



TENTATIVE:
SUBJECT TO
REVISION

TOWN OF PALM BEACH

Town Manager's Office

TOWN COUNCIL MEETING DEVELOPMENT REVIEW

TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD

AGENDA

JUNE 10, 2015

9:30 AM

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

I. CALL TO ORDER AND ROLL CALL

Mayor Gail L. Coniglio
Michael J. Pucillo, President
Richard M. Kleid, President Pro Tem
Danielle H. Moore
Penelope D. Townsend
Robert N. Wildrick

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

VI. APPROVAL OF AGENDA

VII. DEVELOPMENT REVIEWS

A. Appeals

1. ARCOM appeal from Cristina Noble (via attorney James Green) Page 7
475 North County Road - B-010-2015 Gate
Deferred from the May 13, 2015, Town Council Meeting
John S. Page, Director of Planning, Zoning and Building

B. Time Extensions and Waivers

1. Request for One Year Time Extension, Variance No. 31-2014 Page 87

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

- a. **SPECIAL EXCEPTION #4-2015 WITH SITE PLAN REVIEW** The application of Maura Ziska, Esq. Attorney in Fact; relative to property commonly known as **1021 North Ocean Blvd.**, described as lengthy legal description on file; located in the R-A Zoning District. The Applicant is requesting Special Exception with Site Plan Review to allow the construction of a 25,198 square foot two-story, single family residence with basement on a non-conforming platted lot which is 100 feet in width in lieu of the 125 foot minimum width required in the R-A Zoning District. [Attorney: Maura Ziska, Esq.] **Request for Deferral to the June 10, 2015, Town Council Meeting Per Letter Dated February 25, 2015, from Maura A. Ziska. Request for Withdrawal from the June 10, 2015, Town Council Meeting Per Letter Dated April 6, 2015, from Maura A. Ziska.**
John S. Page, Director of Planning, Zoning & Building Page 91
- b. **SITE PLAN REVIEW #13-2014 WITH SPECIAL EXCEPTIONS AND VARIANCES (MODIFIED)** The application of T3 Family Investment, LLC; relative to property commonly known as **221 & 231 Royal Poinciana Way, Sunset Avenue, 214 Sunset Avenue, 216 Sunset Avenue**; described as Lengthy Legal Description on file; located in the C-TS Zoning District. The application has been modified and the applicant is requesting the following approvals:
1. Applicant is requesting site plan approval to construct a two (2) story 63,680 square foot mixed commercial and residential use condominium development with 42,962 square foot sub-basement with 86 underground parking spaces totaling 106,642 square feet, 18,080 square feet of commercial space on the first floor and six (6) residential units on the second floor.
Variances and Special Exceptions were approved on May 13, 2015. The Site Plan Review portion of the application has been deferred from the May 13, 2015 Town Council Meeting.
John S. Page, Director of Planning, Zoning, and Building
- c. **VARIANCE #12-2015** The application of John Ceriale; relative to property commonly known as **230 S. Ocean Blvd.**, described as Lot 528, Poinciana Park, Second Addition, Plat Book 6, Page 86; located in the R-B Zoning District. The Applicant is requesting a variance to allow the existing non-conformity porch to extend 4.08 feet to a street side yard setback at 20.16 feet in lieu of the 24.24 existing porch setback and the 25.0 foot minimum required by code; and, to allow a lot coverage of 28.9% (135 sf additional) in lieu of the 28.2% existing non-conformity and the 25% maximum allowed by code. [Agent: Jose Gonzalez]
[Architectural Commission Recommendation: Implementation of the variance will not cause negative architectural impacts to the subject property. Carried 7-0]
Deferred from the May 13, 2015, Town Council Meeting

2. New Business

- a. **SPECIAL EXCEPTION #13-2015 WITH VARIANCE** The application of Richard and Patti Kurtz; relative to property commonly known as **235 Banyan Road**, described as lengthy legal description on file; located in the R-A Zoning District. The Applicant is requesting a special exception to allow one swinging gate at the entrance to the residence on Banyan Road (a dead end street) with a 10.5 foot setback from the street pavement in lieu of the 18 foot minimum required on a dead end street. A variance is also being requested to allow the gate to be 10 feet tall in lieu of the 8 foot maximum height allowed for gates. [Attorney: Maura Ziska, Esq.]
[Landmarks Preservation Commission Recommendation: Implementation of the proposed variance will not cause negative architectural impacts to the subject landmark property. Carried 7-0.]
John S. Page, Director of Planning, Zoning & Building
- b. **VARIANCE #13-2015** The application of Peter May; relative to property commonly known as **320 Dunbar Road**, described as lengthy legal description on file; located in the R-B Zoning District. The Applicant is requesting a variance to allow the construction of a new 4,897 square foot two story residence with a point of measurement of 8 feet National Geodetic Vertical Datum (NGVD) for cubic content ratio (CCR) in lieu of the 7.5 foot NGVD required when determining cubic content ratio on lots abutting a low street. [Attorney: Maura Ziska, Esq.]
[Architectural Commission Recommendation: Implementation of the proposed variance will not cause negative architectural impacts to the subject property. Carried 7-0]
John S. Page, Director of Planning, Zoning & Building
- c. **VARIANCE #14-2015** The application of Bryan and Christina Cressey; relative to property commonly known as **2315 S. Ocean Blvd.**, described as lengthy legal description on file; located in the R-C Zoning District. The Applicant is requesting a variance to allow the construction of a stairwell descending to the existing basement that would have a street side yard setback of 12.5 feet in lieu of the 25 foot minimum required in the R-C Zoning District. [Attorney: Maura Ziska, Esq.]
John S. Page, Director of Planning, Zoning & Building
- d. **VARIANCE #15-2015** The application of Roy Furman; relative to property commonly known as **137 East Inlet Dr.**, described as Lot 29 of SEA ISLE ESTATES, an addition to the Town of Palm Beach, as recorded in Plat Book 25, Page 89, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The Applicant is requesting variances to allow the construction of a new 255 square foot loggia addition with a roof deck that would have a cubic content ratio (CCR) of 5.14 in lieu of the 5.42 existing and the 3.98 maximum allowed; to allow the proposed loggia addition and cantilevered two foot wide balcony to be setback 34.75 feet from the official bulkhead line in lieu of the 50 foot minimum required; and to

allow a swimming pool and spa to be setback 11.75 feet from the official bulkhead line in lieu of the 50 foot minimum distance required. [Attorney: Maura Ziska, Esq.]

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

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

- e. **VARIANCE #16-2015** The application of Walde Trust, LLC; relative to property commonly known as **444 Chilean Ave.**, described as Lots 52 and 53, Block 12, Revised Map of Royal Park Addition to Palm Beach, Florida according to the plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County Florida in Plat Book 4, Page 1; located in the R-C Zoning District. The Applicant is requesting the following variances: to allow the construction of a 3,776 square foot two-story single family residence on a non-conforming lot: to construct a two-story house with a lot width of 50 feet in lieu of the 75 foot minimum required and a lot area of 6,250 square feet in lieu of the 10,000 square foot minimum required; to construct a two story house with an east side yard setback of 5.7 feet in lieu of the 10 foot minimum required; to construct a two-story garage/guest house with an east side yard setback of 5.7 feet in lieu of the 10 foot minimum required; to construct a two-story garage/guest house with a rear yard setback (south side of the property) of 5 feet in lieu of the 15 foot minimum required; and to construct a two-story single family residence with a landscaped open space of 43.6% in lieu of the 45% minimum required in the R-C Zoning District. [Attorney: Guy Rabideau, Esq.] [Architectural Commission Recommendation: Deferred the project to the June 24, 2015 Commission meeting to restudy the architecture, landscaping and the need for variances. Carried 7-0]

Request for Deferral to the July 15, 2015, Town Council Meeting Per Letter Dated May 29, 2015, from Guy Rabideau.

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

- f. **VARIANCE #17-2015** The application of Susan Bodnar Malloy (Contract Purchaser); relative to property commonly known as **201 Bahama Lane**, described as lengthy legal description on file; located in the R-B Zoning District. The Applicant is requesting a variance to construct a 8 foot x 38 foot swimming pool in the east side of the residence with a 12 foot street side yard setback in lieu of the 15 foot minimum setback required. [Attorney: Maura Ziska, Esq.]

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

- g. **VARIANCE #18-2015** The application of Alex Griswold, Manager of 155 Root Trail, LLC; relative to property commonly known as **155 Root Trail**, described as lengthy legal description on file; located in the R-C Zoning District. The Applicant is requesting variances to allow the construction of a 155 square foot addition to connect the two houses into one unified residence that will increase the lot coverage to 52.3% in lieu of the 47.3% existing and 30% maximum allowed in the R-C Zoning District for a single family residence; to decrease the landscaped open space to 26% in lieu of the 47%

existing and 45% minimum required; to have a front yard setback of 13.75 feet in lieu of the 25 foot minimum allowed; to raise the height and overall height of the existing shed roof on the rear portion of the eastern residence that would be increasing the height within the non-conforming setback by 2.33 feet. The proposed new roof will have a rear yard setback of 9.6 feet in lieu of the 15 foot minimum required and an east side yard setback of 2.4 feet in lieu of the 10 foot minimum required; and to raise the height and overall height of the existing shed roof on the rear portion of the eastern residence that would be increasing the height within the non-conforming setback by 2.33 feet. The proposed new roof will have an east side yard setback of 2.4 feet in lieu of the 10 foot minimum required. [Attorney: Maura Ziska, Esq.]

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

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

VIII. ORDINANCES

IX. ANY OTHER MATTERS

X. ADJOURNMENT

PLEASE TAKE NOTE:

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

PROCEDURES FOR PUBLIC PARTICIPATION

Citizens desiring to address the Town Council should proceed toward the public microphones

when the applicable agenda item is being considered to enable the Town Council President to acknowledge you.

PUBLIC HEARINGS:

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

COMMUNICATIONS FROM CITIZENS:

Any citizen is entitled to be heard concerning any matter under the section entitled "Communications from Citizens," subject to the three minute limitation. The public also has the opportunity to speak to any item listed on the agenda, including the consent agenda, at the time the agenda item comes up for discussion.

OTHER AGENDA ITEMS:

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

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

TOWN OF PALM BEACH

Town Council Meeting Development Review on: June 10, 2015

Section of Agenda

Appeals

Agenda Title

ARCOM appeal from Cristina Noble (via attorney James Green)

475 North County Road - B-010-2015 Gate

Deferred from the May 13, 2015, Town Council Meeting

Presenter

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

Supporting Documents

- [Memorandum dated June 3, 2015 from John S. Page](#)
- [Letter dated April 6, 2015 from James K. Green](#)
- [Service Gate Rendering](#)
- [Map](#)
- [Code Section 18-205](#)
- [ARCOM Minutes dated February, 2015](#)
- [ARCOM Minutes dated March, 2015](#)
- [Letter dated April 24, 2015 from Alexander S. Rotan](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 10, 2015

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

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

Re: ARCOM appeal from Cristina Noble (via attorney James Green)
475 North County Road
B-010-2015 Gate

Date: June 3, 2015

STAFF RECOMMENDATION

Staff recommends that the Town Council consider and rule upon the appeal of Cristina Noble objecting to ARCOM's decision of March 25, 2015, approving a "new black anodized aluminum gate on service driveway" for owners Christopher and Vicki Kellogg at 475 North County Road.

GENERAL INFORMATION

In order to fully understand the context of this appeal, Council should be aware of the following facts:

- The applicants seeking gate approval are Christopher and Vicki Kellogg, 475 North County Road.
- The appellant, Christina Noble, is an adjacent, easterly owner, at 473 North County Road (fronting the Ocean).
- Both parcels were once part of the same estate. When split, an access easement was provided through the Kellogg parcel to the "landlocked" Noble parcel.
- ARCOM first considered the gate request in February this year. Ms. Noble, represented by Attorney Paul Rampell, objected. He stated that there is ongoing litigation between the parties with many different issues being disputed, and argued that his client had not "joined" in the application.
- Architect Ralph Cantin, representing the Kelloggs, stated that access through the gate will be by a code, and the code will be provided to Ms. Noble.
- Town Attorney Randolph opined that ARCOM was only to apply the criteria of the Code as it relates to gate design. He noted that staff does not complete title searches to reveal any recorded agreements or easements.
- ARCOM deferred a decision in March, indicating that more landscaping details were needed.

- ARCOM approved installation of the gate at its following meeting on March 25, 2015.

At the March meeting, Chair Vila reminded the Commission that the application had been deferred the previous month at ARCOM's direction due to the need for landscaping details. Architect Ralph Cantin then made a brief presentation highlighting the gate and landscaping treatment flanked by "Spanish Stoppers" 54 inches in height, contrasted with the gate at 5 feet in height. Mr. Vila reminded the Commission that its sole purpose was to review the aesthetics of the gate and landscaping. The Commission found both the gate and the landscaping acceptable.

Attorney James Green, representing Cristina Noble, explained that he was acting as co-counsel with Paul Rampell, and that he wanted to lay a public record. His client objects to the gate because it will block the access easement leading from North County Road to the Noble home and cause service delays. He indicated that Ms. Noble has not "joined" the application, which would be proper in this instance. He continued his point by informing ARCOM that the Noble property is landmarked. The Landmarks Preservation Commission recently acted upon a request from Noble to demolish a slat house, and required that the Kellogg's join the application before any action was taken. *Please note that the LPC took such action because the subject slat house actually straddled a shared property line between the two owners (not a factor with the proposed gate).*

Mr. Green continued with his objection, again noting that he was laying a record. He submitted several documents for the record, and announced that Mr. Robert Moore, former Town PZB Director, was present to explain past Town practices regarding co-signed applications when two owners are so directly affected. Several ARCOM members objected to being drawn into issues they believed were beyond their purview.

Chair Vila advised that ARCOM was not the right venue for legal arguments. Public comment was ended. He noted that there was a motion on the floor by Garrison to approve the gate/landscaping application. Mrs. Vanneck seconded the motion. Motion carried 6 aye, 1 nay (Gruss).

SPECIAL CONSIDERATIONS

The following materials are attached for review:

- James K. Green appeal letter (including INDEX TO APPEAL, Tabs A-G).
- Alexander Rotan letter.
- Service Gate Rendering.
- Site Plan.
- Code Section 18-205 (ARCOM criteria for building permit).
- Excerpts from ARCOM Minutes of the February 25 and March 25, 2015 meetings.

Attachments

cc: Christopher and Vicki Kellogg
Cristina Noble

James K. Green
Alexander Rotan
Ralph Cantin
ARCOM members
John C. Randolph, Town Attorney

JAMES K. GREEN, P.A.

LAWYERS

JAMES K. GREEN
NINA M. ZOLLO
ANNE F. O'BERRY
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April 6, 2014

VIA HAND DELIVERY

Susan A. Owens, Town Clerk
Palm Beach Town Hall
360 South County Road
Palm Beach, FL 33480

Re: Appeal of March 25, 2015 Architectural Commission Decision on Item No. B-010-2015 Gate, 475 North County Road, Christopher and Vicki Kellogg (collectively "Kellogg")

Dear Ms. Owens:

Pursuant to Section 18-177 of the Palm Beach Code of Ordinances, Ms. Cristina Noble ("Noble" or the "Easement Owner"), through the undersigned counsel, hereby files this appeal with the Town Clerk of the decision by the Palm Beach Architectural Commission ("ARCOM") at their March 25, 2015 meeting to approve the construction of a gate blocking Ms. Noble's service access easement at 475 North County Road, Palm Beach, Florida 33480 (the Property").

Enclosed is a check in the amount of \$320.00 made payable to the Clerk of the Town of Palm Beach to cover the required cost of filing this appeal.

I. Introduction and Summary of Argument

This appeal challenges ARCOM's approval, over Ms. Noble's objection, of a gate blocking Ms. Noble's service access easement over Kellogg's property.

Noble's property is landmarked; Kellogg's is not.

In an earlier application by Ms. Noble to the Landmarks Preservation Commission ("LPC") to demolish a portion of a slat house adjacent to Kellogg's property (involving coincident property interests of Noble and Kellogg), the LPC required that Kellogg join in Noble's application.

In Kellogg's application to ARCOM, ARCOM, over Noble's objection, refused to require that Noble join in Kellogg's application.

Requiring Kellogg to join Noble's application to the LPC but not requiring Noble to join Kellogg's application before ARCOM, where both applications were alleged to involve coincident property interests, is arbitrary and irrational and demonstrates the need for this Council to provide guidance and consistency to applicants before Town Commissions.

RECEIVED

Further, ARCOM's refusal to allow Noble to proffer the testimony of Robert Moore, the Town's long-term former chief building official, that the Town had a long-standing custom, practice and policy of requiring property owners with property interests in the subject property to join in applications such as those before ARCOM and the LPC, violates procedural due process.

II. Background Information Regarding the Property, the Applications, and the Hearings

The Noble Property is bounded on the east by the Atlantic Ocean and on the west by the Kellogg property. The Noble Property has access to public roads only through a service driveway easement over the north of Kellogg's property and an easement over a third party's property to the south. Tab A, Drawing

In or about January, 2015, Noble made an Application for Certificate of Appropriateness to the LPC to demolish a portion of a slat house adjacent to Kellogg's property (which purportedly involved coincident property interests between Noble and Kellogg). At its January 21, 2015 hearing, the LPC required that Kellogg join in Noble's application. Tab B, Noble Application; Tab C, Transcript of January 21, 2015 hearing

In or about January, 2015, Kellogg made an initial application to ARCOM, Item No. B-010-2015 Gate, proposing to construct a new gate across Noble's service driveway easement. Tab D, Kellogg Application

Two hearings were conducted on Kellogg's application, on February 25 and March 25, 2015. Over Noble's objections, ARCOM approved Kellogg's application without requiring Noble's joinder. Tabs E and F, Transcripts

At the latter hearing, Noble's counsel requested leave to proffer the testimony of Robert Moore, the Town's long-term former chief building official, that the Town had a long-standing custom, practice and policy of requiring property owners with property interests in the subject property to join in applications such as those before ARCOM and the LPC. Tab F, Transcript

III. Argument

The due process clauses to the Florida and United States Constitutions protect private property. Such protections extend to easements such as Noble's service driveway easement. *United States v. Welch*, 217 U.S. 333, 339 (1910); *First Unitarian Church v. Salt Lake City Corp.*, 308 F.3d 1114, 1122 (10th Cir. 2002) (holding that government condemnations of easements are takings under the Fifth Amendment and entitle the holder to compensation); *United States v. 10.0 Acres*, 533 F.2d 1092 (9th Cir. 1976) (stating that exclusive easement was a property right subject to a takings claim when government purchased servient property); *McCulloch v. Glasgow*, 620 F.2d 47 (5th Cir. 1980) (regardless of the ultimate success of a person's claim of title to real estate, the conflict between his arguably unencumbered title and the town's arguable easement was sufficient to give the claimant a significant property interest, entitling him to a due process hearing; and depriving him of that hearing was an actionable wrong independent of any uncompensated taking); *Donnell v. United States*, 834 F. Supp. 19 (D.

Me. 1993) (holding that easements are property interests subject to strictures of the Fifth Amendment); *Dianne v. Wingate*, 84 So. 3d 427 (Fla. 1st DCA 2012) (a genuine issue of material fact as to whether the grantors' installation of speed bumps on an ingress and egress easement substantially or unreasonably interfered with the easement holders' right of passage precluded summary judgment in favor of the easement holders in action seeking to have the speed bumps removed).

Procedural due process ensures that the government will not deprive a party of property by engaging in unfair procedures to reach a decision, while substantive due process ensures that the State will not deprive a party of property for an arbitrary reason, regardless of the procedures used to reach that decision. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), whether the fault lies in a denial of fundamental procedural fairness, *see, e.g., Fuentes v. Shevin*, 407 U.S. 67, 82 (1972), or in the exercise of power without reasonable justification in the context of an otherwise legitimate governmental activity, *see, e.g., Daniels v. Williams*, 474 U.S. 327, 331 (1986) (the substantive due process guarantee protects against government power arbitrarily and oppressively exercised).

Here, there was nothing "fair" about the Town's decision through ARCOM to grant Kellogg's application to block Noble's service driveway easement without her joinder but to condition Noble's application to demolish her portion of the slat house on Kellogg's joinder in hers.

Employment of shifting, inconsistent rationales for granting or denying an application also bespeaks arbitrariness. *See, e.g., Houston v. Unum Life Ins. Co. of America*, 246 Fed. Appx. 293 (6th Cir. 2007) (holding that insurer's shifting rationale for denying coverage and its inexplicable reversal of its own conclusion was unreasoned, unprincipled, arbitrary and capricious). As the court observed in *Sweeney v. Mack*, 625 So. 2d 15, 16 (Fla. 5th DCA 1993), "[e]ven if ... an architectural review committee is given the absolute power to approve or to disapprove building plans, such power cannot be exercised unreasonably or arbitrarily." *Id.* (citing *Young v. Tortoise Island Homeowner's Ass'n, Inc.*, 511 So. 2d 381, 384 (Fla. 5th DCA 1987)). *See ABC Liquors, Inc. v. City of Ocala*, 366 So. 2d 146, 149 (Fla. 1st DCA 1979) ("Any standards, criteria, or requirements which are subject to whimsical or capricious application or unbridled discretion will not meet the test of constitutionality."); *Park of Commerce Assocs. v. City of Delray Beach*, 606 So. 2d 633, 635 (Fla. 4th DCA 1992) (Farmer, J., specially concurring) (on rehearing *en banc*), *aff'd*, 636 So. 2d 12 (Fla. 1994) ("land ownership is at the core of our constitutional freedoms and thus the power of government must be exercised with a healthy regard for that right"); McLaren and Glasgow, "Success in Litigating Local Permit Denials: Alternative Theories of Obtaining Justice," 86 *Fla. Bar J.* 20, 25 (Dec. 2012) (observing that "[w]hile the federal courts have eroded the ability of landowners to bring substantive due process claims to protect property rights under the Fifth and 14th Amendments, Fla. Const. art. I, §9 is alive and well to protect property owners from arbitrary and/or capricious government actions that adversely affect property rights") (citing *Chicago Title Ins. Co. v. Butler*, 770 So. 2d 1210, 1214 (Fla. 2000)).

For the foregoing reasons, the Town through ARCOM should be equitably estopped from imposing one requirement for property owners before the LPC and another before ARCOM. As explained in *Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10 (Fla. 1976):

Every citizen has the right to expect that he will be dealt with fairly by his government. ... 'Unfair dealing' by a municipality can also serve as the basis for the invokement of equitable estoppel. *City of Jacksonville v. Wilson*[], 157 Fla. 838, 27 So. 2d 108 (1946)]. While a City Commission certainly possesses the prerogative of deciding to defer action on such a proposal over a long period of time, it must assume the attendant responsibility for the adverse effect it knows or should know its deliberate inaction will have upon the parties with whom it is dealing. In the instant case, the course of inaction chosen by the City and its subsequent arbitrary actions must necessarily be equated with 'unfair dealing.'

Id. at 18 (citations omitted). See *City of Lauderdale Lakes v. Corn*, 427 So. 2d 239, 243-44 (Fla. 4th DCA 1983) (holding that city was equitably estopped from denying property owner's rights based on change in zoning ordinance where owner relied in good faith upon then-existing zoning to induce him to request annexation of his property and not only expended considerable sums of money but also substantially changed the nature and contour of the land and its drainage system because of that reliance).

ARCOM's error in not requiring Noble's joinder in Kellogg's application under these facts was compounded by its refusal to allow the testimony of Mr. Moore or even to allow a proffer at the March 25th hearing. Tab F, Transcript; Tab G, Ltr to John Randolph. On these grounds alone, ARCOM should be reversed for denying procedural due process, as refusing to permit the proffer precludes full and effective appellate review. *Rozier v. State*, 636 So. 2d 1386, 1387 (Fla. 4th DCA 1994); *B.K.F. v. State*, 614 So. 2d 1167, 1168 (Fla. 2d DCA 1993); *Pender v. State*, 432 So. 2d 800, 802 (Fla. 1st DCA 1983); *Brown v. State*, 431 So. 2d 247, 248 (Fla. 1st DCA 1983). The remedy for denial of a proffer is to send the matter back for a new hearing. *Lillyman v. Department of Highway Safety & Motor Vehicles*, 645 So. 2d 113 (Fla. 5th DCA 1994).

ARCOM's error may also have violated equal protection. See *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000) (holding that an individual's assertion that she was irrationally and arbitrarily singled out by governmental officials based upon their requirement that she grant the Village a non-standard 33-foot easement to permit the Village to widen the road on which she lived stated a proper "class of one" claim under the equal protection clause).

IV. Summary and Request for Relief

The "touchstone" of due process is protection of the individual against arbitrary and oppressive action of the government. *City of Chicago, B. & Q. R. Co. v. Chicago*, 166 U.S. 226 (1897); *Dent v. State of West Virginia*, 129 U.S. 114, 123 (1889).

The Town Council needs to reverse ARCOM's decision below and remand this matter to allow Noble to develop a record below through the testimony of Mr. Moore. Further, we respectfully urge the Town Council to provide guidance to ARCOM and other Town entities as follows:

1. As a matter of policy and history, whenever the Town has knowledge of multiple interests in land, it should require the owners of all interests to join in or consent to new construction or improvements on such land. (This policy was followed at the LPC hearing, in which the Town required Kellogg to join Noble's application for demolition.)

2. The Town can reasonably discern multiple interests by disclosure of such interests in surveys required in applications for ARCOM approval, LPC approval, and for building permits, without undertaking its own title examination.

3. The Town should never authorize a gate across a driveway which blocks the valid access over such driveway by a Town resident; it owes every Town resident protection from such obstructions as matters of safety and welfare.

4. If a resident seeks to build on any portion of his or her property covered by a public utility easement, the Town mandates consent to such construction by every holder of every public utility easement.

5. The Town will act more prudently in requiring an easement holder's joinder or consent to an application for a gate blocking such easement than in defending a lawsuit asserting that the Town enabled a property encroachment.

ARCOM's actions have placed both the Town and Noble in an untenable position legally, which can be avoided by memorializing the proffered policy. If Ms. Noble merely sues Kellogg, his defense will be that he acted with the Town's permission, forcing Noble to add the Town as a party defendant, which she is reluctant to do unless forced by Kellogg. An evaluation of the Town's litigation risks indicates that the proactive requirement of Ms. Noble's consent is wiser than a defensive reaction to future litigation which the Town will lose.

Respectfully submitted,

/s/ James K. Green, Esq.
Counsel for Cristina Noble

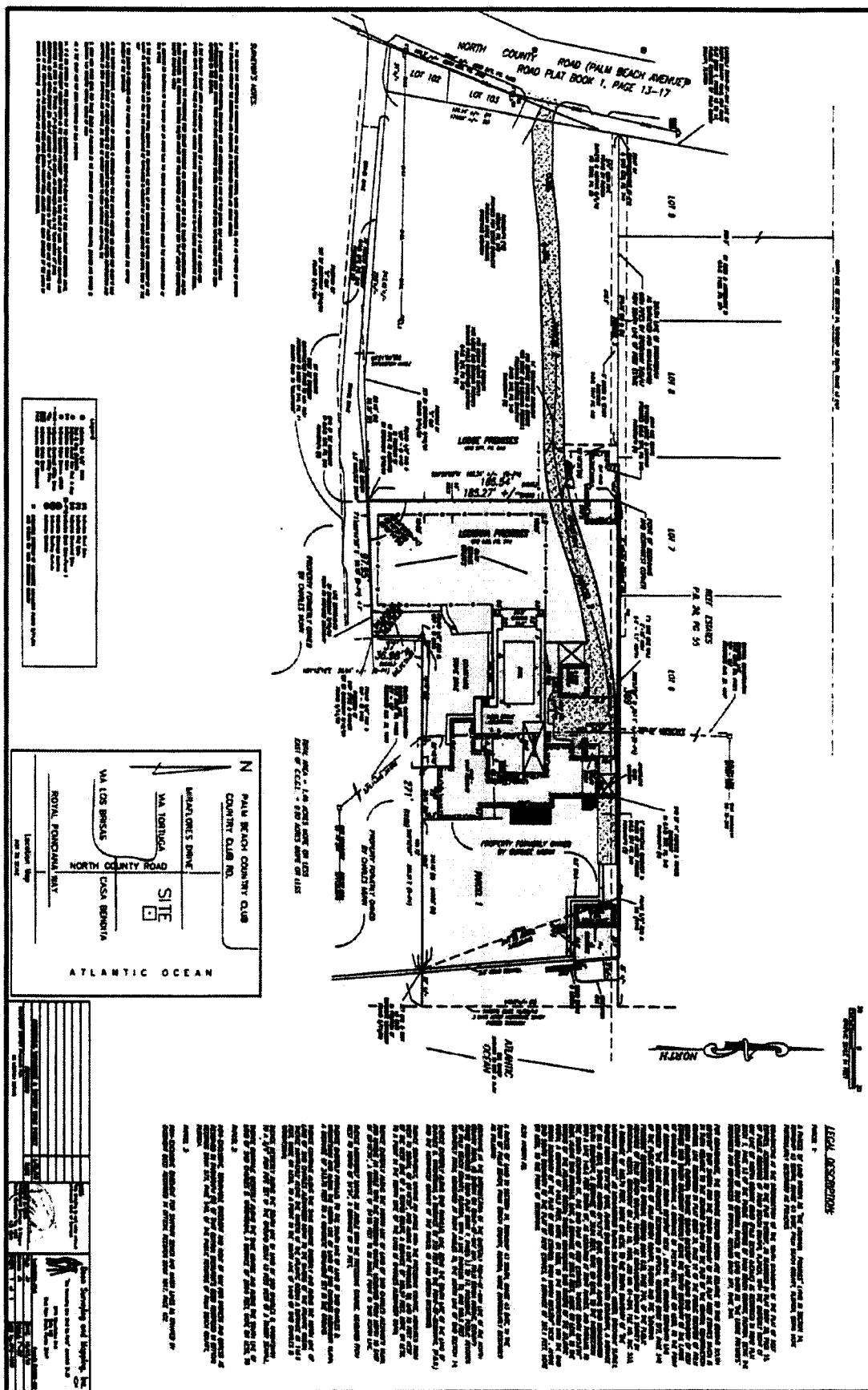
ccs. ***Via email (without record on appeal) to:***

Mayor Gail L. Coniglio
Michael J. Pucillo, President
Richard M. Kleid, President Pro Tem
Danielle H. Moore
Penelope D. Townsend
Robert N. Wildrick
John Randolph, Esq.
Roy Fitzgerald, Esq.

INDEX TO APPEAL
B-010-2015

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Submitted to Mr. Bumpstead
9/25/15



TAB B

**TOWN OF PALM BEACH
LANDMARKS PRESERVATION COMMISSION
360 South County Road, Palm Beach, FL 33480**

(561) 227-6414 for John Lindgren, Planning Administrator
(561) 227-6408 for Cindy Delp, Secretary for the Landmarks Preservation Commission

APPLICATION FOR CERTIFICATE OF APPROPRIATENESS

ADDRESS OF PROPERTY: 473 and 475 North County Road, Palm Beach, FL 33480

OWNER OF PROPERTY: Cristina De Heeren Noble

(Address) 473 North County Road

(Address) Palm Beach, FL 33480

(Phone) (561) 833-1116

APPLICANT'S NAME: Cristina De Heeren Noble

(Address) 473 North County Road

(Address) Palm Beach, FL 33480

(Phone) (561) 833-1116

ARCHITECT FOR PROJECT:

(Firm name) Smith Architectural Group, Inc.

(Architect's name) Jeffery W. Smith

(Architectural firm's address) 206 Phipps Plaza

(Architectural firm's address) Palm Beach, FL 33480

(Phone) (561) 832-0202 (E-Mail) jeff@smitharchitecturalgroup.com

- ☐ Check this box if you are an LPC member, and this project will result in a Voting Conflict for you.

TYPE OF PROJECT:

- | | |
|---|---|
| ☐ Restoration | ☐ Demolition (Interior) |
| ☐ Rehabilitation | ☒ Demolition (Exterior) |
| ☐ Reconstruction | ☐ Sign |
| ☐ Addition to historic structure | ☐ Awning |
| ☐ New Accessory Structure | ☐ Exterior Color Change |
| ☐ Landscape/hardscape | |
| ☐ Other: _____ | |

Is this a tax abatement project? (Must check one) Yes _____ Or No X

TAX EXEMPTION PROJECTS: PART 1-PRECONSTRUCTION APPLICATION MUST BE SUBMITTED AS PART OF THIS APPLICATION (Contact cdelp@townofpalmbeach.com for tax abatement forms)

Does this project require a Town Council approval? (Must check one) Yes _____ Or No X

DESCRIPTION OF PROJECT: (Please give a comprehensive description of the project which fully describes the changes to the landmarked building and/or landmarked property. Attach additional sheet if necessary.)

Complete demolition of a 1.176 S.E. nonconforming wood slat house in the NW corner of the property.

EXAMPLES OF SUBMISSION MATERIALS: SUBMIT THOSE WHICH ARE APPROPRIATE FOR YOUR SPECIFIC PROJECT.

**** (Please note that effective June 21, 2010, electronic submission is required. Please follow electronic submission instructions included in this application****

- ☐ Site Calculations (to be printed on Site Plan)
- ☐ Site Plan (must show any and all adjacent right-of-way)
- ☐ **Materials Removal Plan** (must delineate any and all materials that are to be removed or relocated in the construction process). This drawing shall be titled "Materials Removal Plan." If no original materials are scheduled to be removed or relocated, it shall be so noted on the floor plans.
- ☐ Survey (for new construction/additions, site changes, etc.)
- ☐ Existing and Proposed Elevations (on same page)
- ☐ Details such as columns, railings, awnings, signs, etc. drawn to scale
- ☐ Floor plans
- ☐ Photographs, Original and/or Existing
- ☐ Color Samples and/or Fabric Samples
- ☐ Other
- ☐ **NOTE: 14 Mini-Sets of Reduced Plans (paper copies) are to be submitted to the Town no later than 1 week prior to the meeting.**

The undersigned hereby certifies that the project described in this application, and as detailed by plans and other materials submitted, will be constructed in exact accordance with the aforesaid plans and specifications.

Signed by: _____
(Property owner)

OR _____
(Owner's Legally Authorized Agent*)

Printed name: _____

Printed Name: MICHAEL LACHMAN (L.A.)
FOR KRISTINA N. FLE

***If signed by a Legally Authorized Agent, must be accompanied by a Power of Attorney or statement from property owner authorizing the signer to sign on owner's behalf.**

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LANDMARKS PRESERVATION COMMISSION
TOWN COUNCIL CHAMBERS
SECOND FLOOR, TOWN HALL
360 SOUTH COUNTY ROAD, PALM BEACH

JANUARY 21, 2015
- - -

RECEIVED
MAR 25 2015
TOWN OF PALM BEACH
PZB DEPT

Reported By:
DAWN S. McCONNELL, Court Reporter
Notary Public, State of Florida

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(Thereupon, the following proceedings were had):

CHAIRMAN COOLEY: Application for certificate of appropriateness number 005-2015, owner, applicant Cristina De Heeren Noble, address 473 and 475 North County Road. Architect Smith Architect Group, Jeffrey W. Smith. Project description request for approval for demolition of a structure which is further described as: Complete demolition of a 1,176 square-foot nonconforming wood slat house in the northwest corner of the property, which extends onto the property at 475 North County Road. Other associated changes presented.

Has there been any ex parte communication?

MS. ALBARRAN: None.

CHAIRMAN COOLEY: I reached out and looked at the slat house on Sunday, but other than that, none.

MS. HUFTY: None.

MS. LORENTZEN: None.

MR. SILVIN: Saw it from the street.

MS. WYETT: None.

MR. STRAWBRIDGE: None.

CHAIRMAN COOLEY: Yes, sir.

MR. RAMPPELL: Good morning. Chairman Cooley

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APPEARANCES:

William O. Cooley, Chairman
Nikita Zukov, Vice Chairman
Jacqueline Albarran, Member
Edward Austin Cooney, Member
John T. Gannon, Member
Page Lee Hufty, Member
Rachel Lorentzen, Member
Richard Rene Silvin, Alternate Member
Carol N. Wyatt, Alternate Member
William J. Strawbridge, Jr., Alternate Member
On behalf of the Town of Palm Beach:
Metzger Randolph Massey Carroll & Steriacci
340 Royal Palm Way, Suite 100
Palm Beach, FL 33480-4323
Crandolph@Metzgerlaw.com
JOHN RANDOLPH, ESQ.
On behalf of Cristina De Heeren Noble:
Paul Rampell, LLC
400 Royal Palm Way, Suite 410
Palm Beach, FL 33480
Paul@Rampell-Law.com
PAUL RAMPPELL, ESQ.
On behalf of Christopher Kellogg:
Mirachek Fitzgerald Rose Konopka Thomas & Weis
505 S. Flagler Dr, Suite 600
West Palm Beach, FL 33401-5945
Rfitzgerald@mirachek-law.com
ROY FITZGERALD, ESQ.

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and good morning honorable members of the Landmark Preservation Commission. My name is Paul Rampell. I'm a lawyer here in Palm Beach and a resident and I represent Cristina Noble, the owner of the 475 North County Road.

I would respectfully request that Chairman Cooley recuse himself in this matter, since he and I are on opposite sides of two open active litigations, one in U.S. District Court, case number 14CD8140RLR, and the other in the judicial circuit court case number 2014CA013648. Thank you.

CHAIRMAN COOLEY: Mr. Randolph, do you have a comment on that?

MR. RANDOLPH: Under Florida statute you are required to recuse yourself if a - if your vote will inure to your special private gain or loss, otherwise you are not to recuse yourself.

So you need to consider whether or not your vote on this would inure to your special private gain or in addition, because it's a quasi judicial hearing, if you feel for some reason that you could not act fairly on this project as a result of the litigation that Mr. Rampell is discussing, you could choose to recuse yourself, but...

CHAIRMAN COOLEY: Thank you. Mr. Rampell, I'm

5 1 not going to recuse myself. Quite frankly, if I had 2 to recuse myself from every lawyer that I had a 3 lawsuit going on with, I would never be able to sit 4 up here. 5 So please go ahead. 6 MR. RAMPPELL: To move forward, we are 7 presenting the testimony of Jeffrey W. Smith of the 8 Smith Architect Group. Thank you. 9 CHAIRMAN COOLEY: Mr. Smith. 10 MR. SMITH: Good morning. For the record 11 Jeffrey Smith, president Smith Architect Group. I 12 would like to submit for the record the designation 13 report prepared by the Town of Palm Beach in 1980. I 14 would also like to submit as part of the record my 15 resume. And in that resume I'd like to point out 16 that I have projects that I've worked on now, seven 17 of them have won the Preservation Foundation's 18 Ballinger award; eight of them have won the Florida 19 Trust of Historic Preservation award; five of which 20 have won the AIA award; three of which were for 21 restored properties and that's the AIA State of 22 Florida award and I've won 16 American Institute of 23 Architects Palm Beach Chapter awards for excellence, 24 five of which were for historic properties. 25 For the record, I'd like to say I have served	7 1 I had and I think we should clear it up for the 2 record is the property line runs through the middle 3 of this property, there is a — is it a deed, codicil 4 or something in the deed that gives one owner the 5 authority to tear it down or the other owner and so 6 they are properly before us, correct? 7 MR. PAGE: I'm glad you brought up the 8 question, Mr. Cooley. I'm going to give you some 9 information and I may have to call upon Mr. Lindgren 10 or Mr. Randolph for some additional help. 11 The first slide that Mr. Smith had up on the 12 screen is more or less the front page of your mini 13 sets here and as you will see the slat house actually 14 straddles a property line and sits on two separate 15 properties. 16 There is indeed a private agreement between the 17 parties that goes back to the 1990s, I believe, John; 18 is that correct? 19 MR. RANDOLPH: 1960s. 20 MR. PAGE: 1960s, I'm sorry, specifying that 21 any one of these two property owners has the right to 22 demolish and has the right to traverse on to the 23 others properties to do the demolition. They have to 24 give proper notice to the other party that that is 25 going to occur.
6 1 as Chairman of the Landmark Preservation Commission 2 for five years from 1995 to the year 2000. I have 3 personally visited the site at Luana numerous times. 4 I have been retained by my client, Cristina Noble, to 5 give advice on various landmark issues regarding the 6 property at 473 North County Road. I was asked to 7 analyze the slat house at her request. And based on 8 my observations and experiences, it's my opinion the 9 slat house should be demolished for the following 10 reasons; number one, it has no historic or 11 architectural value at all. It is a noncontributing 12 structure to the landmark status of Luana. 13 The demolition of this satisfies all the 14 criteria that is listed in section 54-125 of the 15 town's code. It is so insignificant that it was not 16 even mentioned in the designation report prepared in 17 1980. It's an eyesore, unsightly and it detracts a 18 landmark house. It is structurally unsound and it's 19 a threat to the safety through collapse and/or fire 20 and fails to conform to our building code and our 21 zoning code. 22 My opinion it's illegal. It's simply a 23 handyman special and I respectfully submit that you 24 request approval of the demolition. 25 CHAIRMAN COOLEY: Thank you. The one question	8 1 This is a very unusual situation. It's not one 2 that we see on a regular basis. So we had the 3 opportunity to visit with Mr. Randolph yesterday to 4 say, would there be any legal concern with this 5 situation going forward with the request and he asked 6 a question about which party or parties signed the 7 application. My understanding is that only one party 8 signs the application and that would be the Nobles on 9 the coast. We don't know whether that agreement goes 10 back to the 1960s, it might have been superseded by 11 another agreement saying something different to him. 12 So I might call Skip to see what legal advice 13 for us about proceeding forward. 14 CHAIRMAN COOLEY: Let me — let me do this 15 first, let me ask Mr. Rampell, can you tell us that 16 the agreement has not been superseded, that the 17 agreement is in full force and effect? 18 MR. RAMPPELL: Yes, sir, I can say that. 19 CHAIRMAN COOLEY: And have the other neighbors 20 been notified? 21 MR. RAMPPELL: Yes, sir. 22 CHAIRMAN COOLEY: Okay. Thank you. 23 MR. RAMPPELL: May I also add that I've been in 24 communication with the lawyer for the neighbor and 25 they are anticipating a demolition of this slat

1 house. 2 CHAIRMAN COOLEY: Thank you, Skip. 3 MR. RANDOLPH: Well, I was brought into this 4 yesterday in a conversation with Mr. Lindgren and Mr. 5 Page and the application was accepted by Mr. Lindgren 6 on behalf of both property owners and when I learned 7 that I stated we really usually don't pay attention 8 to private documents between property owners. We 9 always base our decisions based on our own codes 10 because if we had to do a title search in regard to 11 every property to find out what documents are out 12 there, we would be hamstrung. 13 So I indicated it's my opinion that an 14 application like this coming from two property owners 15 should have the signature and approval of both 16 property owners. And I don't know -- I don't know 17 that it does. But I suggested to them that if the 18 other property owner were here and could state 19 whether or not they had an objection or not, that 20 would be helpful or perhaps there should be a 21 continuance of this in order to figure out whether or 22 not -- I mean, we heard a statement here that this 23 document has not been superceded. But, again, we 24 don't do title searches to make that determination. 25 We base applications on our codes and these	9 1 space would be better than this delapidated 2 structure. 3 We will be glad to prepare and submit to you a 4 chain of title to show that the 1960 deed remains in 5 effect. And we doubt that we will be able to obtain 6 a signature on the landmark's certificate of 7 appropriateness application from the neighbor because 8 of the dispute between them; however, it seems to me 9 that all we're asking for today is your approval of 10 the demolition of the landmark as it sits on a 11 landmark site. 12 Now, it seems to me that your jurisdiction over 13 the non-landmark site would mean that that's not so 14 relevant today. Thank you. 15 CHAIRMAN COOLEY: Okay. Ms. Lorentzen? 16 MS. LORENTZEN: It's -- I'm referring to the 17 words you use because you said they anticipate the 18 demolition, but do they agree to the demolition? 19 MR. RAMPELL: I think they accept the fact that 20 we have the right to unilaterally demolish the slat 21 house under the clear provisions of the 1960 deed and 22 what they have written to me is a request that 23 certain components of the slat house be preserved or 24 respected on their side because it's their intention 25 to rebuild part of it on their side after the
10 1 applications usually come in the name of both 2 property owners as opposed to someone coming in and 3 asking it to -- for both properties. 4 So that's my concern. I also understand 5 there's litigation pending between these properties 6 owners and I don't know what that involves or whether 7 it involves this particular issue or not. 8 So I think we need to learn more about. 9 CHAIRMAN COOLEY: Did you want to comment on 10 that, Mr. Rampell? 11 MR. RAMPELL: Yes, sir. There is -- there's a 12 dispute between the property owners that -- over 13 various issues, but the dispute pertaining to the 14 slat house is the claim by the neighbor that -- that 15 he's being denied access to the east side of the slat 16 house due to a new gate that's been installed. The 17 east side of the slat house -- he can still access 18 the west side, but his objection is to the east side. 19 And since there's a dispute about access as well as 20 some other issues, we thought it would be best to 21 simply stop sharing the slat house and demolish it. 22 It is all of those things that Mr. Smith 23 testified to; it is an eyesore; it is nonconforming; 24 it is unsound and, therefore, we think the simplest 25 solution is to demolish it. We believe the open	12 1 demolition. 2 I have an e-mail from Lou Moratchek to me to 3 that effect that after the demolition, they're 4 planning on rebuilding their side. But I don't 5 intend to speak for them because is Mr. Kellogg here 6 and his lawyer, do you wish to comment on your 7 position? 8 MR. FITZGERALD: Good morning. Roy Fitzgerald 9 on behalf of Mr. Kellogg who will testify shortly. 10 We do object and we object for a number of reasons. 11 We have contacted Ms. Noble's attorney. There's a 12 beam that runs from an existing shed that has not 13 been part of the slat house to the slat house. If 14 the slat house is demolished, it will be effecting 15 the structural integrity of the shed house, which is 16 on Mr. Kellogg's property. We've tried to work with 17 them, so we do have an objection to just demolishing 18 the slat house on both sides of the property line. 19 So let me have Mr. Kellogg tell you his 20 objections. 21 CHAIRMAN COOLEY: Let me ask you one question. 22 Do you -- do you agree that there is a written 23 document that gives one party or the other the 24 authority to tear it down? 25 MR. FITZGERALD: There is a 1960 easement that

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1 allows either party on ten days notice to demolish
 2 the slat house. Since then, a hedge has been
 3 attached to the slat house, which is part of the slat
 4 house.
 5 So if you take down the slat house, you are
 6 going to effect Mr. Kellogg's shed and we object for
 7 that reason among others.
 8 Let me have Mr. Kellogg speak.
 9 CHAIRMAN COOLEY: Thank you. Mr. Kellogg.
 10 MR. KELLOGG: Good morning.
 11 CHAIRMAN COOLEY: Good morning.
 12 MR. KELLOGG: This proposal goes beyond, I
 13 think, the authority of the Landmark because I'm not
 14 a landmark property. So I'm not so sure how Landmark
 15 is going to approve demolishing my property. On my
 16 side of the property is a tool shed, which I believe
 17 were built around the same time as the slat house and
 18 that has a cement floor and is deceptively marked as
 19 part of a slat house. It's clearly a tool shed with
 20 a cement floor.
 21 I object because -- and I can -- would
 22 recommend to the proper authority, whether it's town
 23 council or whatever that I would rebuild and take
 24 down my side of the slat house to avoid the damage to
 25 the plants and garden equipment and so forth.

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1 So I don't see -- I just want to enter my
 2 objection. Thank you.
 3 CHAIRMAN COOLEY: Thank you.
 4 THE CLERK: Your full name for the record, sir.
 5 MR. KELLOGG: Christopher Gage Kellogg. Thank
 6 you.
 7 CHAIRMAN COOLEY: Mr. Zukov?
 8 MR. ZUKOV: Thank you, sir. I believe that
 9 we're not a court of law here. And I think that we
 10 should have an architect to come and present a
 11 demolition plan and show us what they want to
 12 demolish and how and I believe it should be signed by
 13 both owners, I mean, this is right on the property
 14 line and an architect should show you how he's going
 15 to preserve one part, if the owner wishes to leave
 16 one part alone.
 17 So I don't know how we can resolve this except
 18 postpone it, defer it until you resolve it between
 19 the two owners.
 20 CHAIRMAN COOLEY: Mr. Rampell, do you want to
 21 comment on that or Mr. Smith?
 22 MR. SMITH: It is my belief that the footprint
 23 we're showing was the original slat house and at one
 24 time because there are some plans that were in the
 25 Town that we found of the foundations and they're

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1 pretty sketchy, but you can make it out. And that at
 2 some time a handyman enclosed part of the slat house
 3 and put in an actual roof on the slat house at that
 4 location to enclose the structure. Okay. But it's
 5 my opinion that the whole thing was the original slat
 6 house and part of it was converted and put T & G
 7 plywood on the side to enclose it and that's why
 8 we're asking for the entire structure to be
 9 demolished.
 10 CHAIRMAN COOLEY: Could you -- excuse me, go
 11 ahead.
 12 MR. ZUKOV: This is -- we believe you, okay, we
 13 believe you but that doesn't make it right for us to
 14 allow a demolition on two properties. That's not --
 15 that's a legal matter.
 16 MR. SMITH: That's correct. Let the lawyers
 17 work it out.
 18 CHAIRMAN COOLEY: Mr. Strawbridge?
 19 MR. STRAWBRIDGE: It seems to me that maybe
 20 what we ought to do is let Skip tell us where we
 21 should go with this. It seems to be way beyond our
 22 expertise and so forth and so on and I wouldn't want
 23 to --
 24 CHAIRMAN COOLEY: I've got one question that --
 25 go ahead, please.

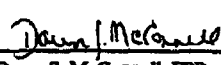
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1 MR. CANTIN: Good morning. Ralph Cantin for
 2 the record. I have not won any Ballinger awards.
 3 You can -- can I have this document here -- actually
 4 the photo in front of you shows the shed and there
 5 are two separate foundations. I would have a sense
 6 and Mr. Zukov is welcome to come out to the site with
 7 us for the next month's meeting that the shed
 8 predates the footing for the slat house and that
 9 exterior that you see there is wood finished shed. I
 10 personally have no objection to demolishing the slat
 11 house, which includes about ten feet on Mr. Kellogg's
 12 property. It's really the shed that's more of a
 13 concern, so if you grant approval for demolishing
 14 just the slat house, we would like to take down the
 15 slat house on our property, so we can keep the shed
 16 in place and that's really what it comes down to and
 17 anything more than that would be aggressive.
 18 CHAIRMAN COOLEY: Do you have any problem with
 19 that if they demolish their half and you demolish
 20 your half?
 21 MR. RAMPPELL: The proposal is that we demolish
 22 our side and they demolish their side?
 23 CHAIRMAN COOLEY: I believe that's what I
 24 understand; is that what you're saying?
 25 MR. CANTIN: That would be acceptable to us,

17 1 this way I can keep the major beams that are 2 connected to the shed, we'll take down our part, they 3 can take down their part and we'll all walk away from 4 here. 5 CHAIRMAN COOLEY: It's like Solomon, you cut 6 the shed in half. 7 MR. CANTIN: Actually, we had to take down of 8 at least ten feet of it on our property because 9 there's a ridge pole that goes ten feet into the 10 Kellogg's property and we're willing to take that 11 down in advance of them taking down the shed. The 12 shed is a nonconforming structure, if they want to 13 get rid of it, get rid of it. 14 CHAIRMAN COOLEY: Do you agree with that? 15 MR. RANDOLPH: I think we've got a deal here 16 now how do we -- 17 MR. ZUKOV: It's better than somebody 18 contracted to come in on one side and another 19 contractor coming from the other side and they're 20 going to meet at the property line with a beam going 21 across; how is that going to work? 22 CHAIRMAN COOLEY: I think if the two parties 23 agree, I think they can figure it out, this isn't -- 24 MR. ZUKOV: They should agree with it legally. 25 CHAIRMAN COOLEY: But Mr. Zukov, I think that	19 1 the Mizner touches to the mansion. It has nothing to 2 do with the landmark. It's just an eyesore. 3 CHAIRMAN COOLEY: Ms. Lorentzen, go ahead, 4 please. 5 MS. LORENTZEN: Well, I was going to -- I was 6 going to agree with that, but I don't know how it 7 gets worked out legally. I don't believe it gets 8 worked out here, but it does seem that they need to 9 do their work first, not that -- but I don't think we 10 have the right to get involved with this. 11 MS. ALBARRAN: I mean, I think maybe they are 12 at least -- they can get a little bit of a feedback 13 from us that if they work it out that we would not 14 have a problem with it being demolished, maybe if 15 they get that feedback so they can move forward 16 showing that. 17 CHAIRMAN COOLEY: Could I suggest this, we've 18 got a couple of other hearings that will take quite a 19 while, could you two gentlemen just kind of go out in 20 the back and see if you can work this out and then 21 come back? 22 MR. RAMPPELL: Certainly. 23 CHAIRMAN COOLEY: I'd like to move to lay this 24 over until the last item? 25 MR. RAMPPELL: Excuse me, when can we come back?
18 1 his proposal is that they'll take steps to preserve 2 their portion of the slat house or their shed -- not 3 the slat house -- necessarily. 4 MR. CANTIN: Well, that becomes the legal 5 issue, you know, I'm saying that the shed is not part 6 of the slat house. This is more of a survey 7 basically saying the same thing. I think it's out of 8 spite and aggressiveness to come into our property, 9 let the lawyers work that out, your Landmark, take 10 down the shed, take down the slat house that's on the 11 neighbor's property that's on your property. 12 CHAIRMAN COOLEY: Mr. Silvin? 13 MR. SILVIN: Unless I have completely 14 misunderstood our function here, I don't believe that 15 we have any authority in the legal areas. Our 16 function is to decide whether a structure is suitable 17 to be on landmark property or not and what if the 18 removal would have an impact on. I don't see that 19 this discussion is relevant to us, as interesting as 20 it is. 21 MR. RAMPPELL: I agree with you and all we're 22 asking for is whether you deem it to be appropriate 23 to remove an eyesore that has no contributing value 24 whatsoever to a landmark. This is -- it's far 25 removed from the mansion. It isn't consistent with	20 1 CHAIRMAN COOLEY: In half an hour, 20 minutes. 2 MR. SMITH: This entire property is landmarked, 3 therefore, anything on the property is considered a 4 landmark, even though it wasn't even mentioned in the 5 designation report where every other accessory 6 structure on the property was mentioned in the 7 designation report, except this slat house. 8 CHAIRMAN COOLEY: Mr. Randolph? 9 MR. RANDOLPH: Before you send them away, I'd 10 like you to send them away with some direction and my 11 concern is that one applicant is applying for 12 demolition on two properties. And I understand that 13 they have that 1960 document, but we don't get into 14 those documents from the staff's standpoint. 15 So if they can work this out in a way that the 16 people -- the Kellogg's can agree that this 17 application can move forward, that even if they would 18 state that orally today because they reached an 19 agreement in regard to the adjacent property, that's 20 fine, but I think to protect the Town, I don't want 21 to see the Town get in the middle of a lawsuit as to 22 whether or not we had jurisdiction to knock property 23 down on both properties. 24 CHAIRMAN COOLEY: So what do you suggest, they 25 both have to sign --

21 1 MR. RANDOLPH: I'm suggesting that if you don't 2 defer this until that can all be worked out, but if 3 you want to send them away to try to work this out in 4 the next half hour that one of the things we'd be 5 looking for when they come back is an agreement from 6 the Kellogg's that they can go forward with the 7 demolition on both properties subject to whatever 8 agreement they worked out. 9 CHAIRMAN COOLEY: Mr. Rampell, what is your 10 comment on that? 11 MR. RAMPPELL: Well, I'm glad to meet with Mr. 12 Kellogg and his counsel. 13 CHAIRMAN COOLEY: Mr. Kellogg is that okay with 14 you? 15 MR. KELLOGG: Yes, sir, it is. As you know, 16 it's my interest to take down our portion of the slat 17 house and it's not in their -- 18 CHAIRMAN COOLEY: We'll just lay this over for 19 a while. Give us the hi sign when you're ready and 20 we'll put you back on. 21 (A break was taken from 11:03 a.m. to 11:14 22 a.m.) 23 MR. RAMPPELL: Thank you, Mr. Chairman, I think 24 we have an agreement. Basically both parties agree 25 that a certificate of appropriateness can be issued.	23 1 other structures that he would not have to go to 2 ARCOM. 3 CHAIRMAN COOLEY: Could we put that on the 4 record, please, Mr. Randolph what your comment was, I 5 think it's important. 6 MR. RANDOLPH: Yes. Hearing what 7 Mr. Fitzgerald said concerned me because I thought 8 perhaps they first have to go to ARCOM because their 9 property is not landmark. Mr. Lindgren has 10 indicated, no, they will not have to go to ARCOM that 11 he can -- because it's not visible from the street or 12 from other properties, correct, Mr. Lindgren? 13 MR. LINDGREN: That's correct. 14 MR. RANDOLPH: And therefore, you know, perhaps 15 your motion could be if you're inclined to allow 16 demolition, it could be subject to their having gone 17 forward with their demolition first; is that what -- 18 is that the agreement you came to? 19 MR. RAMPPELL: Yes. 20 MR. FITZGERALD: That's what we would like. 21 CHAIRMAN COOLEY: I would entertain a motion 22 that we approve the application for certificate of 23 appropriateness number 005--2015 subject to one, 24 having both parties sign the application subject to, 25 two, Mr. Kellogg going first and we'll give him three
22 1 Mr. Kellogg will demolish his side of -- his side -- 2 or his half of the slat house and we will demolish 3 our half -- our side of the slat house. 4 CHAIRMAN COOLEY: Would we -- If we approve it, 5 could we request that you both have signatures on the 6 application? 7 Yes, sir. 8 MR. FITZGERALD: We do have an agreement in 9 principle, but here's kind of the rock, I mean, if we 10 want to take down our side first -- 11 CHAIRMAN COOLEY: And if we agree -- 12 MR. FITZGERALD: -- which has nothing to do 13 with this committee, I mean, I'm in an impossible 14 position because if they don't allow us to take down 15 our side first, then I have no recourse. 16 CHAIRMAN COOLEY: When would you be starting to 17 take your side down -- 18 MR. FITZGERALD: We can take it down within two 19 weeks. 20 CHAIRMAN COOLEY: Would that be agreeable to 21 you? 22 MR. RAMPPELL: I'm sorry, do we have to go to 23 ARCOM -- 24 MR. RANDOLPH: He's asking whether he has to go 25 to ARCOM and the answer is, no, because it's behind	24 1 weeks to demolish and then you folks are on next. 2 Did any -- would somebody care to make a 3 motion? 4 MS. ALBARRAN: So moved. 5 MS. HUFTY: I'll second. 6 CHAIRMAN COOLEY: There's a motion and a 7 second. Any discussion? Call the roll on the 8 motion. 9 MS. HUFTY: I'd just like to make one point. 10 CHAIRMAN COOLEY: Yes, ma'am. 11 MS. HUFTY: There's been a lot of discussion in 12 this town and I think it's quite marvelous even if 13 it's not overall to warn parties represented by 14 lawyers are actually able to work it out and I thank 15 you all for talking to each other. It was very 16 helpful. I'm thrilled. 17 MR. PAGE: Can I ask for one clarification, 18 please. 19 CHAIRMAN COOLEY: Yes, sir. 20 MR. PAGE: The condition of three weeks to 21 demolish, I don't know how quickly the -- Mr. Kellogg 22 and his representatives will be able to put together 23 an application for demolition, perhaps we can clarify 24 that they have to submit their demolition permit 25 within three weeks from today and act upon it in a

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25 1 timely fashion or something to that effect. 2 CHAIRMAN COOLEY: Is that agreeable? 3 MR. FITZGERALD: That's fine with us. 4 MS. ALBARRAN: I make the motion to say that. 5 CHAIRMAN COOLEY: I just -- I didn't want to 6 get in the position where if they have to go first 7 and they second and they never go and then you wind 8 up right back here again. So some way we have to 9 have a trigger to get you guys -- 10 MR. FITZGERALD: The three-week requirement to 11 get the demolition permit is acceptable to us. 12 MR. ZUKOV: I guess the motion is if you both 13 sign the demolition within two weeks, right? 14 MR. RANDOLPH: They're going to sign that right 15 away, I mean, right? 16 MR. FITZGERALD: We'll sign it subject to we go 17 first and we get three weeks to get our permit. 18 MR. RANDOLPH: Right. 19 CHAIRMAN COOLEY: Okay. Call the roll. 20 MR. LINDERGAN: Well, one point of 21 clarification for demolition of the entire 22 structures, although this is barely a structure, 23 there is a prohibition of demolition on entire 24 structures from 1, December through February 28th, so 25 the earliest they could demolish it would be	27 1 going to work this out. 2 Call the roll. 3 THE CLERK: Ms. Albarran. 4 MS. ALBARRAN: Yes. 5 THE CLERK: Ms. Hufty? 6 MS. HUFTY: Yes. 7 THE CLERK: Mr. Cooney? 8 MR. COONEY: Yes. 9 THE CLERK: Mr. Gannon? 10 MR. GANNON: Yes. 11 THE CLERK: Ms. Lorentzen? 12 MS. LORENTZEN: Yes. 13 THE CLERK: Mr. Zukov? 14 MR. ZUKOV: Yes. 15 THE CLERK: Mr. Cooley? 16 CHAIRMAN COOLEY: Yes. 17 Thank you all very much for your support and 18 getting together on this issue. We are down to other 19 business. 20 (The meeting concluded at 11:20 a.m.) 21 - - - 22 23 24 25
26 1 March 1st. 2 MR. RANDOLPH: And thank you for reminding me 3 of that. 4 MR. ZUKOV: The concrete slab is to be removed 5 as well as everything? 6 MR. FITZGERALD: No, the concrete slab that's 7 part of the shed, that's staying. 8 MS. ALBARRAN: I can amend the motion that 9 basically they submit for permit. 10 MR. ZUKOV: We did. 11 MS. ALBARRAN: No, no, change it so that 12 basically they should start demolition March 1st. 13 MR. LINDERGAN: Yes, ma'am. Complete it within 14 the March month. 15 MS. ALBARRAN: Completed within the month of 16 March. 17 CHAIRMAN COOLEY: Okay. That's good. 18 MR. RANDOLPH: We're talking about two partial 19 demolitions? 20 MR. LINDERGAN: They are and then they add up 21 to a whole at the slat house. 22 MS. ALBARRAN: I think for us -- 23 MR. RANDOLPH: I'll withdraw that. 24 MS. ALBARRAN: So ruled. 25 CHAIRMAN COOLEY: I take it you gentlemen are	28 1 CERTIFICATE 2 - - - 3 4 I, DAWN S. McCONNELL, Court Reporter, State of 5 Florida at Large, certify that I was authorized to and 6 did stenographically report the foregoing proceedings and 7 that the transcript is a true and complete record of my 8 stenographic notes. 9 10 Dated this 10th day of March, 2015 11 12 13 14 15 16 17   18 Dawn S. McConnell, FPR 19 20 21 22 23 24 25

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33480 2:14			
33480-4323 2:10			
340 2:9			
360 1:2			
4			
400 2:13			
410 2:13			
473 3:6 6:6			
475 3:6,13 4:4			

TAB D



APPLICATION FOR ARCHITECTURAL COMMISSION REVIEW
(Please refer to attached Electronic Submission Instructions)

1. Project Address: 475 N COUNTY RD
 2. Name of the Applicant: CHRISTOPHER + VICKI KELLOGG
Address: 475 N COUNTY RD Telephone#: 844-4477
 3. Name of Architect/Engineer: RALPH CANTIN, AIA
Phone #: 310-8039 Architect's e-mail address: RALPH.CANTIN@GMAIL.COM
 4. Brief description of the project: (The exact wording in this section will appear on the ARCOM agenda. Please include a comprehensive summarized description of the project which describes the changes)
NEW BLACK ANODIZED ALUMINUM GATE ON
SERVICE DRIVEWAY
 5. Are there any Town Council approvals necessary to complete the project? YES OR NO
Please provide variance, site plan review, and/or special exception numbers: _____
 6. Number of stories: _____ Roof material (type): _____ Const. Type: CBS ?
Frame?: _____ Colors: _____ Building: _____ Roof: _____ Trim: _____ Shutters: _____
also, please provide the above information on the cover sheet of the ARCOM plans.
 7. Signature: (property owner or owner's legally authorized agent) [Signature]
*If signed by a legally authorized agent, must be accompanied by a Power of Attorney or statement from property owner authorizing the signer to sign on owner's behalf.
- ☐ Please check box if you are an ARCOM member, and this project will result in a Voting Conflict for you.

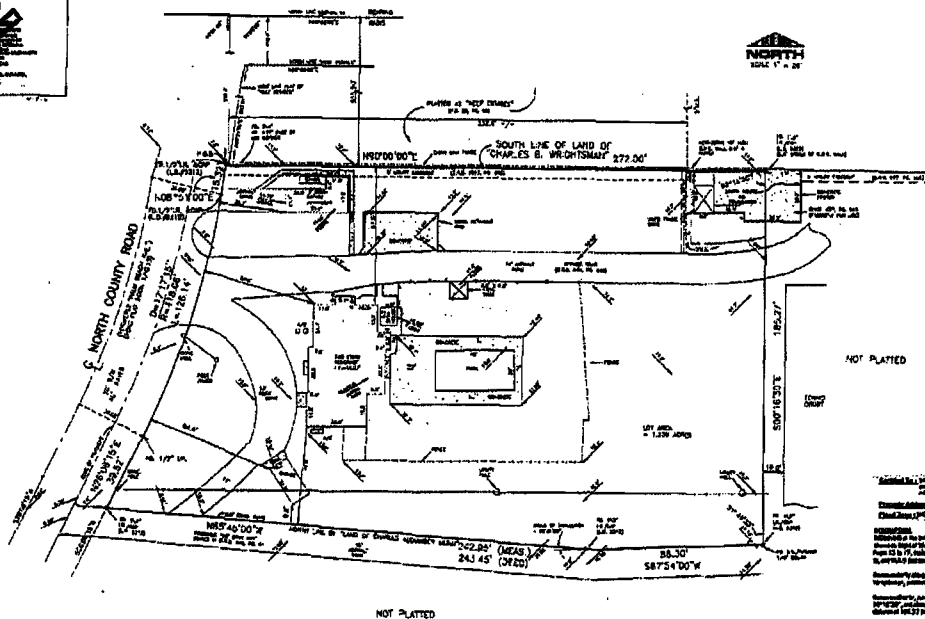
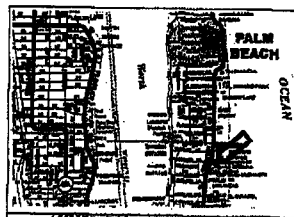
(Please use the attached checklist to ensure that your application is complete. Incomplete applications may cause a deferral of the request. If you have any questions regarding the requirements, please call John Lindgren, at 227-6414 or Cindy Delp at 227-6408 well in advance of the submission deadline.)

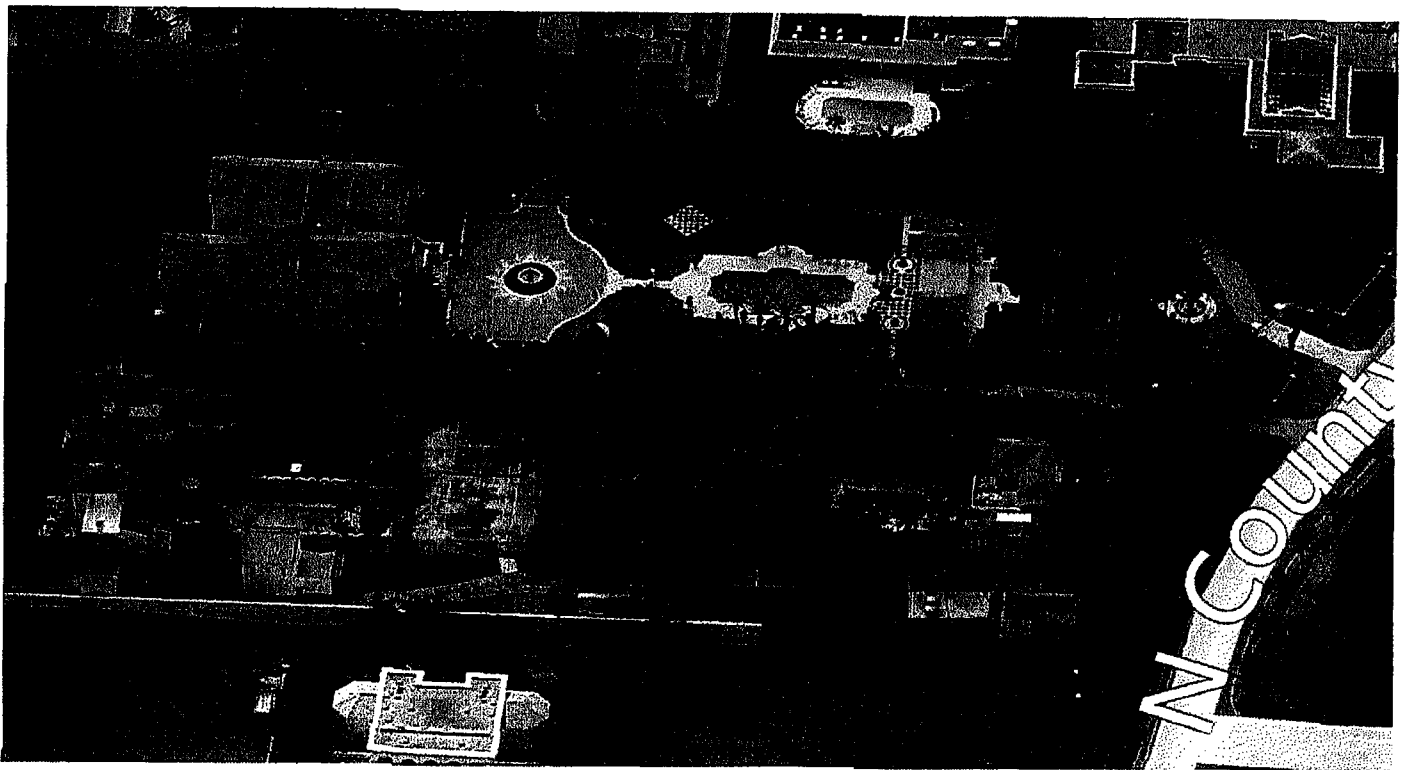
FEES:	Major projects:	\$750.00
	Landscape/Hardscape/Site Lighting:	\$750.00
	Minor projects (awnings, signs, fenestration):	\$250.00
	Deferred projects:	no charge

SUBMISSION DEADLINES: (Please refer to attached electronic submission instructions)
Major projects: - 30 days prior to the meeting, or as listed on the Town's Architectural Commission Meeting Dates and Filing Deadlines list available at www.townofpalmbeach.com
Minor projects: - Two weeks prior to the next scheduled meeting
Deferrals: - No later than one week prior to the scheduled meeting (with changes clouded)
Revisions: - No later than one week prior to the scheduled meeting (with changes clouded), together with a written narrative that succinctly details the changes made.

MEETING DATES: Please see ARCHITECTURAL COMMISSION MEETING DATES AND FILING DEADLINES on Town website at www.townofpalmbeach.com

The Architect and/or Landscape Architect is advised that he/she will be responsible for acknowledging, prior to the issuance of a Certificate-of-Occupancy, that the as-built design matches the original ARCOM approved design, with the exception of other ARCOM or staff approvals.

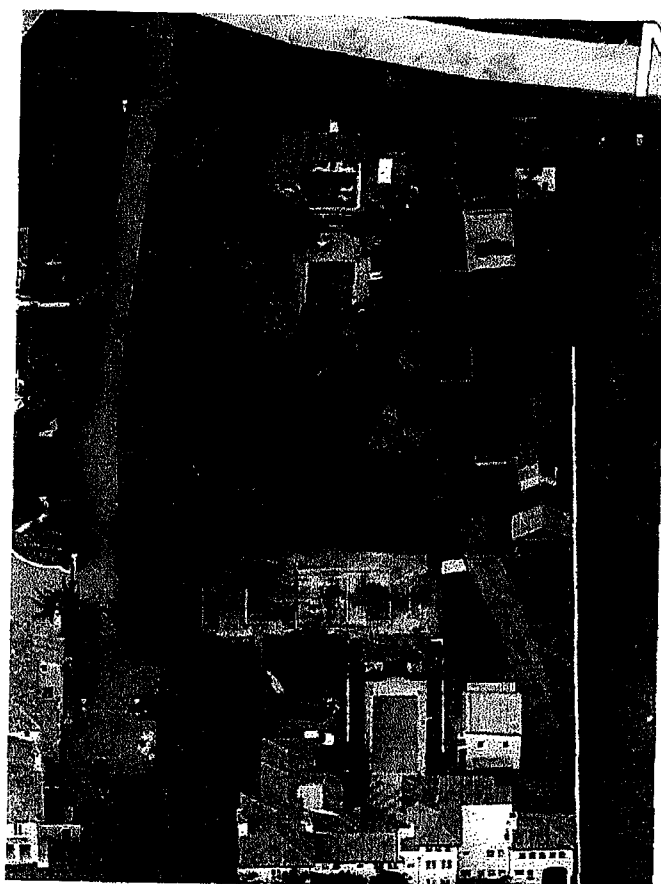
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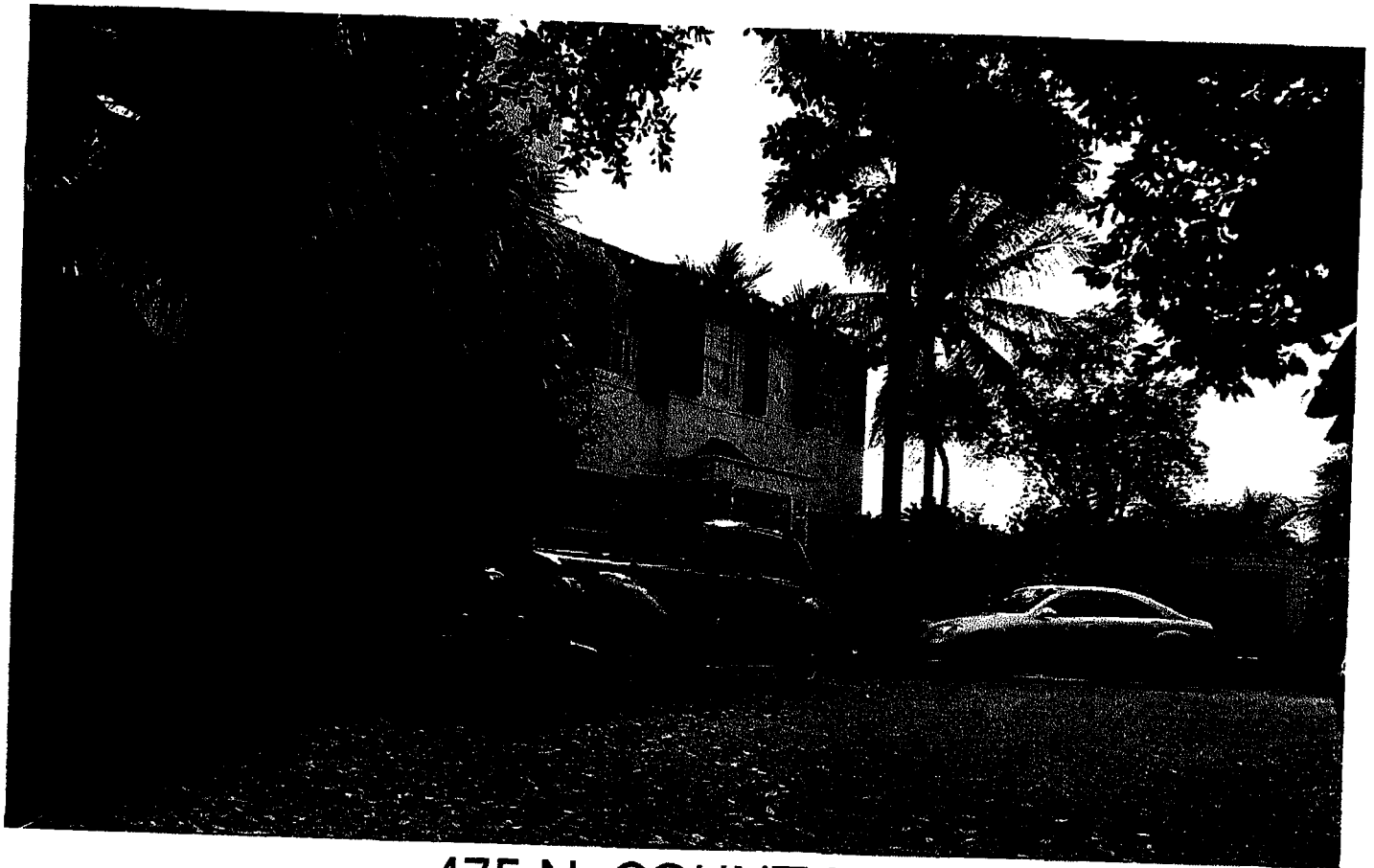
AERIAL FROM NORTH



AERIAL FROM WEST



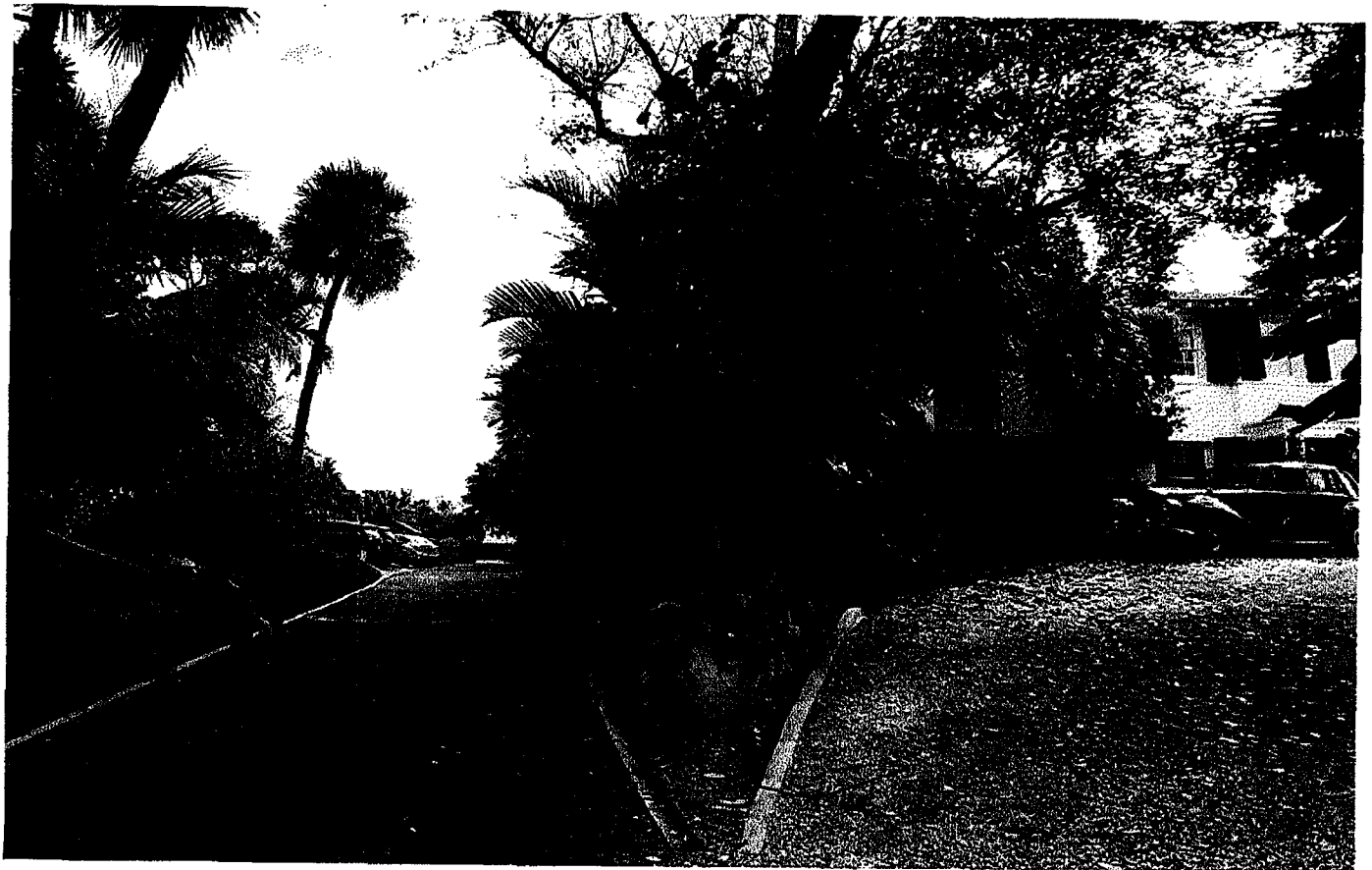
AERIAL FROM EAST



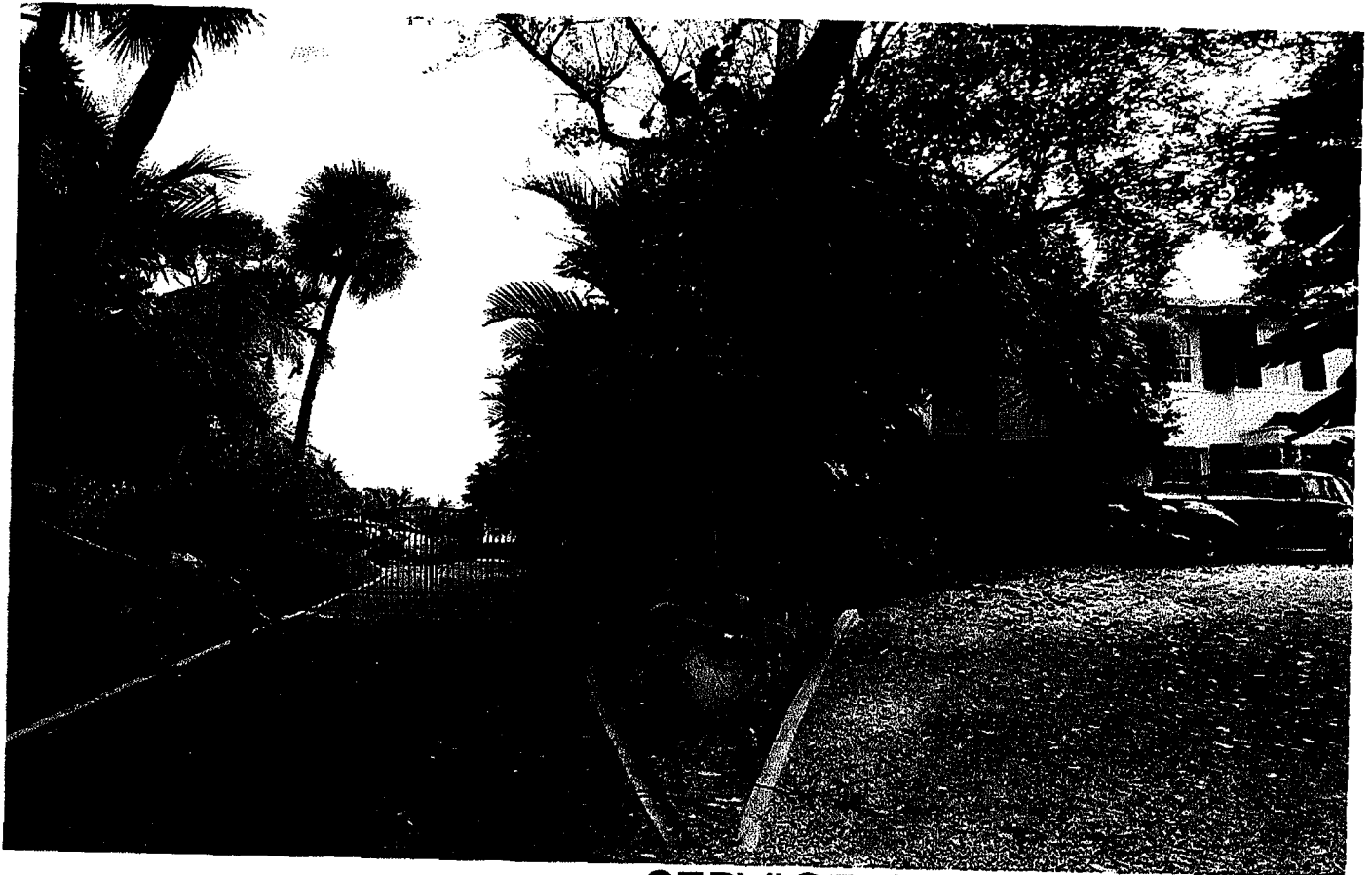
475 N. COUNTY FRONT ELEVATION



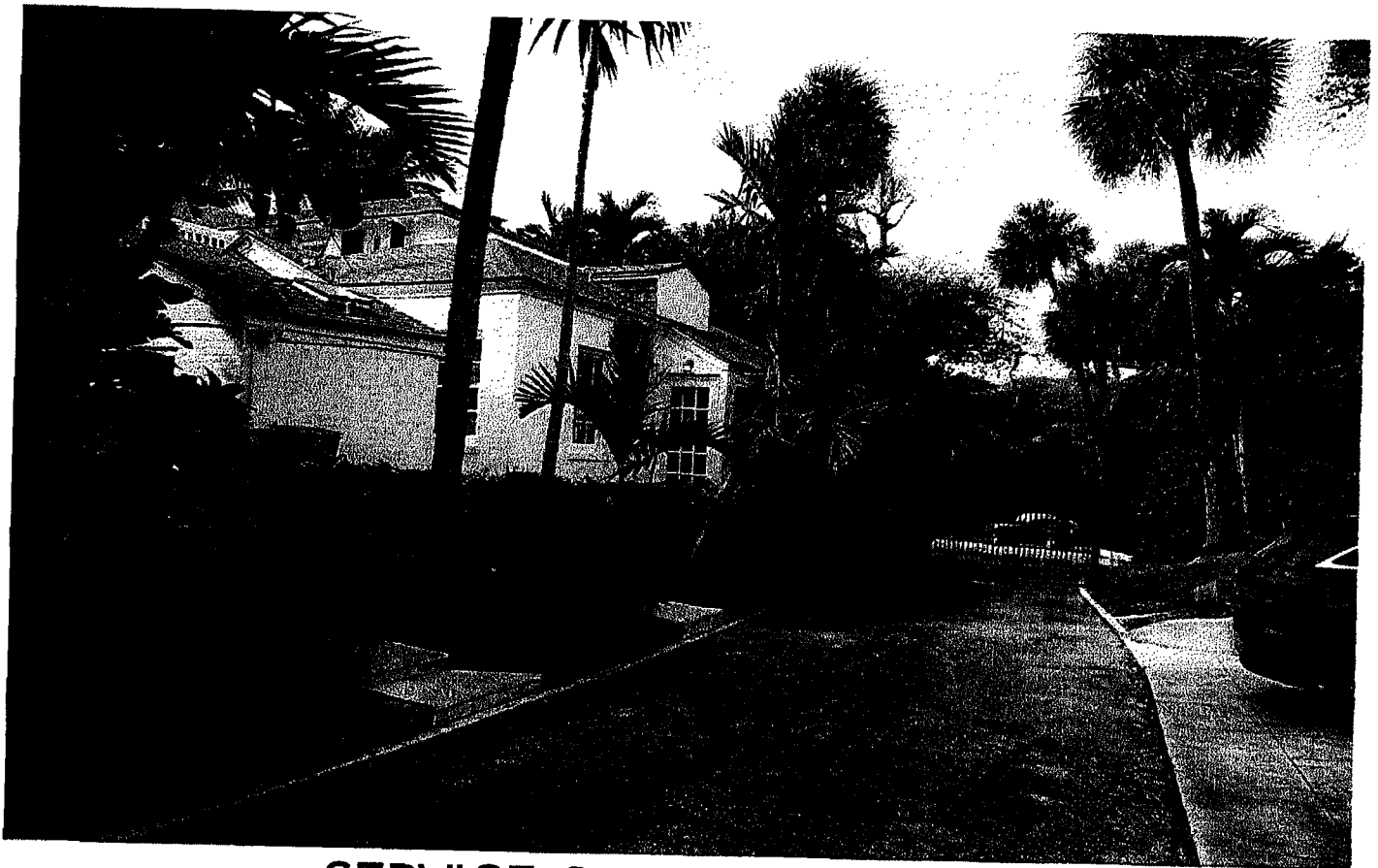
ENTRANCE TO 455 & 473 N. COUNTY RD



EXISTING SERVICE DRIVE



SERVICE GATE RENDERING



SERVICE GATE RENDERING (TO STREET)

ARCHITECTURAL COMMISSION
TOWN COUNCIL CHAMBERS
SECOND FLOOR, TOWN HALL
360 SOUTH COUNTY ROAD, PALM BEACH

FEBRUARY 25, 2015

- - -

Reported By:
DAWN S. McCONNELL, Court Reporter
Notary Public, State of Florida

WWW.USLEGALSUPPORT.COM
561-835-0220

1 APPEARANCES:

2
3 Robert J. Vila, Chairman
4 Ann L. Vanneck, Vice Chairman
5 Kenn Karakul, Member
6 Richard Sammons, Member
7 Peter I.C. Knowles, Member
8 Martin D. Gruss, Member
9 Robert N. Garrison, Member
10 Alexander C. Ives, Alternate Member
11 Michael B. Small, Alternate Member
12 Maisie Grace, Jr., Alternate Member

13 On behalf of the Town of Palm Beach:

14 Mettler Randolph Massey Carroll & Sterlacci
15 340 Royal Palm Way, Suite 100
16 Palm Beach, FL 33480-4323
17 Crandolph@Mettlerlaw.com
18 JOHN RANDOLPH, ESQ.

19 On behalf of Cristina De Heeren Noble:

20 Paul Rampell, LLC
21 400 Royal Palm Way, Suite 410
22 Palm Beach, FL 33480
23 Paul@Rampell-Law.com
24 PAUL RAMPELL, ESQ.

25 On behalf of Christopher Kellogg:
Mrachek Fitzgerald Rose Konopka Thomas & Weis
505 S. Flagler Dr, Suite 600
West Palm Beach, FL 33401-5945
Rfitzgerald@mrachek-law.com
ROY FITZGERALD, ESQ.

1 (Thereupon, the following proceedings were
2 had):

3 - - -

4 CHAIRMAN VILA: New business, B-010-2015 Gate.
5 475 North County Road, Christopher and Vicki Kellogg,
6 Ralph Cantin, architect. New black anodized aluminum
7 gate on service driveway.

8 Ex parte communications, please?

9 MR. GARRISON: None.

10 MS. SAMMONS: None.

11 MR. KARAKUL: None.

12 MS. VANNECK: None. I got a summary.

13 MR. KNOWLES: I got these emails from --

14 MS. VANNECK: That too.

15 MR. KNOWLES -- the Town about the neighbor's
16 objecting to some zoning issues.

17 CHAIRMAN VILA: I didn't see it.

18 MS. VANNECK: We got plenty of emails.

19 MR. IVES: Same. The same emails that Mr.
20 Knowles referenced I got, but that's all.

21 MR. SMALL: I visited the site and neighboring
22 properties and then late yesterday evening when I got
23 back from a fellowship dinner, I saw a lengthy email
24 from Mr. Rampell.

25 MR. IVES: Oh, I got that too.

1 MS. GRACE: I visited the site and I received
2 emails and I didn't know if there was any rules for
3 us regarding access or anything that we needed to
4 answer.

5 MR. GARRISON: Mr. Chairman --

6 CHAIRMAN VILA: Yes.

7 MR. GARRISON -- I spoke to the attorney and I
8 understand he will make a recommendation to us.

9 CHAIRMAN VILA: Before we get out of control
10 here, this is a gate, but all we can do is talk about
11 the design and the gate.

12 So I'm not sure why it's on our agenda?

13 MR. RANDOLPH: That's correct. Mr. Rampell
14 contacted me in regard to a recorded easement with
15 the suggestion that this application not be
16 entertained, unless Mr. Rampell's client joined in
17 the application stating that his client has a
18 property interest in this matter. It's, I believe,
19 that you're here only to apply the criteria of your
20 code as it relates to the placement of the gate and
21 not to make a legal determination as to who owns what
22 in regards to the property.

23 As I've stated on previous occasions when staff
24 receives an application, they base it upon the fee
25 simple property owner, owner's representation that

1 they own the property and I believe that we checked
2 to make sure that they own the property, but that we
3 don't go further to see what kinds of recorded
4 documents may exist because if we did that on each
5 application, we would have to do a title search to
6 see what easements there are on the property, who may
7 hold some beneficial interest, et cetera.

8 So I advised Mr. Rampell before this meeting
9 that I believe your role today is just to consider
10 the design of the gate under the criteria of your
11 code.

12 CHAIRMAN VILA: Thank you very much.

13 So can you just show us the design of the gate?

14 MR. CANTIN: Sure. I have a cold, so I might
15 be hard to understand. Ralph Cantin for the record.
16 I'd like to just give you a layout of the site for
17 reasons why our gate is going --

18 CHAIRMAN VILA: Mr. Cantin, we can look at the
19 layout and we can understand what the story is, but
20 until it's resolved at another level, ARCOM doesn't
21 really need to go through all that and spend all of
22 the time on that. If you want to show us the gate
23 and the placement of the gate, we'll be happy to look
24 at that.

25 MR. CANTIN: Okay. I'm going to be very brief,

1 right where the hand is, is where the gate is
2 supposed to be. The gate is 50 feet back from North
3 County Road. Part of this is speciflicated, this is a
4 landmark property, this is a landmark property as
5 well. This is an access for these two properties.
6 It now is a service gate. It's the main entrance for
7 this property. This is the service gate for this
8 property. There's no connection between the front
9 entry and garages for this property, which I'll call
10 Noble property and that's the one reason why we're
11 here.

12 I'll move on to the gate --

13 CHAIRMAN VILA: That's not our --

14 MR. CANTIN: Okay.

15 CHAIRMAN VILA -- purview, it's not our
16 bailiwick. We're only interested in the esthetics of
17 the gate and its placement and if the actual
18 possibility of building it or not building it is
19 something that's coming before another Town Board, we
20 don't want to waste our time or your time.

21 MR. CANTIN: Okay. The house is a 1930 house
22 which is right here. The gate is -- this is an
23 estate property to the south. This is where the gate
24 would be right here. It's 50 feet back from the road
25 and this is the gate and its location. This is

1 looking back towards the street with the gate and its
2 location.

3 I'll be happy to answer any questions.

4 MR. SAMMONS: Mr. Chairman, I think I have to
5 recuse myself as I have a client who has an interest
6 in this property.

7 CHAIRMAN VILA: Okay. Mr. Sammons is recused.
8 Mr. Garrison?

9 MR. GARRISON: Mr. Chairman, I'll make a motion
10 that we approve the gate as presented.

11 CHAIRMAN VILA: Mr. Karakul.

12 MR. KARAKUL: I will second that, the only
13 thing I think would be is to put some vegetation
14 around each of the gate posts, you know, not to come
15 into the driveway, but just to soften those gates.

16 MR. GARRISON: I'll amend my -- I'll amend my
17 motion to include that.

18 MS. VANNECK: I just might think that you're
19 pretty much imploding in mid air and it's very
20 simple, it doesn't have any, you know, weight or
21 structure, so it needs to be anchored properly and
22 vegetation would do it, but other than that, I would
23 rule on it.

24 CHAIRMAN VILA: Well, I just question whether
25 an ARCOM -- ARCOM's approval of the gate design and

1 placement is at all appropriate given the legal
2 situation between the various owners, but who am I, I
3 didn't make a motion; is there a motion?

4 MR. KARAKUL: There's a motion and I seconded
5 it.

6 MR. GARRISON: No, I made a motion to approve
7 the gate and then with the caveat of its character
8 that we have landscaping around the gate and make it
9 more substantial.

10 CHAIRMAN VILA: We have a motion and it's been
11 seconded, all in favor --

12 MR. RANDOLPH: No, no, no, you got to call on
13 the public first.

14 CHAIRMAN VILA: Oh, that's right, we do.
15 Sorry. Excuse me.

16 For the record, please identify yourself.

17 MR. LYNCH: Good morning. Frank Lynch and I
18 represent 123 LLC, the property immediately to the
19 south.

20 THE COURT: You have a time limit.

21 MR. LYNCH: Absolutely, absolutely. My
22 client's concern is not necessarily the gate, but
23 what the gate represents. The gate represents a
24 barrier across an easement that a party is entitled
25 to. My client's concern is that if that gate is

1 allowed to be closed and there's no automatic opener
2 to that gate, the possibility exists that service
3 personnel would be directed or redirected from this
4 location onto an easement that exists on my client's
5 property overburdening that easement from what was
6 initially intended.

7 So, again, my concern is not the gate, the
8 design of the gate, but that a gate exists. If there
9 was an automatic opener to this gate so that a
10 service vehicle could approach the gate and it would
11 automatically open, I think our concern as to that
12 goes away.

13 But, again, I don't want to take up a lot of
14 your time, our issue is the existence -- not the
15 existence of the gate, but what that gate represents.

16 CHAIRMAN VILA: Like the Cowoma (phonetic).

17 MR. LYNCH: Yes.

18 CHAIRMAN VILA: Thank you very much.

19 MR. RAMPPELL: Good morning, Mr. Chairman and
20 members of the commission. I understand --

21 CHAIRMAN VILA: Your name for the record,
22 please.

23 MR. RAMPPELL: I'm Paul Rampell. I'm a lawyer in
24 town for 35 years. I represent Cristina Noble, the
25 owner of 473 North County Road.

1 We will ask you for your patience because even
2 though you seem inclined to approve the esthetics for
3 the gate, we are entitled to make a record of our
4 position and it's going to take a few minutes, not a
5 long time, but a few minutes.

6 I will start by introducing into the record --
7 just to back up, Ms. Noble owns 473 North County
8 Road. This is the property that's adjacent and east
9 of the Kellogg property. It's represented in green.
10 She also owns the easement which runs across Mr.
11 Kellogg's property. It also is shown in green. This
12 is a service driveway. It has been in place without a
13 gate for many decades. Currently, there is litigation
14 between Ms. Noble and Mr. Kellogg on many different
15 issues are being disputed. We are scheduled for
16 mediation on March 23rd of this year in hopes of
17 settling some of these differences. In the meantime,
18 we do object to the Town entertaining this
19 application because we essentially are the co-owner
20 of this property over which the gate is planned.

21 And it's our position that we must join in the
22 application in order for ARCOM to hear it. We're an
23 interested party; we're an indispensable party; we're
24 essentially the co-owner. It isn't any different than
25 the situation where the owner of a Worth Avenue store

1 would come before the ARCOM, then the tenant would
2 have to join in. It's not any different then when a
3 condominium unit owner makes an application here and
4 the condominium association has to join in. We have
5 two property interests that are involved in this
6 application and unless and until we join in the
7 application, we don't think that it's proper for the
8 Town to entertain it.

9 I wish to submit to the record -- for the
10 record, the deeds which confirm those facts that I've
11 just been describing. Ms. Noble's ownership interest,
12 Mr. Kellogg's ownership interest and the existence of
13 this easement.

14 CHAIRMAN VILA: Is this then heading for
15 counsel review or where does this go? If we approve
16 the design of the gate, which we have a motion on the
17 floor to approve, it's really -- I understand he
18 wants to be on the record, but this seems to me to be
19 the wrong venue.

20 MR. RANDOLPH: Well, he would have the right to
21 appeal the town counsel, so that's where it would go
22 if he's not satisfied with the result, he can appeal
23 it to the town counsel.

24 CHAIRMAN VILA: Okay. Thank you, Mr. Rampell, is
25 that all?

1 MR. RAMPELL: No, it's not at all.

2 CHAIRMAN VILA: Well, in the interest of our
3 agenda, sir, and I keep trying to make it clear,
4 we -- we're -- our responsibility is just to look at
5 the proposed architectural design of a gate and
6 you're presenting a case and the case is not our
7 bailiwick.

8 MR. RAMPELL: Basically, Mr. Chairman, because
9 unless we have a record below before you, we won't
10 have anything to discuss before the town counsel. We
11 have to exhaust our remedies, we have to make a
12 presentation to you. You can -- you can disagree
13 with us, but it's sort of like skipping a trial and
14 going to an appeal. We're at the trial.

15 CHAIRMAN VILA: How much time do you need?

16 MR. RAMPELL: Maybe ten minutes total.

17 CHAIRMAN VILA: Mr. Garrison?

18 MR. GARRISON: I thought we had Skip -- I
19 thought that's where counsel explained to us that our
20 responsibility is for the gate and the gate only, all
21 this other stuff is irrelevant. I don't care who
22 owns the property. My understanding is we are
23 charged with a gate and is the gate a good design or
24 a bad design, period.

25 CHAIRMAN VILA: Ms. Vanneck.

1 MS. VANNECK: Can I ask Mr. Randolph one thing,
2 please. Mr. Randolph, since this is not a bailiwick,
3 yet he has the right to try to present something,
4 can't he present it in writing and skip the rest of
5 it, so we can continue with our agenda?

6 MR. RANDOLPH: I think he's got the right to --
7 as any other party would, to present it orally.
8 Normally you allow three minutes and, obviously, he
9 has requested more time in order to present his case.
10 I would just encourage him if he has things to submit
11 to the -- because I think he's already laid out his
12 case, I would encourage Mr. Rampell if he has things
13 to present for the record that he would like to
14 presented to the counsel, to just present those to
15 the record, I'm not sure why it would take ten more
16 minutes to do that.

17 MR. RAMPELL: But --

18 CHAIRMAN VILA: Does that have anything to do
19 with the design of the gate?

20 MR. RANDOLPH: No. No, and I think -- no, in
21 my opinion it does not, but you're just hearing my
22 opinion. He has a different opinion in that regard.
23 I think one of the things to consider here is whether
24 or not access is being blocked to his client's
25 property by positioning the gate. I think it would be

1 relevant for you to hear whether or not access is
2 being blocked because I think there are -- that could
3 be an issue.

4 I believe you're here only to consider the
5 design of the gate. And we at the staff level after
6 determining in granting a permit whether or not we're
7 going to be blocking access.

8 So I'd like -- I'd like for you to hear whether
9 or not this gate is going to be blocking access to
10 Mr. Rampell's client's property.

11 CHAIRMAN VILA: We just -- we just heard the
12 point that they would be willing to have an automatic
13 gate, so that it never impeded access to anybody's
14 property.

15 MR. RANDOLPH: Did they say that, I thought
16 I --

17 MR. RAMPPELL: Mr. Lynch said that.

18 MR. RANDOLPH: I haven't heard -- I haven't
19 heard him say that.

20 MR. CANTIN: No, the access concerning Ms.
21 Noble, the police and other people for service,
22 there's over a thousand -- several hundred that would
23 have the ability to program them to the gate.

24 MS. VANNECK: Mr. Chair?

25 CHAIRMAN VILA: Yes.

1 MS. VANNECK: Just a quick reference, when we
2 were -- I was on Landmark, we had a building who came
3 before us looking to get Landmark status and not
4 everyone was on board at the same time and we said go
5 back, settle it between you and come back to us for a
6 decision for the esthetics, would that be something
7 that we could ask at this time?

8 MR. RAMPELL: I would certainly be amenable to
9 that.

10 CHAIRMAN VILA: As I understand March 23rd is
11 the mediation date.

12 MR. CANTIN: If there's a motion on the floor,
13 actually I had been in September at Landmark's
14 proposing a gate and putting it in, the problem now
15 is any car goes 220 feet into the property, there's
16 no turn around, that's why we really need the gate
17 there now.

18 MS. VANNECK: It's not been there for I don't
19 know how many years, one month will not change that.

20 CHAIRMAN VILA: Yep. I can certainly agree
21 with you.

22 MS. VANNECK: Now, in that case if you want to
23 --

24 MR. KNOWLES: I'll withdraw my motion.

25 CHAIRMAN VILA: Are you withdrawing your

1 motion?

2 MR. KNOWLES: Yes.

3 MR. GRUSS: Can we move to defer?

4 MS. VANNECK: I second it.

5 CHAIRMAN VILA: Thank you. We have a motion to
6 defer. It's been seconded.

7 All in favor?

8 Robert J. Vila, Chairman.

9 MS. VANNECK: Aye.

10 MR. KARAKUL: Aye.

11 MR. KNOWLES: Aye.

12 MR. GRUSS: Aye.

13 MR. GARRISON: Aye.

14 MR. IVES: Aye.

15 MR. SMALL: Aye.

16 MS. GRACE: Aye.

17 CHAIRMAN VILA: Any opposed?

18 This project is --

19 MR. CANTIN: Is this architecturally deferred to
20 April 1st?

21 MR. FITZGERALD: What provisions of the
22 criteria are you deferring this on? I'm Roy
23 Fitzgerald on behalf of the Kellogg's. Either it's
24 esthetically acceptable or it's not.

25 MS. VANNECK: Right now I need to see more

1 design with planting and that to make an opinion.

2 MR. RANDOLPH: Let's make sure you have a time
3 certain as to the March --

4 CHAIRMAN VILA: To the March meeting, yeah, we
5 want to see a presentation that includes landscape
6 treatment for the area that we saw which has a gate
7 with no visibility means to support and no
8 landscape --

9 MR. GARRISON: It's deferred until March.

10 CHAIRMAN VILA: Okay. The next item on our
11 agenda is B-011-2015, Storefront, 225 Worth Avenue,
12 Suite B, applicant is JMcLaughlin, Tenant, Burton
13 Handelsman is the manager, owner and of Love is next
14 door, LLC, retail store. Ex parte communication --

15 THE CLERK: Mr. Villa, Mr. Randolph --

16 MR. RANDOLPH: If I might, the clerk cannot
17 recall your having taken a vote in regard to the
18 motion to defer, nor can I.

19 MR. GRUSS: We didn't take a vote.

20 CHAIRMAN VILA: We just said ayes and nays.
21 I'd say we certainly did.

22 THE CLERK: Okay. Thank you.

23 CHAIRMAN VILA: Said aye in a hurry.

24 (The agenda item concluded at 12:03 p.m.)
25

C E R T I F I C A T E

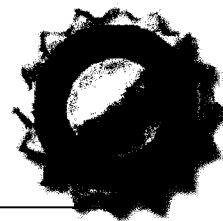
- - -

I, DAWN S. McCONNELL, Court Reporter, State of Florida at Large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 1st day of April, 2015

Dawn S. McConnell

Dawn S. McConnell, FPR



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ORIGINAL

EXCERPT OF RECORDED ARCOM MEETING FOR TOWN OF PALM BEACH

RE: B010-2015 GATE

475 NORTH COUNTY ROAD

MARCH 25, 2015

WWW.USLEGALSUPPORT.COM

866-339-2608

1 (Item B010-2015 as follows:)

2 MR. CHAIRMAN: B010-2015 gate, 475 North County
3 Road. Applicant is Christopher and Vicki Kellogg. The
4 architect is Ralph Cantin, AIA. The project description
5 is a new black anodized aluminum gate on a service
6 driveway. At the February meeting, the project was heard
7 and a motion carried for deferral to the March meeting.
8 And I believe it was based on the fact that we were
9 presented just a plain old gate. And we asked that we
10 see landscaping around the gate, maybe even some supports
11 or posts or that sort of thing. Ex parte?

12 BOARD MEMBER: None.

13 BOARD MEMBER: None.

14 BOARD MEMBER: No.

15 MR. CHAIRMAN: No.

16 BOARD MEMBER: None.

17 BOARD MEMBER: Can I ask is Mr. Sammons recusing
18 himself on this?

19 THE SPEAKER: Mr. Sammons had a vote of incomp last
20 month on this project and it's the same this month.

21 MR. CHAIRMAN OFFICER: So Mr. Ives would be voting.

22 BOARD MEMBER: None.

23 BOARD MEMBER: Nothing since the letters from the
24 last meeting.

25 MR. CHAIRMAN: Thank you. Mr. Cantin?

1 MR. CANTIN: Good morning. Ralph Cantin for the
2 record. We're here to talk about the landscaping for the
3 gate. Dustin Mizell is here. It is 30 Spanish stoppers
4 54 inches high. We have the landscape plan right here.
5 I can zoom in on the area. I will be more reactive on my
6 comments depending on how the attorneys appear. But this
7 shows the undergrowth. It's a natural mid plant material
8 and then here's the growth here and the rendering here.
9 And in the other direction here. And depending on how
10 the conversation goes, I will talk more about the gate.

11 MR. CHAIRMAN: What's the landscaping you're
12 proposing?

13 MR. CANTIN: It's Eugenia Spanish stopper. It's a
14 natural undergrowth for Florida.

15 MR. CHAIRMAN: Can you back up to the shot that had
16 the Spanish bayonet in it? Okay. That's in a pot?

17 MR. CANTIN: Oh, yeah. This is all existing. All
18 you see here is where the hand is, this is green and this
19 green here. This is naturally shaded here. This is more
20 open here. The posts for the gates are four by four,
21 which were the same as presented last time.

22 MR. CHAIRMAN: Okay. Our purpose here is solely
23 dedicated to the aesthetics of the proposed gate. And so
24 what you are proposing is just ground cover?

25 MR. CANTIN: It's 54 inches high. The gate is five

1 feet high.

2 MR. CHAIRMAN: Oh, it's back there.

3 MR. CANTIN: It's back here, right here and here.

4 MR. CHAIRMAN: Okay. And what did you say the
5 material was?

6 MR. CANTIN: Eugenia Spanish stopper.

7 MR. CHAIRMAN: Mr. Karakul? Is that from before?

8 MR. KARAKUL: Yeah, that was from before.

9 MR. CHAIRMAN: Okay. Does anybody have any
10 questions about the proposed gate?

11 BOARD MEMBER: Spanish stoppers is a fine product to
12 use, so I don't have an objection to the Spanish stopper.

13 MR. CHAIRMAN: Okay. Mr. Garrison?

14 MR. GARRISON: Mr. Chairman, based on the comments
15 that we've gotten and the plan that we've gotten back,
16 I'll make a motion that we approve specifically the
17 request for the gates and the landscaping of the gates
18 and the landscaping.

19 MR. CHAIRMAN: Thank you. We have a gentleman at
20 the podium. Did you wish to discuss the aesthetics of
21 this gate?

22 MR. GREEN: I wish to lay a record. My name is
23 James K. Green, 222 Lakeview Avenue, West Palm Beach.
24 And along with Paul Rampell, we represent Christina
25 Noble, who's the owner of the property farther east. Ms.

1 Noble also owns an easement over a portion of the Kellogg
2 property, which is Mr. Kellogg in the applicant here.
3 Ms. Noble's address is 473 North County Road. Mr.
4 Kellogg's is 475. It used to be part of the same estate.

5 My client opposes the application. This gate will
6 block and seriously delay service access to Ms. Noble's
7 property. The Kellogg's gate affects two properties, not
8 only his but also Ms. Noble's. Ms. Noble does have a
9 gate farther east, but it only affects her property. We
10 have not joined Mr. Kellogg in the application. And as
11 stated earlier, we oppose it.

12 Two months ago, another matter affecting both the
13 Noble and the Kellogg properties came before landmarks on
14 January 21st. And the town attorney advised that Mr.
15 Kellogg and based upon town policy needed to join in Ms.
16 Noble's application regarding a slat house. Ms. Noble's
17 property is landmarked. Mr. Kellogg's is not. And for
18 the record, here is a transcript of the January 21, 2015,
19 landmarks hearing which is marked as Noble Exhibit 1.
20 Yesterday I sent --

21 MR. CHAIRMAN: We have a three-minute limit.

22 MR. GREEN: I understand, but I need to lay a
23 record. Yesterday I sent Mr. Randolph a letter, which is
24 Noble Exhibit 2.

25 MR. GARRISON: Mr. Chairman, we're talking about

1 aesthetics, right? We're not talking about legal ease on
2 this property or anything.

3 MR. CHAIRMAN: Exactly. Thank you, Mr. Garrison.
4 I'm not sure that you understand that this is not the
5 right venue for this legal presentation.

6 MR. GREEN: And for the record, I also have
7 testimony from Robert Moore, who's the former town
8 business building official for many, many decades, who
9 will testify that as a matter of town custom, policy and
10 practice, it always required that where a particular
11 application affected two property owners property rights
12 that the town required that both join in the application
13 whether it be before ARCOM or landmarks.

14 MR. CHAIRMAN: Well, I have a motion on the floor
15 right now.

16 BOARD MEMBER: Mr. Chair, I think that the
17 presentation by the attorneys for their record can be
18 made by submitting their letters in writing to whatever
19 authority because it does not apply to us. We do not
20 need to hear it.

21 MR. CHAIRMAN: Exactly.

22 BOARD MEMBER: And that being said, I will second
23 the motion.

24 MR. GREEN: May I make a proffer of Mr. Moore's
25 testimony?

1 MR. CHAIRMAN: I'm sorry?

2 MR. GREEN: May I make a live proffer of Mr. Moore's
3 testimony?

4 MR. CHAIRMAN: Don't you hear what we're saying?
5 This is not the right venue for these arguments. Our
6 understanding is --

7 MR. GREEN: But for an appeal, we need to lay a
8 record.

9 BOARD MEMBER: We're not talking about an appeal.
10 We're talking about approving an architectural gate with
11 landscaping, which we talked about last month. That's
12 why it's deferred. I move the motion, Mr. Chairman.

13 MR. CHAIRMAN: Exactly. We have a motion and it's
14 been seconded. All in favor? Any opposed? Okay.
15 There's one opposed. The motion carries. We think the
16 gate is fine.

17 THE SPEAKER: I'm sorry. Who opposed?

18 MR. CHAIRMAN: Mr. Gruss.

19 (End of this item.)

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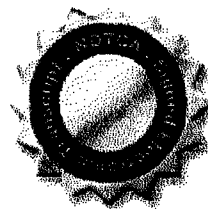
C E R T I F I C A T E

The State of Florida,
County of Palm Beach.

I, Vicki Woodham, Court Reporter, and Notary Public, State of
Florida, do hereby certify that I was authorized to and did
listen to and stenographically transcribed the foregoing
audio-recorded proceedings and that the transcript is a true
record to the best of my ability.

Dated this 27th day of March, 2015.

Vicki S. Woodham
Vicki Woodham, Court Reporter



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March 24, 2015

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John C. Randolph, Esq.
Town of Palm Beach Town Attorney
505 South Flagler Drive, Suite 1100
West Palm Beach, FL 33402

Re: Kellogg Application B-010-2015 to ARCOM
475 N. County Road, Palm Beach, Florida

Dear Skip:

Paul Rampell, Esq. and I represent Cristina Noble, the owner of 473 N. County Road as well as an easement over a portion of 475 N. County Road.

Ms. Noble's neighbors, Christopher and Vicki Kellogg, filed an Application for Architectural Commission Review to construct a new black gate across Ms. Noble's easement.

We object to the Town of Palm Beach allowing Mr. and Mrs. Kellogg's application unless and until Ms. Noble joins in the same. Ms. Noble is a co-owner and an indispensable party. Ms. Noble's vested property interest in 475 N. County is reflected in Executors' Deed dated December 8, 1960, a copy of which is attached, and this interest has never been released or terminated in any way whatsoever.

We acknowledge that the Town, as a matter of policy and expediency, does not undertake a title search of every property for which ARCOM approval may be pursued. In this case, however, we have brought to the Town's attention the vested interest of a co-owner whose service drive will be blocked if the subject gate is permitted. Accordingly, the Town ignores this property owner at its own peril. Since you and others have cautioned ARCOM and the Town Council against taking actions which will invite litigation, it seems both appropriate, given the circumstances, and prudent for the Town to require Ms. Noble joiner in Mr. Kellogg's application.

Recently, Ms. Noble applied for a Certificate of Appropriateness from the Landmarks Preservation Commission ("LPC") to demolish a slat house which straddled her land and Mr. Kellogg's land. Even though Mr. Kellogg's property is not landmarked and is not

subject to the LPC's jurisdiction, you advised the Town to require his signature on Ms. Noble's application. At the hearing you said:

...I think to protect the Town, I don't want to see the Town get into the middle of a lawsuit as to whether or not we had jurisdiction to knock property down on both properties.

In this situation before ARCOM, as in the prior situation before LPC, Ms. Noble and Mr. Kellogg have (a) two distinct property interests and (b) both interests are effected by the Town's decisions.

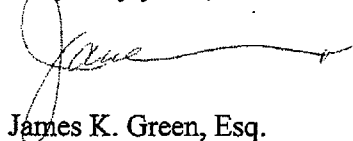
Ms. Noble will be compelled to take action against the Town if it issues approval to Mr. Kellogg to block her access. Action against Mr. Kellogg alone will be insufficient to stop him; one of his defenses will be that he is acting within the Town's permission.

Sec. 18-205, Criteria for building permit, in the Code of Ordinances, contains language favoring good design and balance and the protection of neighborhoods. The proposed gate will disrupt this area by blocking vehicular traffic on a service drive and diverting it to, and thus overloading, an owners drive. Surely, a mandate for ARCOM should be to preserve a resident's access to her home.

The Town routinely requires residents to obtain permission from holders of utility easements prior to various construction and this situation is equivalent.

Please reconsider your advice to ARCOM. The Town easily can require Ms. Noble's signature on Mr. Kellogg's application, an approach which will obviate litigation.

Very truly yours,

A handwritten signature in dark ink, appearing to read "James K. Green", with a long horizontal flourish extending to the right.

James K. Green, Esq.

cc: Ms. Cristina Noble
Paul Rampell, Esq.



SERVICE GATE RENDERING



Ralph Cantin, AIA
FL Lic. AR0015176
801 S. DINE AVE. #1108
WEST PALM BEACH, FL 33411
TEL: 561-833-8833 FAX:
561-833-8833
ralphcantin@aol.com

KELLOGG
RESIDENCE
SERVICE GATE

45 S. COUNTY ROAD
PMA BLDG. 1, STAGE

DESIGN FOR: KELL BASE
DATE: 1/18/15
PROJECT NO.: 805 KELLOGG
SHEET NO.: A101

SHEET TITLE
SITE
PLAN

805 KELL BASE
DESIGNED BY
CHECKED BY
PROJECT NO.
SHEET NO.

A101

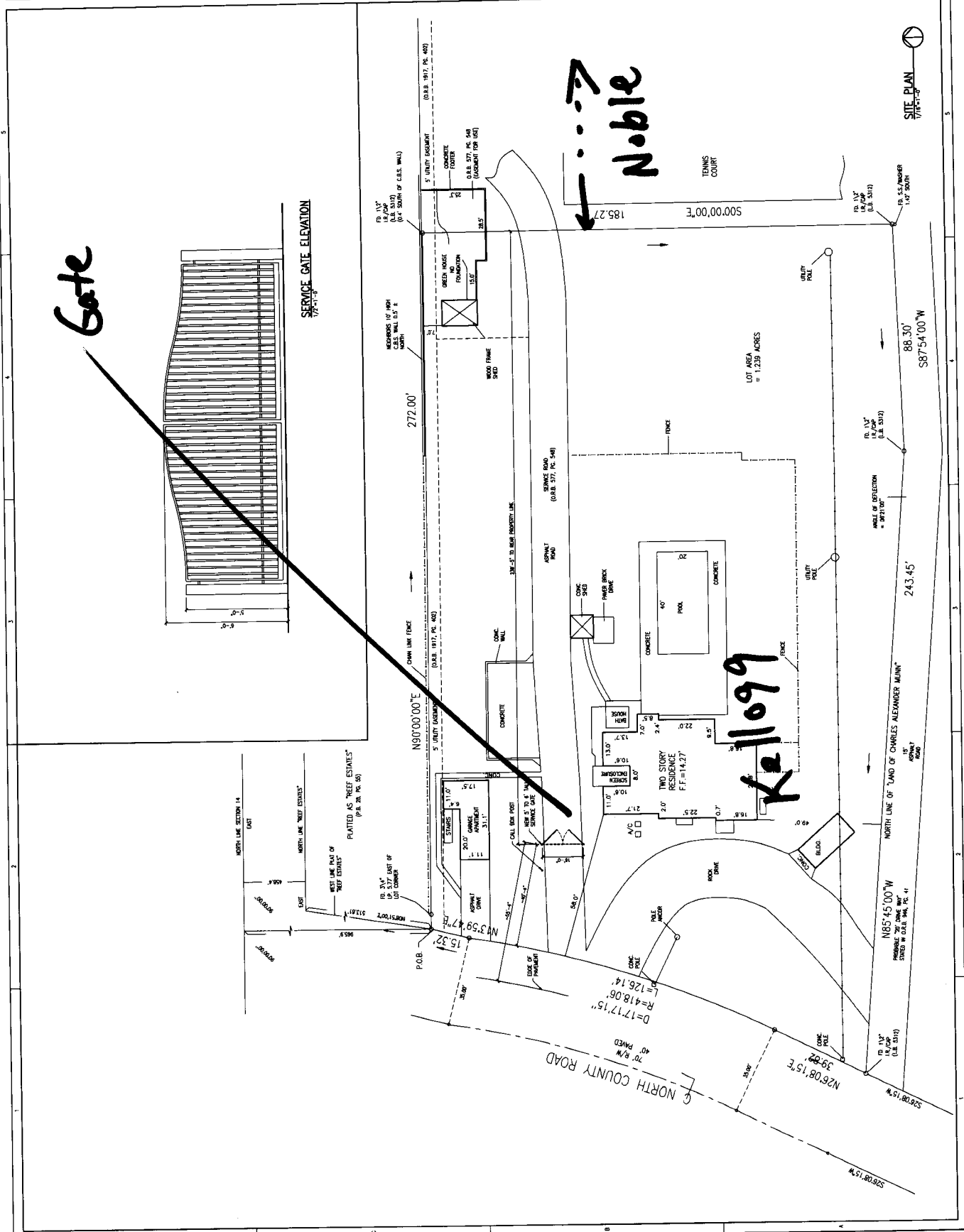
Gate

SERVICE GATE ELEVATION
175'-5 1/2"

Noble

K21099

SITE PLAN
1/18/15



Sec. 18-205. Criteria for building permit.

(a) The architectural commission may approve, approve with conditions, or disapprove the issuance of a building permit in any matter subject to its jurisdiction only after consideration of whether the following criteria are complied with:

- (1) The plan for the proposed building or structure is in conformity with good taste and design and in general contributes to the image of the town as a place of beauty, spaciousness, balance, taste, fitness, charm and high quality.
- (2) The plan for the proposed building or structure indicates the manner in which the structures are reasonably protected against external and internal noise, vibrations, and other factors that may tend to make the environment less desirable.
- (3) The proposed building or structure is not, in its exterior design and appearance, of inferior quality such as to cause the nature of the local environment to materially depreciate in appearance and value.
- (4) The proposed building or structure is in harmony with the proposed developments on land in the general area, with the comprehensive plan for the town, and with any precise plans adopted pursuant to the comprehensive plan.
- (5) The proposed building or structure is not excessively similar to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application within 200 feet of the proposed site in respect to one or more of the following features of exterior design and appearance:
 - a. Apparently visibly identical front or side elevations;
 - b. Substantially identical size and arrangement of either doors, windows, porticos or other openings or breaks in the elevation facing the street, including reverse arrangement; or
 - c. Other significant identical features of design such as, but not limited to, material, roof line and height of other design elements.
- (6) The proposed building or structure is not excessively dissimilar in relation to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application within 200 feet of the proposed site in respect to one or more of the following features:
 - a. Height of building or height of roof.
 - b. Other significant design features including, but not limited to, materials or quality of architectural design.
 - c. Architectural compatibility.
 - d. Arrangement of the components of the structure.
 - e. Appearance of mass from the street or from any perspective visible to the public or adjoining property owners.
 - f. Diversity of design that is complimentary with size and massing of adjacent properties.

g. Design features that will avoid the appearance of mass through improper proportions.

h. Design elements that protect the privacy of neighboring property.

(7) The proposed building or structure is appropriate in relation to the established character of other structures in the immediate area or neighboring areas in respect to significant design features such as material or quality or architectural design as viewed from any public or private way (except alleys).

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

(9) The project's location and design adequately protects unique site characteristics such as those related to scenic views, rock outcroppings, natural vistas, waterways, and similar features.

(10) The financial guarantee required in section 18-175 is met.

(b) If the above criteria are met, the application shall be approved. Conditions may be applied when the proposed building or structure does not comply with the above criteria and shall be such as to bring such building or structure into conformity. If an application is disapproved, the architectural commission shall detail in its findings the criterion or criteria that are not met. The action taken by the architectural commission shall be reduced to writing and signed by the chair, and a copy thereof shall be made available to the applicant upon request.

(c) A decision or order of the commission or the planning, zoning and building department director or his/her designee shall not become effective until the expiration of ten working days after the date upon which a ruling of the commission or the planning, zoning and building department director or his/her designee has been made.

(Code 1982, § 5-387; Ord. No. 3-98, § 1, 10-98; Ord. No. 5-00, § 1, 7-11-00; Ord. No. 32-02, §

*ARCOM Minutes
of February 2015*

B. MAJOR PROJECTS-NEW BUSINESS: (11:50:01 a.m.)

B - 010 - 2015 Gate

Address: 475 N. County Road

Applicant: Christopher and Vicki Kellogg

Architect: Ralph Cantin, AIA

Project Description: New black anodized aluminum gate on service driveway

Call for disclosure of ex parte communication: Disclosures by several members

ARCHITECTURAL PRESENTATION BY: Ralph Cantin

ATTORNEY PRESENT: Paul Rampell for Ms. Noble at 473 N. County Road

ATTORNEY PRESENT: Frank Lynch for 123 LLC at 455 N. County Road

ATTORNEY PRESENT: Roy Fitzgerald for the Kelloggs

Mr. Randolph stated that Mr. Rampell had contacted him in regard to a recorded easement suggesting that this application not be entertained unless Mr. Rampell's client joined in the application, because his client has a property interest in this matter. Mr. Randolph opined that ARCOM was only to apply the criteria of the Code as it relates to the placement of the gate and

not to make a legal determination as to who owns what part of the property. Routinely, when staff receives an application, no title search is performed to reveal any recorded agreements or easements. Mr. Randolph advised Mr. Rampell that the role of ARCOM in this matter is just to consider the design of the gate under the criteria of the Code.

Mr. Cantin presented the gate in accordance with the submitted plans for the proposed gate, to be placed 50 feet back from County Road.

Let the record show that Mr. Sammons declared a voting conflict with regard to this project as he has a client with an interest in this property. Mr. Ives will vote on this project.

**MOTION BY MR. GARRISON FOR APPROVAL OF THE GATE, AS PRESENTED.
MOTION SECONDED BY MR. KARAKUL, BUT THERE SHOULD BE SOME
VEGETATION AROUND EACH OF THE GATE POSTS.
MR. GARRISON ACCEPTED THE CONDITION STATED BY MR. KARAKUL.**

Mrs. Vanneck agreed that the gate needs to be anchored by landscaping.

Attorney Frank Lynch, representing 123, LLC, the property immediately to the south, stated that his client's concern is that this gate represents a barrier across an easement. His client was not opposed to the gate, but to what that gate represents. If the gate is allowed to be closed, and there is no automatic opener to that gate, the possibility exists that service personnel will be re-directed onto an easement that exists on the property owned by 123, LLC, overburdening that easement. If there were an automatic opener to the gate, so that service vehicles approaching could have access, that concern would go away.

Attorney Paul Rampell, representing Cristina Noble, owner of 473 North County, stated that Ms. Noble also owns an easement over Mr. Kellogg's property. There is ongoing litigation between Ms. Noble and Mr. Kellogg with many different issues disputed. He stated that he and his client object to the Town entertaining this application because his client is a co-owner of the property over which the gate is planned. His client has not joined in the application. He submitted a survey into the record. He maintained that he must be allowed to present the case of his client so that it is on the record and appealable to the Town Council.

Upon hearing the outcry from ARCOM members as to why they were being drawn into these issues that do not concern ARCOM, Mr. Randolph advised that Mr. Rampell has the right to present his case orally today.

Mr. Cantin stated that access through the gate will be by a code, and the code will be given to Ms. Noble.

Mrs. Vanneck suggested that both parties be instructed to resolve their issues with the other, and then return to ARCOM for approval.

MOTION WITHDRAWN BY MR. GARRISON.

**MOTION BY MR. GRUSS TO DEFER TO MARCH.
MOTION SECONDED SIMULTANEOUSLY BY MR. IVES AND MRS. VANNECK.
MOTION CARRIED UNANIMOUSLY.**

ARCOM Minutes of March 2015

B - 010 - 2015 Gate

Address: 475 N. County Road

Applicant: Christopher and Vicki Kellogg

Architect: Ralph Cantin, AIA

Project Description: New black anodized aluminum gate on service driveway

At the February meeting, the project was heard, and a motion carried for deferral to the March meeting.

Let the record show that Mr. Sammons left the dais due to his continuing voting conflict with this project. Mr. Ives will vote.

Call for disclosure of ex parte communication: Disclosure by Mr. Ives

ARCHITECTURAL AND LANDSCAPE PRESENTATION BY: Ralph Cantin
OTHERS WHO TESTIFIED: Attorney James K. Green

Mr. Cantin presented photos to illustrate the revised project with landscaping. He explained that 30 Spanish Stoppers or Eugenia (54" high) will be planted at the area of the gate.

Mr. Vila reminded that ARCOM's sole purpose is to review the aesthetics of the gate and the landscaping.

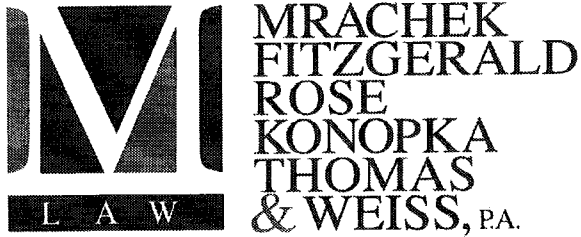
MOTION BY MR. GARRISON TO APPROVE SPECIFICALLY THE REQUEST FOR GATES AND LANDSCAPING.

Attorney James K. Green, 222 Lakeview Avenue, West Palm Beach, stated that he and Paul Rampell represent Cristina Noble, the owner of 473 North County Road. Ms. Noble owns an easement over the Kellogg property, and opposes the application as the gate will block and delay service access to her property. Further, Attorney Green stated that his client has not joined Mr. Kellogg in this application. Mr. Green referred to an application which was heard before the Landmarks Preservation Commission on January 21, 2015 involving these two properties and property owners, where the signatures of both property owners were required on the application. He submitted two documents for the record: Noble Exhibit 1-Verbatim transcript of the Landmarks Preservation Commission meeting of January 21, 2015, and Noble Exhibit 2- Letter dated March 24, 2015 from James K. Green to John C. Randolph, Town Attorney. He stated that Robert Moore, former Director of Planning, Zoning and Building, was present and would testify that it has been a long practice of the town that if an application affected the property rights of two owners, both signatures were required.

Mr. Vila advised that this is not the right venue for these legal arguments.

MOTION SECONDED BY MRS. VANNECK.

MOTION CARRIED 6-1, WITH MR. GRUSS OPPOSED.



Writer's Direct Dial: (561) 355-6992
 Writer's E-mail: arotan@mrachek-law.com

April 24, 2015

Via e-mail: tbradford@townofpalmbeach.com
 and U.S. Mail

Thomas G. Bradford, Town Manager
 Palm Beach Town Hall
 360 South County Road
 Palm Beach, FL 33480

Re: Appeal by Cristina Noble of March 25, 2015 Architectural Commission
Decision on Item No. B-010-2015 Gate, 475 North County Road

Dear Mr. Bradford:

This law firm represents Christopher Kellogg, owner of 475 North County Road.

It has come to our attention that Cristina Noble has filed an appeal with the Town Clerk of the decision by the Palm Beach Architectural Commission ("ARCOM") at its March 25, 2015 meeting to approve the architectural substance and aesthetic appearance of a gate on the Kellogg's property located at 475 North County Road.

The purpose of this letter is to ascertain: (i) the date when the hearing on the Noble appeal will take place; (ii) what standard of review will be applied at the hearing, and; (iii) what evidence will be considered by the Town Council at the hearing.

Section 18-177 of the Palm Beach Code of Ordinances mandates that "[a]ppeals filed pursuant to this section shall be based on the record of the proceedings below and shall not be presented de novo" and that the appeal "shall set forth the alleged inconsistency or nonconformity with the procedures or criteria set forth in this article or standards set forth in or pursuant to this Code." It is our understanding that the Town Council's review of the proceeding below is limited to the question of whether ARCOM, as reflected in the record, properly applied the criteria set forth in section 18-205(a) in approving Kellogg's application for a building permit. Any issues presented or arguments made on appeal that are outside the scope of review as delineated in section 18-177 are not to be considered or heard.

Thomas G. Bradford, Town Manager

Page 2

April 24, 2015

Noble makes no argument in her appeal that ARCOM failed to properly apply the section 18-205(a) criteria when it approved the Kellogg's application, and the record of the proceeding below clearly demonstrates that ARCOM did not stray from the requirements of section 18-205(a) in granting approval.

In the proceeding below, ARCOM limited itself to considering only the architectural substance and aesthetic appearance of the gate as detailed in the Kellogg's application. In fact, section 18-205(b) states that if the criteria laid out in 18-205(a) is met, "the application *shall* be approved." The record below contains no indication that the Kellogg's application failed to meet the section 18-205(a) criteria, or that ARCOM erred in applying the criteria to the Kellogg's application.

We therefore anticipate the Town Council will have little difficulty in upholding ARCOM's decision to approve the application.

Sincerely,



Alexander S. Rotan, Esq.

ASR/gjd

cc: John Lindgren, via e-mail jlindgren@townofpalmbeach.com

Susan Owens, via e-mail sowens@townofpalmbeach.com

John Randolph, Esq., via e-mail jrandolph@jonesfoster.com

TOWN OF PALM BEACH

Town Council Meeting Development Review on: June 10, 2015

Section of Agenda

Time Extensions

Agenda Title

Request for One Year Time Extension, Variance No. 31-2014
230 Park Avenue

Presenter

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

Supporting Documents

- [Memorandum dated May 29, 2015 from John S. Page](#)
- [Letter dated May 27, 2015 from Rabbi Moshe Scheiner](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 10, 2015

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

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

Re: Request for One Year Time Extension, Variance No. 31-2014

Date: May 29, 2015

STAFF RECOMMENDATION

Staff recommends that the Town Council approve an eight month time extension of Variance No. 31-2014 in order to provide the applicant time to obtain Architectural Commission approval of the project.

GENERAL INFORMATION

On April 10, 2013, the property owner was granted a Variance (Variance #11-2013) to eliminate the required one car garage to create living space as part of the proposed renovation of the existing house. That application expired in on April 9, 2014. On July 16, 2014, the property owner was granted approval of the same variance request. The property owner has one year from approval to commence the project by obtaining Architectural Commission approval. The applicant has not applied for Architectural Commission (ARCOM) approval of the project. The property owner has until July 15, 2015, to obtain ARCOM approval or the zoning approval will expire.

Rabbi Moshe Scheiner, the applicant, has submitted the attached letter requesting a one year time extension "due to unforeseen circumstances." It is unclear to Staff why the applicant has yet to have the proposed project approved by ARCOM. Staff recommends the Council allow the applicant an eight month time extension to obtain ARCOM approval. Once approved, the applicant will have one year from ARCOM approval to obtain a building permit to enclose the garage and renovate the house. If so approved, the zoning application approval will remain valid until January 13, 2016

Attachment

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

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



PALM BEACH SYNAGOGUE

RABBI

Moshe E. Scheiner

PRESIDENT

Barbara T. R. Zimet

VICE PRESIDENTS

David Feinberg

Abe Haruvi

TREASURER

Eileen Berman

FINANCIAL SECRETARY

Christopher Popik

Recording Secretary

Hal Matheson

IMMEDIATE PAST PRESIDENT

Michael Scharf

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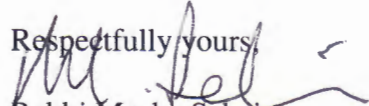
Dr. Eric Weiner

May 27, 2015

Dear Mr. Castro,

My wife and I would like to request a one year extension on our variance for our home at 230 Park Avenue, Palm Beach, issued last July at the town council. Due to unforeseen circumstances we were unable to commence our project this past year but would like to pursue it in the coming year. We would greatly appreciate if you can extend it for us.

Respectfully yours,


Rabbi Moshe Scheiner

RECEIVED
MAY 27 2015
TOWN OF PALM BEACH
PZB DEPARTMENT

TOWN OF PALM BEACH

Town Council Meeting Development Review on: June 10, 2015

Section of Agenda

Development Review - Old Business

Agenda Title

SPECIAL EXCEPTION #4-2015 WITH SITE PLAN REVIEW The application of Maura Ziska, Esq. Attorney in Fact; relative to property commonly known as **1021 North Ocean Blvd.**, described as lengthy legal description on file; located in the R-A Zoning District. The Applicant is requesting Special Exception with Site Plan Review to allow the construction of a 25,198 square foot two-story, single family residence with basement on a non-conforming platted lot which is 100 feet in width in lieu of the 125 foot minimum width required in the R-A Zoning District. [Attorney: Maura Ziska, Esq.]

Request for Deferral to the June 10, 2015, Town Council Meeting Per Letter Dated February 25, 2015, from Maura A. Ziska.

Request for Withdrawal from the June 10, 2015, Town Council Meeting Per Letter Dated April 6, 2015, from Maura A. Ziska.

Presenter

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

Supporting Documents

- [Letter Dated February 25, 2015, from Maura A. Ziska](#)
- [E-mail Dated March 1, 2015, from Debby and John Oxley](#)
- [Letter Dated April 6, 2015, from Maura A. Ziska](#)

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

Marvin S. Rosen, *Counsel*•

*Also admitted in New York

•Also admitted in Michigan

Esperanté

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

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

VIA FACSIMILE: 561-838-5411

February 25, 2015

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

RE: Special Exception 4-2015 – 1021 North Ocean Blvd., Palm Beach, Florida

Dear Mayor and Town Council:

Please defer the above referenced matter from the **March 11, 2015** Town Council agenda to the **June 10, 2015** Town Council agenda. The reason for the deferral is to allow the applicant time to meet with the neighbors regarding their concerns to proposed plans for the subject property.

Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely,



Maura A. Ziska

MAZ/jch

cc: Paul Castro
Michael Perry

00027041



To: Patricia Gayle-Gordon/PalmBeach@PalmBeach, Kathleen Dominguez/PalmBeach@PalmBeach,
Cc:
Bcc:
Subject: Fw: objection to Special Exception for proposed 25,198 square foot residence at 1021 N Ocean Boulevard
From: Paul Castro/PalmBeach - Monday 03/02/2015 09:27 AM

FYI, Letter of objection: Special Exception #4-2015 with Site Plan Review.
----- Forwarded by Paul Castro/PalmBeach on 03/02/2015 09:25 AM -----

From: dmojco@aol.com
To: pcastro@townofpalmbeach.com
Date: 03/01/2015 04:51 PM
Subject: Fwd: objection to Special Exception for proposed 25,198 square foot residence at 1021 N Ocean Boulevard

-----Original Message-----

From: dmojco <dmojco@aol.com>
To: clerk <clerk@townofpalmbeach.com>; tbradford <tbradford@townofpalmbeach.com>; pcastro <pcastro@townofplambeach.com>
Sent: Sun, Mar 1, 2015 4:47 pm
Subject: Fwd: objection to Special Exception for proposed 25,198 square foot residence at 1021 N Ocean Boulevard

-----Original Message-----

From: dmojco <dmojco@aol.com>
To: gaillconiglio <gaillconiglio@gmail.com>
Sent: Sun, Mar 1, 2015 4:44 pm
Subject: objection to Special Exception for proposed 25,198 square foot residence at 1021 N Ocean Boulevard

Subject: objection to Special Exception for proposed 25,198 square foot residence at 1021 N Ocean Boulevard

It is our understanding the Special Exception for the proposed 25,198 square foot residence at 1021 N Ocean Boulevard will be on the March 10 Town Council agenda. We contacted you via email prior to the February 10 Town Council meeting and attended the meeting, the item was postponed. At this time it is our understanding the item is on the March 10 agenda. We plan to attend that meeting. We would like to reiterate our objection to the Special Exception.

Our home is located at 1045 N Ocean Boulevard, we are next to 1029 N Ocean which is next door to 1021 N Ocean. We live on a beautiful stretch of the beach, a group of the homes including ours have lovely lawns abutting the seawalls that creates a lovely vista. The homes are very compatible from an architectural perspective including the present home located at 1021 N Ocean. We suggest that you look at the homes from the beach. The proposed home for 1021 N Ocean is not compatible with the existing homes.

We are very conceded that the proposed home will have a negative impact on the value of our property as it will destroy the harmony of the present properties. We refer you to our previous email of February 8 for our additional concerns. Thank you for your consideration in this matter.

Debby and John Oxley
1045 N Ocean Boulevard
Palm Beach, FL
561 881-2273

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

Marvin S. Rosen, Counsel*

*Also admitted in New York

*Also admitted in Michigan

Esperanté

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

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

VIA FACSIMILE: 561-838-5411

April 6, 2015

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

TOWN OF PALM BEACH

APR 13 2015

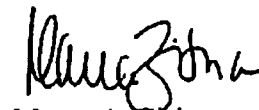
Town Manager's Office

RE: Special Exception 4-2015 – 1021 N Ocean Blvd., Palm Beach, Florida

Dear Mayor and Town Council:

Please withdraw the above referenced matter from the June 10, 2015 Town Council agenda. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely yours,



Maura A. Ziska

MAZ/jch
cc: Paul Castro

00027669

TOWN OF PALM BEACH

Town Council Meeting Development Review on: June 10, 2015

Section of Agenda

Development Review - New Business

Agenda Title

VARIANCE #16-2015 The application of Walde Trust, LLC; relative to property commonly known as **444 Chilean Ave.**, described as Lots 52 and 53, Block 12, Revised Map of Royal Park Addition to Palm Beach, Florida according to the plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County Florida in Plat Book 4, Page 1; located in the R-C Zoning District. The Applicant is requesting the following variances: to allow the construction of a 3,776 square foot two-story single family residence on a non-conforming lot: to construct a two-story house with a lot width of 50 feet in lieu of the 75 foot minimum required and a lot area of 6,250 square feet in lieu of the 10,000 square foot minimum required; to construct a two story house with an east side yard setback of 5.7 feet in lieu of the 10 foot minimum required; to construct a two-story garage/guest house with an east side yard setback of 5.7 feet in lieu of the 10 foot minimum required; to construct a two-story garage/guest house with a rear yard setback (south side of the property) of 5 feet in lieu of the 15 foot minimum required; and to construct a two-story single family residence with a landscaped open space of 43.6% in lieu of the 45% minimum required in the R-C Zoning District. [Attorney: Guy Rabideau, Esq.]

[Architectural Commission Recommendation: Deferred the project to the June 24, 2015 Commission meeting to restudy the architecture, landscaping and the need for variances. Carried 7-0]

Request for Deferral to the July 15, 2015, Town Council Meeting Per Letter Dated May 29, 2015, from Guy Rabideau.

Presenter

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

Supporting Documents

- [Letter Dated May 29, 2015, from Guy Rabideau](#)



RECEIVED

MAY 29 2015

TOWN OF PALM BEACH
PZB DEPT

*Guy Rabideau, Esq.
direct: 561.402.7411
grabideau@rabideau-law.com
Florida Bar Board Certified in Real Estate Law*

May 29, 2015

Via Hand Delivery

Mr. Paul Castro
Zoning Administrator
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: Property: 444 Chilean Avenue, Palm Beach, Florida
Owner: Walde Trust LLC
Variance #16-2015

Dear Mr. Castro:

In connection with the above-referenced matter, I request that the variance matter that is scheduled to appear before Town Council on June 10, 2015 be deferred to the following Town Council Meeting occurring on July 15, 2015.

The matter was heard by ARCOM on May 27, 2015; however, ARCOM postponed its decision until the next meeting occurring on June 24, 2015. As such, we request a one-month deferral from the June 10, 2015 Town Council Meeting.

Please let me know if you have any questions.

Sincerely,


Guy Rabideau