the existing footprint of the home lies within 5 feet of a side or rear lot line, the replacement footprint must be shifted such that an absolute minimum 5 foot side and rear lot line setback is created, and further the redeveloped home must be situated at least 10 feet apart from any structure on a neighboring lot.**
4. The height and overall height from the point of measurement of the proposed single-family dwelling is no higher than the dwelling being demolished.
5. Square footage added to the proposed single-family dwelling shall meet all lot, yard and bulk zoning requirements in the Code.

Although substantial direction was provided to staff regarding “footprint replacement” and setbacks, there was no agreement regarding the notion of limiting the size of homes on adjacent, combined lots. Staff was encouraged to give further thought to potential options. See summary statements that follow:

- Increasing side yard setbacks on combined lots to contain mass does not in itself prevent homes that are larger than those that presently exist. The result may be large homes on large lots (contrary to the goal of preserving existing character).
- A more direct approach to containing the size of dwellings on combined lots would be to consider the use of one or more of the following zoning tools: further limiting cubic content ratio (CCR); requiring more landscaped open space; reducing lot coverage; and/or reducing the angle of vision. Revising these tools to reduce the size of homes on adjacent lots may give rise to “Bert Harris” claims. See additional cautionary note below.
- Staff is concerned that the tools identified just above to limit dwelling size, even if implemented, might not produce the intended result. Any combination of lots (which could drastically differ in total area from block to block) if large enough, may produce overly-large homes regardless of more restrictive lot, yard, and bulk requirements.

The notion of establishing and implementing new rules for homes on combined lots is not used elsewhere in the Code, and could present legal challenges. It may be wise to keep this notion in “abeyance” until or unless the practice of combining lots becomes pronounced.

cc: Skip Randolph, Town Attorney
Planning & Zoning Commissioners