



TOWN OF PALM BEACH

Town Manager's Office

TENTATIVE-
SUBJECT TO
REVISION

TOWN COUNCIL MEETING

TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD

AGENDA

WEDNESDAY, JULY 10, 2013

9:30 A.M.

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
David A. Rosow, President
Robert N. Wildrick, President Pro Tem
William J. Diamond
Richard M. Kleid
Michael J. Pucillo

II. INVOCATION AND PLEDGE OF ALLEGIANCE

III. COMMENTS OF MAYOR GAIL L. CONIGLIO

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

V. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE (Another opportunity for communications from citizens will be offered immediately after the lunch break.)

VI. APPROVAL OF AGENDA

VII. DEVELOPMENT REVIEWS

A. Time Extensions

None

B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

None

2. New Business

- a. **SITE PLAN REVIEW #8-2013** The application of Mark Goldman, Manager, Robmar Realty II, LLC; relative to property commonly known as **225 West Indies Drive**; described as Lot 17, BRAMS ADDITION, being a Replat of a Part of Lots 2, 3, 4, and 5, Indian Mound Tract, according to the map or plat thereof as recorded in Plat Book 26, Page 190 of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting Site Plan Review to allow the construction of a 5,306 square foot one-story single family residence on a non-conforming platted lot which is 99 feet in width in lieu of the 100 foot minimum required in the R-B Zoning District. [Attorney: Maura Ziska]

- b. **SPECIAL EXCEPTION #7-2013 WITH SITE PLAN REVIEW AND VARIANCE (REVISED)** The application of 2842 S Ocean LLC, Edward Leevan, Manager; relative to property commonly known as **2842 South Ocean Blvd**; described as lengthy legal description on file; located in the R-D (2)/Beach Area Zoning Districts. (The application is being revised to add the underlined language in the description of request in Paragraph II.B.) Special Exception is being requested to modify the hotel which is a special exception use by a site plan modification for internal floor plan changes to the basement level of the hotel. Previously a 3,700 square foot spa and 1,141 square foot salon was approved in 2008 as a shell. The hotel is now requesting to build out the spa and salon with a modification as to the exact location of the spa/salon (square footage remains the same). 977 square feet on the north side of the spa is proposed to be used for storage. A further modification is to relocate conference/meeting rooms from the basement to the first

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floor into space that was previously spa and salon and outdoor seating area. A further request is to approve work/changes already completed at the hotel that did not get the required approval by the Town Council. These are as follows: modification in the basement housekeeping area that consist of the removal of interior walls in the laundry room, create a doorway and add an additional exhaust to the south laundry room exterior grounds that is proposed to be screened by a wing wall and landscaping which will meet the noise decibel requirement in the Code; enclosure of an outdoor seating area on the northwest side of the hotel with glass walls and doors; addition of a 144 square foot gazebo to the north side of the hotel. Variances are also requested as follows: A variance to eliminate 42 required off-street parking spaces at the front of the hotel for a six day period from October 16, 2013 to October 21, 2013 for a 13,200 square foot tent to accommodate a conference meeting; a variance to allow an existing 144 square foot gazebo on the north side of the hotel to remain that will result in a lot coverage of 29.2% in lieu of the 28.1% existing and 22% maximum allowed; a variance to allow an existing 144 square foot gazebo on the north side of the hotel to remain that will result in a landscaped open space of 24.2% in lieu of the 24.4% existing and the 35% minimum required. [Attorney: Maura Ziska]

- c. **SPECIAL EXCEPTION #12-2013** The application of John Ceriale; relative to property commonly known as **230 South Ocean Blvd.**; described as Lot numbered 826, Poinciana Park Third Addition, Plat Book 8, Page 72; located in the BA Zoning District. The applicant is requesting Special Exception approval to construct a 350 square foot cabana on the subject property. The property will meet ocean vista requirements and will provide the necessary Unity of Title Agreement. [Agent: Jose Gonzalez]
- d. **SPECIAL EXCEPTION #13-2013** The application of Buccan; relative to property commonly known as **350 South County Road.**; described as Lots 11 through 17, Block 7, of REVISED MAP OF ROYAL PARK ADDITION TO PALM BEACH, FLORIDA according to the Plat thereof recorded in Plat Book 4, Page 1, of the Public Records of Palm Beach County, Florida; located in the C-TS Zoning District. The applicant is requesting a modification to the previously approved Special Exception

use for the restaurant Buccan to allow the following services: Curbside pick-up of take-out orders (allow restaurant employee to take order out to the customers car temporarily parked at the valet stand); cater private parties off-site; delivery; use “Imoto at Buccan” in the advertising materials. [Attorney: Maura Ziska]

- e. **MODIFIED VARIANCE #19-2013** The application of John and Hinda Snyder; relative to property commonly known as **130 Coconut Row**; described as lengthy legal description on file; located in the R-B Zoning District. The applicant is requesting approval for variances to construct a 350 square foot two-story addition (one-story with a roof terrace balcony) to expand the family room on the west side of the residence with a 8 foot north side yard setback in lieu of the 15 foot minimum required; and, to construct a 164 square foot second story addition to add a guest bedroom on the south side of the existing residence that will have a 5 foot south side yard setback in lieu of the 15 foot minimum required in the R-B Zoning District. [Attorney: Maura Ziska]
- f. **MODIFIED VARIANCE #23-2013** The application of Robert S. Cuillo; relative to property commonly known as **1260 North Lake Way**; described as lengthy legal description on file; located in the R-B Zoning District. The applicant is requesting approval for a variance to construct an addition on to the existing garage and add a second floor over the garage which requires the following variances: a north side yard setback of 12.6 feet in lieu of the 15 foot minimum required; an increase of the maximum lot coverage to 36.5% in lieu of the 30% maximum allowed from the 34.9% existing, an increase in the maximum existing cubic content ratio from 3.82 to 4.21 in lieu of the 3.9 maximum allowed. [Attorney: Joel P. Koeppel]
Deferred from the June 12, 2013, Town Council Meeting
[ARCOM Recommendation: Implementation of the proposed variances will not cause negative architectural impacts to the subject property. Carried 7-0]
- g. **VARIANCE #24-2013** The application of Paul Simonson, 550 South Ocean Blvd., LLC; relative to property commonly known as **550 South Ocean Blvd.**; described as lengthy legal description on file; located in the R-A Zoning District. The applicant is requesting a variance to construct a 1,398 square foot two-story guest house/garage addition that would have a 14.8 foot front

yard setback in lieu of the 35 foot minimum required. [Attorney: Maura Ziska]

[Landmarks Preservation Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impacts to the subject property with the proviso that the addition be setback 3 additional feet. Carried 6-1]

- h. **VARIANCE #25-2013** The application of Archdiocese of Palm Beach County, Bishop Gerald Barbarito, Diocese of Palm Beach; relative to property commonly known as **142 North County Road**; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant is requesting a variance to replace the existing “St. Edwards” church sign with a new sign that will be 13.5 square feet in lieu of the 6 foot maximum square footage allowed for an institutional sign. [Attorney: Maura Ziska]

- i. **VARIANCE #26-2013** The application of Gary L. and Terri L. Schottenstein; relative to property commonly known as **270 El Bravo Way**; described as Lot 14 and the West 76.72 feet of Lot 1 of SUPPLEMENTARY PLAT OF EL BRAVO PARK, according to the Plat thereof as recorded in the Plat Book 9, page 9, Public Records of Palm Beach County, Florida; located in the R-A Zoning District. The applicant is proposing to construct a new 15,011 square foot, two-story residence that will require the following variances: (1) to allow a point of measurement of 8 feet National Geodetical Vertical Datum mean seal level (NGVD) for height in lieu of the 7.5 foot NGVD maximum allowed for lots abutting low streets; (2) for building height plane setback of 35 feet in lieu of the 42 foot minimum required for the architectural features above the parapet roof and one-story garage; and (3) to allow a parapet on a pitched roof house with an overall height of 35 feet in lieu of the 30 foot maximum allowed when using parapets. [Attorney: Maura Ziska]

Request for Deferral to the August 14, 2013, Town Council Meeting Per Letter Dated June 27, 2013, from Maura A. Ziska.

- j. **VARIANCE #27-2013** The application of Virginia Dominicus LLC; relative to property commonly known as **230 South County Road, Suite D**; described as Lots 754, 756, 758, 760 and 764, LESS the Easterly 15 feet of Lot

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764, POINCIANA PARD 3rd ADDITION, according to the Plat thereof as recorded in Plat Book 8, Page 72, of the Public Records of Palm Beach County, Florida; located in the C-TS Zoning District. The applicant is requesting a variance to allow a 1,170 square foot interior design firm (Virginia Dominicus LLC) to open on the second floor of a building in the C-TS Zoning district without the required two additional parking spaces that are required under the principle of equivalency for converting a use from residential (requiring two parking spaces) to office (requiring four parking spaces based on 1/250 square feet). [Attorney: Maura Ziska]

- k. **VARIANCE #28-2013** The application of Jeffrey and Lee Alderton; relative to property commonly known as **2283 Ibis Isle Road**; described as Lot 25, IBIS ISLE, according to the Plat thereof as recorded in Plat Book 24, Page 84, Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is proposing to build a swimming pool on the west side of his property requiring a variance to allow for a 10 foot setback in lieu of the 15 foot minimum required in the R-B Zoning District. [Attorney: John L. McDonald]

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C. Other

1. Declaration of Use Agreement Relative to a 16 Slip T-Shaped Dock at the Oasis Condominium, 3120 South Ocean Boulevard. [John Page, Director of Planning, Zoning, and Building]

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VIII. ANY OTHER MATTERS

IX. ADJOURNMENT

PLEASE TAKE NOTE:

- 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.
- The progress of this meeting may be monitored by visiting the Town's website (www.townofpalmbeach.com) and selecting "Your Government" and then selecting "Audio (Live and Archived)." 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.
- 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.
- 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.
- 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.
- A summary of the actions taken at Town Council meetings can be viewed on the Town's website after 5 p.m. on the Friday following the Town Council meeting.

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 on: July 10, 2013

Section of Agenda

New Business - < 15 Minutes

Agenda Title

SPECIAL EXCEPTION #7-2013 WITH SITE PLAN REVIEW AND VARIANCE

(REVISED) The application of 2842 S Ocean LLC, Edward Leevan, Manager; relative to property commonly known as **2842 South Ocean Blvd**; described as lengthy legal description on file; located in the R-D (2)/Beach Area Zoning Districts. (The application is being revised to add the underlined language in the description of request in Paragraph II.B.) Special Exception is being requested to modify the hotel which is a special exception use by a site plan modification for internal floor plan changes to the basement level of the hotel. Previously a 3,700 square foot spa and 1,141 square foot salon was approved in 2008 as a shell. The hotel is now requesting to build out the spa and salon with a modification as to the exact location of the spa/salon (square footage remains the same). 977 square feet on the north side of the spa is proposed to be used for storage. A further modification is to relocate conference/meeting rooms from the basement to the first floor into space that was previously spa and salon and outdoor seating area. A further request is to approve work/changes already completed at the hotel that did not get the required approval by the Town Council. These are as follows: modification in the basement housekeeping area that consist of the removal of interior walls in the laundry room, create a doorway and add an additional exhaust to the south laundry room exterior grounds that is proposed to be screened by a wing wall and landscaping which will meet the noise decibel requirement in the Code; enclosure of an outdoor seating area on the northwest side of the hotel with glass walls and doors; addition of a 144 square foot gazebo to the north side of the hotel. Variances are also requested as follows: A variance to eliminate 42 required off-street parking spaces at the front of the hotel for a six day period from October 16, 2013 to October 21, 2013 for a 13,200 square foot tent to accommodate a conference meeting; a variance to allow an existing 144 square foot gazebo on the north side of the hotel to remain that will result in a lot coverage of 29.2% in lieu of the 28.1% existing and 22% maximum allowed; a variance to allow an existing 144 square foot gazebo on the north side of the hotel to remain that will result in a landscaped open space of 24.2% in lieu of the 24.4% existing and the 35% minimum required. [Attorney: Maura Ziska]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter Dated June 25, 2013, from Michael and Claudia Moffitt
- Letter Dated June 30, 2013, from Leonard and Carol Lilyholm

Michael and Claudia Moffitt

PO Box 288, 580 Chestnut St., Marine on St. Croix, MN 55047

RECEIVED

JUL 01 2013

TOWN OF PALM BEACH
PZB DEPT

Date: June 25, 2013

Town of Palm Beach
Planning, Zoning & Building
P.O. Box 2029
Palm Beach, FL

Special Exception #7-2013 with Variances

Ref: Zoning application #7-2013, subject address; 2842 S. Ocean Blvd. (The Omphoy Hotel)

We are owners of Unit 111, 2850 South Ocean Blvd, Palm Beach. Our unit is located directly south of the Omphoy. We are unable to attend the meeting and would like to make you aware of our concerns in writing. Please consider our position as next door neighbors to the Omphoy.

In the past the Omphoy's "promises" in regards to considering the impact on their neighbors has been sorely lacking. Their attitude has been promise us what we want to hear but do what they want.

The primary reason for my letter is that, during their initial remodeling, they promised us no outside venting would occur at ground level when they applied for their initial permit. They then proceeded to install ground venting that transplanted waves crashing with machine noise. Since the Omphoy took over the old Hilton, we have been forced to sleep with our windows closed. Please remember, they promised this ground venting would never occur.

This March they began and completed installation of a HUGE metal exhaust vent at ground level about 10 feet from our property line. The noise level with the new vent has quadrupled. In addition, there is a smell. Our unit is no more than a few feet from both these vents on the ground floor. Trust me, you would not want those vents next to your home!

We are used to the Omphoy doing what they want but until we received your notice for the hearing, we did not realize they

had not even gotten permission from Palm Beach BEFORE they went ahead and installed this new vent. A neighbor was nice enough to point out to me that it was buried in their request for a temporary tent and a spa.

There are numerous ways the Omphoy could have handled both the old and the new vent that would have had little or no impact on their neighbors. Instead, they chose the cheapest, easiest route (as usual).

We would very much appreciate the help of Palm Beach Planning, Zoning and Building to convince the Omphoy to be a more responsible neighbor and show some concern for adjacent properties.

Thank you!


Mike and Claudia Moffitt
(651) 492-4231

June 30, 2013

To: The Town Council
Palm Beach, Florida

From: Leonard and Carol Lilyholm
The Palm Worth
2850 South Ocean Boulevard
Unit #113
Palm Beach, FL 33480

Re: The Omphoy Hotel
2842 South Ocean Boulevard
Palm Beach, FL 33480
Special Exception # 7-2013

As Palm Beach residents, my husband and I oppose the special request made by the Omphoy Hotel as outlined in section 2a of the Variance Request: "...an addition of exhaust to the south laundry room exterior grounds that is proposed to be screened by a wing wall and landscaping which will meet the noise decibel requirement in the Code."

Located to the south of the Omphoy Hotel, our home in the Palm Worth has been in our family for over forty years, and we appeal to you, our representatives, to protect our interests as homeowners.

The requested variance is about more than economic value. It is about more than glare, odor and noise decibel ratings. The issue looms larger – it is about the quality of life in our Palm Beach home; a quality of life that is not disturbed by a constant background noise. It is difficult to argue that upgrades including an exhaust vent operating night and day "has a positive impact on adjoining properties," an impact that will not "result in substantial economic, noise, glare or odor impact on adjacent properties" (Exhibit B.7).

A reasonable solution would be to locate the vent to the north of the Omphoy, adjacent to the Four Seasons Hotel, another **commercial** property. Certainly this is a more compatible use, as cited in Exhibit B4: "The use will be compatible with adjoining development and the intended purpose of the district in which it is located" or as suggested in Exhibit C2, citing "the intensity of use and/or purpose of the proposed development in relation to adjacent and nearby properties and the effect thereon."

Harmony, compatibility, intended purpose. We ask you to weigh carefully the needs of commercial **and** residential interests in making your decision. Who protects the interests of the Palm Beach resident, if not the Town Council.

Sincerely yours,

Carol M. Lilyholm
Leonard P. Lilyholm

TOWN OF PALM BEACH

Town Council Meeting on: July 10, 2013

Section of Agenda

New Business - < 15 Minutes

Agenda Title

VARIANCE #26-2013 The application of Gary L. and Terri L. Schottenstein; relative to property commonly known as **270 El Bravo Way**; described as Lot 14 and the West 76.72 feet of Lot 1 of SUPPLEMENTARY PLAT OF EL BRAVO PARK, according to the Plat thereof as recorded in the Plat Book 9, page 9, Public Records of Palm Beach County, Florida; located in the R-A Zoning District. The applicant is proposing to construct a new 15,011 square foot, two-story residence that will require the following variances: (1) to allow a point of measurement of 8 feet National Geodetical Vertical Datum mean seal level (NGVD) for height in lieu of the 7.5 foot NGVD maximum allowed for lots abutting low streets; (2) for building height plan setback of 35 feet in lieu of the 42 foot minimum required for the architectural features above the parapet roof and one-story garage; and (3) to allow a parapet on a pitched roof house with an overall height of 35 feet in lieu of the 30 foot maximum allowed when using parapets . [Attorney: Maura Ziska]
Request for Deferral To The August 14, 2013, Town Council Meeting, Per Letter Dated June 27, 2013, from Maura A. Ziska.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter Dated June 27, 2013, from Maura A. Ziska

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

Marvin S. Rosen, *Counsel*•

*Also admitted in New York

*Also admitted in Michigan

Esperanté

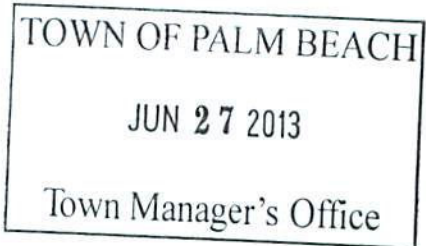
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

June 27, 2013

Mayor and Town Council
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480



RE: Variance # 26-2013 – 270 El Bravo, Palm Beach, Florida

Dear Mayor and Town Council:

Please defer the above referenced matter from the **July 10, 2013** Town Council agenda to the **August 14, 2013** Town Council agenda. The reason for the deferral is because the ARCOM committee deferred the project to the July 24, 2013 ARCOM meeting in order to allow time to re-study the architecture. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely,


Maura A. Ziska

MAZ/jch

cc: Paul Castro
client

TOWN OF PALM BEACH

Town Council Meeting on: July 10, 2013

Section of Agenda

New Business - < 15 Minutes

Agenda Title

VARIANCE #28-2013 The application of Jeffrey and Lee Alderton; relative to property commonly known as **2283 Ibis Isle Road**; described as Lot 25, IBIS ISLE, according to the Plat thereof as recorded in Plat Book 24, Page 84, Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is proposing to build a swimming pool on the west side of his property requiring a variance to allow for a 10 foot setback in lieu of the 15 foot minimum required in the R-B Zoning District. [Attorney: John L. McDonald]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter Dated June 24, 2013, from Albert D. Hutzler, III
- Letter Dated June 26, 2013, from Timothy and Phyllis Hoffman
- Letter Dated June 26, 2013, from Joan Wenzel Messing

Albert D. Hutzler, III
2315 Ibis Isle
Palm Beach, Florida 33480



June 24, 2013

Town of Palm Beach

Attn: Town Council

Re: Variance case #28-2013

Dear Town of Palm Beach Council Members,

My house is directly across the street from 2283 Ibis Isle Road, the new address of Jeffrey Alderton and his wife. Recently he showed me a plan for refurbishing the property, one which has been sitting idle for many years with a dilapidated house on a rundown lot; we are highly in favor of the total plan, including that for the pool and other significant improvements. I urge the Town Council to approve it as soon as possible so that the South End of Ibis Isle will again be a place of maximum enjoyment for all residents in the vicinity.

Thank you for your consideration.

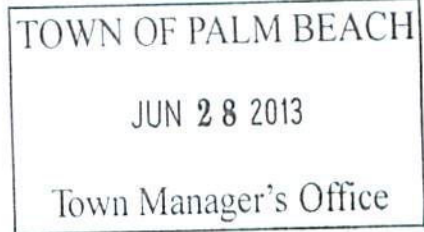
Sincerely,

A handwritten signature in blue ink, appearing to read "Albert D. Hutzler, III".

Albert D. Hutzler, III

26 June 2013

Town of Palm Beach
Town Council



Mayor and Council Members:

This letter will signify our understanding of why a variance for case #28-2013 is requested, and our recommendation to the Council that it be approved.

This property has been vacant and derelict for an excessive amount of years and it is imperative that it is brought into compliance as rapidly as possible.

The Aldertons have been most helpful in explaining their efforts to improve the property and have assured us that they have addressed our concerns to our satisfaction.

With the Council's approval of their variance, we hope their project will proceed promptly and that it will finally be maintained in the manner that Palm Beach requires.

Thank You:

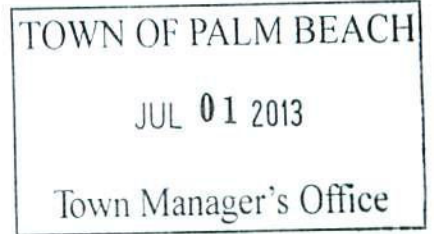
A handwritten signature in black ink, appearing to read "Timothy Hoffman".

Timothy Hoffman

A handwritten signature in blue ink, appearing to read "Phyllis Hoffman".

Phyllis Hoffman

2323 Ibis Isle, Palm Beach, Fl. 33480



June 26,2013

To Who it May Concern:

My property at 2275 Ibis Isle rd w abutts 2283 Ibis Isle Rd S (case # 28-2013)

I do not have an objection to a variance that would put the pool 5ft closer to the road


Joan Wenzel Messing

TOWN OF PALM BEACH

Town Council Meeting on: July 10, 2013

Section of Agenda

Development Review - Other

Agenda Title

Declaration of Use Agreement Relative to a 16 Slip T-Shaped Dock at the Oasis Condominium, 3120 South Ocean Boulevard.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum from John Page, Director of Planning, Zoning, and Building, dated June 28, 2013
- Proposed Declaration of Use Agreement

TOWN OF PALM BEACH

Information for Town Council Meeting on: July 10, 2013

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Review of the Proposed Declaration of Use Agreement for Site Plan Review No. 7-2013, Oasis Condominium Dock, 3120 South Ocean Boulevard

Date: June 28, 2013

STAFF RECOMMENDATION

Staff recommends that the Town Council approved the proposed Declaration of Use Agreement, as modified by staff.

GENERAL INFORMATION

On June 12, 2013, the Council conditionally approved the applicant's site plan review application to construct a sixteen slip dock with associated boat lifts and appurtenances on the west side of South Ocean Boulevard, across from the Oasis Condominium at 3120 South Ocean Boulevard. Among the conditions of approval was a condition that the applicant enter into an acceptable Declaration of Use Agreement with the Town outlining all conditions of approval regarding the dock.

Staff has made proposed changes to the applicant's draft Declaration of Use Agreement. The applicant is in agreement with those changes. Greg Kino, the applicant's attorney, is prepared to address any issues that may arise related to the proposed Agreement. If you have any questions about the proposed Agreement please contact Paul Castro, Zoning Administrator, at 227-6406.

TOWN ATTORNEY REVIEW

The proposed Declaration of Use Agreement was approved by Town Attorney John C. Randolph for legal form and sufficiency.

cc: Thomas Bradford, Deputy Town Manager
Veronica B. Close, Asst. Director, Planning, Zoning & Building
Susan A. Owens, Town Clerk
Kirk Blouin, Director of Public Safety
zf & pf

DECLARATION OF USE AGREEMENT

By

THE TOWN OF PALM BEACH

And

3120 CONDOMINIUM ASSOCIATION, INC.

_____, 2013

Prepared by and return to:
Will Call 69
Gregory S. Kino, Esq.
Ciklin Lubitz Marten & O'Connell
515 N. Flagler Drive, 20th Floor
West Palm Beach, FL 33401
(561) 832-5900

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DECLARATION OF USE AGREEMENT

THIS DECLARATION OF USE AGREEMENT is made and entered into this ____ day of _____, 2013 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter called the "Town"); and 3120 CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, 3120 South Ocean Boulevard, Palm Beach, Florida 33480 (hereinafter called "Declarant"), which terms "Town" and "Declarant" will include and bind the successors and assigns of the parties, wherever the context so required to admits.

W I T N E S S E T H:

WHEREAS, the land described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Property") is located within the municipal limits of the Town, west of South Ocean Boulevard; and

WHEREAS, the proposed use of the Property is for a multifamily dock which is a permitted accessory structure in the R-D (1) Zoning District subject to site plan approval; and

WHEREAS, the Town Council approved Site Plan # 7-2013 on June 12, 2013, which approved a 150 foot long T-shaped dock with 16 slips and 16 boat lifts (the "Dock"); and

WHEREAS, the Town Council approved Site Plan # 7-2013, subject to the conditions set forth herein and the approval of this Agreement on the basis of ~~the Declarant's application, the testimony on behalf of the Declarant, the specific finding of the Town Council that the proposed use will be beneficial and compatible with the neighborhood, and upon~~ a finding by the Town Council that the applicable provisions of the Town Code governing the use of the Property and site plan criteria have been met; and

WHEREAS, all of the representations made herein are true and accurate and the approval of the Site Plan is conditioned upon the representations made herein and all of the conditions herein imposed.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed as follows:

ARTICLE I

RECITALS

The recitals set forth above are true and correct and are incorporated herein and made a part hereof.

ARTICLE II

REPRESENTATION OF AUTHORITY

Declarant has full right to enter into this Agreement and to bind the Property and itself to the terms hereof. There are no covenants, restrictions or reservations of record that will prevent the use of the Property in accordance with the terms and conditions of this Agreement. No consent to execution, delivery and performance hereunder is required from any person, partner, limited partner, creditor, investor, judicial or administrative body, governmental authority or other party other than any such consent which already has been unconditionally given or referenced herein. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will violate any restriction, court order or agreement to which Declarant or the Property is subject.

ARTICLE III

PROPERTY USE

The Property shall be permitted to be used for the construction and operation of the Dock in compliance with all of the information and exhibits, not inconsistent with the terms and conditions set forth herein, **and** as set forth in the application **and approved plans on sheet drawings 1 through 4, prepared by Con-Tech Contractors and Engineers, and the survey from Wallace Surveying, all of which are stamp dated April 18, 2013, and made part of the approval of submitted to the Town for** Site Plan #7-2013, as approved by Town Council on June 12, 2013 (hereinafter referred to as the "Approval"). The Approval is subject to that provision of the Town Code which provides that no subsequent deviation may be made from the application **or plans** as approved by the Town Council except upon an application to an approval by the Town Council. Any additional uses of the Property, not previously approved by the Town, shall be subject to approval by the applicable governmental authority including, but not limited to, the Town Council and any applicable board of commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or agencies under any of the foregoing governmental authorities.

ARTICLE IV

CONDITIONS

The operation of the Dock on the Property will be limited as follows:

1. The Dock facility hours will be from 8:30 A.M. to 8:30P.M.
No boats will be permitted to leave before or return after the permitted hours.
2. Overnight stays on any boat while at the Dock are prohibited.
3. Trash must be removed from the boats and deposited in the trash receptacles provided which shall be removed daily to the Declarant's trash facilities located east of South Ocean Boulevard.
4. No bright lighting will be permitted to be used ~~while a boat is on the dock or on docked vessels. Low level Dock lighting of a minimal nature on the Dock to ensure safety will be utilized~~ that meets the Town's lighting requirements and that is approved by the Architectural Commission shall only be permitted.
5. Slips may only be used by the Declarant's residents and approved lessees of a resident's condominium unit. Absolutely no rental, use or sale of slips to non-residents of the Condominium will be allowed. There shall be no commercial or quasi-commercial use of the Dock.
6. No parking is permitted on the west side of South Ocean Boulevard for any purpose by or near the Dock facility by any dock facility user or servicing company. All service and other vehicles must be parked within the Declarant's property on the east side of South Ocean Boulevard.
7. No vessels larger than 39 feet shall be allowed to docked. There shall be allowed a maximum of 10 vessels that may be allowed over 35 feet in length. The maximum number large boats will be allowed to be docked at the Dock. Only smaller intra-coastal boats will be permitted, not to exceed 39 feet.
8. No barbecuing or cooking will be permitted on any vessel ~~the boats~~ or on the Dock.
9. ~~No discharge of any waste or water from boats is allowed. All waste pump-outs must be done offsite.~~ The Dock ~~will~~ shall have a self locking gate ~~that will automatically lock upon closing with access only provided to the owners or renters in the Oasis Condominium. The Declarant shall ensure that said gate remain locked and closed at all times.~~

10. The gate entrance to the Dock will be screened by landscaping **as approved by the Architectural Commission** and will be maintained on a regular basis.
11. Security ~~will~~ **shall** be provided 24/7 by the Declarant's on-site security personnel. **A security camera may be provided if said camera can be screened from street view and obtain required Architectural Commission approval.**
12. ~~A security camera will be installed for the Dock which will be linked to the Declarant's central monitoring system and monitored 24/7.~~
13. ~~The Dock shall be as designed and constructed in accordance with the plans submitted by Construction Technology, Inc., dated March 8, 2013.~~
14. ~~The Dock lighting, gate, landscape to screen the gate and security camera shall be approved by the Architectural Commission.~~
15. The Ownership of the Property shall not be transferred separate from the transfer of the entirety of the property located east of South Ocean Boulevard which comprises the Oasis Condominium **and shall be joined to the Oasis Condominium by a unity of title agreement acceptable to the Town prior to the issuance of a building permit for the Dock.**
16. Any use on the dock shall not exceed the Town noise limit requirements in the Town's Code of Ordinances.

ARTICLE V

VOLUNTARY AGREEMENT AND WAIVER

Declarant agrees to be bound by the terms and conditions in this Agreement, and Declarant waives any legal objection it might otherwise have to said terms and conditions or parts thereof.

ARTICLE VI

REMEDIES FOR VIOLATION

1. Upon determination by the Director of Planning, Zoning and Building Department of a violation of any of the terms or conditions of this Agreement, and upon notice in writing from the Town to Declarant or Declarant's representative of said violation(s) and the date upon which said violation(s) shall be corrected, Tenant or Tenant's successor or assigns shall pay to the Town a liquidated amount of ~~blank space~~ **\$2,000** per violation. Said liquidated amount shall accrue on a per day basis for each day a violation of this Agreement exists. In addition, in

the event a violation remains uncorrected beyond the date noticed for correction by the Director of the Planning, Zoning and Building Department, this Agreement may be reconsidered by the Town Council at a future meeting upon thirty days notification to the Tenant. The Town Council may, upon a finding of violation, alter this Agreement or rescind the approval of the use.

In the event Declarant disputes the determination of the Director of Planning, Zoning and Building Department of the violation of the conditions of this Agreement, Declarant may appeal the determination of the Director of the Planning, Zoning and Building Department to the Town Council, said appeal to be filed no later than fifteen (15) days of the written notice of violation.

2. In addition to the above, the Town shall have all remedies available at law and equity in order to enforce the terms of this Agreement including but not limited to (a) the Town's code enforcement procedures; (b) all remedies otherwise offered in the Town's Code of Ordinances; and (c) injunction, specific performance, and any and all other equitable relief through the civil courts in and for Palm Beach County for the State of Florida. In the event the Town is required to seek injunctive relief, it shall not be required to post bond and it shall not be required to demonstrate irreparable harm or injury to secure an injunction to enforce the terms of this Agreement. Additionally, in the event of any enforcement action for breach, default or nonperformance of this Agreement, or any of its covenants, agreements, terms or conditions, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorney's fees, either before or as a result of litigation, including appeals.

ARTICLE VII

PROVISIONS FOR NOTICE

For the issuance of any notice regarding the terms of this Agreement, notice shall be provided:

a. To the Town of Palm Beach: Town Manager at Town of Palm Beach, 360 South County Road, Palm Beach, Florida, 33480

b. To the Declarant: 3120 Condominium Association, Inc., Property Manager and President, Oasis Condominium, 3120 South Ocean Boulevard, Palm Beach, 33480

ARTICLE VIII

PROVISIONS TO RUN WITH LAND/RECORDING

This Agreement shall run with the Land and shall be binding upon the Declarant and its respective heirs, legal representatives, successors and assigns. This Agreement shall be recorded by the Declarant in the Official Records of Palm Beach County, Florida upon full execution by the parties hereto. This Agreement shall be superior to any mortgages on the Property and shall be recorded prior to the recording of any such mortgages.

ARTICLE VIII IX

ENTIRE AGREEMENT

This Agreement represents the entire agreement between the parties as to its subject matter and it may not be amended except by written agreement executed by both parties.

ARTICLE IX

EFFECTIVE DATE

The Effective Date of this Agreement shall be the day upon which this Agreement is executed by the last party to sign the Agreement.

ARTICLE XI

MISCELLANEOUS

Wherever the work “laws” appears in this Agreement, it shall be deemed to include all ordinances, rules and regulations as well as laws of the appropriate governmental authorities.

This Agreement may not be amended except by written instrument signed by all parties hereto.

Paragraph headings are inserted for convenience only and shall not be read to enlarge, construe, restrict or modify the provisions hereof. All referenced to numbered or lettered paragraphs, subparagraphs and exhibits refer (unless the context indicates otherwise) to paragraphs, and subparagraphs of this Agreement and to exhibits attached hereto, which exhibits are by this reference made a part hereof.

In the event of the invalidity of any provision of this Agreement, same shall be deemed stricken herefrom and this Agreement shall continue in full force and effect as if such invalid provision were never a part hereof.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF the parties have hereunto set their hands and seal the day and year first above written.

Signed, sealed and delivered
in the presence of:

TOWN OF PALM BEACH

By: _____
Gail Coniglio, Mayor

By: _____
David Rosow, President
Town Council

By: _____
Peter B. Elwell
Town Manager

3120 CONDOMINIUM ASSOCIATION,
INC., a Florida not-for-profit corporation

By: _____
Joshua Teverow, President

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Gail Coniglio, the Mayor of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. She is personally known to me and she did not take an oath.

Signature of Notary Public

Printed Name of Notary Public
Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by David Rosow, the President of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public

Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Peter B. Elwell, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public

Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Joshua Teverow, the President of 3120 Condominium Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He is [] personally known to me or [] has provided identification in the form of _____.

Signature of Notary Public

Printed Name of Notary Public

Commission Expires: _____

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY FOR THE TOWN OF
PALM BEACH

RECOMMENDED APPROVAL

By: _____
John C. Randolph, Esquire

Paul Castro, AICP
Zoning Administrator

Date: _____

EXHIBIT “A”

LEGAL DESCRIPTION

A parcel of submerged land in Lake Worth in Section 26, Township 44 South, Range 43 East, Palm Beach County, Florida, more particularly described as follows:

BEGINNING at a point on the North line of Government Lot 2 of said Section 26, said point being a distance of 20.10 feet from the West right of way line of State Highway A1A; thence continue West along the North line of said Government Lot 2 a distance of 581.84 feet to the intersection of a point in the U.S. bulkhead; thence South $0^{\circ}34'35''$ East; along said U.S. bulkhead line a distance of 400 feet; thence East along a line parallel to the North line of Government Lot 2, a distance of 513.94 feet to a point, said point being 20.10 feet West of West right-of-way of State Road A1A; thence North $7^{\circ}44'34''$ East a distance of 406 feet to the North line of Government Lot 2, and the POINT OF BEGINNING, containing 5.1 acres, more or less.