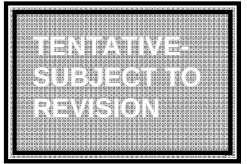




TOWN OF PALM BEACH

Town Manager's Office



TOWN COUNCIL MEETING

TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD

AGENDA

WEDNESDAY, JUNE 12, 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 #7-2013** The application of 3120 Condo Association, Inc. (aka Oasis Condominium); relative to property commonly known as **3120 S Ocean Blvd.**; described as lengthy legal description on file; located in the R-D (1) Zoning District. The applicant is requesting Site Plan review of 16 slip, T-shaped dock with 16 boat lifts, 150 feet in length from the shore but east of the Town Bulkhead Line and Pierhead Line, accessory to an existing condominium. Ten slips will accommodate up to a 39 foot boat and 6 slips will accommodate up to a 35 foot boat. [Attorney: Gregory S. Kino]

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- b. Items Related to Proposed Del Frisco's Restaurant in Royal Poinciana Plaza

Page 17

- (1) Appeal of Administrative Decision Regarding Hours of Operation and Related Off-Street Parking Requirements, by John W. Little III, Attorney for Sterling Palm Beach, LLC, and Also By Harvey E. Oyer III, Attorney for Del Frisco's Grille, Relative to the Yet-To-Be-Established Del Frisco's Grille Restaurant in the Royal Poinciana Plaza.

- (2) **SPECIAL EXCEPTION #9-2013** The application of Harvey E. Oyer, III, Attorney for Del Frisco's Restaurant Group; relative to property commonly known as **340 Royal Poinciana Way, Suites 300, 300A, 302, 302A, 306 & 308**; described as lengthy legal description on file; located in the C-PC Zoning District. The applicant is requesting modification of previous special exception approval (Special Exception #20-2012) to allow for Sunday operating

hours from 10:00 a.m. to 11:00 p.m. The previously approved operating hours for Sunday were 5:00 p.m. to 11:00 p.m. No other changes to the conditionally approved operating hours are being proposed. [Attorney: Harvey E. Oyer, III]

c. **SPECIAL EXCEPTION #10-2013 WITH VARIANCES**

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The application of Pizza Al Fresco, LLC; relative to property commonly known as **7-14 Via Mizner (Restaurant Site) and 317 Peruvian Avenue (Parking Site)**; described as lengthy legal descriptions on file; located in the C-WA and C-TS Zoning Districts. The applicant is requesting Special Exception with Site Plan Review to modify existing Special Exception #3-2006 and #4-2012 to convert a retail store containing a total of 350 square feet (previously Winston Lighting and being Unit C-105S) to additional restaurant seating space with 21 additional seats for Pizza Al Fresco Restaurant. A Special Exception is also being requested to provide supplemental off-site shared parking in the evening at 317 Peruvian Avenue. Applicant further requesting Special Exception approval to move 15 of the additional seats from the converted space into the Via Mizner courtyard during periods of good weather. No variance is required for off street parking for 6 of the additional seats. The following variances are required: to increase outdoor seating by 15 seats over and above the inside capacity, which is not permitted by the outdoor seating conditions in the Code and to eliminate the 5 required off-street parking spaces for 15 of the 21 additional seats being requested and to provide 5 supplemental shared parking spaces in only the evening at 317 Peruvian Avenue.

[Attorney: William W. Atterbury, III]

Request for Deferral to the September 11, 2013, Town Council Meeting Per Letter Dated May 23, 2013 from William W. Atterbury, III

d. **VARIANCE #21-2013** The application of Timothy Gannon; relative to property commonly known as **1300 North Ocean Blvd.**; described as Lot1 (less the West 207.3 feet thereof) AND Lot 1A, McINTOSH HOME SITES, according to the map or Plat thereof as recorded in the Plat Book 21, Page 30, Public Records of Palm Beach County, Florida; located in the R-B/B-A Zoning Districts. The applicant is requesting approval for a variance to construct a swimming pool with a 5.33 foot rear yard setback in lieu

of the 10 foot minimum required on the beach side of the property. [Attorney: Maura A. Ziska]

- e. **VARIANCE #22-2013** The application of Arno Turkclitz; relative to property commonly known as **482/488 Island Drive**; described as Lots 25 and 26, Plat No. 3, EVERGLADES ISLAND DEVELOPMENT in the Town of Palm Beach, Florida, according to the Plat thereof as recorded in the Plat Book 23, Page 120, Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting approval to split a lot (which consists of two platted lots) back into two lots. The two variances required to split the property are as follows: (i) a variance to allow lot coverage to be 28.2% in lieu of the 25% maximum allowed for the proposed lot where the home is located; and (ii) a variance to allow open landscaped open space of 35.9% in lieu of the 50% minimum required in the R-B Zoning District for lots in excess of 20,000 square feet for that same lot. [Attorney: Maura A. Ziska]

- f. **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; and, 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 4.29 in lieu of the 3.9 maximum allowed. [Attorney: Joel P. Koeppel]
Request for Deferral to the July 10, 2013, Town Council Meeting Per Letter Dated May 21, 2013, from Joel P. Koeppel.

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VIII. ORDINANCES

- A. Request For Town Council Authorization To Have Readings of Ordinance No. 5-2013 and Ordinance No. 6-2013 Prior To 5:00 p.m.
[John Page, Director of Planning, Zoning, and Building]

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B. Second Reading

None

C. First Reading

1. ORDINANCE NO. 5-2013 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Text Of The Future Land Use Element Of The Town Of Palm Beach Comprehensive Plan, By Amending The Future Land Use Element Data & Analysis And Policies 2.3 And 11.1 To Provide For The Creation Of A PUD-5 Within An Area Of Property Designated Commercial On The Future Land Use Map, Which Is Bounded By Bradley Place, Sunset Avenue, North County Road, And Royal Poinciana Way; Further Amending Policy 2.3.3 To Provide For The Creation of Commercial/Mixed-Use PUD's, The Creation Of The PUD-5, Detailing An Increase In The Maximum Allowable Density, And Creating Maximum Lot Coverages For First, Second and Third Stories In The PUD-5 Area; Further Creating Policy 11.1.5 That Details Mixed-Use PUD Development Requirements Within Commercial Land Use Categories Provided Certain Threshold Criteria Are Met, And Providing For Said Certain Threshold Criteria; Providing For Severability; Repealing All Ordinances Or Parts Of Ordinances In Conflict Hereof; Providing For Codification; And Providing For An Effective Date.

[John Page, Director of Planning, Zoning, and Building]

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2. ORDINANCE NO. 6-2013 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County Florida, Amending Chapter 134, Zoning, At Section 134-476 By Creating Purpose Language For An Optional PUD-5, Historic Preservation Mixed Use Development, With A Contributing Building Report And PUD-5 Design Guidelines Adopted By Reference For The Five Palm Beach Acres In the C-TS Zoning District Between Royal Poinciana Way And Sunset Avenue And Bradley Place And North County Road And By Prohibiting The Use Of The PUD-5 Regulations For Five Years If A Contributing Building Is Voluntarily Demolished; Section 134-477 By Creating A Review Process For The PUD-5 And Prohibiting Variances From Certain Lot, Yard And Bulk Regulations; Subdivision II, Sections 134-531, 134-532, 134-533 And 134-534 By Adding Submittal Requirements For A PUD-5; By Creating A New Approval Process For PUDs And Amendments To PUDs By Eliminating The Tentative And Final Approval Process And Replacing With A Streamlined Approval Process; And By Creating A New

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Completion Deadline for PUDs; By Eliminating Subdivision III, Sections 134-561 And 134-562 Related To The Tentative And Final PUD Approval Process; By Renumbering 134-563 To 134-561 Adding PUD Amendments And Eliminating Property Owner Consent To Amend PUDs; By Renumbering 134-564 To 134-562, Adding PUD Amendment Language, Eliminating The Existing Time Frame Requirement For Commencement And Providing For New Commencement Language In The PUD Resolution; Section 134-651 By Creating PUD-5 As A Special Exception And Site Plan Review; Section 134-652 By Adding The PUD-5 And Identifying The Area Where A PUD-5 May Be Applied; Section 134-653 By Adding A Maximum PUD-5 Lot Size And Providing A Provision Which Prohibits A Variance From The Maximum Lot Size; Section 134-654 By Creating A Density for the PUD-5 Of Ten Dwelling Units Per Palm Beach Acre With A Maximum Of Thirteen Dwelling Units Per Palm Beach Acre In Lieu Of The Maximum Six Dwelling Units Per Acre Allowed In the Underlying C-TS Zoning District; Section 134-656 By Providing Permitted And Special Exception Uses In The PUD-5 And Creating Separation Requirements Between Residential And Commercial Uses; Section 134-657 By Creating A Minimum Public Open Space Requirement In The PUD-5 With A Provision Prohibiting A Variance From that Requirement; Section 134-687 By Providing Requirements That A PUD-5 Preserve The Main Street Character, Size And Bulk Which Currently Exists In The Five Palm Beach Acres; Section 134-688 By Providing Qualifying Language For The PUD-5 And Further Incorporating By Reference The Contributing Building Report And PUD-5 Design Guidelines; Section 134-689 By Eliminating The Requirement For Street Trees And Adding Language Which Requires Trees Bordering Projects Whenever Possible; Section 134-690 By Adding Language That A PUD-5 Is Required To Have Curb Cuts And Vehicular Access From Only Sunset Avenue; Section 134-691 By Providing A PUD-5 Off-street Parking Exception For Replacement Of Existing Commercial Square Footage Or Intensity Of Use, New Ground Floor Retail Use, Or Retail Use Which Replaces Ground Level Off-street Parking And Curb Cuts Fronting Royal Poinciana Way; Section 134-692 By Adding Language That Prohibits Variances For Lot Coverage, Height, Overall Height and Public Open Space and Providing New Regulations Creating A PUD-5 Density Of Ten to Thirteen Dwelling Units Per Palm Beach Acre In Lieu Of The Six Dwelling Units Per Acre Currently Allowed In The C-TS Zoning District, Provided Certain Conditions Being Met, By Creating Maximum Heights and Overall Heights, Including A Provision For Three Stories Where Only Two Stories Is Currently Allowed, By Adding First Floor And Second Floor Lot Coverage

Of Seventy Percent And A Third Story Lot Coverage Of Thirty-five Percent, By Creating Setbacks Based On PUD Approval, By Eliminating Required Setbacks And Determining Setbacks During The Approval Process And By Creating A Minimum Thirty Percent Public Open Space Requirement; Section 134-693 By Creating Said Section And Providing A Five Year Sunset Provision Unless The Town Council Approves An Extension; Section 134-1109 Creating The PUD-5 As A Special Exception Use Within The Defined Five Palm Beach Acres In The C-TS Zoning District; By Adopting By Reference The Attached Palm Beach PUD-5 Design Guidelines And The Contributing Building Report: The Historic Character Of Royal Poinciana Way; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing For An Effective Date. [John Page, Director of Planning, Zoning, and Building]

IX. ANY OTHER MATTERS

X. 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: June 12, 2013

Section of Agenda

New Business - < 15 Minutes

Agenda Title

SITE PLAN REVIEW #7-2013 The application of 3120 Condo Association, Inc. (aka Oasis Condominium); relative to property commonly known as **3120 S Ocean Blvd.**; described as lengthy legal description on file; located in the R-D (1) Zoning District. The applicant is requesting Site Plan review of 16 slip, T-shaped dock with 16 boat lifts, 150 feet in length from the shore but east of the Town Bulkhead Line and Pierhead Line, accessory to an existing condominium. Ten slips will accommodate up to a 39 foot boat and 6 slips will accommodate up to a 35 foot boat. [Attorney: Gregory S. Kino]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter Dated May 23, 2013, from William J. Cea

ADMINISTRATIVE OFFICE
3111 STIRLING ROAD
FORT LAUDERDALE, FL 33312
954.987.7550

WWW.BECKER-POLIAKOFF.COM
BP@BECKER-POLIAKOFF.COM

May 23, 2013

Reply To:
William J. Cea, Esq.
Board Certified Construction Lawyer
Florida Certified Circuit Civil Mediator
Direct Dial: (561) 820-2888
WCea@becker-poliakoff.com
Also Admitted in District of Columbia

VIA CERTIFIED MAIL # 71189448418060177406
RETURN RECEIPT REQUESTED &
VIA E-MAIL pcastro@townofpalmbeach.com

Town of Palm Beach
Attn: Paul Castro, Zoning Administrator
360 South County Road
Palm Beach, Florida 33480

FLORIDA OFFICES
BOCA RATON*
FORT MYERS
FORT WALTON BEACH
HOLLYWOOD
HOMESTEAD
KEY WEST*
MELBOURNE*
MIAMI
MIRAMAR
NAPLES
ORLANDO
PORT ST. LUCIE
SARASOTA
TALLAHASSEE
TAMPA BAY
WEST PALM BEACH

Re: Site Plan Review #7-2013;
3120 Condominium Association, Inc.

Dear Mr. Castro:

This firm represents Palm Beach Hampton Condominium Association, Inc. ("Palm Beach Hampton"). The Palm Beach Hampton Condominium is located immediately north and adjacent to the property which is the subject of the above referenced Site Plan Review application ("application") submitted by 3120 Condominium Association, Inc. ("3120").

In exchange for Palm Beach Hampton's agreement not to object to the application, 3120 has agreed to be bound by certain Dock Facility Use Restrictions. A copy of the Dock Facility Use Restrictions, Authorization, and confirming letter dated May 3, 2013 from 3120 to Palm Beach Hampton are attached hereto as Exhibit "A".

It is our understanding that the application is presently scheduled for hearing before the Town Council on June 12, 2013. As the adjacent property owner, and interested party, Palm Beach Hampton hereby submits this written statement and confirms that it will not object to the application; *provided* that the above referenced Dock Facility Use Restrictions are imposed by the Town as a condition of any approval.

U.S. & GLOBAL OFFICES
NEW YORK, NEW YORK
WASHINGTON, D.C.
MORRISTOWN, NEW JERSEY
RED BANK, NEW JERSEY
PRAGUE, CZECH REPUBLIC

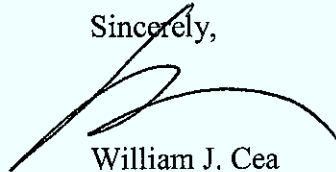
*by appointment only

Town of Palm Beach
Paul Castro, Zoning Administrator
May 23, 2013
Page 2

We trust that a copy of this correspondence and the enclosed Exhibit "A" will be circulated to the Town Council and in conjunction with the hearing on the application.

Thank you for your time and attention to the above. Should you have any questions, or require any additional information, please do not hesitate to contact me.

Sincerely,



William J. Cea
For the Firm

WJC/mbk
Enclosure

cc: Client
Kenneth S. Direktor, Esq.
John Page, Director of Planning, Zoning & Building (via e-mail
jpage@townofpalmbeach.com)
Debby Morakis, Zoning Secretary (via e-mail dmorakis@townofpalmbeach.com)

ACTIVE: 4742012_1



Friday, May 03, 2013

The Oasis Condominium, as an inducement to The Palm Beach Hampton Condominium located at 3100 S Ocean Blvd, represents as follows: There will be no material change to the rules and regulations for the 3120 Condominium Boat Dock Project as now proposed, a copy of which is attached and made a part hereof.

A handwritten signature in dark ink, appearing to read "Joshua Teverow", is written over a horizontal line.

President
Joshua Teverow

3120 South Ocean Boulevard, Palm Beach, Florida 33480 • (561) 586-0775 • Fax: (561) 585-0800

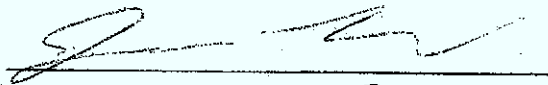
EXHIBIT A



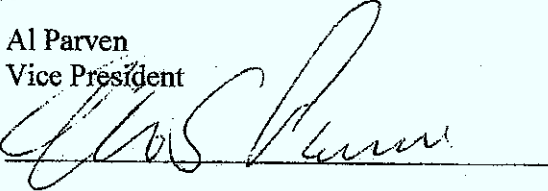
Authorization

The undersigned members of the Board, of 3120 Condominium Association, representing a majority of the Board of Directors, have authorized, President, Joshua Teverow to sign an agreement letter with the Palm Beach Hampton Condominium Association. Indicating that the 3120 Condominium Association will not make any material changes to the rules and regulations governing 3120 Condominium Association Dock Project.

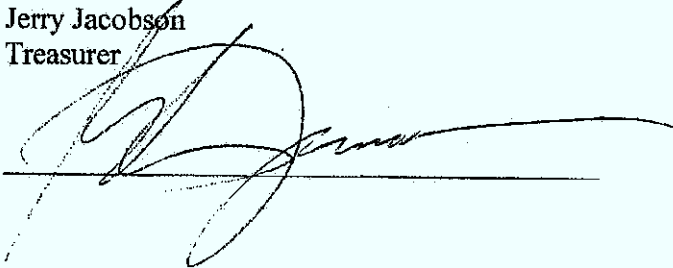
Joshua Teverow
President



Al Parven
Vice President



Jerry Jacobson
Treasurer



Certification

I, Julian Butler, Manager of 3120 Condominium Association, certifies that the above represents a vote that was approved by the majority of The Board.



Julian Butler
Building Manager

OASIS CONDOMINIUM

DOCK FACILITY USE RESTRICTIONS

The Oasis Condominium Association at 3120 South Ocean Boulevard, Palm Beach is committed to insuring its dock facility does not interfere with the quality of life at our building and our neighbor's buildings. We are confident that these Restrictions, along with other restrictions already imposed by the Army Corp of Engineers and the Florida Department of Environmental Protection Approvals we have already obtained after successfully concluding over many months these two agencies application process, reasonably assures the residents of the Oasis Condominium and our neighboring buildings that the Dock Facility will not have an adverse impact.

I) Hours

- a) 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.

II) Noise and Nuisance Restrictions

- a) No loud engines will be permitted, and all boat exhaust systems must have mufflers.

- b) No playing of loud music will be permitted.

- c) No activity that is considered a nuisance to other dock slip owners or residents of 3120 Condominium is permitted.

- d) Overnight stays on any boat while at the dock is prohibited.

- e) Trash must be removed from the boats and deposited in the trash receptacles provided.

- f) No bright lighting will be permitted to be used while the boat is docked. Lighting of a minimal nature on the docks will be utilized.

- g) Slips may only be used by 3120 residents. Absolutely no rental or sale of slips to non-residents will be allowed.

- h) No swimming or diving from the boats or dock is permitted.

- i) No parking is permitted by or near the dock facility by any user or servicing company. All service vehicles must be parked within the condominium property on the east side of A1A.

- j) No large Boats will be allowed to be docked at the dock facility. Only smaller intra-coastal boats will be permitted not to exceed 39 feet.

- k) No barbecuing or cooking will be permitted on the boats or dock.

- l) No discharge of any waste or water is allowed. All waste pump-outs must be done offsite (Wherever boat gas is purchased will have pump-out services available).

- m) All Boat owners must close and lock the dock gate, upon entering or exiting the facility.

III) Dock Owner Association Responsibilities

- a) The dock facility will be similar in design and use to other small high-end communities in South Florida.
- b) The dock facility will have a locked gate that will automatically lock upon closing.
- c) All trash will be removed from the trash receptacles on a daily basis.
- d) The lighting of the dock facility will be kept at minimally low light.
- e) The entrance to the dock facility will be screened by landscaping and will be maintained on a regular basis.
- f) Security will be provided 24/7 by our on-site security personnel.
- g) A security camera will be installed which will be linked to the Oasis condominium central monitoring system of the building, and monitored 24/7.
- h) The dock facility will be kept in good repair and will be maintained on a regular basis. This includes, but is not limited to cleaning, painting and pressure cleaning, of the dock, and any necessary wood, metal or concrete repair.
- i) Each boat owner must have on file with the oasis condominium association, an emergency plan for removing the boat from the dock in the event of extreme weather.

IV) Regulatory Restrictions

- a) The dock facility will be in compliance with the restrictions contained in the already Approval already obtained from the Army Corp of Engineers, including the following.
 - i) The Permittee shall comply with the "Standard Manatee Conditions for in water work- 2011" provided in attachment. No later than 30 days after slip occupancy, the permittee shall install permanent manatee signs.
 - ii) No temporary lighting of the construction area is authorized at any time during the marine turtle nesting season and no additional permanent exterior lighting is authorized unless reviewed and approved by DEP.
- b) The dock facility will be in compliance with the restrictions contained in the approval already obtained from the State of Florida Department of Environmental Protection, including the following.
 - i) This permit authorizes alteration of 20ft of existing mangrove canopy in order to construct the access walkway.

- ii) To offset the permitted impacts, the permittee, within 60 days of conducting the permitted activities, shall remove, monitor for two years, and perpetually maintain their entire shoreline located south of the docking facility free of exotic and nuisance vegetation.
- iii) A maximum of 16 wet slips shall be used for permanent mooring.
- iv) The dock shall not be occupied by liveboards. A liveboard vessel shall be defined as a vessel moored at a facility that is inhabited by a person for any five consecutive days or a total of 10 days within a 30 day period.
- v) There shall be no fish cleaning stations on the dock authorized by this permit. Overboard discharge of trash, human or animal waste, or fuel shall not occur from the dock.

TOWN OF PALM BEACH

Town Council Meeting on: June 12, 2013

Section of Agenda

New Business - < 15 Minutes

Agenda Title

Items Related to Proposed Del Frisco's Restaurant in Royal Poinciana Plaza

(1) Appeal of Administrative Decision Regarding Hours of Operation and Related Off-Street Parking Requirements, by John W. Little III, Attorney for Sterling Palm Beach, LLC, and Also By Harvey E. Oyer III, Attorney for Del Frisco's Grille, Relative to the Yet-To-Be-Established Del Frisco's Grille Restaurant in the Royal Poinciana Plaza.

(2) **SPECIAL EXCEPTION #9-2013** The application of Harvey E. Oyer, III, Attorney for Del Frisco's Restaurant Group; relative to property commonly known as **340 Royal Poinciana Way, Suites 300, 300A, 302, 302A, 306 & 308**; described as lengthy legal description on file; located in the C-PC Zoning District. The applicant is requesting modification of previous special exception approval (Special Exception #20-2012) to allow for Sunday operating hours from 10:00 a.m. to 11:00 p.m. The previously approved operating hours for Sunday were 5:00 p.m. to 11:00 p.m. No other changes to the conditionally approved operating hours are being proposed. [Attorney: Harvey E. Oyer, III]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated May 30, 2013 from John S. Page
- Letter Dated March 22, 2013 from John W. Little, III and Harvey E. Oyer, III

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 12, 2013

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Del Frisco's Grille Restaurant (Royal Poinciana Plaza)
Appeal of Administrative Decision by Staff, Weekend Parking Requirements &
Modification of Special Exception #9-2013

Date: May 30, 2013

STAFF RECOMMENDATION

Staff recommends that the Town Council consider and rule upon the appeal filed by John W. Little III, attorney for Sterling Palm Beach, LLC, and Harvey E. Oyer III, attorney for Del Frisco's Grille, relative to a staff determination that there is not adequate parking in the Royal Poinciana Plaza to allow Del Frisco's to be open for Saturday and Sunday lunch/brunch service. If the appeal is approved, the applicant will be allowed to open for Saturday lunch/brunch and further consideration should be given to Special Exception #9-2013 altering Sunday hours of operation to allow for lunch/brunch.

GENERAL INFORMATION

Applicants obtained Special Exception approval from the Town Council to operate a restaurant in the Royal Poinciana Plaza in November of last year. At the same time, the Council denied a parking variance request, meaning that the future restaurant satisfy all local parking requirements.

Applicants then began working with staff to find a solution to their parking needs. Staff determined that the 1979 Agreement, coupled with the total parking availability in the Plaza, would allow the 218-seat restaurant to be open after 6:00 p.m., but that daytime restaurant service could not be allowed for a restaurant of that size during weekdays and also on weekends. Weekday and weekend hours were addressed separately because the theater, a major off-street parking generator, is prohibited from operating matinees on weekdays (if approved to reopen). Following that determination, applicants submitted a March 8, 2013 letter to staff attempting to resolve two issues. The applicant asserted 1) that the restaurant should be allowed to open for evening dinner service beginning at 5:00 p.m. rather than 6:00 p.m., and 2) that sufficient parking exists allowing the restaurant to open for lunch/brunch on weekends without the need for any parking variance. Their justification cited Florida case law and the term "business week" that has commonly been held to mean Monday-Friday 9:00 a.m. to 5:00 p.m. Staff denied both

requests concluding that it lacked authority to alter the restaurant opening time from 6:00 p.m. to 5:00 p.m., and likewise lacked authority to allow for lunch/brunch service on weekends due to deficient parking.

Staff denial prompted the applicants to file a two-count appeal of the administrative decision, originally heard by the Town Council on April 10, 2013. At that meeting, the Council approved only that portion of the appeal related to evening dinner hours. The restaurant was allowed to open doors at 5:00 p.m. (end of business day) rather than 6:00 p.m. The second part of the appeal, weekend parking requirements, was deferred until such time that the applicants proceeded forward with an application to modify their Special Exception approval to open for Sunday lunch/brunch (now being presented).

All the appeal documents presented to the Town Council during its meeting of April 10 have been attached. If the Town Council decides the appeal in favor of the applicants, then the Council should proceed forward to consider Special Exception #9-2013. If the Town Council upholds staff's administrative decision, then consideration of Special Exception #9-2013 becomes moot and it should be denied.

Attachments

cc: John Little
Harvey Oyer
Brian Kosoy
Adam Munder
Skip Randolph

RECEIVED

MAR 22 2013

**TOWN OF PALM BEACH
PZB DEPT**

March 22, 2013

VIA HAND DELIVERY

Honorable Gail Coniglio, Mayor and
Town Council of Town of Palm Beach
360 South County Road
Palm Beach, FL 33408

Re: Appeal of Certain Determinations Regarding Parking
at Royal Poinciana Plaza for Del Frisco's Grille Restaurant

Dear Mayor and Members of the Town Council:

As you know, Gunster represents Sterling Palm Beach, LLC ("Sterling") and Shutts and Bowen represents Del Frisco's Grille ("Del Frisco's" or "DFG") (together "the Applicant"). Sterling is the lessee of the Royal Poinciana Plaza ("Plaza") under a long term lease of up to 99 years, with an option to purchase. Sterling has entered into a lease with Del Frisco's to open a restaurant at the northeast corner of the Plaza.

At its November 16, 2012 meeting, the Town Council approved the special exception for Del Frisco's with conditions. While the Council denied the request for a 57 parking variance at that time, after the vote the Council directed that Del Frisco's and Sterling work with Town Staff in an effort to resolve parking issues. Specifically, as stated in the Town's December 3, 2012 approval letter, the Town Council "advised Staff to work with the Applicant on the number of seats that would be allowed and resolve parking calculation discrepancies using the 1979 Agreement and the cure parking plan after approved by the Town Council."

Pursuant to those instructions, the Applicant and Town Staff have worked diligently and cooperatively since that time, and have been able to amicably resolve many of the parking issues for DFG. Presently, there are two matters concerning the application of the 1979 Agreement to the Del Frisco's parking calculations, however, that remain unresolved and give rise to this appeal. The two issues are:

(1) When calculating available parking at the Plaza under the 1979 Agreement, should the Applicant be required to account for office parking on the weekends, i.e. after the end of the "business week"?

(2) When calculating available parking at the Plaza under the 1979 Agreement, should the Applicant be required to account for office parking after 5:00 p.m., the close of the business day under Florida law?

For the reasons discussed herein, the answer to each of these questions is no. Accordingly, pursuant to Section 134-145 of the Town Code, Sterling and DFG hereby appeal the rulings of the Planning, Zoning and Building Department ("Town Staff") rendered on March 13, 2013.

BACKGROUND

The Town Council heard the Applicant's request for a special exception with variance on November 16, 2012. As part of that hearing, the Council reviewed certain provisions of the 1979 Agreement related to the parking at the Plaza. It was clear from the Town Council's discussion of this matter during the November meeting that the Council recognized that the 1979 Agreement incorporates a parking concept that provides for separate time periods of the day - - daytime and evening. It was equally clear that the Council wanted to ensure that the Town remain in compliance with the 1979 Agreement when addressing the DFG issues.

In accordance with the Town Council's directions at the November meeting, in early December the Applicant submitted a letter to Town Staff detailing several conditions and circumstances that established the availability of parking for DFG without the need for a variance. On January 14, 2013, the Planning, Zoning and Building Department responded to the Applicant's December letter. *See Exhibit A attached.* In that response, Town Staff correctly acknowledged that under the 1979 Agreement there are separate daytime and evening parking requirements at the Plaza. Applying this analysis, Staff determined that there is ample available evening parking at the Plaza, seven days a week starting at 6:00 p.m., for Del Frisco's to operate a 218 seat restaurant without the need for a parking variance. With respect to daytime parking, Staff noted a difference between the weekdays and the weekend and found that certain of these calculations would depend upon the actions taken by Town Council on Sterling's "cure plan" at the upcoming meeting.

At its February, 2013 meeting, the Town Council reviewed and acted on Sterling's request for Site Plan Review #1-2013 caused by the taking and resulting in the need for a cure plan to be brought forward. By letter dated February 22, 2013, Town Staff provided written notification of the Town's approval of the restriping of the northwest parking lot. This approval results in 188 parking spaces in the northwest portions of the Plaza following the FDOT taking. With this number finalized, Town Staff has determined that there are a total of 718 parking spaces at the Plaza post-taking.

In light of the Town Council's actions in February, by letter dated March 8, 2013 the Applicant requested that Staff review two issues related to the parking at the Plaza. *See Exhibit B attached.* The first issue was whether, under the 1979 Agreement, there is sufficient parking to allow DFG to open at 5:00 p.m. rather than 6:00 p.m. without the need for further Town Council action. The second issue was whether, under the 1979 Agreement, there is sufficient parking to allow DFG to open for brunch on the weekends without the need for further action by Town Council.

In its written response of March 13, 2013, Town Staff stated that it was not in a position to grant these requests as they were matters more appropriately decided by Town Council. See Exhibit C attached. Stated differently, because determination of these two issues required the application of Florida law to the 1979 Agreement, it appears Town Staff concluded that the matter was best ultimately decided by Council, not Staff. After a brief review of the 1979 Agreement, each issue on appeal is discussed below.

ARGUMENT

I. The 1979 Agreement and Parking at the Plaza

Beginning in late 1978 and continuing into the Spring of 1979, the Town Council considered a redevelopment plan proposed by the then owner of the Plaza, Poinciana Properties, Ltd. That redevelopment plan sought to amend plans previously reviewed and conditionally approved by the Town Council the year before. In approving the revised plans, the Town Council required the preparation and execution of what has now become known as the 1979 Agreement.

The 1979 Agreement contains several provisions particularly relevant to this matter. First, the Agreement required that upon expiration of the then existing lease for the Poinciana Theater on June 30, 1983, any new leases entered into by the property owner after that time *would prohibit theater matinees during the business week (Monday-Friday)*. See paragraph 2E, 1979 Agreement attached as Exhibit D. Likewise, the 1979 Agreement *further requires that the owner affirmatively prohibit all but 10% of the total square footage of retail shops from remaining open after 6 p.m.* See paragraph 2D, 1979 Agreement. Finally, the Agreement acknowledged that after the redevelopment was complete, the Plaza would continue to have nonconformities as to both the number and size of parking spaces. See paragraph 1B, 1979 Agreement.

Indeed, during the February 13, 1979 meeting where the Town Council directed the creation of the 1979 Agreement, the impact of these legal restrictions on uses in the Plaza during different periods of the day was specifically discussed. As the minutes state, upon completion of the approved redevelopment, "there would be a total non-conformity of 213 [parking spaces], less the number [of parking spaces] for the theater *in a separate time demand period after 1983....*" (emphasis added).

A. Theater Matinees

Today, no matinee performances at the theater are legally permitted during the weekdays under the terms of the 1979 Agreement. Paragraph 2E of the 1979 Agreement initially stated, "Subsequent to the completion of construction and during its ownership of the Royal Poinciana Plaza the Partnership (and during the ownership of any purchaser) agrees to perform as follows: the current Lessee [of the theater] has agreed that there will *only be one matinee performance during the business week (Monday-Friday)* beginning with July 1, 1979 through June 30, 1983.

Upon entering into a new lease, i.e. after June 30, 1983, it will permit no theater matinees during the week but only on weekends." (emphasis added).

Although the 1979 Agreement was subsequently amended on a number of occasions by the Town and the owner to allow for a weekday matinee, the last amendment to the 1979 Agreement, dated April 15, 2003, has long since expired. There have been no further amendments to the 1979 Agreement and matinees during the business week are contractually prohibited.

B. Retail Shops After 6:00 p.m.

Paragraph 2D of the 1979 Agreement states, "Subsequent to the completion of construction and during its ownership of the Royal Poinciana Plaza the Partnership (and during the ownership of any purchaser) agrees to perform as follows: it will not require any retail shop in Royal Poinciana Plaza by lease or otherwise to maintain evening hours of operation and will prohibit all but ten percent of total square footage of said retail shops from remaining open after 6:00 p.m." Based upon calculations provided by Town Staff, the maximum square footage of retail shops that can remain open after 6:00 p.m. under the 1979 Agreement is capped at 14,118 square feet. Sterling continues to monitor this requirement by appropriate lease provisions to ensure continued compliance under the 1979 Agreement.

Closing hours for office and retail space are unrelated and mutually exclusive. As such, the parties to the 1979 Agreement did not specifically address the time that the offices closed during the business week because there was no need - - it was and is commonly understood that offices are open during the business day. As discussed below, under Florida law the business day is understood to mean Monday to Friday, 9:00 a.m. to 5:00 p.m.

II. Daytime Parking Space Requirements at the Plaza During Weekends

As reflected in its prior written communications, in calculating the parking requirements at the Plaza during the daytime period on the weekends, the Applicant is being required to account for office parking on the grounds that the 1979 Agreement does not expressly prohibit offices from being open for business on the weekend. In other words, in calculating the available parking during the weekend daytime period, the Applicant is being required to assume that all restaurants (including DFG) are open, all 141,000 sq. ft. of office is open, the Supper Club is open and the Theater is open.

Without question, this was not what was intended by the 1979 Agreement. By the very terms used, Paragraph 2F demonstrates that the parking issue the Town wanted to eliminate was the competition for parking spaces between the office and theater uses during the day. Because offices do not open for business on the weekends, the 1979 Agreement used the term "business week (Monday to Friday)" to capture this concept. Simply put, the purpose of this provision was to eliminate parking conflicts between office and theater use in the day time period all seven days of the week - - during the "business week" by the matinee prohibition and on the weekends

by the express terms used (business week) as well as the common sense understanding that offices are open during the business week and not on weekends. If the Town Council had believed that offices are open for business on the weekends, it would have prohibited matinees on every day of the week. The Town Council, of course, knew that was not the case, and prohibited matinees only during the “business week (Monday – Friday).”

Florida courts have repeatedly held that, “One looks to the dictionary for the plain and ordinary meaning of words.” *Specialty Restaurants Corp. v. City of Miami*, 501 So.2d 101, 102 (Fla. 3d DCA 1987). Turning to *Black’s Law Dictionary*, a “business day” is defined as “A day that most institutions are open for business, usually a day on which banks and major stock exchanges are open, excluding Saturdays, Sundays and certain major holidays.” Here there are two possible constructions – one which requires the Plaza to account for the parking required for office uses Monday to Friday 9:00 a.m. to 5:00 p.m. and one which requires the Plaza to account for this parking all seven days of the week 9:00 a.m. to 5:00 p.m. The first interpretation is the only one that comports with common understanding and logic.

Time and again, Florida courts have stated that where the language of an agreement is susceptible of two constructions, the parties must adopt the “construction which comports with logic and reason.” *Baker and Company, Florida v. Goding*, 317 So.2d 118 (Fla. 3d DCA 1975). In other words, the 1979 Agreement should be interpreted, “consistent with reason, probability, and the practical aspect of the transaction between the parties.” *Thompson v. C.H.B. Inc.* 454 So.2d 55, 57 (Fla. 4th DCA 1984). Requiring the Plaza to account for office parking during the weekend daytime period was never the intent of the 1979 Agreement.

Interpreted consistent with Florida law and common understanding and reason, the 1979 Agreement provides more than sufficient parking for Del Frisco’s and any future theater operation during the daytime on weekends.

III. Parking Requirement at the Plaza After 5:00 p.m.

As Florida courts have stated, a business day during the week “refers to “[a] day that most institutions are open for business,” or from 9:00 a.m. to 5:00 p.m. on weekdays. *Black’s Law Dictionary* 495 (9th ed. 2009).” *Fowler v. Gartner*, 89 So.3d 1047, 1048 (Fla. 3d DCA 2012). Under Florida law, contracts must be read in the context of, and with the application of, commonly known and understood facts. *J.N. Laliotis Engineering Construction, Inc. v. Mastor*, 558 So.2d 67, 68 (Fla. 2d DCA 1990) (Agreement should be given “a natural meaning or the meaning most commonly understood in relation to the subject matter and circumstances.”). Here, the 1979 Agreement necessarily embodies the commonly understood fact that office hours during the week are 9:00 a.m. to 5:00 p.m., Monday to Friday.

This legal point is illustrated as a matter of fact by the parking study most recently conducted at the Plaza, together with multiple prior studies. These studies by DKS, which are on file as part of the Del Frisco application, demonstrate that at 5:00 p.m. there are literally hundreds and hundreds of unused parking spaces at the Plaza. For example, Figure 5 - Late

Honorable Gail Coniglio, Mayor, and
Town Council of Town of Palm Beach
March 22, 2013
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Afternoon Parking Occupancy (5:00 p.m.) in the November 16, 2012 presentation to the Town Council confirms that of the more than 700 total spaces available at the Plaza post-taking, only 223 spaces are actually being used in the late afternoon (i.e. at 5:00 p.m.), leaving almost 70% of the parking spaces at the Plaza empty. Legally and factually the Applicant should not be required to account for office parking after the end of the business day, i.e. 5:00 p.m.

CONCLUSION

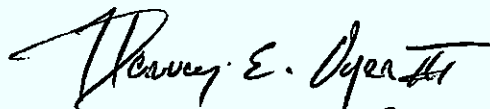
When Florida law is applied to the 1979 Agreement, two things are clear - - the Applicant should not be required to account for office parking after 5:00 p.m. or on Saturdays and Sundays. This is truly one of those occasions when the law and common sense and reason are completely in step. With this correct interpretation of the 1979 Agreement in hand, there is sufficient available parking in the Plaza for Del Frisco's to open for dinner at 5:00 p.m. and to open for brunch on the weekends without the need for a parking variance.

Thank you for your consideration of this matter.

Sincerely,



John W. Little, III
Attorney for Sterling Palm Beach, LLC



Harvey E. Oyer, III
Attorney for Del Frisco's Grille

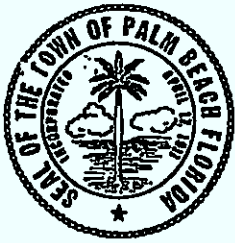
Enclosure(s)

Cc: John S. Page
Paul W. Castro
John C. Randolph, Esq.

JWL/all

WPB_ACTIVE 5445380.1

EXHIBIT A



TOWN OF PALM BEACH

Planning, Zoning & Building Department

January 14, 2013

John W. Little, III
Gunster Law
777 South Flagler Drive
Suite 500 East
West Palm Beach, FL 33401

Harvey E. Oyer, III
Shutts & Bowen LLP
City Place Tower
525 Okeechobee Boulevard
Suite 1100
West Palm Beach, FL 33401

RE: Town Staff Response to December 6, 2012 Letter
Parking at Royal Poinciana Plaza for Del Frisco's Restaurant

Dear Sirs:

The Planning, Zoning & Building Department has completed its staff review of your December 6, 2012 letter outlining your argument(s) regarding parking code compliance for the proposed Del Frisco's Grille in the Royal Poinciana Plaza. It should be reiterated that the Town Council (on November 16, 2012) approved a "Special Exception" allowing the restaurant to open, but denied your parking space variance, meaning that the restaurant must comply with applicable parking requirements.

Allow me to make one critically important note before continuing. A proposed "parking lot cure plan" was considered by the Town Council at their meeting of January 9, 2013. Significant public comments were heard at that time. A question was posed to the Council about the legal validity (possible abandonment) of parking variances formerly approved at the Plaza. The Council has asked staff and the Town Attorney to investigate the validity of such claim. That process will continue between now and their next meeting in February. The staff responses below assume that former parking variances remain valid. If, however, it is eventually determined that said variances have indeed been abandoned and are no longer valid, all of the responses identified below will be subject to change.

Town staff offers the following responses to your communication:

1. It is acknowledged that there are separate daytime and evening parking requirements at the Plaza (per restrictions in the 1979 Agreement relating to same).

2. Theater (whether open or not) parking must be provided at the Plaza. The 1979 Agreement now prohibits theater matinees during weekdays. As such, matinees are permitted on weekends only, and evening performances are permitted throughout the week.
3. Recent FDOT property acquisition at the northwest corner of the Plaza prompted the owners to submit a "Cure Plan" illustrating proposed revisions to the parking lot. Town Council deliberation regarding the Cure Plan, initially considered on January 9, 2013, was deferred until their February 13 meeting. An approved Cure Plan is needed to pinpoint the number of parking spaces in the Plaza (a critical factor in determining Del Frisco's parking compliance). Based upon Council discussion, staff expects that the number of approved parking spaces in the northwest corner of the plaza will be something less than the proposed 208 spaces outlined on the Cure Plan.
4. Town staff has determined that there is a parking lot deficiency of 57 spaces for the proposed 218-seat Del Frisco's Restaurant situated in the Royal Poinciana Plaza.
5. The number of parking spaces required for restaurants is based on seating capacity and back-of-house square footage. Section 134-2175 of the Zoning Ordinance stipulates that if a use change occurs triggering an increase in parking, then the additional parking must be provided. The proposed back-of-house area, and the office and/or retail use that previously occupied that portion of the building, have the same off-street parking requirement, meaning no additional parking is required for that area. The 57 parking space deficiency was calculated when applying parking code requirements to the remainder of the proposed restaurant site.
6. Staff accepts your arguments (page 6 parking space numbers) regarding "evening use." The zoning code requires a total of 509 spaces for all Plaza businesses, including both the theater and the 218-seat Del Frisco's Restaurant, after 6:00 p.m. The time frame of 6:00 p.m. is important because of the 1979 Agreement prohibiting all but 10% of total square footage of "retail shops" from remaining open after that time. Although your total number of 141,187 square feet includes both retail shops and office uses, staff accepts your number as being valid as most office uses close for business by 6:00 p.m. and Town officials have acknowledged that there are separate daytime and evening parking demands at the Plaza. Sufficient parking exists during evening hours (after 6:00 p.m) for the proposed 218-seat restaurant given the use restrictions in the 1979 Agreement. "Daytime use" must be calculated differently, and is further outlined below.
7. "Daytime use" parking requirements at the Plaza go up (all retail uses are theoretically open at such time, although no theater matinees are allowed on weekdays). Because of theater restrictions, weekday and weekend daytime uses must be addressed separately.

Weekday daytime parking space requirements:

Per data on page 7, a total of 758 spaces are needed (including 57 spaces for the 218-seat restaurant) to satisfy total Plaza occupancy. Once the Cure Plan final parking count

number of approved spaces is determined, it can be mathematically calculated whether or not sufficient parking exists in order for a new 218 seat restaurant to be opened. If insufficient parking exists, owners would have the option of reducing the number of seats in the proposed Del Frisco's restaurant to a still to-be-determined number, or opting not to offer lunch service. Yet another option, seeking a parking variance for lunchtime service, is briefly addressed further below. It appears unlikely, following the tentative Cure Plan solution (still undetermined) discussed during the January 9 Town Council meeting, that weekday lunch service will prove a viable option for your clients.

Weekend daytime parking space requirements:

Using the same data on page 7, then adding 175 spaces for the theater as identified on page 6, the total Plaza parking requirement is 933 (a number that cannot be achieved on the site). As such, Del Frisco's cannot operate during lunch on weekends.

8. Town Code(s) not only regulate the amount of required off-street parking, but also a host of related circulation and accessibility issues. The redesign of any parking lot alteration that may involve ADA requirements is still under review.

Several concluding comments are necessary. Reduced lunch seating (with a higher seat count in the evening), if that should be allowed, must be accomplished in some manner found acceptable to the Town. Operating with a different number of seats (less at lunch and more at dinner) in the same overall space creates the potential for code compliance abuse. If the owner should eventually choose that option, a plan for effectively controlling variable diners must be presented and approved by the Planning, Zoning & Building Department and/or Town Council. An effective means of preventing over-occupancy must be achieved.

With regard to the possibility of pursuing a "lunchtime parking variance" for Del Frisco's (one of the options noted above on weekdays), Staff would advise the owners to establish an excellent operational evening track-record before submitting such an application. Owners could keep careful records of total parking lot usage during the first year of operation (both daytime and evening). Approaching the Town Council at that time, with critical data regarding proven operational results and parking availability, would provide the Town with an established record of usage, enabling an informed decision based upon actual operations at the site. Please understand, of course, that Staff can make no assurances whatsoever on future actions the Council may take.

The entire Plaza property has been designated as a Town landmark. If indeed the proposed restaurant moves to fruition, it goes without saying that any architectural changes to the site will require approval from the Landmarks Preservation Commission. Likewise, building permit(s) for all changes to the property must be secured from this Department.

Please contact my office with any further questions or concerns. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "John Page". The signature is fluid and cursive, with the first name "John" and last name "Page" clearly distinguishable.

John Page, Director

Attachment: 12/6/12 Parking Data from attorneys John Little and Harvey Oyer, III

cc: Peter Elwell, Town Manager
John C. Randolph, Town Attorney
Paul Castro, Zoning Administrator
Mayor and Town Council
Adam Munder, Sterling Organization
Brian Kosoy, Sterling Organization

RECEIVED

DEC 07 2012

**TOWN OF PALM BEACH
PZB DEPT**

Writer's E-Mail Address: JLittle@gunster.com
Writer's Direct Dial: 561-650-0701

December 6, 2012

John S. Page
Director of Planning, Zoning & Building
Town of Palm Beach
360 South County Road
Palm Beach, FL 33408

Paul W. Castro
Zoning Administrator
Town of Palm Beach
360 South County Road
Palm Beach, FL 33408

Re: Parking at Royal Poinciana Plaza for Del Frisco's Restaurant

Gentlemen:

As you know, Gunster represents Sterling Palm Beach, LLC ("Sterling") and Shutts and Bowen represents Del Frisco's Grille. Sterling is the lessee of the Royal Poinciana Plaza ("Plaza") under a long term lease of up to 99 years, with an option to purchase. Sterling has entered into a lease with Del Frisco's Grille to open a restaurant at the northeast corner of the Plaza.

At its November 16, 2012 meeting, the Town Council approved the Special Exception for Del Frisco's Grille with conditions. While the Town Council denied the request for a parking variance, after the vote Council members directed that Del Frisco's and Sterling work with Town Staff in an effort to resolve parking. The purpose of this letter is to follow that direction and to set forth our analysis of several changed conditions and circumstances that now establish the availability of parking for Del Frisco's Grille without the need for a variance. Specifically, the changed conditions and circumstances are (i) consideration of the input from the Town Council's discussion of the 1979 Agreement and the need to ensure compliance with that Agreement; (ii) consideration of the parking spaces behind the Hibbel Building; (iii) consideration of a revised cure plan relating to the FDOT taking (Site Plan Review #1-2013) which increases the number of parking spaces; and (iv) consideration of a revised request by Del Frisco's Grille which reduces its proposed lunch time seating. As discussed below, these four changes remove the need for a parking variance for Del Frisco's Grille.

I. THE 1979 AGREEMENT AND PARKING AT THE PLAZA

Beginning in late 1978 and continuing into the Spring of 1979, the Town Council considered a redevelopment plan proposed by the then owner of the Plaza, Poinciana Properties, Ltd. That redevelopment plan, presented as part of Variance #39-78, sought to amend plans previously reviewed and conditionally approved by Town Council the year before. In approving

Variance #39-78, the Town Council required the preparation and execution of what has now become known as the 1979 Agreement.

The 1979 Agreement contains several provisions particularly relevant to this matter. First, the Agreement required that upon expiration of the then existing lease for the Poinciana Theater on June 30, 1983, any new leases entered into by the property owner after that time *would prohibit theater matinees during weekdays*. See paragraph 2E, 1979 Agreement. Likewise, the 1979 Agreement *further requires that the owner affirmatively prohibit all but 10% of the total square footage of retail shops from remaining open after 6 p.m.* See paragraph 2D, 1979 Agreement. Finally, the Agreement acknowledged that after the redevelopment was complete, the Plaza would continue to have nonconformities as to both the number and size of parking spaces. See paragraph 1B, 1979 Agreement.

Indeed, during the February 13, 1979 meeting where the Town Council directed the creation of the 1979 Agreement, the impact of these legal restrictions on uses in the Plaza during different periods of the day was specifically discussed. As the minutes state, upon completion of the approved redevelopment, "there would be a total non-conformity of 213 [parking spaces], less the number [of parking spaces] for the theater *in a separate time demand period after 1983....*" (emphasis added). In other words, after the contractual prohibition against matinees at the theater was in place, the nonconformity in the number of parking spaces would be reduced because the parking spaces associated with theater would *no longer* be considered in analyzing parking needs at the Plaza during the daytime. It is clear from the Town Council's discussion of the issue during the November 16, 2012 meeting that the 1979 Agreement incorporates a combined parking concept that separated time periods of the day and the Council wanted to ensure that the Town remains in compliance with the 1979 Agreement.

In 1980, Town Council considered and approved Variance #4-80 which requested permission "to amend [the] Agreement dated 3/79 relative to Slat House; permission to restore, refurbish, remodel to professional offices and restaurant, in turn for cancellation of building permit for construction of new building etc." The revised redevelopment plan sought to amend the earlier plans approved by Town Council by eliminating "Building B" which was to be constructed in the northwest corner of the Plaza and instead rebuild the structure known as the Slat House. At that time, it was determined that the nonconformity as to the number of parking spaces would not increase based upon the proposed new construction authorized by Variance #4-80. The owner's request was approved and on May 12, 1980 an Amendment to Agreement was executed between the owner and the Town.

On June 17, 1981 the Zoning Administrator prepared a memorandum to the Town Manager which extracted a copy of the "Fact Sheet" from the Town's files showing the number of parking spaces required for each use existing in the Plaza. The memorandum goes on to state that "this fact sheet is the latest agreement [under the First Amendment to the 1979 Agreement], approved by the Town Council, between the Town and the Plaza owners." A review of that Fact Sheet reveals that the total number of nonconforming spaces under the 1979 Agreement, as amended, was 213 spaces. This document went on to note that after 1983 (when weekday

matinees would no longer be contractually permitted) the 172 spaces allocated for theater use would no longer be needed during the daytime slot, and therefore the daytime nonconformity would be reduced by that number of spaces. Said a different way, the Town and owner continued to recognize that once the matinees ceased as contractually required by the 1979 Agreement, the parking spaces allocated to the theater use would no longer be considered in arriving at the necessary parking for the Plaza during the separate daytime period. Daytime and evening parking are considered separately. Again, as noted above, the statements made by Town Council members on November 16th reflect their understanding of this fact and their belief that the Town should comply with the terms of the 1979 Agreement including the clear recognition of separate parking demands during the different time periods of the day (day and evening).

A. Theater Matinees

Today, no matinee performances at the theater are legally permitted during the weekdays under the terms of the 1979 Agreement. Paragraph 2E of the 1979 Agreement initially stated, "Subsequent to the completion of construction and during its ownership of the Royal Poinciana Plaza the Partnership (and during the ownership of any purchaser) agrees to perform as follows: the current Lessee [of the theater] has agreed that there will *only be one matinee performance during the business week (Monday-Friday)* beginning with July 1, 1979 through June 30, 1983. Upon entering into a new lease, i.e. after June 30, 1983, it will permit no theater matinees during the week but only on weekends." (emphasis added). By its very terms, this provision recognized that the parking issue the Town wanted to eliminate was the competition for parking spaces between the office and theater uses during the day. Because offices do not open for business on the weekends, the 1979 Agreement used the term "business week (Monday to Friday)" to capture this concept. Said a different way, the purpose of this provision was to eliminate parking conflicts between office and theater use in the day time period all seven days of the week - - during the "business week" by this prohibition and on the weekends by the express terms used as well as the common sense understanding that offices are open during the business week and not on weekends.

Although, the 1979 Agreement was subsequently amended on a number of occasions by the Town and the owner to allow for a weekday matinee, the last amendment to the 1979 Agreement, dated April 15, 2003, has long since expired. There have been no further amendments and matinees during the business week are not contractually permitted.

B. Retail Shops After 6:00 p.m.

Paragraph 2D of the 1979 Agreement states, "Subsequent to the completion of construction and during its ownership of the Royal Poinciana Plaza the Partnership (and during the ownership of any purchaser) agrees to perform as follows: it will not require any retail shop in Royal Poinciana Plaza by lease or otherwise to maintain evening hours of operation and will prohibit all but ten percent of total square footage of said retail shops from remaining open after 6:00 p.m." Based upon the attached calculations provided by Town Staff of the total retail and office space at the Plaza (including the Hibel Building), the maximum square footage of retail shops that can remain open after 6:00 p.m. under the 1979 Agreement is capped at 14,118 square feet. At the present time, there are four (4) retail shops in the Plaza as confirmed by the Town's business license records and only one of those retail shops, UPS, is periodically open after 6:00 p.m. The UPS store is 1,224 sq. ft. Sterling continues to monitor this requirement by appropriate lease provisions to ensure continued compliance under the 1979 Agreement.

C. Summary of Impact of These Provisions

As detailed in Section V.A. below, when these contractual provisions of the 1979 Agreement which limit the legally permitted uses to the separate day and evening time periods are applied to the Del Frisco's application, it is clear that there are hundreds of excess parking spaces in the evening time period even after the addition of Del Frisco's Grille. Likewise as detailed in Section V.B. below, during the daytime period, using the numbers presented to the Town Council by Staff on November 16th, the parking spaces needed from the addition of Del Frisco's in this separate time period is reduced from 57 to 30 parking spaces. How the need for these 30 remaining parking spaces during the separate day time period is reduced from 30 to zero (0) is explained in Sections II, III and IV below.

II. HIBEL BUILDING PARKING SPACES

The Hibel Building and its associated parking spaces are not shown on the prior parking plans for the Plaza. At the time of the November 16, 2012 Town Council meeting, Staff was reporting to Council that if the then proposed cure plan of 197 spaces was used, there would be 728 parking spaces available in the Plaza after the taking. Sterling's number was 735 parking spaces post taking, a difference of 7 parking spaces. In discussions with Town Staff after the meeting, we have confirmed and agreed that the difference is the 7 parking spaces behind the Hibel Building. In the calculations by Town Staff of the office/retail space in the Plaza (141, 187 sq.ft.) the 3,000 sq.ft. from the Hibel building was included. The seven (7) parking spaces at the Hibel, however, were not counted. As detailed in Section V.B. below, when these 7 parking spaces are taken into consideration, the number of additional spaces needed for the addition of Del Frisco's Grille is reduced from 30 to 23 parking spaces during the separate day time period.

III. REVISED CURE PLAN FOR PARKING DUE TO FDOT TAKING

At the time of the November 16, 2012 Town Council meeting, the proposed cure plan showed 197 parking spaces in the northwest portion of the Plaza. This cure would restore all but 35 of the 232 parking spaces previously approved by the Town for that portion of Sterling's property. As shown to Council at the November 16th meeting, the loss of these 35 spaces is what created a "shortfall" during the separate day time period and was in fact a legal hardship that the Town Council could consider. Following the November 16th Council meeting, working with Staff, Sterling has revised the cure plan to include additional parking spaces. As reflected in Sterling's Application for Site Plan Review (#1-2013) the revised cure plan increases the parking by 11 spaces, for a total of 208 parking spaces in the northwest portion of the Plaza post taking. As detailed in Section V.B. below, when these 11 parking spaces are considered, the number of additional spaces needed for the addition of Del Frisco's Grille is reduced from 23 to 12 parking spaces during the separate day time period.

IV. REVISION OF DAYTIME SEATING BY DEL FRISCO'S GRILLE

Del Frisco's Grille has revised its plan for lunch time operations at the Plaza. Specifically, Del Frisco's Grille is reducing its lunch time seating in the restaurant from 218 seats to 182 seats. This reduction of 36 seats at lunch equates to a reduction during the daytime of 12 parking spaces. The reduction of seats during lunch will be accomplished by a modification of the plans acceptable to Town Staff and Del Frisco's. In sum, the evening seating at the Grille will be 218 and is therefore consistent with the Special Exception approved by the Town Council which permits up to 218 seats.

As detailed in Section V.A. below, because of the hundreds of extra parking spaces in the Plaza during the separate evening time period, no parking variance is required in the evening. With respect to the day time period, as demonstrated in Section V.B., when the 36 seats are removed at lunch, the final 12 parking spaces needed for the addition of Del Frisco's Grille is reduced to zero (0) and therefore no parking variance is required during the separate day time period either.

V. APPLICATION FOR THE CHANGES TO THE PARKING FOR DEL FRISCO'S GRILLE

Town Staff determined (using the Principle of Equivalency) that the addition of a 218 seat restaurant by Del Frisco's resulted in the need for 57 additional parking spaces. Since no parking spaces at the Plaza can be assigned to any particular tenant or their customers as a result of earlier conditions placed on parking at the Plaza (Condition 3 to Special Exception #21-95 with Site Plan and Two Zoning Variances), the question becomes whether there are at least 57 excess parking spaces at the Plaza after accounting for the parking required for all of the legally permitted uses during the two separate time periods (day and evening). As demonstrated below, using Staff's calculations of the required parking for all of the other uses in the Plaza, and given the changed conditions and circumstances discussed above, there are a sufficient number of

parking spaces available at the Plaza to allow the addition of the Del Frisco's Grille without the need for a parking variance.

A. Legally Permissible Evening Uses at the Plaza Under the 1979 Agreement

As noted above, the 1979 Agreement legally restricts the uses that are allowed during the evening time period at the Plaza. If the contractual requirements of the 1979 Agreement are honored by the Town, the only legally permissible evening uses at the Plaza are: (1) the theater space; (2) the three restaurants (Palm Beach Grill, McCarty's and TooJays) and Poinciana Club space; (3) ten percent of the retail space after 6:00 p.m. capped at a maximum of 14,118 sq.ft. and (4) Del Frisco's Grille at 218 seats in the evening. The chart below shows these legally permissible uses and the associated parking requirements as calculated on the attachment by Town Staff.

Use at Plaza – Assumes 100% Occupancy	Associated Parking
Theater Space per 1979 Agreement (maximum)	175
Restaurants and Poinciana Club Space (Palm Beach Grill – 59, McCarty's – 54, TooJays – 43, Poinciana Club – 74)	230
Maximum Retail Space allowed to be open past 6 p.m. per the 1979 Agreement – 14,118 sq. ft. (10% of 141,187 sq.ft.)	47
Del Frisco's Grille (additional parking spaces needed as determined by Staff)	57
TOTAL PARKING SPACES NEEDED FOR EVENING USES	509

As reported to the Town Council at the November 16th meeting, Staff determined there would be 728 available parking spaces at the Plaza after the FDOT taking based on the then proposed cure plan of 197 spaces. When the 7 spaces behind the Hibbel Building are added to this number, together with the 11 additional spaces shown on the revised cure plan that has now been filed with the Town, the total number of available parking spaces in the evening after the FDOT taking is 746 spaces (728 spaces+ 7 Hibbel spaces + 11 new cure plan spaces = 746 spaces).

Accordingly, once all of the legally permissible evening uses allowed under the 1979 Agreement are accounted for, including the additional parking spaces needed for the addition of Del Frisco's Grille, there are over 235 excess parking spaces available in the evening time period (746 spaces – 509 spaces = 237 spaces). In other words, if the terms of the 1979 Agreement are honored, a point stressed by several of the Council members at the November 16th meeting, no parking variance is required for the 57 spaces added by Del Frisco's during the separate evening time period because there is more than adequate surplus space in the Plaza after accounting for all legally permitted evening uses.

It should also be noted that even with the addition of the Del Frisco's Grille, there are more than 475 available parking spaces in the evening for use by any theater and Poinciana Club operator (175 spaces for Theater + 74 spaces for Poinciana Club + 237 excess spaces = 486 spaces). This is approximately 1 parking space for every 2 seats currently in the theater. Moreover, the Del Frisco's Grille will be located at the opposite end of the Plaza away from the theater and Poinciana Club area.

B. Legally Permissible Daytime Uses at the Plaza Under the 1979 Agreement

As noted above, the 1979 Agreement legally restricts the uses that are allowed during the separate day time period at the Plaza. If the contractual requirements of the 1979 Agreement are honored, the only legally permissible daytime uses at the Plaza are: (1) office/retail space of 141,187 sq.ft.; (2) the three restaurants (Palm Beach Grill*, McCarty's and TooJays) and the Poinciana Club space; (3) Del Frisco's Grille. The chart below shows these legally permissible uses and the associated parking requirements as calculated by Town Staff.

Use at Plaza – Assumes 100% Occupancy	Associated Parking
Office/Retail Space – 141,187 sq.ft. per 1979 Agreement (includes the space to be occupied by Del Frisco's)	471
Restaurants and Poinciana Club Space (Palm Beach Grill – 59*, McCarty's – 54, TooJays – 43, Poinciana Club – 74)	230
Del Frisco's Grille (additional parking spaces needed as determine by Staff)	57
TOTAL PARKING SPACES NEEDED FOR DAYTIME USES	758

As noted above, based on the revised cure plan filed with the Town, there are 746 parking spaces in the Plaza for use during the daytime after the taking (728 spaces + 7 Hibel spaces + 11 cure plan spaces = 746 spaces). Based on the changed circumstances and conditions discussed in this letter, there is available parking at the Plaza to allow Del Frisco's Grille to have 182 seats at

* It should be noted that the Palm Beach Grill does not and has never operated at lunch, and has consistently expressed that it has no desire to do so in the future.

John S. Page
Paul W. Castro
December 6, 2012
Page 8

lunch without the need for a parking variance. This is illustrated using the numbers discussed with the Town Council on November 16th as follows:

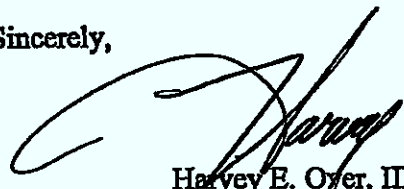
Additional Parking Required by Del Frisco's Grille as Determined by Staff (Principle of Equivalency)	57 spaces
Applying the contractual restrictions of the 1979 Agreement to daytime uses, and based on a total of 728 spaces determined by Staff using the then proposed cure plan, the daytime shortfall is reduced to	30 spaces
When the 7 parking spaces at the Hibel are considered, the daytime shortfall is further reduced to	23 spaces
When the revised cure plan filed with the Town which adds 11 parking spaces is considered, the daytime shortfall is further reduced to	12 spaces
When the reduction by Del Frisco's of 36 seats from the restaurant during lunch is considered, the daytime shortfall is eliminated	0 spaces

Conclusion

Based on the foregoing, we respectfully request that Staff approve Del Frisco's Grille proceeding forward based on the Town Council's approval of the Special Exception and the determination that a parking variance is clearly not required based on the changed conditions and circumstances discussed herein. Please let us know if we can provide any additional information. Thank you for your consideration of this matter.

Sincerely,


John W. Little, III
Attorney for Sterling Palm Beach, LLC


Harvey E. Oyer, III
Attorney for Del Frisco's Grille

cc: John C. Randolph, Esq.

Little, John

From: PCastro@TownofPalmBeach.com
Sent: Tuesday, November 06, 2012 3:31 PM
To: Little, John
Subject: Re: Office/retail calculations
Attachments: Plaza business tax Info.pdf

John,

That is correct. Here are the numbers we used. Let me know if you have any questions.

Paul

From: "Little, John" <JLittle@gunster.com>
To: "PCastro@TownofPalmBeach.com" <PCastro@TownofPalmBeach.com>, "JPPage@TownofPalmBeach.com" <JPPage@TownofPalmBeach.com>
Cc: "randolph@jones-foster.com" <randolph@jones-foster.com>, "Harvey E. Oyer, III" <HOyer@shutta.com>, "Lackey, Anne" <ALackey@gunster.com>
Date: 11/06/2012 03:10 PM
Subject: Office/retail calculations

Paul: Ahead of circling back with you and JP following our meeting yesterday, I was calling to ask a quick question about the 141,187 sq. ft. office/retail calculation you made of existing uses at the Plaza from the business tax receipts.

It dawned on me after we left that since you were doing calculations involving current uses at the Plaza, the 141,187 sq ft includes the office/retail space where Del Frisco's would go. Said a different way, the 141,187 includes all space at the Plaza except the Theater, Palm Beach Grill, TooLays, McCarty's and the Poindiana/Supper Club space.

If I am correct, your number is basically the same as the calculation of office/retail that I sent to you previously (which excluded the Del Frisco's space from the calculation) and I do not need to look at any of the underlying paperwork. I appreciate you reviewing this and letting me know. JWL



GUNSTER

FLORIDA'S LAW FIRM FOR BUSINESS

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Eminent Domain and Property Rights
Business Litigation
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West Palm Beach, FL 33401
P 561-650-0701 F 561-671-2491
jlittle@gunster.com
gunster.com | [View my bio](#)

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically

ACT	TYPE	PROPERTY ADDRESS	FLOOR	SQ FT	OWNER	PROPERTY NAME	PROPERTY TYPE	NOTES
act	svc	340 ROYAL POINCIANA WAY 1C PALM BEACH FL 33480			975	FAITH PECHTER	SALON W AND SPA ESSENTIALS	
act	oth	340 ROYAL POINCIANA WAY 2C PALM BEACH FL 33480	1		800	ANGELO'S OF PALM BEACH INC	ANGELO'S OF PALM BEACH INC	Jeweler
cls	fin	340 ROYAL POINCIANA WAY 300 PALM BEACH FL 33480			5020	SUNTRUST SOUTH FLORIDA NA	SUNTRUST SOUTH FLORIDA NA	SE24-92
hls	svc	340 ROYAL POINCIANA WAY 301 PALM BEACH FL 33480			5500	FOX COSMETICS INC	THE BABOR INSTITUT	
act	rie	340 ROYAL POINCIANA WAY 302 PALM BEACH FL 33480			4730	NRT NEW YORK LLC	THE CORCORAN GROUP	
cls	oth	340 ROYAL POINCIANA WAY 303 PALM BEACH FL 33480			5000	BABOR COSMETICS AMERICA CORP	BABOR COSMETICS AMERICA CORP	Administrative offices
act	oth	340 ROYAL POINCIANA WAY 305 PALM BEACH FL 33480			3938	ESKO PROPERTIES INC	SIDNEY KOHL COMPANY	Administrative offices
act	oth	340 ROYAL POINCIANA WAY 306 PALM BEACH FL 33480	2-Jan		5820	INNKEEPERS USA TRUST	INNKEEPERS USA TRUST	Administrative offices
act	oth	340 ROYAL POINCIANA WAY 307 PALM BEACH FL 33480			1600	GO FIGURE PALM BEACH LLC	GO FIGURE BARRE STUDIO	Health studio
act	med	340 ROYAL POINCIANA WAY 309 PALM BEACH FL 33480			1325	EDGARDO ARTURO GRANDE DMD PA	THE ANAYA CLINIC	

39,500

act	rt	340 ROYAL POINCIANA WAY 310 PALM BEACH FL 33480			1408	ROYAL PET GROOMING INC	ROYAL PET GROOMING
act	rie	340 ROYAL POINCIANA WAY 311 PALM BEACH FL 33480			2000	TKC OF PALM BEACH LLC	MIRSKY VALORE
hls	rt	340 ROYAL POINCIANA WAY 312 PALM BEACH FL 33480			1870	BRANDON PALM BEACH INC	BRANDON OF PALM BEACH ISLAND
act	rt	340 ROYAL POINCIANA WAY 312A PALM BEACH FL 33480			350	BETH ANN BARBER	TONTOS
act	l&e	340 ROYAL POINCIANA WAY 313 PALM BEACH FL 33480	124	2600		TOOJAY'S PALM BEACH INC	TOOJAY'S ORIGINAL GOURMET DELI
act	svc	340 ROYAL POINCIANA WAY 314 PALM BEACH FL 33480			300	HAIR AND NAILS BOUTIQUE INC	HAIR AND NAILS BOUTIQUE INC
act	med	340 ROYAL POINCIANA WAY 315 PALM BEACH FL 33480			1617	JFK INTERNAL MEDICINE FACULTY PRACTICE LLC	ISLAND MEDICAL CARE
act	med	340 ROYAL POINCIANA WAY 315 PALM BEACH FL 33480			1617	JFK INTERNAL MEDICINE FACULTY PRACTICE LLC	ISLAND MEDICAL CARE
act	oth	340 ROYAL POINCIANA WAY 316 PALM BEACH FL 33480			8800	THE STERLING ORGANIZATION LLC	THE STERLING ORGANIZATION LLC
act	rt	340 ROYAL POINCIANA WAY 317 PALM BEACH FL 33480			1229	HOME OFFICE TRANSPORT LLC	THE UPS STORE

real estate

flowers

43 spaces

property mgmt

17,574

act	svc	340 ROYAL POINCIANA WAY 327A PALM BEACH FL 33480			300	PLAZA HAIR & NAILS	PLAZA HAIR & NAILS	
his	rtl	340 ROYAL POINCIANA WAY 328 PALM BEACH FL 33480			2500	PALM BEACH COUTURE DESIGNS INC	DESIGNER TO YOU	se13-2008
act	rlc	340 ROYAL POINCIANA WAY 329 PALM BEACH FL 33480			5125	SBZZ OF PALM BEACH LTD	BROWN HARRIS STEVENS OF PALM BEACH	
act	rtl	340 ROYAL POINCIANA WAY 330 PALM BEACH FL 33480			1700	COUTURE AND MORE INC	COUTURE AND MORE	
act	rtl	340 ROYAL POINCIANA WAY 332A PALM BEACH FL 33480			764	LAVANDE PB INC	HOUSE OF LAVANDE	v12-2008
his	svc	340 ROYAL POINCIANA WAY 332B PALM BEACH FL 33480			1000	MCPHERSON- BARRETT PHOTOGRAPHY	MCPHERSON- BARRETT PHOTOGRAPHY	
act	pro	340 ROYAL POINCIANA WAY 332B PALM BEACH FL 33480			850	PARASUTRA	PARASUTRA	YOGA UNCLASSIFIED PROFESSION
act	oth	340 ROYAL POINCIANA WAY 333 PALM BEACH FL 33480			1887	VIKING SPORT CRUISERS - FLORIDA INC	VIKING SPORT CRUISERS	Administrative offices
act	l&e	340 ROYAL POINCIANA WAY 336 PALM BEACH FL 33480		164	6515	HILLSTONE RESTAURANT GROUP INC	PALM BEACH GRILL	SE34-1998
act	rlc	340 ROYAL POINCIANA WAY 337 PALM BEACH FL 33480	2		900	SOTHEYB'S INTERNATIONAL REALTY INC	SOTHEYB'S INTERNATIONAL REALTY INC	

15,026

59

act	svc	340 ROYAL POINCIANA WAY 337A PALM BEACH FL 33480	1		1900	EDWARD INC	EDWARD INC
act	svc	340 ROYAL POINCIANA WAY 339A PALM BEACH FL 33480	2		500	ADVANCED MENTAL HEALTH CARE INC	ADVANCED MENTAL HEALTH CARE INC
act	pro	340 ROYAL POINCIANA WAY 339B PALM BEACH FL 33480			500	SUSAN LEE LCSW PSYCHOTHERAPIST	SUSAN LEE LCSW PSYCHOTHERAPIS T
cls	oth	340 ROYAL POINCIANA WAY 339C PALM BEACH FL 33480			250	BARBARA M ROGERS	BARBARA M ROGERS
hls	pro	340 ROYAL POINCIANA WAY 339D PALM BEACH FL 33480	2		350	W DAN ROWLANDS	F.I.R.S.T.
hls	pro	340 ROYAL POINCIANA WAY 339F PALM BEACH FL 33480	2		200	340 ROYAL POINCIANA LLC	340 ROYAL POINCIANA LLC
act	pro	340 ROYAL POINCIANA WAY 339J PALM BEACH FL 33480			450	MURPHY REID LLP	MURPHY REID LLP
act	rie	340 ROYAL POINCIANA WAY 341 PALM BEACH FL 33480	2		4100	SOTHEBY'S INTERNATIONAL REALTY REFERRAL COMPANY LLC	SOTHEBY'S INTERNATIONAL REALTY REFERRAL COMPANY LLC
cls	oth	340 ROYAL POINCIANA WAY 345 PALM BEACH FL 33480			1200	ALPS RESOURCES BANKERS INC	ALPS RESOURCES BANKERS INC
act	oth	340 ROYAL POINCIANA WAY 3C PALM BEACH FL 33480	1		800	TREE OF LIFE FOUNDATION INTERNATIONAL INC	TREE OF LIFE FOUNDATION INTERNATIONAL INC

Financial consultant

10,250

cls	rti	340 ROYAL POINCIANA WAY 318 PALM BEACH FL 33480			3600	BRANDON OF OKEECHOBEE LLC	SOHO LIVING	
act	pro	340 ROYAL POINCIANA WAY 320 PALM BEACH FL 33480			1400	JUST FOR YOU EXERCISE & RESOURCE CENTRE INC	JFY EXERCISE PALM BEACH	Health studio
act	pro	340 ROYAL POINCIANA WAY 321 PALM BEACH FL 33480			12256	ALLEY MAASS ROGERS & LINDSAY PA	ALLEY MAASS ROGERS & LINDSAY PA	
act	rti	340 ROYAL POINCIANA WAY 322 PALM BEACH FL 33480			2270	DOUGLAS ELLMAN FLORIDA LLC	DOUGLAS ELLMAN FLORIDA LLC	
act	med	340 ROYAL POINCIANA WAY 322B PALM BEACH FL 33480			1200	BOCA NURSING SERVICES INC	BOCA NURSING SERVICES INC	
cls	rti	340 ROYAL POINCIANA WAY 324 PALM BEACH FL 33480			1000	SEAVIEW REALTY INC	SEAVIEW REALTY INC	
act	pro	340 ROYAL POINCIANA WAY 325A PALM BEACH FL 33480			740	THE FITNESS EDGE INC	THE FITNESS EDGE	Health studio
act	svc	340 ROYAL POINCIANA WAY 325B PALM BEACH FL 33480			825	A STUDIO DAY SPA CORP	A STUDIO DAY SPA CORP	
act	oth	340 ROYAL POINCIANA WAY 326 PALM BEACH FL 33480	2-Jan		1800	ROYAL POINCIANA PLAZA	ROYAL POINCIANA PLAZA	property mgmt
act	oth	340 ROYAL POINCIANA WAY 326B PALM BEACH FL 33480			900	HOL ORIGINAL LLC	HOL ORIGINAL LLC	Administrative offices

25,991

act	ria	340 ROYAL POINCIANA WAY 4C PALM BEACH FL 33480	1		1000	HALL REAL ESTATE PA	HALL REAL ESTATE PA
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115081

104,349 #61A

act	oth	50 COCOANUT ROW 220 PALM BEACH FL 33480	2		1180	FPG DEVELOPMENT GROUP LLC	FPG DEVELOPMENT GROUP LLC
hls	rie	50 COCOANUT ROW 216 PALM BEACH FL 33480	2		1160	CHATHAM LODGING LP	CHATHAM LODGING LP
act	med	50 COCOANUT ROW 215 PALM BEACH FL 33480	2		1540	CHIROPRACTIC CARE OF PALM BEACH, INC	CHIROPRACTIC CARE OF PALM BEACH INC
act	oth	50 COCOANUT ROW 212 PALM BEACH FL 33480	2		3408	INK ACQUISITION LLC	INK ACQUISITION LLC
act	oth	50 COCOANUT ROW 211 PALM BEACH FL 33480	2		2750	CHATHAM LODGING LP	CHATHAM LODGING LP
act	oth	50 COCOANUT ROW 200 PALM BEACH FL 33480	2		10000	ISLAND HOSPITALITY MANAGEMENT INC	ISLAND HOSPITALITY MANAGEMENT INC
act	med	50 COCOANUT ROW 120 PALM BEACH FL 33480	1		5000	LAYNE D NISENBAUM DO PA	ISLAND DERMATOLOGY LASER & ANTI-AGING INSTITUTE
hls	rie	50 COCOANUT ROW 119 PALM BEACH FL 33480	1		1850	JOHN D PINSON INC	JOHN D PINSON INC
act	svc	50 COCOANUT ROW 117 PALM BEACH FL 33480	1		2000	LUCIEN CAPEHART PHOTOGRAPHY INC	LUCIEN CAPEHART PHOTOGRAPHY INC

29,888

act	oth	50 COCOANUT ROW 115 PALM BEACH FL 33480	1		1000	MCCARTY CONSULTING LLC	MCCARTY CONSULTING LLC
act	med	50 COCOANUT ROW 104 PALM BEACH FL 33480	1		1250	FRANCIS P CONROY DMD	FRANCIS P CONROY DMD
act	l&e	50 COCOANUT ROW 101 PALM BEACH FL 33480	1	151	4648	MICHAEL R MCCARTY RESTAURANT GROUP LLC	MICHAEL R MCCARTY'S
act	oth	50 COCOANUT ROW 100 PALM BEACH FL 33480	1		2700	ISLAND HOSPITALITY MANAGEMENT INC	ISLAND HOSPITALITY MANAGEMENT INC

The following was taken from AS400

14,950



The following information was taken from AS400 BTR records

HIS Dining Rm 17290 70 ROYAL POINCIANA PLZ
HIS Nightclub WITH dance 17300 70 ROYAL POINCIANA PLZ
HIS Theater 17250 70 ROYAL POINCIANA PLZ
HIS Club Dining over 40 35904 70 ROYAL POINCIANA PLZ A
HIS Nightclub WITH dance 35905 70 ROYAL POINCAINA PLZ A

~~189~~
~~225~~

878
~~330~~

10000 THE POINCIANA CLUB
10000 THE POINCIANA CLUB INC
27500 PTG FLORIDA INC
THE POINCIANA CLUB INC
THE POINCIANA CLUB INC

74
~~218~~ 175

HIS Merchant 37763 150 ROYAL POINCIANA PLZ

1

3000 DTY INC

~~HIS Restaurant over 40 35776 338 ROYAL POINCIANA PLZ~~

~~130~~

~~JE ME SOLUTIONS INC~~

3,000 #1 GLA

[REDACTED]

POINCIANA CLUB DINING ROOM Closed 1993?
THE POINCIANA CLUB INC
ROYAL POINCIANA PLAYHOUSE Closed 2004
JACQUELINE OF PALM BEACH SE17-95
JACQUELINE OF PALM BEACH

DESIGNERS TO YOU

HAVANA 336

SE#4-95

The following information was taken from AS400 BTR records

HIS Dining Rm	17290 70 ROYAL POINCIANA PLZ	225	10000 THE POINCIANA CLUB POINCIANA CLUB DINING ROOM
HIS Nightclub WITH	17300 70 ROYAL POINCIANA PLZ		10000 THE POINCIANA CLUB THE POINCIANA CLUB INC
HIS Theater	17260 70 ROYAL POINCIANA PLZ	878	27500 PTG FLORIDA INC ROYAL POINCIANA PLAYHOUSE
HIS Club Dining ove	35904 70 ROYAL POINCIANA PLZ A	330	THE POINCIANA CLUB JACQUELINE OF PALM BEACH
HIS Nightclub WITH	35905 70 ROYAL POINCIANA PLZ A		THE POINCIANA CLUB JACQUELINE OF PALM BEACH
HIS Merchant	37763 150 ROYAL POINCIANA PLZ	1	3000 DTY INC DESIGNERS TO YOU
HIS Restaurant over	35776 336 ROYAL POINCIANA PLZ	130	JE ME SOUVIENS INC HAVANA 336

Commercial/ office/Retail 1141, 187 # GLA @ 1:300 = 471

Theatre 878 seats @ 1 per ⁵ seats = ~~175~~ 179

Poinciana Club 189 seats @ 1 per 35 seats
 \$ 1 per 300 # back of house = 74

Too Jays " = 43

P.B. Grill " = 59

McCarty 's " = 59

mi. ~~11.11~~



Closed 1993?

Closed 2004
SE17-95

SE#4-95

EXHIBIT B

March 8, 2013

John S. Page
Director of Planning, Zoning & Building
Town of Palm Beach
360 South County Road
Palm Beach, FL 33408

Paul W. Castro
Zoning Administrator
Town of Palm Beach
360 South County Road
Palm Beach, FL 33408

Re: Parking at Royal Poinciana Plaza for Del Frisco's Grille Restaurant

Gentlemen:

As you are aware from our prior correspondence, Gunster represents Sterling Palm Beach, LLC ("Sterling") and Shutts & Bowen represents Del Frisco's Grille. Sterling is the lessee of the Royal Poinciana Plaza ("Plaza") under a long term lease of up to 99 years, with an option to purchase. Sterling has entered into a lease with Del Frisco's Grille to open a restaurant at the northeast corner of the Plaza.

To briefly recount, at its November 16, 2012 meeting, the Town Council approved the Special Exception for Del Frisco's Grille with conditions. While the Council denied the request for a parking variance at that time, after the vote Council directed that Del Frisco's and Sterling work with Town Staff in an effort to resolve parking issues. Pursuant to that direction, we prepared a letter dated December 6, 2012 setting forth our analysis of several changed conditions and circumstances that established the availability of parking for Del Frisco's Grille without the need for a variance.

On January 14, 2013, the Planning, Zoning and Building Department responded to our December 6, 2012 letter. At the outset, your letter advised that the determinations set forth in the January 14th letter were subject to modification depending upon the actions taken by the Town Council at its scheduled February 13, 2013 meeting to review Sterling's request for Site Plan Review #1-2013 caused by the taking and resulting in the need for a cure plan to be brought forward. By letter dated February 22, 2013, the Town provided its written notification of its approval of the restriping of the northwest lot as shown on Drawing #3 dated February 5, 2013. This approval results in 188 parking spaces in the northwest portion of the Plaza following the FDOT taking. In light of the Town Council's actions on the 13th, the undersigned request that the Town Staff address the two points discussed below in an effort to finalize the parking matters for Del Frisco's Grille.

As a preliminary matter, as detailed at page 6 of our December 6, 2012 letter, Staff reported to the Town Council at the November 16th meeting that there would be 728 available parking spaces at the Plaza after the FDOT taking based on the then proposed cure plan of 197 spaces in the northwest portion of the Plaza. After the November 16th meeting, in working with Staff, it was determined that the 7 spaces behind the Hibbel building were not included in the

Staff's post-taking count of 728 spaces. When the 7 Hibel spaces are added to the 728 spaces, the total is 735. Since it has now been determined by the Town Council that there will be 9 fewer spaces than was anticipated in November (197 projected – 188 approved = 9), the post-taking number must be reduced by 9 spaces. Accordingly, adjusting the previously agreed upon numbers following the action taken by the Town Council on February 13th results in a total parking at the Plaza post-taking of 726 spaces (735 – 9 = 726).

A. Parking Requirement for Evening Uses at the Plaza

As acknowledged in the Town's letter of January 14th, a total of 509 parking spaces are required for evening uses at the Plaza *after* the addition of the 218 seat Del Frisco's Grille. In its January 14th letter, however, the Town Staff appears to suggest that Del Frisco's Grille would need to wait until 6 p.m. to open for dinner in order to satisfy the evening parking requirement. Now that Town Council has acted on Sterling's request for site plan review and the post-taking parking numbers are finalized, as noted above there are well over 200 excess spaces during the evening hours (726 spaces – 509 spaces = 217 excess spaces). Based upon (i) these numbers, (ii) a reasonable and proper interpretation of the 1979 Agreement and (iii) the materials presented to Town Council at the November 16, 2012 meeting, it is clear that there is more than adequate parking to allow Del Frisco's Grille to open at 5:00 p.m. for dinner.

As the Staff acknowledged in its January 14th letter, the 1979 Agreement establishes separate daytime and evening parking requirements at the Plaza. With respect to the evening, the 1979 Agreement has an express provision limiting the amount of retail that can remain open past 6:00 p.m. The express inclusion of this limitation was understandable as it is not uncommon for retail to remain open after traditional office hours. It is also entirely understandable that the 1979 Agreement did not specifically address office closing time -- it did not need to given the fact that the commonly understood normal office hours are 9:00 a.m. to 5:00 p.m. during the business week.

As Florida courts have recognized, a business day during the week "refers to "[a] day that most institutions are open for business,' or from 9:00 a.m. to 5:00 p.m. on weekdays. *Black's Law Dictionary* 495 (9th ed. 2009)." *Fowler v. Gartner*, 89 So.3d 1047, 1048 (Fla. 3d DCA 2012). Under Florida law, contracts must be read in the context of, and with the application of, commonly known and understood facts. *J.N. Laliotis Engineering Construction, Inc. v. Mastor*, 558 So.2d 67, 68 (Fla. 2d DCA 1990) (Agreement should be given "a natural meaning or the meaning most commonly understood in relation to the subject matter and circumstances."). Here, the 1979 Agreement necessarily embodies the commonly understood fact that office hours during the week are 9:00 a.m. to 5:00 p.m.

This legal point is illustrated as a matter of fact by the parking study most recently conducted at the Plaza, together with multiple prior studies. These studies by DKS which are on file as part of the Del Frisco Grille application demonstrate that at 5:00 p.m. there are literally hundreds and hundreds of unused parking spaces at the Plaza. For example, Figure 5 - Late Afternoon Parking Occupancy (5:00 p.m.) in the November 16, 2012 presentation to the Town Council confirms that of the more than 700 total spaces available at the Plaza post-taking, only

223 spaces are actually being used in the late afternoon (i.e. at 5:00 p.m.). Now that it has been confirmed that there will be 188 spaces in the northwest portion of the Plaza post-taking, the undersigned request that Staff confirm that Del Frisco's Grille can open at 5:00 p.m. for dinner at 218 seats.

B. Daytime Parking Space Requirements at the Plaza (Weekends)

In paragraph 2 of the Town's January 14th letter, the statement is made that under the 1979 Agreement theater matinees are permitted on weekends only and evening performances are permitted throughout the week. From this premise, it appears that Staff added the 175 space parking requirement for the theater to the weekday parking requirements of 758 spaces for all other uses, arriving at a required parking total of over 930 spaces during the daytime on weekends. Even with the 188 space approval by Town Council on February 13th, if this incorrect interpretation of the 1979 Agreement is applied, there will be a parking deficit for the weekend daytime period not only for Del Frisco's Grille but also for any future theater operation.

Without question, this was not what was intended by the 1979 Agreement. The language of the 1979 Agreement refers to a "business week" to reflect that the Town wanted to eliminate the competition for parking spaces between the office use and the theater use during the weekdays. Because offices do not open for business on the weekends, the 1979 Agreement used that term "business week (Monday-Friday)" to capture this concept. Said a different way, if the Town Council had believed that offices are open for business on the weekends, it would have prohibited matinees on every day of the week. The Town Council of course knew that was not the case, and prohibited matinees only during the "business week (Monday – Friday)."

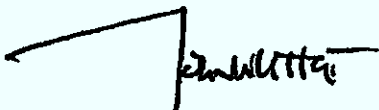
Florida courts have repeatedly held that, "One looks to the dictionary for the plain and ordinary meaning of words." *Specialty Restaurants Corp. v. City of Miami*, 501 So.2d 101, 102 (Fla. 3d DCA 1987). Turning to *Black's Law Dictionary*, a "business day" is defined as "A day that most institutions are open for business, usually a day on which banks and major stock exchanges are open, excluding Saturdays, Sundays and certain major holidays." Here there are two possible constructions – one which requires the Plaza to account for the parking required for office uses Monday to Friday 9:00 a.m. to 5:00 p.m. and one which requires the Plaza to account for this parking all seven days of the week 9:00 a.m. to 5:00 p.m. The first interpretation is the only one that comports with common understanding and logic. Time and again, Florida courts have stated that where the language of an agreement is susceptible of two constructions, the parties must adopt the "construction which comports with logic and reason." *Baker and Company, Florida v. Goding*, 317 So.2d 118 (Fla. 3d DCA 1975). Said a different way, the 1979 Agreement should be interpreted, "consistent with reason, probability, and the practical aspect of the transaction between the parties." *Thompson v. C.H.B. Inc.* 454 So.2d 55, 57 (Fla. 4th DCA 1984). Requiring the Plaza to account for office parking during the weekend daytime period was never the intent of the 1979 Agreement.

Interpreted consistent with Florida law and common sense, the 1979 Agreement provides more than sufficient parking for Del Frisco's Grille and any future theater operation during the daytime on weekends.

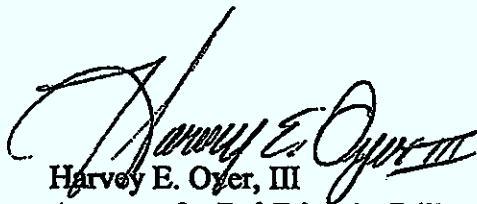
John S. Page
Paul W. Castro
March 8, 2013
Page 4

Thank you for your prompt consideration and approval of these matters so that we can move forward.

Sincerely,



John W. Little, III
Attorney for Sterling Palm Beach, LLC



Harvey E. Oyer, III
Attorney for Del Frisco's Grille

cc: John C. Randolph, Esq.

WPB_ACTIVE 5426677.2

EXHIBIT C

From: JPage@TownofPalmBeach.com [<mailto:JPage@TownofPalmBeach.com>]
Sent: Wednesday, March 13, 2013 02:47 PM
To: Little, John; Harvey E. Oyer, III <HOyer@shutts.com>
Cc: PCastro@TownofPalmBeach.com <PCastro@TownofPalmBeach.com>;
Skip_Randolph.PALMBEACH@TownofPalmBeach.com <Skip_Randolph.PALMBEACH@TownofPalmBeach.com>
Subject: Response to March 8 letter: Parking at RPP for Del Frisco's Grille Restaurant

John and Harvey:

I have received and reviewed your letter of March 8. Let me respond to the two critical questions that you posed to staff.

The Special Exception with Variance application approved by the Town Council identifies the days/times when the restaurant would be open. It specifically indicates that Sunday hours would be dinner only (5 pm to 11 pm). The hours outlined upon the application were approved on record in a public meeting. This office has no authority to alter those hours and allow for brunch on Sunday. Sunday brunch approval, if desired, would require further review and approval from the Town Council. Please correct me if anything different was presented to the Council in this regard.

1.

My letter of 1/14/13 addresses a variety of issues, including daytime and evening parking requirements. As outlined in that letter, parking demands change in the evening, after 6:00 pm, because the 1979 Agreement prohibits all but 10% of the retail shops from being open after that time. Although you asked if Del Frisco's could open for dinner service at 5:00 rather than 6:00, and although that request may seem reasonable, this office has no authority to deviate from the combined effects of parking requirements and terms of the 1979 Agreement. Together, they establish a 6:00 pm opening time for the intended restaurant (opening prior to 6:00 creates a non-conforming parking problem). Again, a change in hours of this sort would require Town Council approval.

Please understand that staff has very little discretion in altering specifics of the Town Council conditions of approval nor of the '79 Agreement terms. Deviation from your approval application, or from the terms of my January 14, 2013 Town response to the two of you regarding parking specifics, will require Town Council approval.

John Page
Director, Planning, Zoning & Building Department
Phone: 561-227-6405
e-mail: jpage@townofpalmbeach.com

PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from Town of Palm Beach officials and employees regarding municipal business are open records available to the public and media upon request. Under Florida law e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by telephone or in writing. If you have received this message in error, please notify us immediately by replying to this message, and please delete it from your computer. Thank you.

EXHIBIT D

79 042635

APR 13 PM 4:25

AGREEMENT

THIS AGREEMENT, made and entered into this 6 day of March, 1979, by and between the TOWN OF PALM BEACH (hereinafter referred to as the "Town"), and POINCIANA PROPERTIES, LTD., a Virginia Limited Partnership, authorized to do business in Florida (hereinafter referred to as "Partnership").

WITNESSETH:

WHEREAS, Partnership made an application for variance No. 39-78 with respect to the property known as the Royal Poinciana Plaza on Coconut Row in the Town of Palm Beach located on land situate, lying and being in the Town of Palm Beach, Palm Beach County, Florida, more particularly described on the sheet attached hereto as Exhibit A; and

WHEREAS, after public notice and a public hearing on the Partnership application, the Town Council of the Town of Palm Beach granted said variance No. 39-78 with modifications of the original plan at its meeting of February 13, 1979 subject to the following conditions; and

WHEREAS, Partnership suggested and volunteered some of said conditions and by this agreement does hereby covenant and agree with TOWN that the conditions hereinafter set forth have become binding obligations on the part of Partnership, and upon its successors and assigns.

NOW, THEREFORE, know all men by these presents that in consideration of the premises hereinbefore set forth and for other

25.60
This instrument was prepared by
VELVYN L. MIDDLETON
Attorney at Law
205 NORTH AVENUE, PALM BEACH, FLORIDA 33480

- PALM OFF 3023 PAGE 380
BEACH REC

good and valuable considerations, the parties do hereby agree as follows:

1. The granting of variance No. 39-78 is contingent upon and subject to compliance by Partnership with the following conditions, to wit:

A. Immediately upon the complete execution of this agreement, Partnership shall simultaneously execute a stipulation with the Town to dismiss the legal action against the TOWN for "Declaratory Judgment and Injunctive Relief" filed in the Circuit Court of the Eleventh Judicial Circuit in and for Palm Beach County, Florida No. 76-508-CA (L) 01 B Civil Division and thereafter stipulation shall be filed and the action shall be dismissed with prejudice.

B. Upon completion of the modified construction proposed to the Council, the buildings and the property shall conform to the requirements of the Zoning Code of TOWN except as to the number and size of non-conforming parking spaces then existing in the Royal Poinciana Plaza and the size of the spaces now existing (and to be added upon demolition of the "Slat House" and to be added as shown in "shaded blocks" on plans) which will continue to be used. No other non-conformity will be permitted.

C. Upon completion of the project, there will be over 16% of landscape open space, as defined by the Zoning Code of TOWN and determined by the Building Official. After construction is completed and certificate of occupancy is issued

there shall be no conversion of any landscaped areas to paved areas without approval of the Town.

D. All landscaping must be approved on site by Honorable Thomas Mettler, a member of the Town Council, before a certificate of occupancy is granted. In granting such approval said Town Council member will be looking for substantial conformity with both Town Ordinance requirements and with the plans submitted (and to be submitted) and on file with the Building Official. However, the parking spaces which could have been provided in the northeast corner of the property and along the perimeter roads on the east boundary of the property will be eliminated as directed by the Town Council which will add to the number of non-conforming parking spaces permitted.

E. Creation of Unit of Title to prohibit the separate conveyance of any portion of Royal Poinciana Plaza.

2. Subsequent to the completion of construction and during its ownership of the Royal Poinciana Plaza the Partnership (and during the ownership of any purchaser) agrees to perform as follows:

A. In the event of the demise of the historic Mysore Fig Tree, that area within the curb around the base of the tree will be maintained in its entirety as an open landscaped space.

B. There shall be no construction of any new buildings in the Royal Poinciana Plaza after completion of construction of Building B (located in the northwest corner of the Plaza) contemplated under

variance No. 39-78 herein, however, this shall not prohibit construction of alterations or renovations of any buildings in the Plaza which does not increase number of square feet in said buildings. The compromise plan as finally granted by the Town provides for the destruction of all but approximately 2,400 sq. ft. of the easterly portion of the present "old playhouse building a/k/a Slat House" (located in the southeast corner of the Plaza) and conversion of this area to landscaped parking spaces of the same size as those now in the Plaza. The plans for renovation of the easterly portion of the present "old playhouse building a/k/a Slat House" shall be approved by the Architectural Commission of the Town of Palm Beach. Building A as proposed in the variance application shall not be constructed but shall remain as landscaped parking area.

C. It will not object to or contest by legal action any zoning which precludes further development of any nature in the Plaza and further it will not instigate or participate in legal action to repeal current zoning ordinance.

D. It will not require any retail shop in Royal Poinciana Plaza by lease or otherwise to maintain evening hours of operation and will prohibit all but 10% of total square footage of said retail shops from remaining open after 6:00 p.m.

E. It will continue to lease the space now occupied and used by the "Poinciana Theater" only for use as a theater of the performing and/or visual arts and

for lectures or other special events. The current Lessee has agreed that there will be only one matinee performance during the business week (Monday-Friday) beginning with July 1, 1979 through June 30, 1983. Upon entering into a new lease, i.e. after June 30, 1983, it will permit no theater matinees during the week but only on weekends. This will not preclude the use of the theater for lectures or other special events on the weekends during the remainder of the year when theater productions are not being presented.

F. It will include a restrictive clause in any contract of sale of the Plaza whereby the purchaser agrees to prohibit use of the "Poinciana Theater" for any purpose other than as set forth in paragraph E above and that said restriction shall be contained in the deed of conveyance to purchaser.

G. It will not allege economic hardship as a basis to abrogate any of the terms of this agreement.

3. The above conditions shall be construed to be covenants and restrictions running with the land and shall be in full force and effect so long as the structure currently known as the Royal Poinciana Plaza continues to be in existence and is located upon the above-described premises. However, none of the above shall bind Partnership or any subsequent owners of the Royal Poinciana Plaza to this agreement or the current zoning ordinance if at some future date that ordinance is revised as it applies to the plaza and thereby provides for further development possibilities.

4. Upon any breach of the above covenants and conditions by Partnership or its successors and assigns, TOWN shall have all

the rights and remedies allowed by law to require strict compliance with the said covenants and conditions.

5. Under the TOP, with Sanitary Sewage Good Faith Amendment, the commercial allocation will be used in its entirety for this project and Council has approved 1500 gallons more per day to be allocated to accommodate this project.

6. This agreement shall inure to and be binding upon the successors and assigns of the parties hereto. This agreement may be changed only by written amendment executed by the TOWN and Partnership or its successors or assigns.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first aforesaid.

TOWN OF PALM BEACH

By: George R. Frost, Town Manager

CORPORATE SEAL

PRINCIPANA PROPERTIES, LTD.

By: James E. Rogers (L.S.)
General Partner

Grace T. Peters
TOWN CLERK
Charles H. Weather
TOWN ATTORNEY
Doyle Rogers
Charles C. Rogers
As to Partnership

STATE OF FLORIDA

SS

COUNTY OF PALM BEACH

Before me the undersigned authority personally appeared GEORGE R. FROST and GRACE T. PETERS, Town Manager and Town Clerk respectively of the Town of Palm Beach, a municipal corporation located in Palm Beach County, Florida, known to me to be the individuals described in and who executed the foregoing agreement on behalf of the Town of Palm Beach and they acknowledged before me that they executed the same for the purposes therein expressed.

Witness my hand and official seal this 6th day of March 1979.

John J. Lawrence
Notary Public in and for the
State and County aforesaid

My Commission Expires: AS LATER
NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPIRES JAN. 2 1980
BONDED THRU GENERAL INS. AGENCY

STATE OF FLORIDA

3 SE

COUNTY OF PALM BEACH

Before me the undersigned authority personally appeared JAMES CONNORS, General Partner of Poinciana Properties, Ltd., a Virginia Limited Partnership, known to me to be the individual described in the who executed the foregoing agreement, and acknowledged before me that he executed the same for the purposes herein expressed.

Witness my hand and official seal this 12th day of March 1979.

Clair C. Peterson
Notary Public in and for the
State and County aforesaid

My Commission Expires:

Salary Table, State of Florida as Large
By Commission Expires Dec. 31, 1979
Banded by American Fire & Casualty Co.

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BEACH REC

DESCRIPTION

On the north by the southerly right-of-way line of Royal Poinciana Way; on the east by the westerly right-of-way line of Coconut Row; on the west by the Waters of Lake Worth; on the south by the following described line;

Commencing at the intersection of the northerly right-of-way line of White Hall Way with the westerly right-of-way line of Coconut Row, as said streets are described in deed recorded in Deed Book 814, page 477 and subsequent pages, public records of Palm Beach County, Florida; thence northerly along the said westerly right-of-way line of Coconut Row, a distance of 444.76 feet to the beginning of a curve concave to the east having a radius of 329.60 feet and a central angle of $23^{\circ}-53'-30''$; thence northerly along the arc of said curve, a distance of 137.44 feet, to the tangent to said curve; thence northerly along said tangent, a distance of 59.62 feet to the point of beginning of the herein described south line; thence westerly making an angle from south-west to west of $66^{\circ}-14'-30''$, a distance of 227.26 feet; thence northerly at right angles, a distance of 25 feet; thence westerly at right angles, a distance of 293.43 feet to the beginning of a curve to the northeast, having a radius of 65.03 feet and a central angle of $85^{\circ}-42'-45''$, a distance of 97.28 feet; thence northwesterly, a distance of 33.90 feet, more or less, to the southeast corner of a parcel of land described in Deed Book 1011, page 226, Public Records of Palm Beach County, Florida, said southeast corner is located in the arc of a curve concentric with the last herein described curve, and having a radius of 90.03 feet and a central angle of $102^{\circ}-55'-30''$ and 4.19 feet southerly from a point of reverse curve; thence northerly along the arc of the just described curve, a distance of 4.19 feet to the point of reverse curvature, of a curve concave to the west, having a radius of 513.29 feet and a central angle of $15^{\circ}-35'-22''$; thence northerly along the arc of said reverse curvature, a distance of 97.62 feet to a point in a line parallel with and 481.2 feet southerly from (measured at right angles to) the southerly right-of-way line of Royal Poinciana Way, said line also being described in Deed Book 1011, page 226, Public Records of Palm Beach County, Florida; thence westerly along said parallel line, a distance of 191.06 feet, more or less, to the Waters of Lake Worth and the end of the herein described southerly line.

Excepting, however, so much of a nearly rectangular area of land, together with riparian or littoral rights appurtenant or incident thereto, as is included in the foregoing described parcel of land, and which nearly rectangular area of land has a southerly boundary of 208.44 feet, an easterly boundary of 71.2 feet, a northerly boundary of 190.74 feet plus 12.08 feet on two different courses coinciding with the south line of the "east approach of Flagler Memorial Bridge", and having a westerly boundary of 71.88 feet coinciding with the west face of an existing concrete bulkhead within the Waters of Lake Worth, and all as such nearly rectangular area of land and riparian and littoral rights appurtenant or incident thereto are more particularly described and were conveyed in deed of Florida East Coast Hotel Company to Town of Palm Beach, dated September 11, 1939, recorded in Deed Book 592, page 478 of the Public Records of Palm Beach County, Florida.

PALM BEACH OFF 3023 PAGE 387

Record Verified
Palm Beach County, FL
John B. Smith
Palm Beach County

EXHIBIT "A"

TOWN OF PALM BEACH

Town Council Meeting on: June 12, 2013

Section of Agenda

New Business - < 15 Minutes

Agenda Title

SPECIAL EXCEPTION #10-2013 WITH VARIANCES The application of Pizza Al Fresco, LLC; relative to property commonly known as **7-14 Via Mizner (Restaurant Site) and 317 Peruvian Avenue (Parking Site)**; described as lengthy legal descriptions on file; located in the C-WA and C-TS Zoning Districts. The applicant is requesting Special Exception with Site Plan Review to modify existing Special Exception #3-2006 and #4-2012 to convert a retail store containing a total of 350 square feet (previously Winston Lighting and being Unit C-105S) to additional restaurant seating space with 21 additional seats for Pizza Al Fresco Restaurant. A Special Exception is also being requested to provide supplemental off-site shared parking in the evening at 317 Peruvian Avenue. Applicant further requesting Special Exception approval to move 15 of the additional seats from the converted space into the Via Mizner courtyard during periods of good weather. No variance is required for off street parking for 6 of the additional seats. The following variances are required: to increase outdoor seating by 15 seats over and above the inside capacity, which is not permitted by the outdoor seating conditions in the Code and to eliminate the 5 required off-street parking spaces for 15 of the 21 additional seats being requested and to provide 5 supplemental shared parking spaces in only the evening at 317 Peruvian Avenue. [Attorney: William W. Atterbury, III]
Request for Deferral to the September 11, 2013, Town Council Meeting Per Letter Dated May 23, 2013 from William W. Atterbury, III

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter Dated May 23, 2013, from William W. Atterbury, III

ALLEY, MAASS, ROGERS & LINDSAY, P.A.

340 ROYAL POINCIANA WAY, SUITE 321

POST OFFICE BOX 431

PALM BEACH, FLORIDA 33480-0431

(561) 659-1770

FACSIMILE (561) 833-2261

WWW.AMRL.COM

RAYMOND C. ALLEY (1893-1975)

HAROLD G. MAASS (1923-2006)

KAREN S. MARX (1964-1994)

1331 SE OCEAN BOULEVARD

STUART, FLORIDA 34996

P (772) 287-4404

F (772) 287-4044

DOYLE ROGERS
ALAN LINDSAY
PAUL B. ERICKSON
DAVID H. BAKER
WILLIAM W. ATTERBURY III
LOUIS L. HAMBY III
ROBB R. MAASS
M. TIMOTHY HANLON
WARREN D. HAYES, SR.
STUART J. HAFT
CAROL S. WAXLER
BRUCE A. McALLISTER
CATHERINE KENT

May 23, 2013

Via Email and U.S. Mail

Mr. Paul Castro
Zoning Administrator
Planning, Zoning & Building Department
Town of Palm Beach
360-S. County Road
Palm Beach, Florida 33480

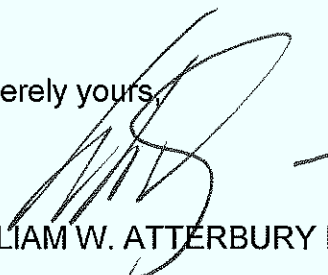
Re: Pizza Al Fresco, LLC; Application for Special Exception No. 10-2013 with
Variances

Dear Mr. Castro:

Pizza Al Fresco, LLC, hereby requests that the Town Council defer consideration of this application from the June 12, 2013 Town Council meeting to the meeting scheduled for September 11, 2013 in order to allow the applicant additional time to address certain details of the application with the landlord of the property.

Thank you for your consideration.

Sincerely yours,


WILLIAM W. ATTERBURY III

cc: Mayor and Members of the Town Council
Peter B. Elwell, Town Manager
John Page, Director of Planning, Zoning and Building
John C. Randolph, Town Attorney

WWA/slj

TOWN OF PALM BEACH

Town Council Meeting on: June 12, 2013

Section of Agenda

New Business - < 15 Minutes

Agenda Title

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; and, 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 4.29 in lieu of the 3.9 maximum allowed.. [Attorney: Joel P. Koeppel]

Request for Deferral to the July 10, 2013, Town Council Meeting Per Letter Dated May 21, 2013, from Joel P. Koeppel.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter Dated May 21, 2013, from Joel P. Koeppel

KOEPPPEL LAW GROUP, P.A.

THE REFLECTIONS BUILDING, SUITE 300
400 SOUTH AUSTRALIAN AVENUE

WEST PALM BEACH, FLORIDA 33401

JOEL P. KOEPPPEL, ESQ.
MEMBER FL & NY BARS

TELEPHONE (561) 659-6455
TELECOPIER (561) 659-7006
Joel@KoeppelLawGroup.com

May 21, 2013

Paul Castro, Zoning Administrator
Planning, Zoning and Building Department
360 South County Road
Palm Beach, FL 33480

Re: 1260 N. Lake Way, Palm Beach, FL
Modified Variance No. 23-2013

Dear Mr. Castro:

Please consider this my request for the above-captioned Variance to be deferred from the Town Council Meeting scheduled for June 12, 2013 until the July meeting.

Should you have any questions concerning this request please contact me at your convenience.

Very truly yours,



Joel P. Koeppel

JPK:ls

Cc: Robert Cullio
David R. Miller
Debbie Morakis

TOWN OF PALM BEACH

Town Council Meeting on: June 12, 2013

Section of Agenda

Ordinances - First Reading

Agenda Title

Request For Town Council Authorization To Have Readings of Ordinance No. 5-2013 and Ordinance No. 6-2013 Prior to 5:00 p.m.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum from John Page dated May 30, 2013

TOWN OF PALM BEACH

Information for Town Council Meetings on: June 12, 2013

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Request to Consider Ordinance No. 5-2013 and Ordinance No. 6-2013 prior to 5:00 p.m. at Both Public Hearings

Date: May 30, 2013

STAFF RECOMMENDATION

Staff recommends that the Town Council conduct the public hearings on Ordinance No. 5-2013 and Ordinance 6-2013 at the Town Council meetings at which they are to be heard prior to 5:00 p.m.

GENERAL INFORMATION

Florida Statutes require the Town Council to hold at least one of two public hearings to adopt a comprehensive plan amendment or zoning amendment ordinance after 5:00 p.m. However, the Statute provides that the time can be changed if a majority plus one of the local governing body elect to have a hearing at another time. Staff is requesting that the Town Council elect to conduct both public hearings on Ordinance No. 5-2013 and Ordinance 6-2013, during the course of the normal Council business. This may occur before 5:00 p.m.

PBE:jsp:pc

cc: Thomas G. Bradford, Deputy Town Manager
John C. Randolph, Town Attorney
Susan A. Owens, Town Clerk
Veronica B. Close, AICP, Asst. Director, Planning, Zoning and Building Department
Paul W. Castro, AICP, Zoning Administrator
John Lindgren, AICP, Planning Administrator
zf

TOWN OF PALM BEACH

Town Council Meeting on: June 12, 2013

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 5-2013 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Text Of The Future Land Use Element Of The Town Of Palm Beach Comprehensive Plan, By Amending The Future Land Use Element Data & Analysis And Policies 2.3 And 11.1 To Provide For The Creation Of A PUD-5 Within An Area Of Property Designated Commercial On The Future Land Use Map, Which Is Bounded By Bradley Place, Sunset Avenue, North County Road, And Royal Poinciana Way; Further Amending Policy 2.3.3 To Provide For The Creation Of Commercial/Mixed-Use PUD's, The Creation Of The PUD-5, Detailing An Increase In The Maximum Allowable Density, And Creating Maximum Lot Coverages For First, Second and Third Stories In The PUD-5 Area; Further Creating Policy 11.1.5 That Details Mixed-Use PUD Development Requirements Within Commercial Land Use Categories Provided Certain Threshold Criteria Are Met, And Providing For Said Certain Threshold Criteria; Providing For Severability; Repealing All Ordinances Or Parts Of Ordinances In Conflict Hereof; Providing For Codification; And Providing For An Effective Date.

ORDINANCE NO. 6-2013 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County Florida, Amending Chapter 134, Zoning, At Section 134-476 By Creating Purpose Language For An Optional PUD-5, Historic Preservation Mixed Use Development, With A Contributing Building Report And PUD-5 Design Guidelines Adopted By Reference For The Five Palm Beach Acres In the C-TS Zoning District Between Royal Poinciana Way And Sunset Avenue And Bradley Place And North County Road And By Prohibiting The Use Of The PUD-5 Regulations For Five Years If A Contributing Building Is Voluntarily Demolished; Section 134-477 By Creating A Review Process For The PUD-5 And Prohibiting Variances From Certain Lot, Yard And Bulk Regulations; Subdivision II, Sections 134-531, 134-532, 134-533 And 134-534 By Adding Submittal Requirements For A PUD-5; By Creating A New Approval Process For PUDs And Amendments To PUDs By Eliminating The Tentative And Final Approval Process And Replacing With A Streamlined Approval Process; And By Creating A New Completion Deadline for PUDs; By Eliminating Subdivision III, Sections 134-561 And 134-562 Related To The Tentative And Final PUD Approval Process; By Renumbering 134-563 To 134-561 Adding PUD Amendments And Eliminating Property Owner Consent To Amend PUDs; By Renumbering 134-564 To 134-562, Adding PUD Amendment Language, Eliminating The Existing Time Frame Requirement For Commencement And Providing For New Commencement Language In The PUD Resolution; Section 134-651 By Creating PUD-5 As A Special Exception And Site Plan Review; Section 134-652 By Adding The PUD-5 And Identifying The Area Where A PUD-5 May Be Applied; Section 134-653 By Adding A Maximum PUD-5 Lot Size And Providing A Provision Which Prohibits A Variance From The Maximum Lot Size; Section 134-654 By Creating A Density for the PUD-5 Of Ten Dwelling Units Per Palm Beach Acre With A Maximum Of Thirteen Dwelling Units Per Palm Beach Acre In Lieu Of The Maximum Six Dwelling Units Per Acre Allowed In the Underlying C-TS Zoning District; Section 134-656 By Providing Permitted And Special Exception Uses In The PUD-5 And Creating Separation Requirements Between Residential And Commercial Uses; Section 134-657 By Creating A

Minimum Public Open Space Requirement In The PUD-5 With A Provision Prohibiting A Variance From that Requirement; Section 134-687 By Providing Requirements That A PUD-5 Preserve The Main Street Character, Size And Bulk Which Currently Exists In The Five Palm Beach Acres; Section 134-688 By Providing Qualifying Language For The PUD-5 And Further Incorporating By Reference The Contributing Building Report And PUD-5 Design Guidelines; Section 134-689 By Eliminating The Requirement For Street Trees And Adding Language Which Requires Trees Bordering Projects Whenever Possible; Section 134-690 By Adding Language That A PUD-5 Is Required To Have Curb Cuts And Vehicular Access From Only Sunset Avenue; Section 134-691 By Providing A PUD-5 Off-street Parking Exception For Replacement Of Existing Commercial Square Footage Or Intensity Of Use, New Ground Floor Retail Use, Or Retail Use Which Replaces Ground Level Off-street Parking And Curb Cuts Fronting Royal Poinciana Way; Section 134-692 By Adding Language That Prohibits Variances For Lot Coverage, Height, Overall Height and Public Open Space and Providing New Regulations Creating A PUD-5 Density Of Ten to Thirteen Dwelling Units Per Palm Beach Acre In Lieu Of The Six Dwelling Units Per Acre Currently Allowed In The C-TS Zoning District, Provided Certain Conditions Being Met, By Creating Maximum Heights and Overall Heights, Including A Provision For Three Stories Where Only Two Stories Is Currently Allowed, By Adding First Floor And Second Floor Lot Coverage Of Seventy Percent And A Third Story Lot Coverage Of Thirty-five Percent, By Creating Setbacks Based On PUD Approval, By Eliminating Required Setbacks And Determining Setbacks During The Approval Process And By Creating A Minimum Thirty Percent Public Open Space Requirement; Section 134-693 By Creating Said Section And Providing A Five Year Sunset Provision Unless The Town Council Approves An Extension; Section 134-1109 Creating The PUD-5 As A Special Exception Use Within The Defined Five Palm Beach Acres In The C-TS Zoning District; By Adopting By Reference The Attached Palm Beach PUD-5 Design Guidelines And The Contributing Building Report: The Historic Character Of Royal Poinciana Way; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing For An Effective Date.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum from John Page dated May 30, 2013
- Ordinance No. 5-2013
- Ordinance No. 6-2013
- Contributing Building Report: The Historic Character of Royal Poinciana Way by Jane S. Day, Ph.d.
- Palm Beach PUD-5 Design Guidelines by Mouzon Design

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 12, 2013

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Proposed Modifications and Changes to the Town's Comprehensive Plan and Chapter 134, Zoning, Which Create PUD-5 Regulations in a Portion of the Commercial Town-Serving Zoning District bordered by Royal Poinciana Way, Bradley Place, Sunset Avenue and North County Road:
Ordinance Nos. 5-2013 and 6-2013

Date: May 30, 2013

STAFF RECOMMENDATION

Staff recommends that the Town Council consider Ordinance No. 5-2013 on first reading and if approved, transmit proposed comprehensive plan amendments to the Florida Department of Economic Opportunity. In addition, staff recommends that the Council consider companion Ordinance No. 6-2013, containing related zoning ordinance text changes, on first reading.

PLANNING AND ZONING COMMISSION/LOCAL PLANNING AGENCY RECOMMENDATION

The Planning and Zoning Commission/Local Planning Agency (LPA), at its meeting of May 21, 2013, recommended by a 4-3 vote (Mr. Wideman, Mr. Shaw and Ms. Buck dissenting), approval of Ordinance No. 5-2013 modifying the comprehensive plan by creating the PUD-5 within the Commercial Future Land Use category. In addition, the LPA also recommended by a 7-0 vote, approval of Ordinance No. 6-2013 which creates PUD-5 regulations within the portion of the Commercial Town-serving (C-TS) zoning district bordered by Royal Poinciana Way, Bradley Place, Sunset Avenue and North County Road. The LPA recommended one modification to the proposed ordinance prohibiting a third story on "Contributing" buildings that front Royal Poinciana Way.

GENERAL INFORMATION

On April 16, 2013, the Planning and Zoning Commission, as the LPA, considered the comprehensive plan and zoning text amendments proposed by the Royal Poinciana Way Committee which proposes to create a PUD-5 for a portion of the Commercial Town-Serving District bounded on the west by the east right-of-way line of Bradley Place, on the east by the

west right-of-way line of North County Road, on the north by the south right-of-way line of Sunset Avenue, and on the south by the north right-of-way line of Royal Poinciana Way. After hearing all testimony, the LPA recommended that staff draft ordinances based on the Royal Poinciana Way Committee recommendations for necessary action the following month.

On May 21, 2013, the LPA considered the proposed Ordinances for the proposed PUD-5 (Ordinance Nos. 5-2013 and 6-2013 attached). Proposed Ordinance No. 5-2013 creates text within the Town's Comprehensive Plan permitting a PUD-5 within the Commercial Future Land Use designation in the Future Land Use Element for the five Palm Beach acres of land between Royal Poinciana Way and Sunset Avenue and Bradley Place and North County Road. Proposed Ordinance No. 6-2013 creates PUD-5 zoning regulations for that area, which is within the C-TS Zoning District in Chapter 134, Zoning, in the Town Code of Ordinances.

After hearing all testimony, the LPA recommended approval of Ordinance No. 5-2013 as drafted. In addition, the LPA also recommended approval of Ordinance No. 6-2013 with one major recommended modification. The LPA recommended that Ordinance 6-2013 be modified to prohibit third stories within a PUD-5 development on "Contributing" buildings that front Royal Poinciana Way.

If adopted per the attached Ordinances, property owners within the subject area would be able to redevelop using either the Commercial Town-Serving Zoning District regulations, or the new PUD-5 regulations (provided the site meets eligibility requirements including design guidelines). The PUD-5 regulations allow a more limited array of land uses than the C-TS Zoning District, but provide more flexible lot, yard and bulk zoning regulations. The permitted uses would be retail, restaurant, professional and studio type schools on the first floor and offices on the second floor provided that any of these uses are not larger than 3,000 square feet. The special exception uses would be bars, lounges, banks, museums and outdoor seating on the first floor and residential uses above the first floor on Royal Poinciana Way and on the first floor on Sunset Avenue. Uses over 3,000 square feet would still be required to obtain special exception approval by demonstrating Town-serving.

The proposed Comprehensive Plan changes (Ordinance No. 5-2013) necessary to create the PUD-5 regulations are summarized as follows:

- Modification of the Goals, Objectives and Policies in the Comprehensive Plan to allow for the proposed PUD-5 within the five Palm Beach acres identified above, located in the C-TS zoning district, within the underlying Commercial Future Land Use designation.
- Modification of the Comprehensive Plan to allow an increased density for only the proposed five Palm Beach acres described above within the Commercial Future Land Use Category.
- Modification of the Commercial Future Land Use category to provide 70 percent lot coverage for the first and second floor and 35 percent on the third floor.

The proposed Zoning text changes (Ordinance No. 6-2013) creating the PUD-5 are summarized as follows:

- Streamlining the existing PUD process, including the elimination of the tentative approval requirement and creation of a PUD amendment process.
- Creating a Contributing Buildings Report which designates the “Contributing” buildings that must be preserved in whole or in part if applying for the PUD-5, and also creating PUD-5 Design Guidelines outlining the architectural guidelines that must be met if applying for the PUD-5.
- Requiring Landmark Preservation Commission and Planning and Zoning Commission review and Town Council approval of a PUD application and a concurrent special exception and site plan review application.
- Creating a provision which would not allow the use of the PUD-5 regulations if a “Contributing” building is demolished.
- Adding to the special exception and site plan review submittal requirements, the creation of a regulation which would require PUD-5 applicants to submit a streetscape of the proposed development or redevelopment and surrounding buildings with an appropriately scaled model.
- Limiting the special exceptions and permitted uses to only those uses in the C-TS zoning district which are compatible to the existing character of the five Palm Beach acre area.
- Increasing the maximum density allowed for properties that develop using the PUD-5 requirements within that five acre area from 6 dwelling units per Palm Beach acre to 13 dwelling units per Palm Beach acre.
- Creating a maximum development site for a PUD-5 at 1.5 Palm Beach acres, with no variance allowed from that maximum.
- Creating a provision which would not allow for variances from the maximum lot coverage, height, overall height and public open space requirements proposed in the PUD-5.
- Increasing the number of stories allowed from two stories by special exception to two stories by right and a third story by special exception (The LPA recommends that third stories on “Contributing” buildings that front Royal Poinciana Way be prohibited).
- Creating a maximum height for the proposed third story of 35 feet.
- Decreasing the overall height for one and two story portions of buildings from an additional five feet above the maximum height requirement for a flat roof, and ten feet for a pitched roof, to three feet and eight feet respectively. Increasing the height and overall height to provide for the third story portion of a building from 30 feet to 38 feet for a flat roof and 43 feet in lieu of 35 feet for a pitched roof type of construction.
- Allowing a maximum lot coverage for buildings and structures to remain at 70% for the one and two story portions (existing C-TS maximums) and creation of a 35% maximum lot coverage for the proposed third story portion of a building within a PUD-5.
- Eliminating the front, side and rear setback requirements for buildings and structures.

- Allowing residential uses on the first floor only on those lots within the area which front on Sunset Avenue.
- Creating an off-street parking exemption when eliminating curb cuts and street fronting off-street parking and replacing with one story retail and 30% public open space on Royal Poinciana Way.
- Creating an off-street parking exemption for new and replacement commercial first floor retail use.

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

TOWN ATTORNEY REVIEW

Ordinance Nos. 5-2013 and 6-2013 were approved by Town Attorney John C. Randolph for legal form and sufficiency.

Attachments

PBE:jsp:pc

cc: Planning and Zoning Commission/LPA
Thomas G. Bradford, Deputy Town Manager
John C. Randolph, Town Attorney
Veronica B. Close, AICP, Asst. Director, Planning, Zoning and Building Department
Paul W. Castro, AICP, Zoning Administrator
John Lingdren, AICP, Planning Administrator
zf

ORDINANCE NO. 5-2013

An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Text Of The Future Land Use Element Of The Town Of Palm Beach Comprehensive Plan, By Amending The Future Land Use Element Data & Analysis And Policies 2.3 And 11.1 To Provide For The Creation Of A PUD-5 Within An Area Of Property Designated Commercial On The Future Land Use Map, Which Is Bounded By Bradley Place, Sunset Avenue, North County Road, And Royal Poinciana Way; Further Amending Policy 2.3.3 To Provide For The Creation Of Commercial/Mixed-Use PUD's, The Creation Of The PUD-5, Detailing An Increase In The Maximum Allowable Density, And Creating Maximum Lot Coverages For First, Second and Third Stories In The PUD-5 Area; Further Creating Policy 11.1.5 That Details Mixed-Use PUD Development Requirements Within Commercial Land Use Categories Provided Certain Threshold Criteria Are Met, And Providing For Said Certain Threshold Criteria; Providing For Severability; Repealing All Ordinances Or Parts Of Ordinances In Conflict Hereof; Providing For Codification; And Providing For An Effective Date.

WHEREAS, the Town proposes to amend its Comprehensive Plan in accordance with the requirements of the 1993 Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, the Town created the Town of Palm Beach Comprehensive Plan with the adoption of Ordinance No. 11-89, and last amended the Comprehensive Plan on July 13, 2011 with the adoption of Ordinance No. 1-11 and Ordinance No. 3-11; and

WHEREAS, the Town is amending the Data & Analysis and Goals, Objectives and Policies (GOPs) portions of the Future Land Use Element of the Town's Comprehensive Plan, specifically Policies 2.3 and 11.1 as they relate to densities and intensities of mixed-use development within commercial land use areas, provided certain criteria are met, and providing said certain criteria; and

WHEREAS, after reviewing the proposed amendments to the Town's Comprehensive Plan at their May 21, 2013 meeting, the Planning and Zoning Commission, acting as the Local Planning Agency (LPA), recommended approval of said amendments, and transmittal to the Florida Department of Economic Opportunity (DEO); and

WHEREAS, after considering and reviewing the proposed amendments to the Town's Comprehensive Plan, the Town Council determined that the aforementioned changes should be made.

NOW THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA THAT THE TOWN'S COMPREHENSIVE PLAN IS HEREBY AMENDED IN THE DATA AND ANALYSIS, AND THE GOALS, OBJECTIVES, AND POLICIES SECTIONS, as follows:

Section 1. AMENDMENT OF COMPREHENSIVE PLAN

The Data & Analysis found on pages I-21 and the GOPs, Policy 2.3, and Policy 11.1 in the Future Land Use Element in the Town of Palm Beach Comprehensive Plan are hereby amended as follows (added words underlined, removed words ~~stricken~~):

Approved & Future New PUDs

This category represents Planned Unit Developments that have been approved by the Town Council. The Plan designates approximately 168 acres of land for this use. Only the Breaker's PUD contains remaining development potential. If built to maximum density, this PUD could hold another 251 multi-family units and some commercial development.

Densities in new PUD's shall be limited to the maximum density allowable in the land use category, ~~and zoning district,~~ and/or applicable PUD regulations in which ~~they~~ such new PUDs are located prior to ~~their~~ approval of a new PUD application, but shall not exceed thirteen units per acre.

Nonconforming buildings or structures unintentionally damaged or destroyed, such as by fire or other casualty, act of terrorism, war or act of God or nature may exceed what is permitted in this land use category and the land development regulations if rebuilt at the same density and/or intensity, on the same footprint and to the same size and configuration as those nonconforming buildings or structures being replaced. Actual construction to replace, restore or reconstruct the nonconforming building or structure shall commence within the time frame outlined in the land development regulations.

POLICY 2.3

Development orders shall be issued by the Town only for new non-residential development or redevelopment that is consistent with the Future Land Use Map and descriptions and intensities of land use as set forth in the following policies.

2.3.1 The following definitions shall pertain to the application of the non-residential land use designations and associated policies:

- a. "Town-serving" shall mean establishments principally oriented to serving the needs of Town persons and not substantially relying on the patronage of persons not defined as Town persons. Commercial establishments (other than those uses in the "Commercial – Office, Professional & Institutional" (C-OPI) zoning district, which are not required to meet town-serving requirements) of 2,000 square feet or less of gross leasable area in the "Commercial – Planned Center" (C-PC) zoning district, 3,000 square-foot or less of gross leasable area in the C-TS and C-B zoning districts, and 4,000 square-foot or less of gross leasable area in the C-WA zoning district are assumed to meet the intent of the first part of this definition.

- b. “Town persons” shall mean all full-time and seasonal residents of the Town as well as visitors staying at accommodations in, or employees working in establishments located within, the Town.
- 2.3.2 Conservation – Intended to preserve and protect unique natural areas from development and the negative impacts of public use. No urban development is permitted.
- 2.3.3 Commercial – Intended to create, preserve, and enhance areas of attractive, small-scale, retail, personal and professional/business services, and mixed commercial/ residential use, developed either as a unit or in individual parcels, providing primarily for the frequently recurring needs of Town persons with limited provision for more intensive commercial uses that are proven to be compatible with the Future Land Use Plan and the character of the Town.
- a. Appropriate uses include a wide range of commercial retail, service, professional and business uses for residents and visitors; PUD-5, Historic Preservation Mixed Use Development as set forth in Policy 11.1.5; hotels/motels up to 26 rooms per gross Palm Beach acre (40,000 square feet); timesharing uses up to 9 units per gross Palm Beach acre (40,000 square feet); offices; public uses and facilities; public and private schools; private group uses; and residential uses located above the ground floor.
 - b. Except for uses located in the Worth Avenue zoning district (C-WA) & PUD-5, Historic Preservation Mixed Use Development (bounded between Bradley Place, North County Road, Royal Poinciana Way and Sunset Avenue), one residential unit may be located above the ground floor, or up to a maximum density of six dwelling units per gross Palm Beach acre, whichever is greater. In the Worth Avenue zoning district the maximum allowable density shall be 10 dwelling units per gross Palm Beach acre provided the Worth Avenue Design Guidelines are met. In PUD-5, Historic Preservation Mixed Use Development, the maximum allowable density shall be 10 dwelling units per gross Palm Beach acre, but can be increased to 13 dwelling units per gross Palm Beach acre if certain conditions are met.
 - c. Maximum lot coverage for non-residential uses shall be 75%, except for PUD-5, Historic Preservation Mixed Use Development, which will allow for a maximum lot coverage of 70% for the first and second stories of a building, and 35% for the third story (if permitted).
 - d. In limited circumstances, the maximum building height shall be three stories.
- 2.3.4 Public – Intended to recognize existing locations of, and provide sites for, public uses, structures and facilities.
- a. Appropriate uses include public schools, low intensity public buildings and facilities such as fire and police stations, Town Hall, etc, of a scale and intensity

necessary to primarily serve the needs of Town persons. Only public uses owned, operated, franchised, or supervised by a governmental agency are given this designation.

- b. The designation of a property for Public use on the Future Land Use Plan Map recognizes the current use of the property; and, further, that such properties may also be appropriate for residential or commercial development with uses identified under the Single-Family Residential and Commercial land use categories.
 - c. Maximum lot coverage shall be 40%.
 - d. In limited circumstances, the maximum building height shall be three stories.
- 2.3.5 Public Recreation – Intended to provide for low intensity public recreational uses or activities, natural resource and scenic resources of a scale and intensity necessary to primarily serve the needs of Town persons. Only public facilities owned, operated, franchised, or supervised by a public governmental entity are given this designation.
- 2.3.6 Private Group Use – Intended to provide for low intensity uses such as private clubs, golf and country clubs, public and private schools, houses of worship, museums, and non-commercial recreation-type or cultural uses at a scale and intensity intended to primarily serve the needs of Town persons.
- a. The designation of a property for Private Group Use on the Future Land Use Plan Map recognizes the current use of the property; and, further, that such properties may also be appropriate for residential or commercial development with uses identified under the Single-Family Residential, Multi-family Moderate Density, and Commercial land use categories.
 - b. Maximum lot coverage shall be 40%.
 - c. In limited circumstances, the maximum building height shall be three stories.
- 2.3.7 Approved PUD – Intended to recognize existing or previously approved PUD's and provide for new PUD's within the density limits of the land use category in which they are located prior to approval of the PUD. PUD densities shall not exceed 13 dwelling units per gross Palm Beach acre.

POLICY 11.1

The following types of Planned Unit Developments shall be allowed in the Town:

- 11.1.1 Single-family PUD's located within the Single Family Residential Land Use Category not exceeding four dwelling units per gross Palm Beach acre.

11.1.2 Mixed residential development located within the Multi-Family Moderate or Multi-Family High Density Land Use Categories, not exceeding the maximum density allowable within the Land Use Category.

11.1.3 Mixed-use development within the Multi-Family Moderate Density or Multi-Family High Density Land Use Categories, allowing for a mix of residential uses not exceeding the maximum allowable density within the Land Use Category and nonresidential development not exceeding 20% of the gross floor area of the PUD.

The following equivalencies shall be used in determining the intensity of the nonresidential components:

Land Use Type	Unit of Measurement	Equivalence to One Dwelling Unit of Gross Density
Hotels, motels or similar transient facilities	Number of bedrooms	Two bedrooms
Principal Commercial Uses	Total floor area	750 square feet
Accessory Commercial Uses	Total floor area	1,500 square feet
Other Nonresidential Uses	Total floor area	1,000 square feet

11.1.4 In order to encourage preservation of historic residential structures, such single-family structures may be permitted to be converted through a historic preservation PUD to contain multiple residential units, within the confines of the existing structure, provided the density does not exceed four dwelling units per gross Palm Beach acre.

11.1.5 PUD-5, Historic Preservation Mixed Use Development, allowing for:

- 70% lot coverage for the first and second stories.
- 35% lot coverage for the third story (if permitted).
- 10 dwelling units per gross Palm Beach acre, with the ability to reach 13 if all required parking is in a sub-basement, or there is a 50% reduction in existing density, if applicable.
- 30% minimum common open space/landscape open space that cannot be used for off-street parking and/or loading.
- Pedestrian access between Royal Poinciana Way and Sunset Avenue through the use of vias whenever possible.
- Encouragement of interior courtyards.
- All parking and loading requirements to be met, unless criteria for exceptions are met as outlined in Town code.

Section 2. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this ordinance for any reason, is held to be unconstitutional, void or otherwise invalid, the validity of the remaining portions of this Ordinance shall not be affected thereby.

Section 3. EFFECTIVE DATE

This Ordinance shall take effect 31 days subsequent to its passage on second and final reading.

PASSED ON FIRST READING in a regular, adjourned session of the Town Council on the 12th day of June 2013.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council on the ____ day of _____ 2013.

Gail L. Coniglio, Mayor

David A. Rosow, Town Council President

Robert N. Wildrick, Council President Pro Tem

William J. Diamond, Town Council Member

Richard M. Kleid, Town Council Member

Michael J. Pucillo, Town Council Member

ATTEST:

Susan A. Owens, Town Clerk

ORDINANCE NO. 6-2013

An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County Florida, Amending Chapter 134, Zoning, At Section 134-476 By Creating Purpose Language For An Optional PUD-5, Historic Preservation Mixed Use Development, With A Contributing Building Report And PUD-5 Design Guidelines Adopted By Reference For The Five Palm Beach Acres In the C-TS Zoning District Between Royal Poinciana Way And Sunset Avenue And Bradley Place And North County Road And By Prohibiting The Use Of The PUD-5 Regulations For Five Years If A Contributing Building Is Voluntarily Demolished; Section 134-477 By Creating A Review Process For The PUD-5 And Prohibiting Variances From Certain Lot, Yard And Bulk Regulations; Subdivision II, Sections 134-531, 134-532, 134-533 And 134-534 By Adding Submittal Requirements For A PUD-5 By Creating A New Approval Process For PUDs And Amendments To PUDs By Eliminating The Tentative And Final Approval Process And Replacing With A Streamlined Approval Process And By Creating A New Completion Deadline for PUDs; By Eliminating Subdivision III, Sections 134-561 And 134-562 Related To The Tentative And Final PUD Approval Process; By Renumbering 134-563 To 134-561 Adding PUD Amendments And Eliminating Property Owner Consent To Amend PUDs; By Renumbering 134-564 To 134-562, Adding PUD Amendment Language, Eliminating The Existing Time Frame Requirement For Commencement And Providing For New Commencement Language In The PUD Resolution; Section 134-651 By Creating PUD-5 As A Special Exception And Site Plan Review; Section 134-652 By Adding The PUD-5 And Identifying The Area Where A PUD-5 May Be Applied; Section 134-653 By Adding A Maximum PUD-5 Lot Size And Providing A Provision Which Prohibits A Variance From The Maximum Lot Size; Section 134-654 By Creating A Density for the PUD-5 Of Ten Dwelling Units Per Palm Beach Acre With A Maximum Of Thirteen Dwelling Units Per Palm Beach Acre In Lieu Of The Maximum Six Dwelling Units Per Acre Allowed In the Underlying C-TS Zoning District; Section 134-656 By Providing Permitted And Special Exception Uses In The PUD-5 And Creating Separation Requirements Between Residential And Commercial Uses; Section 134-657 By Creating A Minimum Public Open Space Requirement In The PUD-5 With A Provision Prohibiting A Variance From that Requirement; Section 134-687 By Providing Requirements That A PUD-5 Preserve The Main Street Character, Size And Bulk Which Currently Exists In The Five Palm Beach Acres; Section 134-688 By Providing Qualifying Language For The PUD-5 And Further Incorporating By Reference The Contributing Building Report And PUD-5 Design Guidelines; Section 134-689 By Eliminating The Requirement For Street Trees And Adding Language Which Requires Trees Bordering Projects Whenever Possible; Section 134-690 By Adding Language That A PUD-5 Is Required To Have Curb Cuts And Vehicular Access From Only Sunset Avenue; Section 134-691 By Providing A PUD-5 Off-street Parking Exception For Replacement Of Existing Commercial Square Footage Or Intensity Of Use, New Ground Floor Retail Use, Or Retail Use Which Replaces Ground Level Off-street Parking And Curb Cuts Fronting Royal Poinciana Way; Section 134-692 By Adding Language That Prohibits Variances For Lot Coverage, Height, Overall Height and Public Open Space and Providing New Regulations Creating A PUD-5 Density Of Ten to Thirteen Dwelling Units Per Palm Beach Acre In Lieu Of The Six Dwelling Units Per Acre Currently Allowed In The C-TS Zoning District, Provided Certain Conditions Being Met, By Creating Maximum Heights and Overall Heights, Including A Provision For Three Stories Where Only Two Stories Is Currently Allowed, By Adding First Floor And Second Floor Lot Coverage Of Seventy Percent And A Third Story Lot Coverage Of Thirty-five Percent; By Creating Setbacks Based On PUD

Approval, By Eliminating Required Setbacks And Determining Setbacks During The Approval Process And By Creating A Minimum Thirty Percent Public Open Space Requirement; Section 134-693 By Creating Said Section And Providing A Five Year Sunset Provision Unless The Town Council Approves An Extension; Section 134-1109 Creating The PUD-5 As A Special Exception Use Within The Defined Five Palm Beach Acres In The C-TS Zoning District; By Adopting By Reference The Attached Palm Beach PUD-5 Design Guidelines And The Contributing Building Report: The Historic Character Of Royal Poinciana Way; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing For An Effective Date.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

WHEREAS, the Town has determined that the five Palm Beach Acres located between Royal Poinciana Way and Sunset Avenue and Bradley Place and North County Road is an important gateway into the Town;

WHEREAS, the Town believes that the PUD-5 would be a tool to encourage preservation of the existing character of that area during redevelopment;

WHEREAS, after public hearing pursuant to notice required by law, the Local Planning Agency considered all testimony and recommended that the Town Council adopt the subject Ordinance; and,

Whereas, after public hearing pursuant to notice as required by law, the Town Council does hereby find, determine, and declare that the public health, safety, morals and general welfare of the citizens of the Town of Palm Beach require that the aforesaid Chapter 134, Zoning, of the Code of Ordinances, be amended as hereinafter set forth.

Section 1. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-476, Purpose, to read as follows:

Sec. 134-476. Purpose.

(a) The purpose of planned unit development regulations is to:

(1) Encourage flexibility in the design and development of land in order to promote its most appropriate use;

(2) Facilitate the adequate and economical provision of streets, utilities and public spaces; and

(3) Preserve the natural and scenic qualities of open area and preservation;

All in accordance with the terms and provisions as set forth herein.

(b) The procedure is intended to permit diversification in the location of structures and improve circulation facilities and other site qualities while ensuring adequate standards relating to public health, safety and welfare and morals both in the use and occupancy of buildings and facilities in planned groups.

(c) In addition to subsections (a) and (b) of this section, PUD-4 historical preservation-residential development is intended to preserve structures and premises of significant historical or architectural value to the town by allowing for low-density residential development at a density calculated on the area of the entire property, excluding the area of property required by the town to be assigned to the historical structure. Structures and/or premises listed in the national record or in any historical report recognized by the town council may be considered significant for the purposes of this article. In addition, the town council may declare any other structure and/or premises to be of historical or architectural significance.

(d) In addition to subsection (a), (b) and (c) of this section, PUD-5 historical preservation mixed use development or redevelopment is intended to (i) incentivize property owners in this area with greater density and fewer parking requirements for commercial and retail uses than C-TS zoning in return for preservation of buildings, structures, vias and/or facades for buildings that contribute to the historical size, scale, feel and character of Royal Poinciana Way, as a major gateway into the town and our historic “Main Street”; and (ii) further incentivize new development or redevelopment of noncontributing buildings in accordance with the PUD-5 Design Guidelines and Contributing Buildings Report, which are adopted by reference and consistent with the existing character, architecture, scale, massing and placement of those buildings that have been designated as Contributing. “Contributing” means those buildings, vias and structures identified in various categories in the Contributing Building Report, adopted by reference, which have been determined to be representative of the Town’s historic Main Street in terms of the architecture, character, size, height and bulk in the five Palm Beach acres between Royal Poinciana Way and Sunset Avenue and Bradley Place and North County Road. The PUD-5 development is a commercial mixed-use district wherein the residential component is secondary or accessory to the primary commercial uses for retail, office and entertainment. Maintaining the predominantly commercial character of the street and minimizing potential conflicts between commercial and residential uses shall be a consideration used in determining scale, height, placement, bulk and cubic footage of new or redeveloped residential units. Design of structures or buildings in a PUD-5 application shall be consistent with the character of Contributing buildings in this area, the PUD-5 requirements and the PUD-5 Design Guidelines or said application shall be denied. The Bradley House Hotel, a landmark and Contributing building in this area, shall only be considered as an appropriate example of architecture and design and not used in determining bulk and height in future development or redevelopment.

(e) Specific design standards that are required to be met when applying for the PUD-5 are in the PUD-5 Design Guidelines, the Contributing Building Report, which are both adopted by reference, and the provisions in Sec. 54-122 through Sec. 54-125(b), Sec. 134-226 through Sec. 134-229, and Sec. 134-326 through Sec 134-330 of the Code of Ordinances. These standards and regulations ensure that development/redevelopment using the PUD-5 regulations is consistent with the existing character, architecture, scale and massing of those buildings that have been designated as Contributing in this area. Properties where Contributing buildings are voluntarily demolished shall not be eligible to apply for the PUD-5 regulations for a period of five years subsequent to demolition.

Section 2. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-477, District regulations, to read as follows:

Sec. 134-477. District regulations.

With the exception of the PUD-5, the requirements and regulations for a PUD district are contained in division 14 of article VI of this chapter. The use, lot, yard and bulk requirements for the PUD-5 are contained in Sec. 134-651 through 134-692.

Sec. 134-478. Town council approval for permitted use and special exception use; review by planning and zoning commission; hearing; site plan review of application.

(a) A planned unit development, when a permitted use, shall be subject to the approval of the town council after a review and report by the planning and zoning commission and after a public hearing is held by the town council in accordance with law.

(b) A planned unit development, when a special exception use, shall be subject to the approval of the town council after a review and report by the planning and zoning commission and after a public hearing is held by the town council in accordance with law. The review by the planning and zoning commission shall be to make findings pursuant to sections 134-227 through 134-233 and other applicable sections of this chapter and to make recommendations thereon.

(c) Every application for approval of a planned unit development shall require concurrent site plan review in accordance with article III of this chapter.

(d) Every building and/or structure in the PUD-5 shall require Landmark Preservation Commission approval. In addition, if variances are being requested from the zoning code, the Director of the Planning, Zoning and Building Department may require the applicant to obtain a recommendation from Landmark Preservation Commission for the benefit of the Planning and Zoning Commission and Town Council. Variances as to lot coverage, height, overall height and public open space are prohibited.

Section 3. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Subdivision II and Section 134-531, Application, to read as follows:

Subdivision II. ~~Tentative~~ Approval Process.

Sec. 134-531. Application.

In order to provide an expeditious method for processing a plan for a planned unit development, under the terms of this chapter, it is declared to be in the public interest that all procedures with respect to the approval or disapproval of a plan for a planned unit development or an amendment thereto, and the continuing administration thereof, shall be consistent with the following:

(1) An application for ~~tentative~~ approval of the plan for a planned unit development or an amendment thereto shall be filed by or on behalf of the landowner with the ~~building official~~ Planning, Zoning and Building Director or designee.

- (2) The following information shall be submitted with the application:
- a. The location and size of the site and the nature of the landowner's interest in the land proposed to be developed.
 - b. The density of land use to be allocated to parts of the site to be developed.
 - c. The location and size of any common open space and the form or organization proposed to own and maintain any common open space.
 - d. The use and the approximate height, bulk and location of buildings and other structures.
 - e. The feasibility of proposals for the disposition of sanitary waste and storm water.
 - f. The substance of covenants, grants of easements or other restrictions proposed to be imposed upon the use of the land, buildings and structures including proposed easements or grants for public utilities.
 - g. The provisions for parking of vehicles and the location and width of proposed streets and public ways.
 - ~~h. The required modifications in the town land use regulations otherwise applicable to the subject property.~~
 - ih. For plans that call for development over a period of years, a schedule showing the proposed times within which application for final approval of all sections of the planned unit development are intended to be filed.
 - ji. For PUD-4 and PUD-5, a complete description of the historical and/or architecturally significant structures and/or premises and provisions for their preservation. The portion of the property to be devoted to ~~the~~ preservation shall be delineated.
 - j. For PUD-5, a complete description of the Contributing buildings and/or premises and provisions for their preservation. If applicable, the portion of the property to be devoted to preservation shall be delineated.
 - k. For PUD-5, a site elevation plan shall be submitted of the proposed development or redevelopment, including a streetscape of the proposed development or redevelopment and surrounding buildings together with an appropriately scaled model.
 - l. For PUD-5 development or redevelopment that has a condominium component, the applicant shall submit commercial and/or residential condominium documents for review. ~~and~~
 - m. PUD development shall meet all of the requirements for special exception in Secs. 134-226 through 134-231 and site plan review in Secs. 134-326 through 134-330.
- (3) The application for ~~tentative~~ approval of a planned unit development or an amendment thereto shall include a written statement by the landowner or any other entity having a cognizable interest in the land, setting forth the reasons why, ~~in his opinion~~, a planned unit development or an amendment

thereto would be in the public interest and would be consistent with the town's statement of purposes on planned unit development.
(Ord. No. 2-74, § 7.31, 3-26-74; Ord. No. 5-78, § 13, 3-31-78)

Section 4. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-531, Public hearings, to read as follows:

Sec. 134-532. Public hearings.

(a) Upon submission of a complete planned unit development or amendment application, the planning and zoning commission, and the landmark preservation commission in those cases involving the PUD-5 shall hear said application within 60 days of the application being deemed complete by the director of the planning, zoning and building department or designee. A public hearing on the planned unit development or amendment application shall then be held by the town council after public notice is given in accordance with law.

(b) ~~A transcript of the hearing shall be caused to be made by the town council, copies of which shall be made available at cost to any party to the proceedings, and all exhibits accepted in evidence shall be identified and duly preserved, or, if not accepted in evidence, shall be properly identified and the reason for the exclusion clearly noted in the record.~~ The planning and zoning commission and the landmark preservation commission in those cases involving the PUD-5 shall ~~report~~ make recommendations on the proposed planned unit development, or amendment thereto, not less than 15 days before the public hearing by the Town Council, and the report shall be available for public inspection during reasonable hours.

(Ord. No. 2-74, § 7.32, 3-26-74; Ord. No. 2-83, § 6, 2-23-83; Ord. No. 1-04, §§ 38, 43, 3-9-04; Ord. No. 5-09, § 26, 4-15-09)

Section 5. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-531, Grant or denial, to read as follows:

Sec. 134-533. Grant or denial.

- (a) The town council shall, within 60 days following the conclusion of the public hearing ~~for tentative~~ at which a planned unit development or amendment thereto has been approved ~~approval of a planned unit development~~, by written resolution either (i) grant ~~tentative~~ approval of the plan as submitted, or (ii) grant ~~tentative~~ approval subject to specified conditions not included in the plan as submitted, ~~or (iii) deny tentative approval to the plan.~~
- (b) If a planned unit development or an amendment thereto is denied, the determination as to denial shall be rendered in writing within thirty (30) days of the denial.
- (c) If ~~tentative~~ approval is granted, ~~other than by lapse of time, either of the plan as submitted or of the plan with conditions~~, the town council shall, as part of its resolution, specify the conditions of approval, drawings, specifications and form of performance bond, if any, that shall be required. ~~accompany an application for final approval.~~
- (e) ~~If tentative approval is granted subject to conditions, the landowner shall, if he finds such conditions to be unacceptable, within 45 days after receiving a copy of the written resolution of the town council, notify the town council of his refusal to accept the conditions.~~

~~(d) If the landowner refuses to accept all the conditions, the town council shall be deemed to have denied tentative approval of the plan.~~

~~(e) If the landowner does not, within such period, notify the town council of his acceptance of or his refusal to accept all the conditions, tentative approval of the plan, with all the conditions, shall stand as granted.~~

~~(f) Nothing contained in this section shall prevent the town council and the landowner from mutually agreeing to a change in such conditions, and the town council may, at the request of the landowner, extend the time during which the landowner shall notify the town council of his acceptance or refusal to accept the conditions.~~

~~The extent to which the plan departs from zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, bulk and use, and the reasons why such departures are not deemed to be in the public interests. The departure~~

~~(d) If a plan is granted tentative approval, with or without conditions, the town council shall set forth in the written resolution the time within which an application for final approval of the plan shall be filed the approved plan is required to be commenced or, for an approved plan that provides for development over a period of years, the periods of time within which applications for final approval of each part thereof shall be filed phases of the approved plan have to be commenced. For the purposes of this Section, commencement shall be the issuance of a building permit. All authorized work under the building permit for said approved plan must be completed within the construction schedule contained in section 105.4.1.6 of the Florida Building Code as amended in section 18-242 of this Code or some alternative period approved by Council or said approval shall expire.~~

~~The time so established between grant of tentative approval and application for final approval shall not be less than three months and, for developments over a period of years, the time between applications for final approval of each part of a plan shall be not less than six months. Nothing contained in this subsection shall be construed to limit a landowner from the presentation of any application for final approval earlier than the time period set forth in this subsection.~~

~~(Ord. No. 2-74, § 7.33, 3-26-74; Ord. No. 5-78, § 13, 3-31-78)~~

Section 6. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Subdivision III, Final Approval, Section 134-534, Status of plan after tentative approval, to read as follows:

Sec. 134-534. Status of plan after ~~tentative~~ approval.

(a) Within five working days after the adoption of the written resolution provided for in section 134-533, it shall be certified by the town clerk and shall be filed in the clerk's ~~his~~ office, and a certified copy shall be mailed to the landowner. Where ~~tentative~~ approval has been granted, the approval shall be noted on the zoning map maintained in the office of the town clerk.

(b) ~~Tentative~~ Approval of a plan shall not qualify a plat of the planned unit development for recording or authorize development or issuance of any building permits. A plan which has been approved by the Town Council may only be modified by PUD approval as outlined in the process identified in this Article. A plan which has been given tentative approval as submitted or which has been given tentative approval with conditions that have been accepted by the landowner, and provided that the landowner has not defaulted or violated any of the conditions of the tentative approval, shall not be modified, revoked or otherwise impaired by action of the town pending an application for final approval, without the consent of the landowner, provided an application for final approval is filed or, for development over a period of years, provided applications are filed within the periods of time specified in the resolution granting tentative approval.

~~(c) If a plan is given tentative approval and thereafter, but prior to final approval, the landowner shall elect to abandon part or all of the plan and shall so notify the town council in writing, or if the landowner shall fail to file application for final approval within the required period of time, as the case may be, tentative approval shall be deemed to be revoked, and all that portion of the area included in the plan for which final approval has not been given shall be subject to the sections of this chapter applicable thereto, as they may be amended from time to time, and such shall be noted on the zoning map in the office of the town clerk and in the records of the town clerk.~~

Secs. 134-535--134-560. Reserved.

Section 7. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Subdivision III, Final Approval, Section 134-561, Application, by eliminating the language as follows:

~~Subdivision III. Final Approval~~

~~Sec. 134-561. Application.~~

~~(a) An application for final approval of a planned unit development may be for all the land included in a plan or the extent set forth in the tentative approval for a section thereof. The application shall be made to the director of planning, zoning and building or designee. The application shall include such drawings, specifications, covenants, easements, conditions and form of performance bond as were set forth by written resolution of the town council at the time tentative approval. A public hearing on an application for final approval of the plan or part thereof shall not be required, provided the plan, or the part thereof submitted for final approval, is in substantial compliance with the plan theretofore given tentative approval. The town council shall find that any changes to the tentative plan shall not be in contravention to the public's best interests.~~

~~(b) When the application for final approval has been filed, together with all drawings, specifications and other documents in support thereof and as required by the resolution of tentative approval, the town council shall, within 45 days of such filing, grant such plan final approval.~~

Section 8. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-562, Refusal to grant for variations in tentative approved plan, by eliminating the language as follows:

~~Sec. 134-562. Refusal to grant for variations in tentatively approved plan.~~

~~(a) If the final plan for a planned unit development as submitted contains variations from the plan given tentative approval, the town council may, after a meeting with the landowner, refuse to grant final approval and shall, within 45 days from the filing of application for final approval, so advise the landowner in writing of the refusal, setting forth in the notice the reasons why one or more of the variations are not in the public interest.~~

~~(b) If refusal occurs, the landowner may:~~

~~(1) File his application for final approval without the variations objected to by the town council on or before the last day of the time within which he was authorized by the resolution granting tentative approval to file for final approval, or within 30 days from the date he received notice, whichever date shall last occur;~~

~~(2) Treat the refusal as a denial of final approval; or~~

~~(3) File a written request with the town council that it hold a public hearing on his application for final approval. Any such public hearing shall follow the procedure for tentative approval and shall be held during the next annual public hearing period starting with October.~~

~~(c) Within 45 days after the conclusion of the hearing, the town council shall by resolution either grant final approval to the plan or deny final approval to the plan. The grant or denial of final approval of the plan shall, in cases arising under this subsection, be in the form and contain the findings required for a resolution on an application for tentative approval set forth in section 134-532.~~

Section 9. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-563, Certification; filing of record plat, by renumbering and to read as follows:

Sec. 134-5631. Certification; filing of record plat; modification before completion of development.

~~(a) A plan for a planned unit development or any part thereof, or an amendment thereto, that has been given final approval by the town council shall be so certified without delay by the town clerk, and a record plat, if required, may shall be filed on record forthwith in the office of the county clerk in accordance with F.S. ch. 177 before any development shall take place in accordance therewith. Upon the filing on record of the plan, all other ordinances and subdivision regulations otherwise applicable to the land included in the plan shall cease to apply thereto.~~

~~(b) Pending completion within five years of the planned unit development or of that part thereof, as the case may be, that has been finally approved, no modification of the provisions of the plan or part thereof, as finally approved, shall be made nor shall it be impaired by act of the town, except with the consent of the landowner.~~

Section 10. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-564, Abandonment; termination, by renumbering from 134-564 to 134-562 and to read as follows:

Sec. 134-5642. Abandonment; termination.

If a plan for a planned unit development or ~~section~~ portion thereof, or an amendment thereto, is given ~~final~~ approval and thereafter the landowner ~~shall~~ abandon the plan or ~~the section~~ a portion thereof that has been ~~finally~~ approved, ~~and shall so notify the town council in writing~~ or if the landowner ~~shall~~ fails to commence the planned unit development within ~~18 months~~ the timeframe identified in the planned unit development resolution, such ~~final~~ approval shall terminate and be deemed null and void unless such time period is extended by the town upon written request of the landowner.

Secs. 134-5653--134-590. Reserved.

Section 11. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-564, Establishment of special exception planned unit developments, to read as follows:

Sec. 134-651. Establishment of special exception planned unit developments.

The following special exception planned unit development districts are established and shall be subject to all applicable requirements of this article and of the district in which they are located: <u>In addition, the following planned unit developments shall be required to meet all of the requirements as set forth for special exception in Secs. 134-226</u>	Single-family development
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through 134-229 and site plan review in Sec. 134-326 through Sec 134-330.PUD-1	
PUD-2	Residential mix development
PUD-3	Mixed use development
PUD-4	Historical preservation residential development
PUD-5	Historical preservation mixed use development

Section 12. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-652, Districts where permitted, to read as follows:

Sec. 134-652. Districts where permitted.

Planned unit developments as established by this article may be permitted as special exceptions only in specifically designated districts as follows:

(1) *PUD-1, single-family development.* Permitted only in portions of R-B districts which are in close proximity to intensive developments in an R-C, R-D(1) or R-D(2) district.

(2) *PUD-2, residential mix development.* Permitted only in R-C, R-D(1) and R-D(2) districts.

(3) *PUD-3, mixed use development.* Permitted only in R-C, R-D(1) and R-D(2) districts.

(4) *PUD-4, historical preservation residential development.* Permitted only in R-AA, R-A and R-B districts.

(5) *PUD-5, historical preservation mixed use development.* Permitted only in that portion of the C-TS district in the five Palm Beach acres bounded between Royal Poinciana Way and Sunset Avenue, and Bradley Place and North County Road.

Section 13. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-653, Minimum area requirements, to read as follows:

Sec. 134-653. Minimum area requirements.

Minimum area requirements for special exception planned unit developments are as follows:

(1) *PUD-1, single-family development.* One contiguous acre undivided by any public right-of-way or easement.

(2) *PUD-2, residential mix development.* Ten contiguous acres undivided by any public right-of-way or easement.

(3) *PUD-3, mixed use district.* Twenty contiguous acres undivided by any public right-of-way or easement.

(4) *PUD-4, historical preservation residential development.* One or more contiguous acres undivided by any public right-of-way or easement.

(5) *PUD-5, historical preservation mixed use development.* No minimum size requirement, however the maximum lot size shall be 1.5 Palm Beach acres. No variance shall be allowed which increases the maximum size of a PUD-5 lot.

Section 14. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-654, Residential density, to read as follows:

Sec. 134-654. Residential density.

Residential densities in special exception planned unit developments permitted under this article shall be as follows:

PUD District	Use District	Maximum Density Permitted under PUD* (units per acre)
PUD-1	R-B	4
PUD-2	R-C	6**
	R-D(1)	13**
PUD-3	R-C	6**
	R-D(1)	13**
	R-D(2)	13**
PUD-4	R-AA	2/3**
	R-A	2**
	R-B	4**
<u>PUD-5</u>	<u>C-TS***</u>	<u>10 with the ability to reach 13 if all required off-street parking is in a sub-basement or there is a 50 percent reduction in existing density.</u>

* See section 134-656 for conversion of nonresidential uses to equivalent dwelling unit amounts for the purpose of calculating gross density.

** See section 134-655 for special provisions covering densities in those portions of the planned unit development site adjoining lower density residential districts.

***Only that part of the C-TS zoning district bounded between Bradley Place and North County Road and Royal Poinciana Way and Sunset Avenue.

Section 15. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-656, Permitted land use, to read as follows:

Sec. 134-656. Permitted land use.

The uses permitted in planned unit developments shall be as follows:

(1) *PUD-1.*

a. Any use permitted in the R-AA large estate residential district, R-A estate residential district or R-B low density residential district; provided, however, that such uses are grouped in cluster development in accordance with division 5 of this article.

b. Townhouses, subject to applicable requirements in subdivision II of division 10 of article VIII of this chapter.

(2) *PUD-2.*

a. Any use permitted in the R-C medium density residential district.

b. Newsstands, dining rooms and personal service uses for the convenience of residents shall be permitted in such district; provided, however, that no exterior or external advertising of such facilities shall be permitted nor shall the gross floor area devoted to such uses exceed ten percent of the gross ground floor area of buildings included within the planned unit development.

(3) *PUD-3.*

a. Any use permitted in the R-D(1) moderate density residential district.

b. In PUD-3 developments containing 100 or more residential dwelling units, commercial uses permitted in the C-TS, C-WA, C-OPI or C-PC commercial district may be permitted; provided, however, that any commercial development in the planned unit development shall front on a major thoroughfare and further provided that such commercial development, including its required parking area, shall not occupy more than 20 percent of the gross floor area of the planned unit development. For the purpose of calculating gross density, as set forth in section 134-620, the following land use measurements shall be equivalent to a dwelling unit as defined:

Land Use Type	Unit of Measurement	Equivalence to One Dwelling Unit of Gross Density
Hotels, motels or similar places of transient occupation	Number of bedrooms	Two bedrooms
Principal commercial uses	Total floor area	750 square feet
Accessory commercial uses	Total floor area	1,500 square feet
All other nonresidential floor spaces	Total floor area	1,000 square feet

(4) *PUD-4.*

Any use permitted in the R-AA large estate residential or R-A estate residential district, provided the uses are developed compatibly with an historical or architecturally significant structure or premises.

(5) *PUD-5.*

Any permitted or special exception uses within the C-TS district with the exception of non-profit cultural centers, professional and studio type schools, public and private parking lots, storage garages, parking garages which are not part of a principal use, auto rental lots, private social, swimming, golf, tennis and yacht clubs, public or private academic schools, drive-in business service facilities, churches, synagogues and other houses of worship, roof deck parking and museums. Residential uses are allowed by special exception on the first floor on those platted lots that front on the south side of Sunset Avenue within the PUD-5 area which are identified as Lots 31 through 65, Floral Park.

Residential access to dwelling units shall be physically separated from commercial uses in a mixed use building. In addition, in mixed commercial/residential buildings, the applicant shall use noise reduction construction techniques such as additional insulation and storm rated windows in both the commercial and residential units to reduce possible negative impacts between those types of uses.

Section 16. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-657, Open Space, to read as follows:

Sec. 134-657. Open space.

(1)PUD-1 through PUD-4. A minimum of 15 percent of a planned unit site area shall be developed as common open space. Parking areas and vehicle access facilities shall not be considered in calculating such common open space. In no event, however, shall the lot coverage of all structures located within a planned unit development site exceed 35 percent of the gross area included within such planned unit development site.

(2) PUD-5. There is a minimum 30 percent public open space requirement. Public open space is defined as landscape or hardscape areas, including vias, dedicated for use of the general public. Said public open space shall be open to the sky and not closed for public access at any time. Public open space shall not be used for off-street parking or loading, and the minimum landscape open space within the public open space shall be determined during the approval process of the PUD, special exception and site plan review process by the Town Council. Variances shall not be permitted from the minimum 30 percent public open space requirement.

Section 17. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-687, General standards, to read as follows:

Sec. 134-687. General standards.

(a) The planned unit development shall be consistent with the regulations governing planned unit developments as set forth within division 3 of this article.

(b) The planned unit development plan shall be consistent with the Palm Beach Comprehensive Plan.

(c) The planned unit development shall provide for an effective and unified treatment of the development possibilities on the project site making appropriate provision for the preservation of scenic features and amenities of the site and the surrounding areas. For the PUD-5, this shall include the preservation of the Main Street appearance with separations and building breaks which are currently prevalent for the Contributing and noncontributing buildings in the PUD-5 area.

(d) The planned unit development shall be planned and developed to harmonize with any existing or proposed development in the area surrounding the project site.

(e) The historical preservation mixed use planned unit development (PUD-5) shall be complimentary to the architecture, character, size, height and bulk of land uses and the historically contributing buildings which exist on the five Palm Beach acres bounded between Royal Poinciana Way and Sunset Avenue, and Bradley Place and North County Road. Bradley House Hotel, as a Contributing building, shall only be used as an example of architecture and design and not height and bulk when looking at the compatibility of development and redevelopment.

Section 18. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-688, Design standards, to read as follows:

Sec. 134-688. Design standards.

(a) In a planned unit development, all buildings in the layout and design shall be an integral part of the development and shall have convenient access to and from adjacent uses and blocks.

(b) Individual buildings shall be related to each other in design, masses, materials, placement and connections to provide a visually and physically integrated development. In addition, proposed buildings and/or structures utilizing the PUD-5 shall be complimentary to the architecture, character, size, height and bulk of the Historically and Architecturally Contributing buildings, as identified in the Contributing Buildings Report, and land uses within the five Palm Beach acres bounded between Royal Poinciana Way and Sunset Avenue, and Bradley Place and North County Road. Bradley House Hotel, as a Contributing building, shall only be used as an example of architecture and design and not height and bulk when looking at the compatibility of development and redevelopment.

(c) Treatment of the sides and rear of all buildings within the planned unit development group shall be comparable in amenity and appearance to the treatment given to street frontage of these same buildings.

(d) The design of buildings and the parking facilities shall take advantage of the natural features, topography of the project site, where appropriate.

(e) All building walls shall be so oriented as to ensure adequate light and air exposures to the room within.

(f) All buildings shall be arranged so as to avoid undue exposure to concentrated loading or parking facilities. ~~Wherever possible,~~ loading and parking facilities shall be so oriented as to preserve visual and audible privacy between adjacent buildings.

(g) All buildings shall be arranged so as to be accessible to emergency vehicles.

(h) All PUD-5 development or redevelopment shall (i) preserve and enhance the unique quality and “Main Street” character of the area which is captured in the Contributing Building Report and PUD-5 Design Guidelines, which are adopted by reference, so as to support its unique heritage; (ii) encourage small scale retail, entertainment and office establishments providing for the frequently recurring needs of the townspeople in a mixed-use environment with an accessory or secondary, small scale residential component; (iii) create a pedestrian friendly environment, which shall include, wherever possible, pedestrian access between Royal Poinciana Way and Sunset Avenue, through vias; and (iv) encourage interior courtyards and pedestrian friendly public open spaces. As such, all applications for PUD-5 development or redevelopment shall have a site elevation plan of the proposed development or redevelopment, including a streetscape of the proposed development and surrounding buildings together with an appropriately scaled model.

Section 19. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-689, Landscape design standards, to read as follows:

Sec. 134-689. Landscape design standards.

(a) In a planned unit development, landscape treatment for plazas, roads, paths, service and parking areas shall be designed as an integral part of a coordinated landscape design for the entire project area.

(b) Primary landscape treatment shall consist of shrubs, ground cover, and shade trees and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Landscape materials selected should be appropriate to local growing conditions.

(c) Whenever appropriate, existing trees shall be conserved and integrated into the landscape design plan.

(d) Wherever possible ~~All~~ streets bordering the project area shall be planted at appropriate intervals with ~~street~~ trees.

Section 20. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-690, Circulation system design standards, to read as follows:

Sec. 134-690. Circulation system design standards.

(a) In a planned unit development, there shall be an adequate, safe and convenient arrangement of pedestrian circulation facilities, roadways, driveways, off-street parking and loading space.

(b) Roads, pedestrian walks and open space shall be designed as integral parts of an overall site design. They shall be properly related to existing and proposed buildings and appropriately landscaped.

(c) Buildings and vehicular circulation with open spaces shall be arranged so that pedestrians moving between buildings are not unnecessarily exposed to vehicular traffic.

(d) Landscaped, paved and comfortably graded pedestrian walks shall be provided along the lines of the most intense use, particularly from building entrances to streets, parking areas and adjacent buildings.

(e) Materials and design of paving, lighting fixtures, retaining walls, fences, curbs, benches, etc., shall be of good appearance, easily maintained and indicative of their function.

(f) PUD-5 development or redevelopment shall not have curb cuts and vehicular access from Royal Poinciana Way, Bradley Place or North County Road. All curb cuts and vehicular off-street parking access shall be from Sunset Avenue.

Section 21. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, Section 134-691, Parking and loading design standards, to read as follows:

Sec. 134-691. Parking and loading design standards.

(a) In a planned unit development, parking facilities shall be landscaped and screened from public view to the extent necessary to eliminate unsightliness and monotony of parked cars.

(b) Pedestrian connections between areas and buildings shall be via special pedestrian walkways and/or elevators.

(c) Parking facilities shall be designed with careful regard to orderly arrangement, landscaping, ease of access, and shall be developed as an integral part of an overall site design.

(d) Any above grade loading facility should be screened from public view to the extent necessary to eliminate unsightliness.

(e) Parking and loading facilities shall be provided in accordance with divisions 2 and 3 of article IX of this chapter with the exception of the PUD-5 which shall be in accordance with the requirements in Sec. 134-69(f) and sub-section (f) of this section.

(f) PUD-5 development or redevelopment shall meet the parking and loading requirements in division 2 and 3 of Article IX of this chapter with the exception of the required off-street parking. The PUD-5 off-street parking requirements are as follows:

1. Residential and existing hotel uses shall be required to provide the required off-street parking as provided for in division 2 of Article IX except when said redevelopment results in at least 50 percent reduction from the density that previously existed. In such case, the applicant shall not be required to provide any additional off-street parking for the redevelopment other than what existed prior to the redevelopment.
2. Off-street parking for replacing commercial square footage and/or intensity of use that existed prior to redevelopment and for first floor building area to be utilized as retail space shall not be required. Any existing off-street parking shall be required to be recaptured, except as provided for in subsection 4. Any increase in the demand for off-street parking for additional commercial square footage and/or intensity of use, other than first floor retail use, based on Article IX, OFF-STREET PARKING AND LOADING in Chapter 134 of the Code shall be required, except as provided for in sub-sections 3 and 4 of this section.
3. PUD-5 development and redevelopment shall be exempt from the off-street loading requirements in Sec. 134-2211. However, the applicant shall demonstrate that there is adequate loading and unloading zones that are not on Royal Poinciana Way to service the proposed PUD-5.

4. In the PUD-5, properties fronting on Royal Poinciana Way should be encouraged to eliminate parking lots and curb cuts that front on the street and curb cuts which interfere with the flow of pedestrian traffic. Accordingly, any parking lots and associated curb cuts fronting on Royal Poinciana Way that are replaced by street fronting, one story retail space, and set aside 30% of the prior parking lot area as public open space, need not provide onsite parking for the retail space that replaces the parking area.

Section 22. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, creating Section 134-692, Lot, yard and bulk requirements, to read as follows:

Sec. 134-692. Lot, yard and bulk requirements.

(a) With the exception of the open space in Sec. 134-657 and density requirements in Sec. 134-654, the lot, yard and bulk requirements for the PUD-1, PUD-2, PUD-3 and PUD-4 are intended to meet the requirements in the district in which the PUD is proposed.

(b) The lot, yard and bulk requirements for PUD-5 applications are as follows. Variances shall not be permitted from the lot coverage, height, overall height and public open space requirements as set forth herein.

1. Maximum density: 10 dwelling units per Palm Beach acre with a maximum of 13 dwelling units per Palm Beach acre if one of the following are met (Sec. 134-654):
 - a. All required off-street parking is in a sub-basement.
 - b. The existing density is decreased by not less than 50%.
2. Maximum height:
 - One-story portion: 15 feet
 - Two-story portion: 25 feet
 - Three-story portion: 35 feet
3. Maximum overall height: An additional 3 feet for a parapet on a flat roof building and an additional 8 feet for a pitched roof building.
4. Maximum lot coverage:
 - One story portion: 70 percent
 - Two story portion: 70 percent
 - Three story portion: 35 percent
5. Setbacks: All setbacks shall be determined through the PUD approval process.
6. Public Open Space: There is a minimum 30 percent public open space requirement. Public open space is defined as landscape or hardscape areas, including vias, dedicated for use of the general public. Said public open space shall be open to the sky and not closed from public access at any time.

Public open space shall not be used for off-street parking or loading, and the minimum landscape open space within the public open space shall be determined during the approval process of the PUD, special exception and site plan review process by the Town Council.

Section 23. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, creating Section 134-693, Sunset Provision, to read as follows:

Sec. 134-693. Sunset Provision.

The PUD-5 Regulations within sec. 134-476 through sec. 134-693 and sec. 134-1109 shall sunset on _____, 2018, unless the town council by a majority vote approves an extension of these regulations at a regularly scheduled town council meeting prior to their expiration.

Section 24. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-1109, Special exception uses, to read as follows:

Sec. 134-1109. Special exception uses.

- (a) The special exception uses require a site plan and review as provided in Article III of this chapter. The special exception uses in the C-TS town-serving commercial district are as follows:
 - (1) Planned Unit Development (PUD-5) for an area of the District bounded between Royal Poinciana Way and Sunset Avenue and Bradley Place and North County Road.

Section 25. Amend ARTICLE V, PLANNED UNIT DEVELOPMENT PROCEDURE, incorporating by reference the attached Palm Beach PUD-5 Design Guidelines and Contributing Building Report: The Historic Character Of Royal Poinciana Way, as provided for in that above amendments.

Section 26. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 27. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 28. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 29. Effective Date.

This Ordinance shall take effect 31 days subsequent to its passage on second and final reading.

PASSED AND ADOPTED in regular, adjourned session assembled on first reading this 12th day of June, 2013, and second and final reading on this ____day of _____, 2013.

Gail L. Coniglio, Mayor

David A. Rosow, Town Council President

Robert N. Wildrick, Council President Pro Tem

William J. Diamond, Town Council Member

Richard M. Kleid, Town Council Member

Michael J Pucillo, Town Council Member

ATTEST:

Susan A. Owens, Town Clerk

Contributing Building Report: The Historic Character of Royal Poinciana Way
by Jane S. Day, Ph.D.

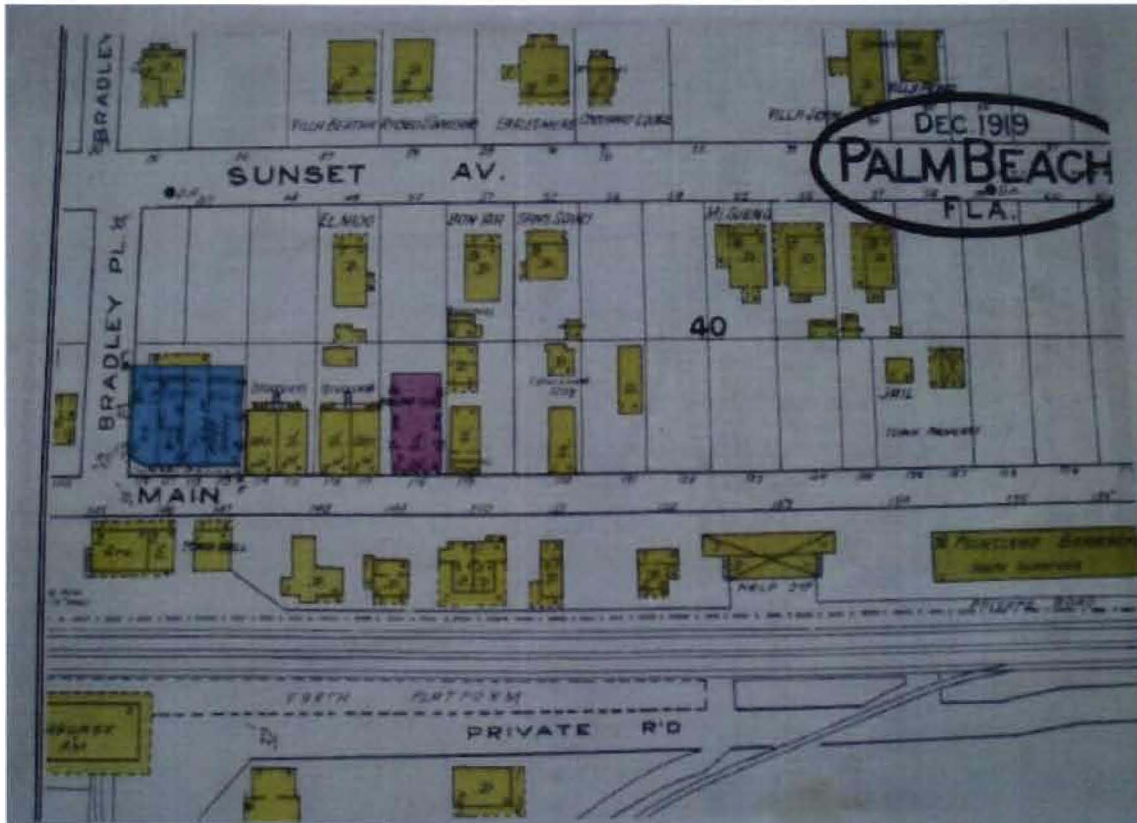
A. Historic Preservation, Character and Architecture: The purpose of adopting a PUD-5 is to create a vehicle that will result in those buildings that contribute to the historic quality of Royal Poinciana Way (RPW) being preserved, at least in part, in any future development. Those buildings that do not contribute should be developed in a manner consistent with the historic Main Street character of Royal Poinciana Way. These characteristics are understandably more narrow than what could be developed under existing standards through the normal ARCOM process.

In order to proceed with defining the Historic Character of Royal Poinciana Way and those buildings which contribute to that character, it is necessary to provide background information on the development of traditional main street commercial blocks in the United States, and review specific past preservation actions taken in the Town of Palm Beach on the five acre tract between RPW and Sunset Avenue, and between Bradley Place and County Road as defined in the PUD-5.

In the United States, the main street of a town was traditionally an area of centralization. It was a magnet for commerce usually anchored by transportation, whether a streetcar or in the case of Palm Beach, the Florida East Coast (FEC) railroad. The street often became the civic and commercial center of a town. Throughout the country, the most common types of main streets are defined as one-part commercial blocks, two-part commercial blocks, and stacked vertical blocks. Height is the most obvious variation in these topologies with the one-part commercial block being primarily one story in height, the two-part commercial block being two to four stories in height, and the stacked vertical block having more than four stories to accommodate taller buildings, though not to the scale of skyscrapers. Within these individual types of urban spaces, (which are defined more by height, mass and orientation to the street than by stylistic details) specific and varied architectural styles exist. Palm Beach's RPW is a two-part commercial block which was the most common type of layout for small and moderate sized communities throughout the country between 1915 and 1950. The street is mainly horizontal in orientation, and is composed of a variety of architectural styles, fenestration patterns, and multi-leveled roof lines. The street is densely developed and as in many main streets the compositional vocabulary is defined by the front facades of the buildings, and the lot sizes. Side walls are often secondary and few of the buildings were meant to stand alone. In Palm Beach, as in many other locations, what has contributed to Main Street's undoing is the automobile.

On a micro level, the Sanborn Fire Insurance Map of Palm Beach that was published in 1919 shows the area that is now called RPW and labels it "Main Street," an early indicator that this is how the street was referred to by citizens and visitors early in its history. When platted in 1912 as the Floral Park Subdivision, the block consisted predominately of rectangular lots that were long and narrow with only twenty-five feet frontage along the street. Some larger lots were on the corners. Consolidation of these narrow lots allowed for larger buildings but the scale of the street remained small. The 1919 Sanborn Map shows the area along Main Street as scattered with dwellings, stores, offices, and guest cottages. The block was always mixed use. Originally most of the buildings were wood frame structures. Many had front porches. The map also shows that in 1919 this street housed

the original Town Hall, the Post Office, the Jail and a small grocery store. Because the Flagler Railroad Bridge, which predates the other two bridges to Palm Beach ran immediately south of Main Street, this was the only place of embarkation (other than by boat) to the island during its early history. RPW was the center of arrival, departure, and most civic and commercial activity. It was also residential. A comparison of this 1919 Sanborn map with present conditions (2013) shows that some of the character of the street has been altered by removing all of the structures on the south side of RPW and replacing those structures and the original railroad tracks with an open landscaped median.



Sanborn Fire Insurance Map - Palm Beach, Florida, December, 1919 (Detail)

Because of the general historical importance of RPW as the original Main Street of the Town, on June 18, 2009 the Landmarks Preservation Commission (LPC) discussed the possibility of creating an historic district on the south side of what is now being considered as the PUD-5 block. Sunset Avenue was not considered. During that discussion, it was decided that because the majority of the buildings were not historic and many of those that were historic had been altered over time, a better strategy would be to try to landmark individual buildings that did meet the criteria of Chapter 54 of the Town of Palm Beach Code of Ordinances (Landmarks Preservation Ordinance) rather than create an historic district. One reason for this decision was that even though the Ordinance requires a property to meet only one criterion for designation, typically two or more have been fulfilled during successful designation hearings over the last twenty years. That being said, some of the buildings

included in the area defined by the PUD-5 do retain enough details of their historical and architectural character, and massing to meet the first criterion in the Landmark Ordinance: **Sec. 54-161(1) Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town.** Other buildings, of a higher architectural standard, also meet the third and fourth criterion. These are: **(3) Embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmen** and **(4) Is representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or who influenced his age.** If any of the buildings on this block are to be considered for Landmark Designation, they should follow the regular procedure of the Landmarks Commission (LPC) and Chapter 54 of the Town of Palm Beach Code of Ordinances.

In an effort to provide property owners with guidance on how to proceed with preservation and redevelopment in the PUD-5, The Royal Poinciana Way Committee decided that Design Guidelines would be developed by Steven Mouzon, of Mouzon Design, Miami, Florida. Mr. Mouzon divided the structures and elements on the PUD-5 block into four categories for future reference so that property owners could incorporate both preservation and development strategies in any work on the block. Those categories are listed below. Addresses, Owners and Tax Folio numbers listed below are those found on the Property Appraiser of Palm Beach County web site in January 2013.

- 1) Historically and Architecturally Contributing - These buildings are historically and architecturally important to the RPW block. They could qualify for local designation under more than one criterion in Chapter 54 of the Town of Palm Beach Code of Ordinances. The loss of these buildings would negatively affect the historic and architectural character of the block and shall therefore be preserved.**



E.R. Bradleys Saloon South, Inc. - 283 Royal Poinciana Way c.1919 (50-43-43-22-32-000-0010)

Neo-Classical Revival - c.1919 - Footprint pictured on the 1919 Sanborn Fire Insurance Map

- Rectangular concrete building with smooth stucco exterior
- Flat roof with classical balustrade at the roof line
- Main entrance has a chamfered storefront wrap as illustrated in *Palm Beach PUD-5*

Design Guidelines, section 2.4 Side Street Elevations

- Windows set triply and in pairs on second floor, storefronts on ground floor
- Original windows replaced with aluminum awning windows in 1950
- Quoins on the corners and between windows
- Dentil molding cornice
- Stucco storefront beam separating first and second floors as illustrated in *Palm Beach PUD-5 Design Guidelines*, section 2.9 Storefront Composition
- The west facade has been altered and no longer has ground floor storefronts
- Outdoor seating as illustrated in *Palm Beach PUD-5 Design Guidelines*, section 2.6 Sidewalk Seating



Palm Beach Book Store (Vesenaz Holding Corp.) - 211 Royal Poinciana Way c.1923 (50-43-43-22-32-000-0321)

Neo-Classical Revival: Originally Garden Theater, Unknown Architect, c.1923

- Rectangular wood frame building with smooth stucco exterior
- Front facing gable roof with composition shingle covering and chimney
- Central temple front block with side wings and symmetrical design
- Two story high Corinthian pilasters, corbel with cornice supports
- Central gable parapet with cast stone balustrade on either side
- Height varies from neighboring buildings as illustrated in *Palm Beach PUD-5 Design Guidelines*, section 2.2 Height Variations
- Three arched windows on second floor



Nick and Johnnies (Vesenaz Holding Corp.) - 207 Royal Poinciana Way - William Manley King, 1927 (50-43-43-22-31-000-0652)

Mediterranean Revival: William Manly King c.1927

- Rectangular building with smooth stucco exterior
- Flat roof with a shed roof extension at the roof line- barrel tile
- Second shed roof above arched openings on south facade- barrel tile
- Decorative roof brackets and cypress outriggers support the second shed roof
- Colonnaded arcade across front facade with pointed arched windows above
- Arched windows have vertical divided lights
- Sliding doors as well as fixed entrance doors
- Classical pilasters with unique organic leaf design capitals between arches
- Wall extension west of arcade with small door & niche juxtaposes neighbor and meets the building to the west as recommended in *Palm Beach PUD-5 Design Guidelines*, section 2.7 Party Walls - see [cornice over eave]
- Outdoor seating as illustrated in *Palm Beach PUD-5 Design Guidelines*, section 2.6 Sidewalk Seating



Evelyn and Arthur (Vesenaz Holding Corp.) - 201 Royal Poinciana Way - John L. Volk,

1941(50-43-43-22-31-000-0652). Please note that the Historically and Architecturally Contributing Building by John L. Volk pictured above extends north along County Road and terminates at the corner of Sunset Avenue. Ownership of the parcel is the same. The Parcel Number for the northern section is different (50-43-43-22-31-000-0630).

Art Moderne: John L. Volk, 1941

- Rectangular building with smooth stucco exterior
- Flat roof, with a small ledge or coping at the roof line
- One or more corners are curved with rounded storefront wraps, to take advantage of the intersection and meet the street as recommended in *Palm Beach PUD-5 Design Guidelines*, section 2.4 Side Street Elevations
- Recessed store fronts with angled entries
- Fixed metal windows
- Fluted pilasters with Art Deco inspired capitals



New Bradley House, LTD -280 Sunset Avenue, 1924 - Town of Palm Beach Landmark (50-43-43-22-31-000-0301)

Mediterranean Revival: Martin Luther Hampton, 1924

- Irregular masonry building with stucco exterior
- Flat and Hip roofs with multi-level roof lines as illustrated in *Palm Beach PUD-5 Design Guidelines*, section 2.2 Height Variations
- U- shaped footprint around a street facing courtyard
- Open and closed miradors (tower elements)
- Elaborated chimney
- Scuppers
- A variety of fenestration styles with rounded and square topped windows
- Cantilevered balconies

2) Architecturally Contributing - These buildings are architecturally important to the block with character defining mass and scale but undetermined historical importance. They could qualify for local designation under at least one criterion of the LPC Ordinance but more study is needed to make that determination. The loss of these buildings would negatively affect the architectural character of the block and shall therefore be preserved.



Island Animal Hospital, Inc. - 262 Sunset Avenue c.1920 (50-43-43-22-31-000-0380)

American Foursquare: Unknown Architect c.1920

- This is one of the indigenous American styles of architecture & rare in Palm Beach
- Low-pitched hipped roof, with wide overhanging eaves
- Two stories with a one story wing on north facade - originally an open porch
- Inconspicuous entry (on west facade)
- A ribbon of windows at the street facade



Testa Family LLC. - 214 Sunset Avenue c.1920 (50-43-43-22-31-000-0611) left and (50-43-43-22-32-000-0600) right

Mission Style: Unknown Architect c. 1920

- A vernacular variety of the Mediterranean Revival style
- Rectangular in form with a smooth stucco exterior
- Flat roof with a prominent Spanish parapet and cartouche on north facade
- Regular fenestration, although windows are not original
- Front porch with barrel tile shed roof
- Small Mission bell arch to the west
- The space between these two buildings form the northern termination of Testa's Via as illustrated in *Palm Beach PUD-5 Design Guidelines*, section 2.3 Vias



**Sunset Condominium Apartments (Multiple owners and parcel numbers) -244 Sunset Avenue
c.1950**

Mid-Century Modern: Unknown Architect c. 1950

- Two story rectangular apartment building
- Jalousie and aluminum awning windows
- Exposed rafter ends
- Smooth stucco exterior with brick trim for contrast
- Brick planters on the north facade that meet the sidewalk bringing greenery to the street
- Second floor terrace in the southeast corner of the building



Main Street News - 255 Royal Poinciana Way c.1919 (50-43-43-22-32-000-0130)

Mission Style: Unknown Architect c. 1919

- Rectangular building with wood frame structural system
- Asymmetrical Mission-style parapet with flat built-up roof
- Smooth stucco exterior
- The balcony and metal railings were added c. 1970s
- Decorative Octagon window and ceramic Della Robbia plaque on south facade
- Some sources say this building was associated with the Florida East Coast Railroad but it has been greatly altered



Maha Ganapathy Trust - 233/235 Royal Poinciana Way, 1945 (50-43-43-22-32-000-0211)

Masonry Commercial Building: Gustav Maass, 1945

- Commercial Building with residential units in rear with courtyard
- Concrete block structural system
- Covered with smooth stucco
- Flat built-up roof with flat parapet
- Two angled storefronts with center passageway to rear
- Stucco storefront beam separating first and second floors as illustrated in *Palm Beach PUD-5 Design Guidelines*, section 2.9 Storefront Composition

3) Urbanistically Contributing - These buildings fit into their environment and meet the street in such a way as to contribute to the character of the historic block. The loss of the contributing aspects of these buildings (as outlined in the bullet points below each illustration) would negatively affect the character of the block and shall therefore be preserved.



**Testa's Restaurant (Testa Family LLC) - 221 Royal Poinciana Way- Draper Babcock, 1947
(50-43-43-22-32-000-0280)**

Masonry Commercial: Draper Babcock, 1947

- This building could qualify for local designation under at least the first criterion of the Landmarks Preservation Ordinance
- Flat roof with prominent parapet
- Neon signs representing the 1940s and 1950s
- Building more free standing than others on the street emphasizing outdoor dining spaces as illustrated in *Palm Beach PUD-5 Design Guidelines*, section 2.6 Sidewalk Seating
- First and second floor patios
- Double wrought iron columns with brick bases, planters, and tile floor define the outdoor seating area
- The front dining room with pine paneling, booths, and bar is representative of "Old" Florida restaurants. The tile floor is a continuation of the outside floor



Via Testa (Testa Family LLC) - 221 Royal Poinciana Way c.1980s (50-43-43-22-32-000-0280)

- This Via could qualify for local designation under at least the first criterion of the Landmarks Preservation Ordinance
- One of the small buildings in Via Testa may have been the Town Jail on the 1919 Sanborn Map. These buildings are urbanistically important as illustrated in *Palm Beach PUD-5 Design Guidelines*, section 2.8 Narrow Shops
- Important for the concept of open space in the block as illustrated in *Palm Beach PUD-5 Design Guidelines*, section 2.3 Vias



Cucina del Art (Ritcon Properties LLC) - 257 Royal Poinciana Way - John Stetson, 1950 (50-43-43-22-31-000-0400) and Hampton Liquors - 255 Royal Poinciana Way -1950 (50-43-43-22-32-000-0130)

Masonry Commercial: John Stetson, 1950

- Outdoor dining space as illustrated in *Palm Beach PUD-5 Design Guidelines*, section 2.6 Sidewalk Seating



Palm Beach Daily New Building (Breakers Palm Beach, Inc.) c.1924 - 265 Royal Poinciana Way (50-43-43-22-32-000-0081)

Mediterranean Revival: Unknown Architect, c.1924

- Greatly altered in 1931,1937, 1941 and 1950
- Urbanistically contributing because of the way the building mass meets the street



Island Home (MB Ventures of Palm Beach) - 249 Royal Poinciana Way c.1923 (50-43-43-22-32-000-0141)

Masonry Vernacular: Unknown architect, c. 1923

- This building could qualify for local designation under at least the first criterion of the Landmarks Preservation Ordinance
- More than 60% of the storefront windows are at eye level as illustrated in the *Palm Beach Pud-5 Design Guidelines*, section 2.10 Storefront Windows
- Transom lights above the awning give light to the interior
- The storefront base protects the windows from damage as illustrated in the *Palm Beach Pud-5 Design Guidelines*, section 2.9 Storefront Composition



Tropical Fruit (Poinciana Capital Corp.) - 261 Royal Poinciana Way c.1923 (50-43-43-22-32-000-0100)

Wood Frame Vernacular: Unknown Architect, c. 1923

- Urbanistically contributing because of the way the building mass meets the street
- Greatly altered - Original storefront has been removed and brick facade added



P. Goodwin and Rapunzel's (MB Ventures of Palm Beach) - 253 Royal Poinciana Way c. 1920 (50-43-43-22-32-000-0141)

Masonry Vernacular: Unknown Architects, P. Goodwin c. 1920; Rapunzel's c. 1950

- These buildings could qualify for local designation under at least the first criterion of the Landmarks Preservation Ordinance
- Parapet on P. Goodwin reflects 1920s style. Building was greatly altered c. 1970
- Rapunzel's storefront base protects the windows from damage as illustrated in the *Palm Beach Pud-5 Design Guidelines*, section 2.9 Storefront Composition
- More than 60% of the storefront windows are at eye level as illustrated in the *Palm Beach Pud-5 Design Guidelines*, section 2.10 Storefront Windows

Palm Beach Resort Wear - 217 Royal Poinciana Way c. 1950 - This building shares a legal address with the Palm Beach Book Store although it does not have the same architectural character. (Vesenaz Holding Corp.)(50-43-43-22-32-000-0321). No Photograph.

Masonry Vernacular: Unknown Architect, c. 1950

- Urbanistically contributing because of the way the building mass meets the street

4) Non-Contributing - These buildings and spaces detract from the whole and could be demolished and rebuilt within the historic character of the PUD-5 using the *PUD-5 Design Guidelines* as adopted by reference and with the approval of LPC.



Bank (Fidelity Fed Save and Loan Assn.) - 245 Royal Poinciana Way (50-43-43-22-32-000-0170)



Testa's Service Station (Testa Family LLC) - 231 Royal Poinciana Way (50-43-43-22-32-000-0230)



Professional Offices (Clive Boner & Neil Boner) - 254 Sunset Avenue (50-43-43-22-31-000-0440)



212 Sunset Avenue (Vesenaz Holding Corp.) - (50-43-43-22-31-000-0630)



210 Sunset Avenue (Vesenaz Holding Corp.) - (50-43-43-22-31-000-0630)

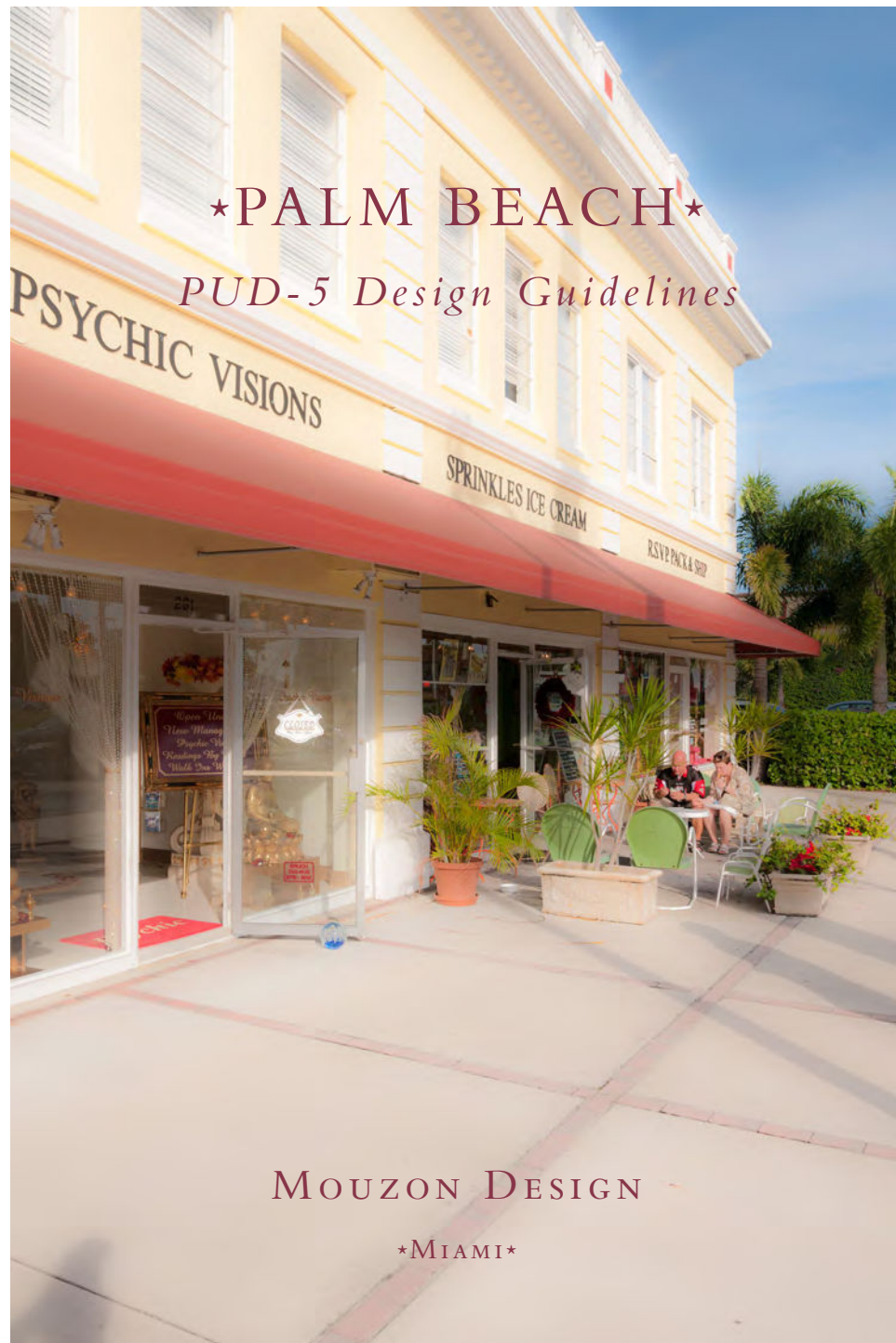


**Parking Lot at Breakers Office Building (Breakers Palm Beach Inc). - 265 Royal Poinciana Way
(50-43-43-22-32-000-0040)**

Conclusions

The area considered in the PUD-5 is a five acre tract between Royal Poinciana Way and Sunset Avenue, and between Bradley Place and County Road.

- Royal Poinciana Way was the original Main Street of the Town of Palm Beach. The entire block is part of the Floral Park Subdivision that was platted in 1912.
- This area is historically significant because of its associations with development patterns, commerce, and transportation in Palm Beach.
- In architectural form, the RPW PUD-5 is a two part Commercial Block that is horizontal in orientation.
- Architectural resources within the PUD-5 area are characterized as 1) Historically and Architecturally Contributing, 2) Architecturally Contributing, 3) Urbanistically Contributing, or 4) Non-Contributing.
- Many of the buildings within the PUD-5 area (particularly those in category 1 or 2 may qualify for designation as a Landmark of the Town of Palm Beach under Chapter 54 of the Town of Palm Beach Code of Ordinances (Landmark Preservation) **Sec. 54-161(1) Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town.**
- Those buildings that do receive landmark designation can take advantage of the Historic Properties Tax Exemption (Tax Abatement) Program as offered by the Town of Palm Beach and Palm Beach County.
- Other Federal tax incentives for historic properties may be available on a case by case basis depending on the integrity of the original architecture and the scope of the project.
- The contributing resources in the RPW PUD-5 exhibit a number of architectural styles. These are: Mediterranean Revival, Neo-Classical Revival, Art Moderne, Mission Style, American Four Square, Masonry Commercial and Wood Frame Vernacular.
- New development in the PUD-5 area should reflect the stylistic vocabulary of the historic architecture that is already present in the area and should reference the *Palm Beach PUD-5 Design Guideline*.
- Homogeneity should be avoided in future development. The original rhythm of variation in style, height and fenestration patterns should be maintained.
- Architectural review of future projects will be considered by the Town Council with recommendations from the Landmarks Preservation Commission.



★PALM BEACH★

PUD-5 Design Guidelines

MOUZON DESIGN

★MIAMI★

★PALM BEACH★

PUD-5 Design Guidelines

AUTHORED BY:
MOUZON DESIGN
★MIAMI★

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ARTICLE I

★GENERAL★

I.1 AUTHORITY

- I.1.1 The action of the Town of Palm Beach, Florida in the adoption of these PUD-5 Design Guidelines is authorized by and in accordance with the procedures for the adoption of amendments to Chapter 134 of the Code of Ordinances for the Town of Palm Beach.
- I.1.2 These PUD-5 Design Guidelines, providing urban center building standards, is adopted as an instrument of implementation of the PUD-5 historical preservation of mixed use commercial development or redevelopment, as set forth in Section 134- 476 (d) of the Code of Ordinances of the Town of Palm Beach.
- I.1.3 These PUD-5 Design Guidelines were adopted administratively by the Palm Beach Town Council on {DATE TO BE ADDED}.

I.2 INTENT

- I.2.1 The purpose of these PUD-5 Design Guidelines is to enable and encourage the implementation of commercial and mixed-use buildings in the subject urbanism, which is the block of Palm Beach bounded by Royal Poinciana Way on the South, Sunset Avenue on the North, North County Road on the East, and Bradley Place on the West.
- I.2.2 These PUD-5 Design Guidelines contain patterns for elements of the urbanism and

the architecture of this block.

I.3 APPLICABILITY

- I.3.1 Provisions of these PUD 5 Design Guidelines are activated by “shall” when required; “should” when recommended; and “may” when optional.
- I.3.2 These PUD-5 Design Guidelines are applicable for all development or redevelopment pursuant to the PUD-5 option provided for at Section 134-476 to 134-564 of the Code of Ordinances of the Town of Palm Beach.
- I.3.3 Terms used throughout these PUD-5 Design Guidelines shall take their commonly accepted meanings or as defined in the Definitions (Article 4.) In the event of conflicts between these definitions and those of the Code of Ordinances of the Town of Palm Beach those of these PUD-5 Design Guidelines shall take precedence.
- I.3.4 The Definitions of Terms contains regulatory language that is integral to these PUD-5 Design Guidelines.

I.4 COMPANION DOCUMENT

The companion document entitled *The Historic Character of Royal Poinciana Way* is meant to work cooperatively with this document. It describes everything that has happened with the subject urbanism to date; this document describes what should happen hereafter.

ARTICLE 2

★PUD-5 DESIGN GUIDELINES★

2.1 CONTEXT

- 2.1.1 This Article contains PUD-5 Design Guidelines for development, redevelopment and infill development under the PUD-5 option.
- 2.1.2 These PUD-5 Design Guidelines are calibrated to produce places where more people choose to walk. Greater walkability enhances the social and economic viability of a place.
- 2.1.3 These PUD-5 Design Guidelines are intended to foster development of a place with a mix of uses because a mix of uses also enhances social and economic viability. These may include retail, food service, office, residential, lodging, and civic uses.

2.2 FORMAT

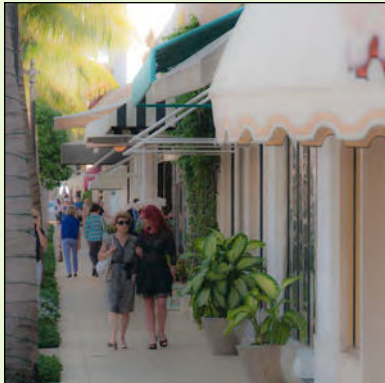
- 2.2.1 Each pattern in these PUD-5 Design Guidelines begins with the pattern name and number.
- 2.2.2 The next item is the rule of thumb. These are the instructions for what to do.
- 2.2.3 The next item begins with “We do this because”. This is the intent behind the rule of thumb. The intent is meant to broaden choice because if someone knows the reasons behind the guideline, they can figure out more ways of meeting both the rule of thumb and also the intent.
- 2.2.4 References may be included below the intent to other patterns which relate to the current pattern.
- 2.2.5 The following items are annotated photographs illustrating various conditions that can be achieved using the rule of thumb and the intent. The photographs may illustrate both entire patterns and details of the patterns.

2.1 FRONTAGES

Pull all buildings except certain civic buildings to the frontage line. Residential buildings may have a setback of no more than 15' on vias. Do not leave gaps wider than 15' between buildings along a street frontage.

WE DO THIS BECAUSE: The ever-changing tapestry of good storefronts pulled right up to the sidewalk is one of the biggest inducements to keep pedestrians walking. Pulling storefronts back is a huge impediment to walkability because, given a choice between walking on one side of a street with storefronts tight to the sidewalk and the other side without close storefronts, many people will cross the street to walk on the entertaining side, even when this choice only exists for as little as one block. The only buildings that are important enough to pull back, leaving a front yard, are major civic buildings such as city halls, courthouses, church buildings, and schools. Civic buildings often need a yard to allow for public gatherings. This yard is often detailed as a square or a plaza. Because Main Streets are the most intense, civic buildings that require yards should be preferred on Front Streets. Ground floor uses shall be primarily retail (merchandising and food service.) Offices and other commercial services can be built on Main Streets and Front Streets, so long as they behave just like retail buildings. Purely residential buildings may not be built on the first floor of Royal Poinciana Way.

~
[See 2.5 Parking]



[activity on sidewalks next to storefronts]



[civic buildings can have more green]



[civic buildings don't have to set back]



[sidewalk extended to set-back building]



[storefronts attract]



[restaurant sidewalk vitality]

2.2 HEIGHT VARIATIONS

Building heights should vary by at least 6" from adjacent existing buildings. Vary storefront heights and window heights at each level by at least 4" from adjacent existing buildings. New buildings should be no less than 2 stories on streets and 1 story on vias, with a maximum height of 3 stories at block corners and 3 stories along other street fronts.

WE DO THIS BECAUSE: The best towns that were built sequentially over years, decades, or centuries, so heights naturally varied for a number of reasons. Even buildings built adjacent to each other from the same design usually had some height variations if built at different times due to using different builders with construction conventions that varied slightly.

Block corners should have the highest buildings to create the strongest street enclosure because intersections are the most open parts of a street. Vias may be very narrow, allowing even one-story buildings to provide a good enclosure proportion.

~

[See 2.1 Frontages]



[1, 2, & 1-1/2 stories]



[small variations]



[taller building anchoring block corner]



[taller 1st floor boosts corner building]



[window height differences]



[no two heights exactly alike]

2.3 VIAS

Use vias to move pedestrians through the middle of a block. Vias should be open for most of their length but may be covered occasionally. If covered, the roof should be glazed except for very short passages. Storefront windows on vias are strongly encouraged. Vias may be as narrow as 6' or as wide as 24' except at piazzas, which may be wider.

WE DO THIS BECAUSE: Vias can be ominous if they are lined with blank walls. And just like any other pedestrian environment, if you bore the pedestrians, they will go elsewhere. So the minimum lining for a via should be copious planting material. The only other reliably effective via lining less than storefronts is seating for adjacent business, such as waiting seating for a restaurant.

The businesses behind the storefronts may spill out onto the via with tables for restaurants and retail display for shops. This enhances the walkability and the vitality of the via.

[See 2.1 Frontages, 2.6 Sidewalk Seating, 2.10 Storefront Windows]



[arched via entrance]



[trellised via entrance]



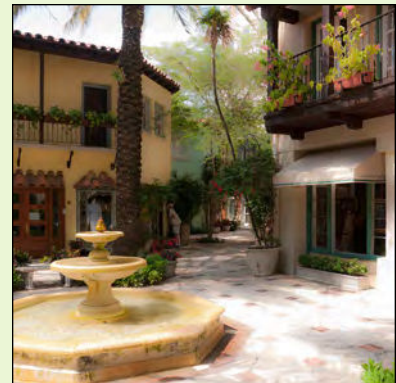
[via retail]



[via restaurant]



[via garden]



[via may widen into piazza]

2.4 SIDE STREET ELEVATION

On block corner buildings, wrap the storefront design at least one storefront bay down the side street.

WE DO THIS BECAUSE: Extending the vitality of the storefront down a side street energizes the side street, connecting the walkability of the Main Street or Front Street into the surrounding neighborhood streets. The wrapped storefront is made more effective by chamfering the corner because it makes the transition around the corner easier. The upper level of the building may chamfer with the storefront, or it may remain square.

~

[See 2.9 Storefront Composition, 2.10 Storefront Windows]



[square storefront wrap]



[rounded storefront wrap]



[chamfered storefront wrap]



[wrap can be longer on busy side streets]



[chamfered wrap framed with piers]



[chamfers may be extra-long]

2.5 PARKING

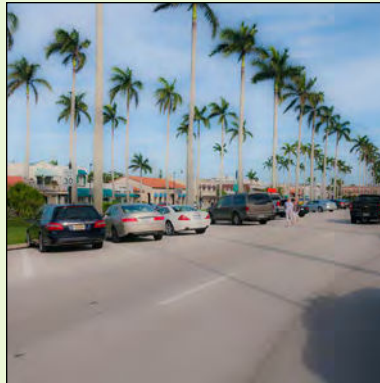
Parking is required on all vehicular thoroughfares except drives between streets and parking on the interior of the block. Site Parking is permitted only if screened by buildings and 20' or more from the frontage line. Structured parking must be concealed underground.

WE DO THIS BECAUSE: Parked cars can enhance urbanism in precise instances, such as shielding pedestrians on a sidewalk from intense traffic. But parked cars can also be corrosive to walkability if placed improperly. The only place where parking should be visible from a thoroughfare should be parallel or diagonal parking between travel lanes and a sidewalk. Curb cuts on Royal Poinciana Way are not permitted because they disrupt pedestrian flow on what should be the part of the block with the greatest vitality.

~
[See 2.8 Narrow Shops]



[quadruple the usual parking spaces]



[diagonal is most efficient street parking]



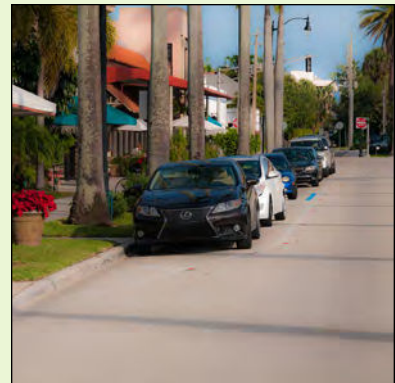
[parallel is less than 1/2 as efficient]



[Worth is double parallel]



[upside to parallel is better street enclosure]



[parking shields sidewalks]

2.6 SIDEWALK SEATING

Sidewalk seating is permitted on all thoroughfares so long as it does not obstruct minimum designed pedestrian flow or encroach upon vehicular travel lanes.

WE DO THIS BECAUSE: By enticing people to spend more time on the street, the street becomes more interesting and even more people are enticed to walk. Outdoor seating also requires less interior serving space and less space conditioning. People also require less space conditioning as they spend more time outdoors because they become acclimated to the local environment. Because of all this, no reasonable sidewalk seating proposal should be rejected so long as it does not reduce the clear travel width to less than 6 feet or the design width based on anticipated pedestrian traffic, whichever is greater, nor encroach upon vehicular travel lanes.

~

[See 2.1 Frontages]



[benches]



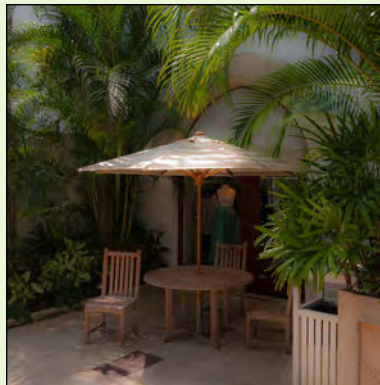
[public frontage enclosed]



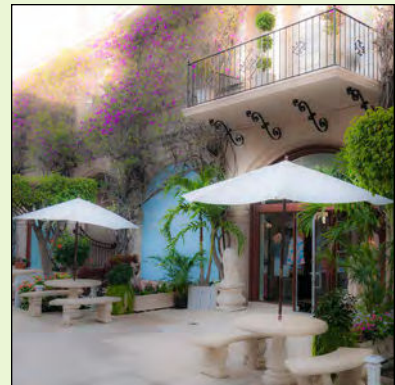
[public frontage semi-open]



[private frontage]



[table & chairs]



[tables & benches]

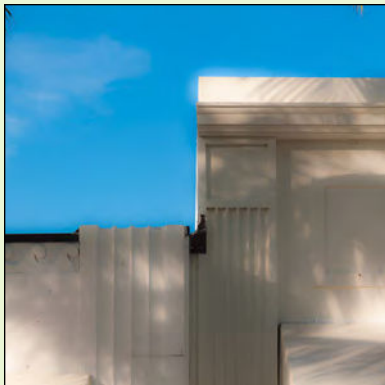
2.7 PARTY WALLS

Allow party walls to be joined at the frontage by a common pier if adjacent units are built at the same time. Otherwise, provide a pier at the end of each unit that terminates the cornice of each building appropriately.

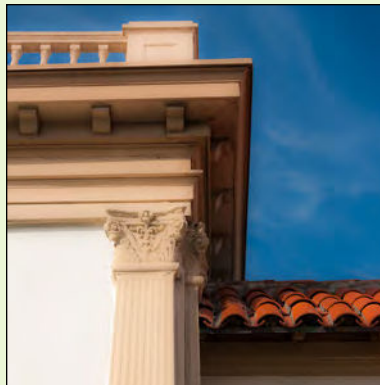
WE DO THIS BECAUSE: Some Main Street buildings are built as part of a multi-unit construction project, while others are built individually. Party wall frontage techniques should accommodate both methods. Units built at the same time may have identical elevations above the storefront (pictured below) or may simply have a common pier, with the entire frontage varying on either side. The common end cap technique is similar, but with only the cornice end cap being common to both units. Both techniques may also be used when one building is built first, if the designer of the second building is content to allow the cornice of the second building to die into the first building's end cap. This can make the second building appear inferior to the first, however, so designers often opt for the double end cap, where each building terminates its own cornice. End caps are not required if there is a significant cornice height difference, because cornices can simply return onto the adjacent wall if allowed by local building officials. Other cornice terminations exist, such as the projecting parapet, which projects only at the cornice level to provide termination for the building cornice (and the neighbor's, if desired.) The same issues occur at the storefront beam level. The two methods illustrated here are the paint color method (also usable for building cornice) and the common end cap.

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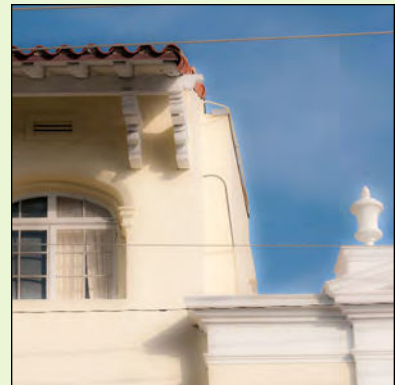
[See 2.1 Frontages, 2.2 Height Variations]



[double piers]



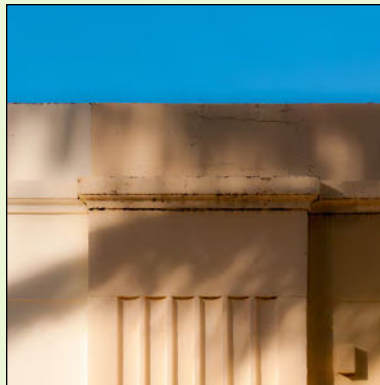
[cornice over eave]



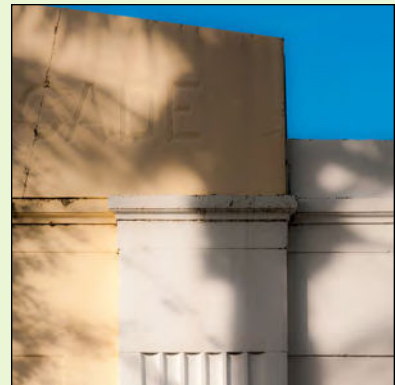
[bracketed eave over cornice]



[cornice return]



[common pier, color break]



[pediment on common pier]

2.8 NARROW SHOPS

Provide for at least a few extremely narrow lots (12 feet wide or less.)

WE DO THIS BECAUSE: Many town centers do not have enough variety of building width. A few Narrow Shops make the streetscape much more interesting. They also create very small units, where establishments can be run for less expense than in more typically-sized units. Narrow Shops are similar to liner buildings, except that liner buildings turn their broad side to the street and their very thin side to their neighbor, while narrow shops do the opposite. Narrow shops are therefore the less expensive of the two because of having less frontage. This comes at the expense, however, of having less light. The Infill Narrow Shop is most common, and occurs mid-block between two larger buildings. The Mid-Block End Cap Narrow Shop also occurs mid-block, adjacent to a playground or small square. The Corner End Cap Narrow Shop naturally occurs when space is left between the last building on the block and the corner. Free-Standing Narrow Shops are often Temporary Retail, intended to be moved elsewhere later. The Recessed Narrow Shop blocks the view of a mid-block parking lot. The Tall Narrow Shop is narrow in proportion due to its height of three stories or more, and may therefore be wider than 12 feet.

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[See 2.1 Frontage]



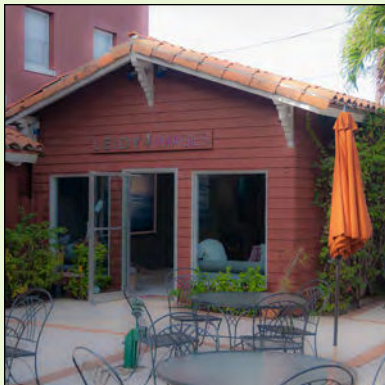
[infill]



[mid-block end cap]



[corner end cap]



[free-standing]



[recessed]



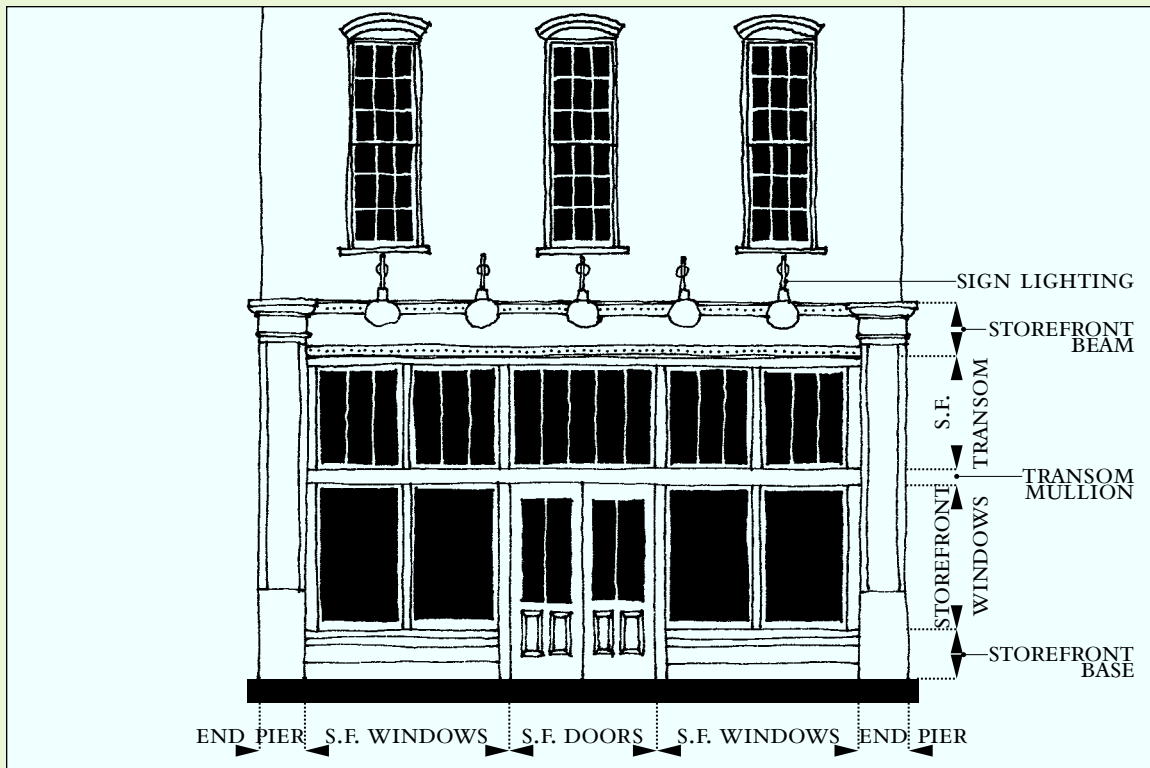
[tall]

2.9 STOREFRONT COMPOSITION

Compose the storefront with a storefront beam at the top that supports the wall above. Arrange storefront doors and storefront windows below the transom mullion. A storefront transom may be located between the transom mullion and the storefront beam. Build a storefront base below the storefront windows.

WE DO THIS BECAUSE: The storefront beam is necessary for structural support, and it makes an ideal location for signage. The storefront windows are necessary for displaying wares, while the storefront transoms allow daylight to penetrate deeper into the store. The storefront base protects the storefront windows from damage and from the wear associated with periodic sidewalk cleaning.

[See 2.1 Frontages, 2.7 Party Walls, 2.10 Storefront Windows]



2.10 STOREFRONT WINDOWS

The glass, sash, and muntins of storefront windows should occupy no less than 60% of the storefront at eye level. The head height of storefront windows should be no less than 7 feet, and no greater than 20 feet. The sill height of storefront windows should be no less than 6 inches and no more than 30 inches.

WE DO THIS BECAUSE: Views through Storefront Windows are one of the major contributing factors to the appeal of walking. The bottom of the glass, however, should not be too close to the ground or it is likely to be broken. Nor should it be too tall, because views through a slot look into a dark interior and reveal little. And the top of the glass should be limited to one story plus a mezzanine because people typically are uncomfortable standing next to a very tall sheet of glass.

The storefront window types that follow categorize types by height and division for 5.3.1 through 5.3.6, then by the material used to mull the storefront windows together for 5.3.7 through 5.3.10.

[See 2.1 Frontages, 2.3 Vias, 2.9 Storefront Composition]



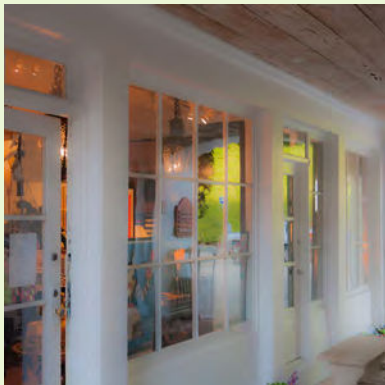
[single lite, mullion height]



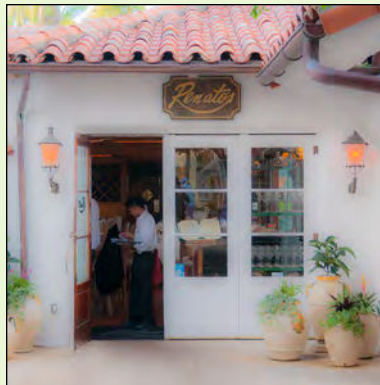
[single lite, full height]



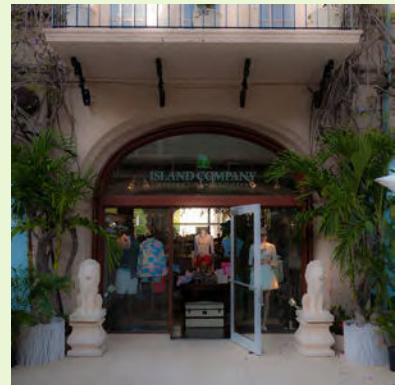
[multi-lite, mullion height]



[multi-lite, full height]



[glazed doors as storefront]



[arched]

ARTICLE 3

★DEFINITIONS★

To the extent not inconsistent with the definitions in the Zoning Code, Sec. 134-2, the following definitions shall govern:

ALLEY: service thoroughfare at the back of lots.

APARTMENT: a dwelling unit sharing a building and a lot with other dwellings and/or uses. Apartments may be for rent or for sale as condominiums.

BLOCK: the aggregate of private lots, passages, rear lanes and alleys, circumscribed by thoroughfares.

BLOCK FACE: the aggregate of all the building facades on one side of a block. The Block Face provides the context for establishing Architectural Harmony.

BUILDING DISPOSITION: the placement of a building on its lot.

BUILDING FUNCTION: the uses accommodated by a building and its lot. Functions are categorized as Restricted, Limited, or Open, according to the intensity of the use.

BUILDING HEIGHT: the vertical extent of a building measured in stories, not including a raised basement or a habitable attic. Height limits do not apply to masts, belfries, clock towers, chimney flues, water tanks, elevator bulkheads and similar structures. Building Height shall be measured from the average grade of the enfronting thoroughfare.

BUILDING TYPE: a structure category determined by function, disposition on the lot, and configuration, including frontage and height. For example, a rowhouse is a type, not a style.

COMMERCIAL: the term collectively defining workplace, office and retail functions.

CONTEXT: surroundings made up of the particular combination of elements that create specific habitat.

COURTYARD BUILDING: a building that occupies the boundaries of its lot while internally defining one or more private patios. This type is able to shield the private realm while strongly defining the public thoroughfare. Because of its ability to mask incompatible activities, it is recommended for workshops, lodging and schools.

CURB: the edge of the vehicular pavement detailed as a raised curb or flush to a swale. The Curb usually incorporates the drainage system.

DENSITY: the number of dwelling units per acre.

DRIVEWAY: a vehicular lane within a lot, usually leading to a garage. A Driveway in the First Layer may be used for parking if it is no more than 18 feet wide, thereby becoming subject to the constraints of a parking lot.

ELEVATION: the exterior walls of a building not along a Frontage Line. Facades are the remaining exterior walls of buildings and are those exterior walls that are located along a Frontage Line.

ENFRONT: to place an element along a frontage line, as in “porches enfront the street.”

ENTRANCE, PRINCIPAL: the main point of access of pedestrians into a building. In the support of pedestrian activity, the Principal Entrance should be given to a Frontage Line rather than to the parking.

FACADE: the exterior wall of a building that is set along a Frontage Line (see Elevation). Facades support the public realm and are subject to requirements additional to those required of elevations

FRONTAGE LINE: those lot lines that coincide with a public frontage. Facades along Frontage Lines define the public realm and are therefore more regulated

than the elevations that coincide with other Lot Lines.

INFILL: a project within existing urban fabric.

LINER BUILDING: a building specifically designed to mask a parking lot or a parking garage from a frontage. A Liner Building, if less than 30 feet deep and two stories, shall be exempt from parking requirements.

LODGING: premises available for daily and weekly renting of bedrooms. The area allocated for food service shall be calculated and provided with parking according to retail use.

LOT LINE: the boundary that legally and geometrically demarcates a lot (see Frontage Line). Such lines appear graphically on Community and Site Plans. Codes reference lot lines as the baseline for measuring setbacks.

LOT WIDTH: the length of the principal Frontage Line of a lot.

NET SITE AREA: the developable areas of a site, excluding flood plain.

OFFICE: premises available for the transaction of general business but excluding retail, artisanal and manufacturing uses.

OUTBUILDING: an ancillary building, usually located towards the rear of the same lot as a Principal Building. It is sometimes connected to the principal building by a Backbuilding. Outbuildings shall not exceed 600 square feet of habitable space, excluding parking areas.

PARKING STRUCTURE: a building containing two or more stories of parking. The propensity of Parking Structures to create negative pedestrian experiences along their frontage shall be mitigated by the provision of a Liner Building at the first story.

PRINCIPAL BUILDING: the main building on a lot, usually located toward the frontage.

PRIVATE FRONTAGE: the privately held layer between the frontage line and the principal building facade. The structures and landscaping within the Private Frontage may be held to specific standards. The variables of Private Frontage are the depth of the setback and the combination of architectural elements such as fences, stoops, porches and

galleries.

PUBLIC FRONTAGE: the area between the curb of the vehicular lanes and the Frontage Line. Elements of the Public Frontage include the type of curb, walk, planter, street tree and streetlight.

RESIDENTIAL: premises available for long-term human dwelling.

RETAIL: premises available for the sale of merchandise and food service.

RETAIL FRONTAGE LINE: Frontage Lines designated on a Community Plan that require the provision of a Shopfront, causing the ground level to be available for retail use.

SETBACK: the area of a lot measured from the lot line to a building facade or elevation. This area must be maintained clear of permanent structures with the exception of: galleries, fences, garden walls, arcades, porches, stoops, balconies, bay windows, terraces and decks (that align with the first story level) which are permitted to encroach into the Setback.

SIDEWALK: the paved layer of the public frontage dedicated exclusively to pedestrian activity.

SITE: The total land enclosed by all Lot Lines of a piece of property. The Site is made up of the First Layer, the Second Layer and the Third Layer.

STORY: a habitable level within a building of no more than 14 feet in height from finished floor to finished ceiling. Attics and raised basements are not considered stories for the purposes of determining building height.

STREETSCAPE: the urban element that establishes the major part of the public realm. The streetscape is composed of thoroughfares (travel lanes for vehicles and bicycles, parking lanes for cars, and sidewalks or paths for pedestrians) as well as the visible private frontages (building facades and elevations, porches, yards, fences, awnings, etc.), and the amenities of the public frontages (street trees and plantings, benches, streetlights, etc.).

VIA: a pedestrian connector passing between buildings, providing shortcuts through long blocks and connecting rear parking areas to frontages.