



TOWN OF PALM BEACH

Town Manager's Office

TENTATIVE -
SUBJECT TO
REVISION

TOWN COUNCIL MEETING

TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD

AGENDA

WEDNESDAY, APRIL 10, 2013

9:30 AM

For information regarding procedures for monitoring or participating in Town Council Meetings, please refer to the end of this agenda.

I. CALL TO ORDER AND ROLL CALL

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

II. INVOCATION AND PLEDGE OF ALLEGIANCE

III. COMMENTS OF MAYOR GAIL L. CONIGLIO

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

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

VI. APPROVAL OF AGENDA

VII. PUBLIC HEARINGS

- A. RESOLUTION NO. 63-2013 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as 130 El Brillo Way Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach.
[John Page, Director of Planning, Zoning and Building] Page 8
- B. RESOLUTION NO. 64-2013 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as 1047 South Ocean Boulevard Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach.
[John Page, Director of Planning, Zoning and Building] Page 36

VIII. DEVELOPMENT REVIEWS

- A. Appeal
1. Appeal of Administrative Decision Governing Hours of Operation and Related Off-street Parking Requirements, by John W. Little III, Attorney for Sterling Palm Beach, LLC, and Also From Harvey E. Oyer III, Attorney for Del Frisco's Grille, Relative To The Yet-To-Be-Established Del Frisco's Grille Restaurant in the Royal Poinciana Plaza.
[John Page, Director of Planning, Zoning and Building] Page 65
- B. Time Extensions & Waivers
- None
- C. Variances, Special Exceptions, and Site Plan Reviews
1. Old Business
- a. VARIANCE #11-2013 The application of Rabbi Moshe and Nechama Scheiner; relative to property commonly

known as **230 PARK AVENUE**; described as Lot 47 and the East ½ of Lot 46 of BUNGALOW PARK, as recorded in Plat Book 7, Page 26, Public Records of Palm Beach County, Florida; located in the R-C Zoning District. The applicant is requesting a variance to eliminate the required one car garage on the existing house to create living space. [Attorney: Maura Ziska]
Deferred from the March 13, 2013, Town Council Meeting.

2. New Business

- a. **SITE PLAN REVIEW #4-2013** The application of Richard True; relative to property commonly known as **119 East Inlet Drive**; described as Lot 15, SEA ISLES ESTATES, according to the Plat thereof, 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 Site Plan Review to allow the construction of a 4,694 square foot two-story single family residence on a non-conforming platted lot which is 96 feet in width in lieu of the 100 foot minimum required in the R-B Zoning District. [Attorney: Maura A. Ziska]
- b. **SPECIAL EXCEPTION #6-2013** The application of Bricktop's Palm Beach (Joe Ledbetter, Owner); relative to property commonly known as **375 South County Road**; described as Lengthy legal description on file; located in the C-TS Zoning District. The applicant is requesting Special Exception with Site Plan Review approval to modify the previously approved restaurant and site plan as follows: to allow the new restaurant name to be changed from "BT Palm Beach" to Bricktop's Palm Beach"; modify the south elevation awning by installing a hard roof behind the fascia awning; modify the stair access to the mezzanine; modify the decorative railing on patio wall; add Nana windows to the bar for security and inclement weather; modify the seating plan to add nine booths to replace 9 four tops; change patio columns from metal with canvas cover to concrete with stucco; add planters to west elevation. [Attorney: Maura A. Ziska]
- c. **VARIANCE #13-2013** The application of Jeffrey Fisher; relative to property commonly known as **252 El Bravo Way**; described as Lot 18, SUPPLEMENTARY PLAT OF EL BRAVO PARK, according to the Plat thereof as recorded in Plat Book 9, Page 9, Public Records of Palm

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Beach County, Florida; located in the R-A Zoning District. The applicant is proposing to add five feet to the east side of the existing garage, requiring a variance to allow for a 3.42 foot setback in lieu of the 15 foot minimum required in the R-A Zoning District. [Attorney: Guy Rabideau]
[Landmark Preservation Commission recommendation: Implementation of the proposed variance will not cause negative architectural impacts to the subject landmark property. Carried 7-0.]

- d. **VARIANCE #14-2013** The application of Michael Formica and Robert Hiemstra; relative to property commonly known as **218 Phipps Plaza**; described as Lengthy legal description on file; located in the R-C Zoning District. The applicant is requesting a variance to relocate an accessory building and convert it to be a usable garage which will result in a 2.5 foot rear yard setback in lieu of the 15 foot minimum required in the R-C Zoning District. [Attorney: Maura A. Ziska]
[Landmark Preservation Commission recommendation: Implementation of the proposed variance will not cause negative architectural impacts to the subject landmark property. Carried 7-0.]
- e. **VARIANCE #15-2013** The application of Alan Menkes; relative to property commonly known as **153 Clarke Avenue**; described as Lot 16, PRIMAVERA ESTATES (OCEAN SECTION) according to the Plat thereof as recorded in the Plat book 6, Page 82, Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting a variance to demolish a non-conforming two story garage and rebuild the same size garage (1,215 square feet) in the same location which require the following variances: a west side yard setback of 5 feet in lieu of the 15 foot minimum required and 5 feet existing; a rear yard setback of 11.9 feet in lieu of the 15 minimum required and 11.9 feet existing; a cubic content ratio of 5.0 in lieu of the 3.91 maximum allowed and 5.0 existing; a two story accessory structure with an overall height of 23.75 feet on a lot under 20,000 square feet where only a one story 15 foot tall building is allowed. [Attorney: Maura A. Ziska]
[Landmark Preservation Commission recommendation: Implementation of the proposed variances will not cause negative architectural impacts to the subject landmark property. Carried 7-0.]

- f. **VARIANCE #16-2013** The application of Anchor Animal Hospital (Dr. Lindsey Naimoli); relative to property commonly known as **230 and 234 South County Road**; described as Lots 754, 756, 758, 760 and 764, LESS the easterly 15 feet of Lot 764, POINCIANA PARK 3rd ADDITION, according to the Plat thereof as recorded in the Plat Book 8, Page 72, of the Public Records of Palm Beach County, Florida; located in the C-TS Zoning District. The applicant is requesting a variance to allow a veterinary office (Anchor Animal) on the first floor and second floor in the C-TS Zoning District where only office use on the second floor is allowed. The proposed veterinary office is proposed to be 1,661 square feet on the first floor that will contain the patient rooms, lobby and pharmacy. The second floor would be 1,170 square feet and have an office, a conference room and a residence. The total square footage is proposed to be 2,831 square feet. The hours of operation are proposed to be 7 a.m. until 6 p.m.; however, the DVM would be available for emergencies after hours. The practice would include the following services: general veterinarian practice, veterinary surgery, emergency and critical care, holistic veterinary medicine, complimentary veterinary medicine, veterinary theriogenology, veterinary pharmacy, alternative veterinary therapeutics (hyperbaric oxygen, Chinese & natural remedies), pet grievance & behavioral counseling, veterinary digital imaging, veterinarian licensed retail good and mobile (residential & hospitality industry) veterinary services. Boarding would be required in some circumstances related to post op recovery.
[Attorney: Maura A. Ziska]

- g. **VARIANCE #17-2013** The application of David A. Rosow and Jean D. Rosow, Trustees of the David A. Rosow Qualified Personal Residence Trust dated July 31, 2000; relative to property commonly known as **1460 N. Lake Way**; described as lengthy legal description on file; located in the R-A Zoning District. The applicant is requesting a variance to relocate a 6.2 foot high, 90kw generator further north from its present location with a north side yard setback of 6.5 feet in lieu of 15 foot minimum required. The generator will be enclosed with a 7 foot high wall. [Architect: Daniel Menard]

D. Other

1. Consideration Of The Testa Family, Inc., Comprehensive Plan And Zoning Text Amendment Application To Create An Overlay Within The Five Acres Of Land Between Bradley Place And North County Road And Royal Poinciana Way And Sunset Avenue. The Application Was Previously Deferred April 2012 To The February 2013 Council Meeting In Order For The Newly Established Royal Poinciana Way Committee To Study Regulations For This Area. *Deferred from the April 11, 2012, and February 13, 2013, Town Council Meetings.*
Request for Deferral to the September 11, 2013, Town Council Meeting Per Letter dated April 3, 2013, from Francis X.J. Lynch.

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IX. ANY OTHER MATTERS

X. ADJOURNMENT

PLEASE TAKE NOTE:

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

PROCEDURES FOR PUBLIC PARTICIPATION

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

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

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

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

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

TOWN OF PALM BEACH

Town Council Meeting on: April 10, 2013

Section of Agenda

Public Hearings

Agenda Title

RESOLUTION NO. 63-2013 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as 130 El Brillo Way Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated March 26, 2013 from John S. Page, Director of Planning, Zoning and Building
- Resolution No. 63-2013
- Designation Report for 130 El Brillo Way
- Excerpt from the Minutes of the Landmarks Preservation Commission Meeting of March 20, 2013
- Applicable Section of Code of Ordinances

TOWN OF PALM BEACH

Information for Town Council Meeting on: April 10, 2013

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Landmark Designation of 130 El Brillo Way
Resolution No. 63 – 2013

Date: March 26, 2013

STAFF RECOMMENDATION

Staff recommends ratification of the property known as 130 El Brillo Way as a Town landmark.

LANDMARKS PRESERVATION COMMISSION RECOMMENDATION

At the Public Hearing for Designation held during the March 20, 2013 meeting of the Landmarks Preservation Commission, the Commission voted unanimously to recommend to the Town Council that the above mentioned property be designated as a landmark. In accordance with Section 54-164 (a) (11) of Chapter 54 of the Town of Palm Beach Code of Ordinances, the Town Council shall hold a public hearing within ninety (90) days of the final decision of the Landmarks Commission to consider ratification of the Commission's recommendation.

GENERAL INFORMATION

- The property meets the following criteria for designation as a landmark of the Town of Palm Beach.
 - Sec. 54-161 (1) Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town; and,
 - Sec. 54-161 (3) Embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmen.
 - Sec. 54-161 (4) Is representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or has influenced his age.

Landmark Designation of 130 El Brillo Way

Resolution No. 63 - 2013

March 26, 2013

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OWNER CONSENT

Please be advised that the Town's consultants have attempted to contact the property owner relative to this designation, but have not been able to speak with her. It must be noted that all required correspondence relative to the designation process was mailed via certified mail to the property owner and was received. The Town has received no correspondence from the property owner either in support or opposition to the designation.

FUNDING/FISCAL IMPACT

No direct funding is needed for this action.

COMPREHENSIVE PLAN

The action proposed is consistent with the goals, objectives and policies contained in the Historic Preservation Element of the Town's Comprehensive Plan.

TOWN ATTORNEY REVIEW

Please be advised that the Town Attorney has reviewed Resolution No. 63 - 2013 relating to 130 El Brillo Way, and has approved it as to legal form and sufficiency.

attachments

JSP:cmd

cc: Thomas G. Bradford, Deputy Town Manager
John C. Randolph, Town Attorney
Susan A. Owens, Town Clerk
John Lindgren, AICP, Planning Administrator
pf

RESOLUTION NO. 63 - 2013

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY KNOWN AS 130 EL BRILLO WAY MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE IV OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH; AND DESIGNATING SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE IV OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

WHEREAS, pursuant to the provisions of Ordinance No. 2-84, (Chapter 54, Article IV, Code of Ordinances of the Town of Palm Beach) the Landmarks Preservation Commission of the Town of Palm Beach held public hearings and recommended to the Town Council that certain property described herein be designated as a landmark as described in said Ordinance and Code; and

WHEREAS, after due notice to the property owner(s) affected, a public hearing was held at which all parties interested were given an opportunity to be heard and express their views and opinions with respect to the property and its designation as a landmark; and

WHEREAS, the Town Council does hereby find and determine that the property described herein meets the criteria required by the Ordinance to designate a landmark, and shall be designated as a landmark;

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

Section 1. The foregoing recitals are hereby ratified and confirmed.

Section 2. The recommendation and determination of the Landmarks Preservation Commission as to the property hereinafter described in Section 3 of this Resolution, being designated as a landmark is hereby ratified, approved and confirmed.

Section 3. The landmark herein designated, pursuant to the provisions of Ordinance No. 2-84, and the provisions of the Town Code described herein, is known as **130 El Brillo Way** and the property to be landmarked is legally described as follows:

LOT 24, EL BRAVO PARK, ACCORDING TO THE PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA, PLAT BOOK 8, PAGE 9, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA

Section 4. The Town Clerk is hereby ordered to furnish the property owner of the landmarked property a copy of this Resolution.

Section 5. Within thirty (30) days from the date of this Resolution, the Landmarks Preservation Commission shall cause to be filed in the Office of the Recorder of Deeds in and for Palm Beach County, Florida, a certificate that the above-described property comprises a landmark, as defined in and subject to the provisions of Ordinance No. 2-84 and the Code of Ordinances of the Town of Palm Beach, Florida.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 10th day of April, 2013.

Gail L. Coniglio, Mayor

David A. Rosow, Town Council President

Robert N. Wildrick, President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Susan A. Owens, MMC, Town Clerk

Michael J. Pucillo, Town Council Member

130 El Brillo Way



DESIGNATION REPORT

Wednesday, March 20, 2013

Landmark Preservation Commission

Palm Beach, Florida

DESIGNATION REPORT

130 El Brillo Way

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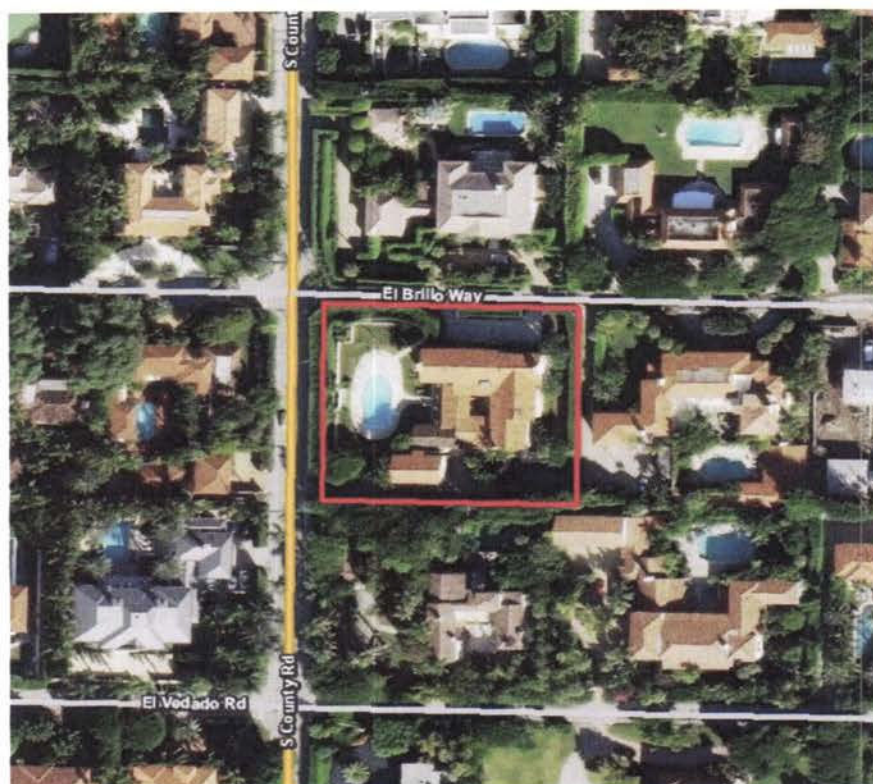
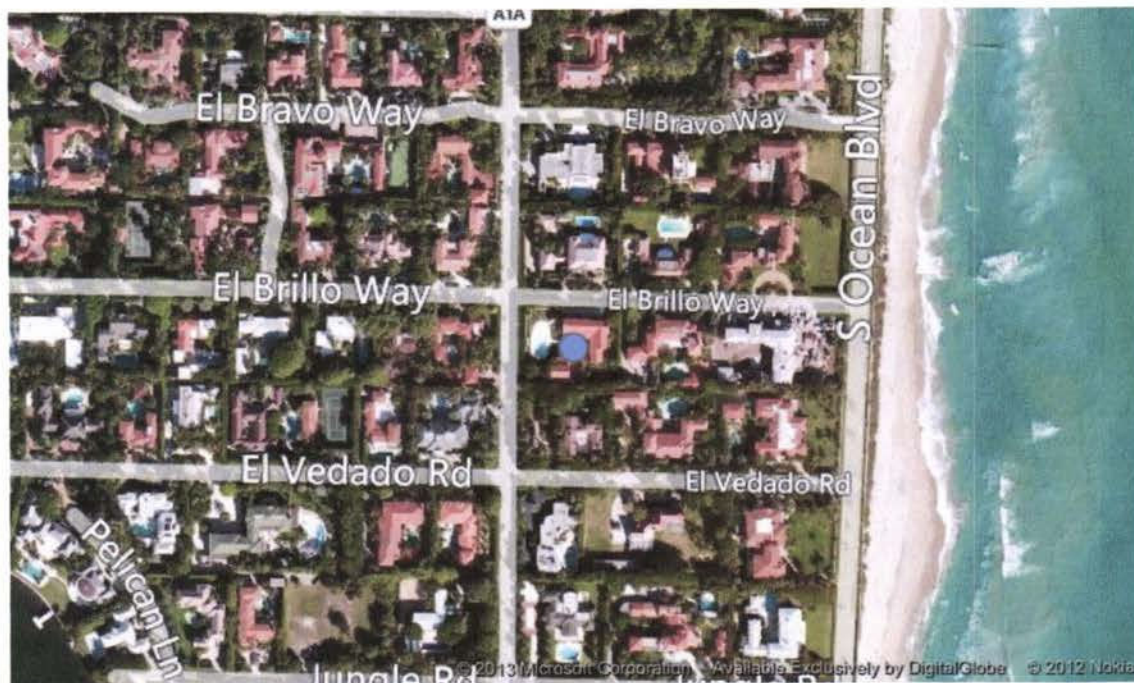
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Report produced by Murphy Stillings, LLC

I. General Information

Location:	130 El Brillo Way Palm Beach, Florida
Date of Construction:	1925
First Owner:	Mr. & Mrs. Frank Vernon Skiff
Architect:	Marion Sims Wyeth
Builder:	Harry R. Corwin Company
Present Owner:	Heidelinde M. Alexandra Kauka (check)
Present Use:	Residential
Present Zoning:	R-A
Palm Beach County Tax Folio Number:	50434327050000240
Legal Description:	El Bravo Park Lot 24

II. Location Map



III. Architectural Information

The residence at 130 El Brillo Way, originally known as Casa Marcheta, was designed by Marion Sims Wyeth in 1925 for Mr. and Mrs. Frank Vernon Skiff. The house is a classical two story Mediterranean Revival style estate constructed during Palm Beach's 1920s Boom Time Era. The house sits prominently on a large corner lot at the intersection of South County Road and El Brillo Way.

Mediterranean Revival style architecture is an eclectic design style that was inspired by Spanish, Italian, North African and Moorish structures and became popular in Florida during the 1920s. Buildings of this style often have arched openings, asymmetrical massing and fenestration, balconies, and ornate cast-stone elements. In addition, stone or stucco facades, decorative wrought ironwork, tile floors, pecky cypress ceilings and clay barrel tile roofs are typical features of Mediterranean Revival style buildings.

130 El Brillo Way was designed with a center courtyard containing arched and pillared cloisters extending on three sides and a loggia on the west leading out to a terrace. The north facing residence is constructed of hollow clay tile covered with rough stucco. The intersecting gable roofs are covered in red clay barrel tiles and have exposed rafters. All of the facades have asymmetrical fenestration, with the majority of the windows being casements found often in pairs or ribbons. Some of the windows have arched tops while others are square. Double doors leading to iron-railed balconies grace the north façade. Other typical Mediterranean style details featured on the house are decorative wrought ironwork, cast-stone ornamentation, classical pilasters, bracketed sills and carved wood cornices. Both the east and west gable ends have chimneys capped with Spanish barrel tile and stone ornaments.

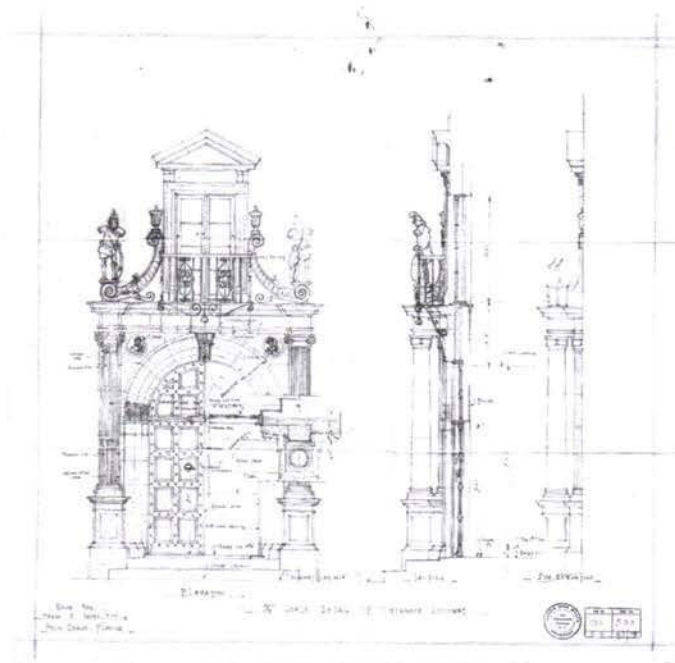


Main (North) Façade

The main entrance at 130 El Brillo Way is the most dramatic feature of Wyeth's design. A heavy entablature is supported by a pair of Ionic columns on classic pedestals. The entry has double wood paneled doors with a wide, classically designed stone arch surround. Just below the entablature and are two portrait medallions. Above the entablature is a decorative stone pediment with scrolls and urns and a casement window in the center. Sitting atop the Ionic columns are two cast stone statues. Decorative metal doors, ornate iron grillwork and a metal lantern enhance the elaborate entry and accentuate the Mediterranean Revival style of the house.



Main Entrance



Entrance Design by Marion Sims Wyeth

An important feature of many Mediterranean Revival style estates is their outdoor spaces and Wyeth was well known for the courtyards and outdoor rooms he created. At the heart of 130 El Brillo Way are a covered cloister and an open columned courtyard with a fountain in the center. This outside space is accessed from all first-floor rooms and defines the core of the house. Wyeth designed these arcades and loggias to serve not only as outdoor living rooms, but as a means of access to each room in lieu of copious inside halls.

Historic photos and drawings of the house illustrate numerous original features of the residence. Some of these features include four fireplaces, decorative cast stone moldings, elaborate wood ceilings, ornamental wrought ironwork, Spanish tile floors, and a room paneled with pecky cypress wood.

Throughout the history of the 130 El Brillo Way there have been additions, alterations and repairs to the property. In 1929, Marion Sims Wyeth was hired to design a card room as an addition to the first floor. Also in 1929, a second story was added to the garage for servants' quarters and in 1930 an additional garage was constructed. Building permits indicate interior alterations and repairs have taken place to update and maintain the dwelling. The only significant work that took place on the exterior was in 2011 when 64 windows were replaced with impact protection windows. The owners took great care to replace the windows to closely match the original windows and therefore retain the architectural integrity of the house.



Accessory Structures

IV. Historical Information

Casa Marcheta was built in 1925 at an estimated cost of \$65,000.¹ Marion Sims Wyeth built the house for Frank Vernon Skiff and his wife Ida Skiff. Frank Vernon Skiff founded the Jewel Company in 1899 in Chicago as a door-to-door coffee delivery service. A few years later he changed the name to Jewel Tea Company and began his own Jewel brand labels. In 1909, he built his own plant and soon after sales reached \$1 million with 400 routes. Five years later, the Jewel Tea Company had 850 routes scattered across the Midwest and \$8 million in sales. In 1919, Frank Vernon Skiff sold his interest in Jewel Tea Company for \$16 million dollars, the majority owner becoming John M. Hancock, for whom the famed Chicago skyscraper is named.²

Frank Vernon Skiff had been visiting and wintering in Palm Beach for many years prior to building his house on El Brillo Way. His parents, Vernon W. and Mary Frances Skiff, had begun traveling from Iowa to spend the winter season in Palm Beach as early as 1879, staying at Palm Beach's first hotel, the Cocoanut Grove, built and operated by pioneer and first mayor of Palm Beach "Cap" E. N. Dimick. As the years passed and the Royal Poinciana Hotel and Palm Beach Inn were built, the Skiffs stayed alternately at both hotels. Ida Skiff recalled that as a young bride, "the nicest Christmas present she and Frank could receive was the way and means to get to Palm Beach for a brief vacation with Frank's parents."³

In 1915, Frank and Ida Skiff went from spending short vacations in Palm Beach to spending the winter season, first staying at hotels and then renting homes. In a 1949 interview given to the Palm Beach Daily News, Ida Skiff described Palm Beach lifestyle prior to the 1920s Land Boom as well as development of the Town. The decision to "have their own place on the Island built" came to the Skiffs after watching Sunset Avenue being sold and planned one winter. According to Mrs. Skiff, "from one end of the avenue to the other, there were "come-ons" employed by clever auctioneers to dispose of the property. With every sale you got something thrown in. Sometimes a piano and again a cook stove or refrigerator." Land was quickly being developed and they wanted to be part of it.⁴

¹ Town of Palm Beach Building Permit #396, March 16, 1925.

² John McNeer, "Olden Days: Jewel Tea has its Roots in Newton," Newton Daily News. 12 December 2007.

³ Palm Beacher: Mrs. Frank Vernon Skiff, Palm Beach Daily News, 25 March 1949.

⁴ Ibid

The Skiffs choose to build their house on the ocean block of El Brillo Way. At the time there were three other houses on El Brillo Way; "Villa Tranquilla" designed by Addison Mizner, 132 El Brillo built by Newlon and Stephens and "Qui Si Sana" designed by Marion Sims Wyeth. The Skiffs had become acquainted with Marion Sims Wyeth and admired his work so in 1925 they hired him to design their residence. The building permit for 130 El Brillo was taken out March 16, 1925, and work began immediately so that the Skiffs could occupy the house for the upcoming winter season. The Skiffs also hired Mrs. Marion H. Millizen, a prominent New York interior designer who had opened a winter headquarters in Palm Beach, to decorate their home.⁵

130 El Brillo Way received its name "Casa Marcheta" during a corner-laying ceremony in 1925. According to Mrs. Skiff, "at the end of the ceremony, their guest, John Charles Thomas, tossed his ceremonial shovel in the air and burst in to a round of the popular Spanish ballad 'Marcheta' and right then the Skiffs named their house."⁶ Frank and Ida Skiff were well-established in Palm Beach society and held many parties and musicales at Casa Marcheta, many of which were chronicled in local and New York newspapers. Frank Vernon Skiff passed away in 1933, but Mrs. Skiff continued to spend winters and entertain frequently at Casa Marcheta until 1952.

V. Architects Biography

Marion Sims Wyeth

Marion Sims Wyeth was as one of Palm Beach's foremost architects in a career that spanned over fifty years. Wyeth was noted for his "quiet, subdued and rational" interpretations of both the Spanish and Italian styles. With Addison Mizner, Maurice Fatio, Joseph Urban and John Volk, he is credited with creating the "Palm Beach Style".

Wyeth was born in 1889 in New York, a son of Florence Nightingale Sims and Dr. John Allan Wyeth. Dr. Wyeth was a Civil War poet, surgical pioneer, and founder of New York's Polyclinic Hospital, the first postgraduate medical school in the United States. Marion's grandfather, Dr. James Marion Sims, founded the field of gynecology and the first woman's hospital in history. Marion Sims Wyeth began

⁵ "The Artistic Colony," Palm Beach Post, 13 January 1926.

⁶ Palm Beacher: Mrs. Frank Vernon Skiff, Palm Beach Daily News, 25 March 1949.

his architectural studies at Princeton University and completed his classic training at the École des Beaux-Arts in Paris in 1914. At the time, the Ecole was considered the one of the finest schools in the world. It was a style of education based on studying the classics, mostly Roman architecture. After completing school, Wyeth served as secretary to the U.S. Ambassador in Rome. Upon his return to New York, Wyeth became associated with the architectural offices of Bertram Grosvenor Goodhue and later with Carrere and Hastings, the firm that designed Whitehall for Henry Flagler.

Arriving in Palm Beach at the age of 30, Wyeth met with immediate success. From 1920, Wyeth shared a New York office with Frederic Rhineland King, a friend from his student days in Paris, until 1934 when they formalized the relationship with the Wyeth and King partnership. William Royster Johnson joined Wyeth's Palm Beach office as a draftsman in 1924. In 1944 he became a partner and the firm name changed to Wyeth, King and Johnson. Over the years, the firm designed buildings ranging from Mediterranean Revival to classical Georgian, French, and Colonial styles.

The socially popular Wyeth was a prolific craftsman and more than 100 of his designs have graced the Island, including eight built on El Brillo Way. Some of his well known Palm Beach designs include Qui Si Sana, Casa Juanita, Hogarcito, Casa de Los Arcos, Vita Serena, Southwood and the Bethesda by the Sea rectory. His largest project was Cielito Lindo, a 45,000-square-foot Spanish Moorish-Revival-style mansion built for James Donohue and Jessie Woolworth Donohue in 1927. In the late 1940s, it was sold to developers, who split the property and created several houses. And while Joseph Urban is credited with Mar-a-Lago, Wyeth's association with the project was essential for its completion. Wyeth also had an impressive list of prominent works outside of Palm Beach. Some of these include Good Samaritan Hospital and the Norton Gallery of Art in West Palm Beach, the Governor's Mansion in Tallahassee, and Doris Duke's Shangri La in Honolulu.

Wyeth served as a trustee of the Society of the Four Arts (1936-1969) and as its president (1956-1961). He became the first Palm Beach architect to be elected a fellow of the American Institute of Architecture in 1954, and received the Test of Time Award from its Palm Beach Chapter in 1981. Marion Sims Wyeth passed away in 1982 at the age of 93.

VI. Statement of Significance:

“Casa Marcheta” located at 130 El Brillo Way is significant as an excellent example of the Mediterranean Revival style carefully executed by Marion Sims Wyeth. It is also important as an example of the grand society estates built in Palm Beach during the Boom Time Era of the 1920s and the cultural and economic climate that supported such luxury.

VII. Criteria for Designation

Section 54-161 of the Town of Palm Beach Landmarks Preservation Ordinance outlines the criteria for designation of a landmark or landmark site and suggests that at least one criterion must be met to justify the designation. Listed below are criteria which relate to this property and justification for designation:

- (1) “Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town.”

“Casa Marcheta” was constructed during the Florida Boom Time Era of the 1920s. Its Mediterranean Revival architecture displays the accompanying opulence found during this period. It was built as a seasonal residence for Mr. Frank Vernon Skiff, founder of the Jewel Tea Company, whose family had been spending the winters in Palm Beach since 1879. During the boom years of the 1920s many affluent northerners hired prominent architects to build houses in Palm Beach rather than spend the winter season at the hotels, creating a new era in the history of the resort town. Casa Marcheta was representative of this new era and therefore reflects the broad cultural, economic and social history of the Town of Palm Beach fulfilling criterion (1).

- (3) “Embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship.”

“Casa Marcheta” is an excellent example of the Mediterranean Revival style popularized in Palm Beach during the Boom Time Era of the 1920s and still recognized as the Palm Beach style. The house embodies distinctive Mediterranean Revival characteristics found in Palm Beach houses of this style including a central courtyard, outdoor living rooms, asymmetrical fenestration, barrel tile covered

roofs, arched windows, ornate wrought ironwork, balconies, decorative cast-stone embellishments, statues, and a dramatic entryway. These features have been carefully executed to present a specimen inherently valuable for the study of the style and therefore fulfilling criterion (3).

- (4) "Is representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or has influenced his age."

"Casa Marcheta" was designed by Marion Sims Wyeth, one of Palm Beach's most important architects. Wyeth's influential career spanned more than fifty years and he is recognized as one of the creators of the "Palm Beach" style. More than 100 of his notable designs were built for some of Palm Beach's most prominent patrons.

VIII. Selected Bibliography

Dragisic, R.D. "Architects on the Architects: Marion Sims Wyeth"
Lecture at the Preservation Foundation of Palm Beach. December 2010.

Earl, Polly Anne. Palm Beach: An Architectural Legacy. New York: Rizzoli International Publications, 2002.

El Brillo Way 2001 Annual Walking Tour Brochure. Preservation Foundation of Palm Beach.

Hoffstot, Barbara D. Landmark Architecture of Palm Beach. Revised Edition. Pittsburgh, Pennsylvania: Ober Park Associates, Inc., 1980.

Johnston, Shirley. Palm Beach Houses. New York: Rizzoli International Publications, 1991.

Marion Sims Wyeth Drawings for Frank Vernon Skiff House, 1925 detail drawings and 1929 card room addition. Preservation Foundation of Palm Beach.

McNeer, John. "Olden Days: Jewel Tea has its Roots in Newton," Newton Daily News. 12 December 2007.

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The Palm Beach Post. Archived Articles Online and Articles from the files of the Historical Society of Palm Beach County and the Preservation Foundation of Palm Beach.

Sanborn Insurance Map of Palm Beach. New York: Sanborn Map Co., 1926. City of West Palm Beach Public Library, Florida Room.

Town of Palm Beach. Building Permits, 1920 – 2012.

West Palm Beach City Directories. Asheville, NC: Florida-Piedmont
Directory Company, 1918-1984.

IX. Florida Master Site File Form



HISTORICAL STRUCTURE FORM

Electronic Version 1.1.0

Site # PB06511

Recorder # Jane S. Day

Field Date 7/17/2010

Form Date 9/21/2010

Form No 201007

Form # - Field Date (YYYYMM)

First Site Form Recorded for this Site? NO

GENERAL INFORMATION

Site Name (address if none) Donald Gordon, House Multiple Listing (DHR only) _____

Other Names _____ >> _____

Survey or Project Name Palm Beach Historic sites Survey, Phase V Survey# _____

National Register Category Building(s)

LOCATION & IDENTIFICATION

Address

Street No.	Direction	Street Name	Street Type	Direction Suffix
<u>130</u>		<u>El Brillo</u>	<u>Way</u>	

Cross Streets (nearest/ between) S. Ocean Blvd. and S. County Rd.

City / Town (within 3 miles) Town of Palm Beach In Current City Limits? YES

County Palm Beach Tax Parcel #(s) 50-43-43-27-05-000-0240

Subdivision Name El Bravo Park Block _____ Lot 24

Ownership Private Individual

Name of Public Trust (e.g., park) _____

Route to (especially if no street address) On the southeast corner of El Brillo Way and South County Road.

MAPPING

USGS 7.5' Map Name _____ Publication Date _____ >> PALM BEACH;1983

Township: _____ Range: _____ Section: _____ 1/4 section: _____ >> 43S ;43E ;27;UNSP

Irregular Section Name: _____

Landgrant _____

UTM: Zone _____ Easting _____ Northing _____

Plat or Other Map (map's name, location) _____

DESCRIPTION

Style Mediterranean Revival Other Style _____

Exterior Plan Irregular Other Exterior Plan _____

Number of Stories 2

Structural System(s) _____ >> Hollow clay tile

Other Structural System(s) concrete block

Foundation Type(s) _____ >> Continuous

Other Foundation Types _____

Foundation Material(s) _____ >> Concrete Block

Other Foundation Material(s) _____

Exterior Fabric(s) _____ >> Stucco

Other Exterior Fabric(s) _____

Roof Type(s) _____ >> Gable

Other Roof Type(s) _____

Roof Material(s) _____ >> Spanish tile

Other Roof Material(s) _____

Roof Secondary Structure(s) (dormers etc) _____ >> _____

Other Roof Secondary Structure(s) _____

Number of Chimneys 2

Chimney Material Brick

Other Chimney Material(s) stucco on exterior

Chimney Location(s) east exterior, west exterior

HISTORICAL STRUCTURE FORM

SPB06511

DESCRIPTION (continued)

Window Descriptions casement, French doors

Main Entrance Description (stylistic details) on the north facade with a cast stone surround

Porches: #open 3 #closed #incised Location(s) entry - n, (2) 2nd floor balconies - n

Porch Roof Type(s)

Exterior Ornament cast stone, exposed rafters, engaged columns

Interior Plan Unknown

Other Interior Plan

Condition Excellent

Structure Surroundings

Commercial: NONE of this category

Residential: ALL this category

Institutional: NONE of this category

Undeveloped: NONE of this category

Ancillary Features (Number / type of outbuildings, major landscape features)

Archaeological Remains (describe): none observed

If archaeological remains are present, was an Archaeological Site Form completed?

Narrative Description (optional)

HISTORY

Construction year 1925

Architect (last name first): unknown

Builder (last name first): H.R. Corwin & Co.

Changes in Locations or Conditions

Type of Change

Year of Change

Date Change Noted

Description of Changes

>> Altered-not to standards;1981;Dean B. Ellis

Structure Use History

Use

Year Use Started

Year Use Ended

>> Private residence;1925;

Other Structure Uses

Ownership History (especially original owner, dates, profession, etc.)

RESEARCH METHODS

Research Methods

>> Examine local property records

Other research methods

SURVEYOR'S EVALUATION OF SITE

Potentially Eligible for a Local Register?

YES

Name of Local Register if Eligible Town of Palm Beach Landmark

Individually Eligible for National Register?

INSUFF. INFO

Potential Contributor to NR District?

INSUFF. INFO

Area(s) of historical significance

>> Architecture

Other Historical Associations

Explanation of Evaluation (required) This is a good example of the Mediterranean revival style from the boom times of the 1920s. It is worthy of further study.

HISTORICAL STRUCTURE FORM

8PB06511

DOCUMENTATION (Photos, Plans, etc.)

Photographic Negatives or Other Collections Not Filed with FMSF, including Field Notes, Plans, other Important Documents.

Document type: _____ Maintaining Organization: _____
 File or Accession #: _____ Descriptive Information: _____
 >> _____

RECORDER INFORMATION

Recorder Name (Last, First) Day, Jane S.
 Recorder Address / Phone 728 Granada Dr., Boca Raton, FL 33432 561-362-4473
 Recorder Affiliation Research Atlantica Other Affiliation _____
 Is a Text-Only Supplement File Attached (Surveyor Only)? _____

***** MASTER SITE FILE USE ONLY *****

Cultural Resource Type: Electronic Form Used: Form Type Code: Form Quality Ranking: Form Status Code: Supplement Information Status: Supplement File Status: Form Comments: _____ _____ _____	<table border="1"> <tr> <th>SHPO's Evaluation of Resource</th> </tr> <tr> <td>Date</td> </tr> </table> FMSF Staffer: Computer Entry Date:	SHPO's Evaluation of Resource	Date
SHPO's Evaluation of Resource			
Date			

REQUIRED PAPER ATTACHMENTS

- (1) USGS 7.5" MAP WITH STRUCTURE PINPOINTED IN RED
- (2) LARGE SCALE STREET OR PLAT MAP
- (3) PHOTO OF MAIN FACADE, B&W, AT LEAST 3"X5"

EXCERPT FROM THE MINUTES OF THE LANDMARKS PRESERVATION COMMISSION
MEETING OF MARCH 20, 2013

XII. DESIGNATION HEARINGS:

Item 1: 130 El Brillo Way

Owner: Heidelinde M. Kauka Hamill

Call for disclosure of ex parte communication: No disclosures

Janet Murphy of Murphy Stillings, LLC, Staff Historic Preservation Consultants, testified that she had made numerous attempts to contact the property owner, but was not successful in speaking to the property owner. She noted that the Town had not received any correspondence from the property owner either. Ms. Murphy testified to the architecture, history and architect for this 1925 Marion Sims Wyeth Mediterranean Revival style residence, and stated that this property meets the following criteria for designation as a landmark of the Town of Palm Beach:

Sec. 54-161 (1) Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town; and,

Sec. 54-161 (3) Embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmen; and,

Sec. 54-161 (4) Is representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or who influenced his age.

Mr. Cooney offered some informational comments regarding this particular architect, his plans, and some changes made to this property over time.

Mrs. Delp verified that proof of publication and proper legal service were in place for this hearing.

Mr. Moore made some comments and requests relative to the quality of the consultants' future designation hearing presentations.

MOTION BY MR. FELDKAMP THAT THE DESIGNATION REPORT BE MADE A PART OF THE RECORD.

MOTION SECONDED BY MR. MOORE.

MOTION CARRIED UNANIMOUSLY.

MOTION BY MR. FELDKAMP THAT 130 EL BRILLO WAY BE RECOMMENDED TO THE TOWN COUNCIL FOR DESIGNATION AS A LANDMARK OF THE TOWN OF PALM BEACH AND THAT THE CRITERIA, AS PRESENTED, BE MADE PART OF THE RECORD.

MOTION SECONDED BY MR. MOORE.

MOTION CARRIED UNANIMOUSLY.

Palm Beach, Florida, Code of Ordinances >> PART II - CODE OF ORDINANCES >> Chapter 54 - HISTORICAL PRESERVATION >> ARTICLE IV. - DESIGNATION PROCEDURE >>

ARTICLE IV. - DESIGNATION PROCEDURE

Sec. 54-161. - Criteria for landmarks and landmark sites.

Sec. 54-162. - Creation of historic districts.

Sec. 54-163. - Commission powers with respect to landmarks, landmark sites and historic districts.

Sec. 54-164. - Landmark, landmark site and historic district designation and undesignation procedures.

Sec. 54-165. - Voluntary restrictive covenants.

Secs. 54-166—54-195. - Reserved.

Sec. 54-161. - Criteria for landmarks and landmark sites.

A landmark or landmark site shall meet at least one of the following criteria:

- (1) Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town.
- (2) Is identified with historic personages or with important events in national, state or local history.
- (3) Embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship.
- (4) Is representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or who influenced his age.

(Code 1982, § 16-38)

Sec. 54-162. - Creation of historic districts.

- (a) *Authorized.* For preservation purposes, the commission shall identify geographically defined areas within the town to be designated as historic districts and shall cite the guideline criteria upon which such designation shall be made. An historic district may be designated for any geographic area of particular historic, architectural or cultural significance to the town that:
 - (1) Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town.
 - (2) Is identified with historic personages or with important events in national, state or local history.
 - (3) Embodies distinguishing characteristics of one or more architectural types, or contains specimens inherently valuable for the study of a period, style or methods of construction or use of indigenous materials or craftsmanship.
 - (4) Is representative of the notable works of one or more master builders, designers or architects whose individual ability has been recognized to have influenced their age.
 - (5) Constitutes a unique area of architecture, landscaping and planning.
- (b) *Petition for special historic district category.* Following the designation of each landmark or landmark site, the commission may petition the town council for the categorizing of such

property as special district H. Following the designation of each historic district, the commission may petition the town council for the categorizing of each property in such district to special district HD.

(Code 1982, §§ 16-38.1, 16-39)

Sec. 54-163. - Commission powers with respect to landmarks, landmark sites and historic districts.

The commission has the power to:

- (1) Designate a building, together with its accessory buildings and its lot of record, or a vacant site or a district as historic and worthy of preservation as a landmark, landmark site or historic district, as the case may be, within the jurisdiction of the commission, provided such designation is ratified by the town council.
- (2) Recommend appropriate legislation for the preservation of any building, site or district which it has so designated.
- (3) Make application for public and private funds when appropriate and available for the purposes set forth in this article subject to the approval of the town council.
- (4) Review applications proposing erection, alteration, restoration or moving of any building it has so designated or any building located in a district it has so designated, and to issue or deny certificates of appropriateness accordingly.
- (5) Review applications for demolition permits proposing demolition of all or part of any landmark or any building located in an historic district, and to issue certificates of appropriateness or to deny them for one year.
- (6) Cooperate with the owner of a landmark or a property located in an historic district throughout the year following a refusal to issue a certificate of appropriateness pursuant to an application for a demolition permit, and to seek alternative economic uses for such landmark or property.
- (7) Review its denial of a certificate of appropriateness for demolition of such landmark or property annually, during a public hearing at which time the owner of the affected landmark or property shall be afforded an opportunity to appear with counsel and to present testimony.
- (8) Prohibit the issuance of building, exterior remodeling or demolition permits affecting any property under consideration for landmark designation without a certificate of appropriateness, this prohibition to remain in effect for the length of time required by the commission and the town council for final action on the proposed designation. The commission shall accomplish such prohibition by furnishing the building official a list of all property under consideration for landmark designation.

(Code 1982, § 16-42)

Sec. 54-164. - Landmark, landmark site and historic district designation and undesignation procedures.

- (a) The following procedure shall be adhered to by the commission in designating any building, building site or district that is worthy of preservation:
 - (1) The commission shall consider for landmark designation any property proposed by the owner of record or by a member of the commission.
 - (2)

Notice of a proposed designation shall be sent by certified mail to the owner of record of property proposed for designation as a landmark or landmark site and to each owner of record of property in a district proposed for designation as an historic district, describing the property proposed and announcing a public hearing by the commission to consider such a designation to be held not less than 30 days after the mailing of such notice.

- (3) The commission shall also cause notice of each such proposed designation to be posted at least 30 days prior to the public hearing on the bulletin board in the lobby of the town hall, and in addition the commission shall cause such notice to be published in a newspaper having general circulation in the town.
 - (4) The commission may retain or solicit expert testimony regarding the historic and architectural importance of the buildings and districts under consideration for designation.
 - (5) The commission may present testimony or documentary evidence of its own to establish a record regarding the historic and architectural importance of the proposed landmark, landmark site or historic district.
 - (6) The commission shall afford the owner of each affected property reasonable opportunity to present testimony or documentary evidence regarding the historic and architectural importance of such property.
 - (7) The owner of each affected property shall be afforded a right of representation by counsel and reasonable opportunity to cross examine witnesses presented by the commission.
 - (8) Any interested party may present testimony or documentary evidence regarding the designation of a proposed landmark, landmark site or historic district at the public hearing and may submit to the commission documentary evidence within three days after the hearing.
 - (9) Within not more than 30 days after a public hearing, the commission shall render a final decision regarding the proposed designation and give written notice of its decision to each owner of property affected by the designation, setting forth the reasons for the decision.
 - (10) The commission shall maintain a record of testimony and documentary evidence submitted to it for consideration of the designation of a proposed or previously designated landmark, landmark site or historic district.
 - (11) In accordance with section 54-163(1), the town council shall, within 90 days of the commission's final decision, hold a public hearing to consider ratification of the determination of the commission prior to the designation of a property as a landmark or landmark site or of a district as an historic district becoming effective. Absent ratification by the town council, the commission's determination shall be ineffective.
 - (12) Within 30 days of the date on which the town council ratifies the commission's designation of a landmark, landmark site or historic district, the commission shall cause to be filed in the office of the county recorder of deeds a certificate of notification that such property is designated a landmark or landmark site or is located within a district designated an historic district; and the certificate of notification shall be maintained on the public record until such time as such designation may be withdrawn by the commission and the town council.
- (b) Designation and undesignation hearings before the commission shall be held only during the months of November, December, January, February, March and April.
- (c)

Designation of a landmark, landmark site or a historic district may be withdrawn by following the same procedure as listed above.

(Code 1982, § 16-43)

Sec. 54-165. - Voluntary restrictive covenants.

The owner of any landmark or landmark site may, at any time following the designation of his property, enter into a restrictive covenant on the property after negotiation with the commission. The commission may assist the owner in preparing such a covenant in the interest of preserving the landmark or the landmark site. The owner shall record such covenant in the office of the county recorder of deeds and shall notify the town clerk, building official and town council and may notify the office of the county property appraiser of such covenant and the conditions thereof.

(Code 1982, § 16-48)

Secs. 54-166—54-195. - Reserved.

TOWN OF PALM BEACH

Town Council Meeting on: April 10, 2013

Section of Agenda

Public Hearings

Agenda Title

RESOLUTION NO. 64-2013 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as 1047 South Ocean Boulevard Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated March 27, 2013 from John S. Page, Director of Planning, Zoning and Building
- Resolution No. 64-2013
- Designation Report for 1047 South Ocean Boulevard
- Excerpt from the Minutes of the Landmarks Preservation Commission Meeting of March 20, 2013
- Applicable section of Code of Ordinances

TOWN OF PALM BEACH

Information for Town Council Meeting on: April 10, 2013

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Landmark Designation of 1047 South Ocean Boulevard
Resolution No. 64 – 2013

Date: March 27, 2013

STAFF RECOMMENDATION

Staff recommends ratification of the property known as 1047 South Ocean Boulevard as a Town landmark.

LANDMARKS PRESERVATION COMMISSION RECOMMENDATION

At the Public Hearing for Designation held during the March 20, 2013 meeting of the Landmarks Preservation Commission, the Commission voted 6-1 to recommend to the Town Council that the above mentioned property be designated as a landmark. In accordance with Section 54-164 (a) (11) of Chapter 54 of the Town of Palm Beach Code of Ordinances, the Town Council shall hold a public hearing within ninety (90) days of the final decision of the Landmarks Commission to consider ratification of the Commission's recommendation.

GENERAL INFORMATION

- The property meets the following criteria for designation as a landmark of the Town of Palm Beach.

Sec. 54-161 (3) Embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmen.

Sec. 54-161 (4) Is representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or has influenced his age.

Landmark Designation of 1047 South Ocean Boulevard

Resolution No. 64 - 2013

March 27, 2013

Page 2

OWNER CONSENT

Please be advised that the property owner supports the landmark designation of this property.

FUNDING/FISCAL IMPACT

No direct funding is needed for this action.

COMPREHENSIVE PLAN

The action proposed is consistent with the goals, objectives and policies contained in the Historic Preservation Element of the Town's Comprehensive Plan.

TOWN ATTORNEY REVIEW

Please be advised that the Town Attorney has reviewed Resolution No. 64 - 2013 relating to 1047 South Ocean Boulevard, and has approved it as to legal form and sufficiency.

attachments

JSP:cmd

cc: Thomas G. Bradford, Deputy Town Manager
John C. Randolph, Town Attorney
Susan A. Owens, Town Clerk
John Lindgren, AICP, Planning Administrator
pf

RESOLUTION NO. 64 - 2013

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY KNOWN AS 1047 SOUTH OCEAN BOULEVARD MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE IV OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH; AND DESIGNATING SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE IV OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

WHEREAS, pursuant to the provisions of Ordinance No. 2-84, (Chapter 54, Article IV, Code of Ordinances of the Town of Palm Beach) the Landmarks Preservation Commission of the Town of Palm Beach held public hearings and recommended to the Town Council that certain property described herein be designated as a landmark as described in said Ordinance and Code; and

WHEREAS, after due notice to the property owner(s) affected, a public hearing was held at which all parties interested were given an opportunity to be heard and express their views and opinions with respect to the property and its designation as a landmark; and

WHEREAS, the Town Council does hereby find and determine that the property described herein meets the criteria required by the Ordinance to designate a landmark, and shall be designated as a landmark;

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

Section 1. The foregoing recitals are hereby ratified and confirmed.

Section 2. The recommendation and determination of the Landmarks Preservation Commission as to the property hereinafter described in Section 3 of this Resolution, being designated as a landmark is hereby ratified, approved and confirmed.

Section 3. The landmark herein designated, pursuant to the provisions of Ordinance No. 2-84, and the provisions of the Town Code described herein, is known as **1047 South Ocean Boulevard** and the property to be landmarked is legally described as follows:

LEGAL DESCRIPTION AS REFLECTED ON THE ATTACHED QUIT CLAIM DEED WHICH WAS RECORDED ON JANUARY 12, 2009.

Section 4. The Town Clerk is hereby ordered to furnish the property owner of the landmarked property a copy of this Resolution.

Section 5. Within thirty (30) days from the date of this Resolution, the Landmarks Preservation Commission shall cause to be filed in the Office of the Recorder of Deeds in and for Palm Beach County, Florida, a certificate that the above-described property comprises a landmark, as defined in and subject to the provisions of Ordinance No. 2-84 and the Code of Ordinances of the Town of Palm Beach, Florida.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 10th day of April, 2013.

Gail L. Coniglio, Mayor

David A. Rosow, Town Council President

Robert N. Wildrick, President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Susan A. Owens, MMC, Town Clerk

Michael J. Pucillo, Town Council Member



WC#68

Prepared by:
Lori Thomas
Universal Land Title, Inc.
1555 Palm Beach Lakes Blvd., Suite 500
West Palm Beach, FL 33401

CFN 20090013077
OR BK 23031 PG 1767
RECORDED 01/12/2009 16:31:10
Palm Beach County, Florida
AKT 10.00
Doc Stamp 0.70
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 1767 - 1769; (3pgs)

Return to:

Universal Land Title, Inc.
1555 Palm Beach Lakes Blvd., Suite 500
West Palm Beach, FL 33401

File Number: 10773121

(Space Above This Line For Recording Data)

Quit Claim Deed

This Quit Claim Deed made this 30th day of December, 2008 between K. Addison Jack, LLC, a Connecticut limited liability company, whose post office address is 1155 Sasco Hill Road, Fairfield, CT 06824, grantor, and Karin Jack, whose post office address is 1155 Sasco Hill Road, Fairfield, CT 06824, grantee:

(Whenever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

Witnesseth, that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, does hereby remise, release, and quitclaim to the said grantee, and grantee's heirs and assigns forever, all the right, title, interest, claim and demand which grantor has in and to the following described land, situate, lying and being in the Palm Beach County, Florida, to-wit:

Parcel I

A tract of land lying and being in Government Lot 2, Section 35, in Township 43 South, Range 43 East, Town of Palm Beach, Palm Beach County, and more particularly described as follows:

Beginning at a point on the shore of the Atlantic Ocean 1765.25' North of the Township line between Townships 43 and 44 South, Range 43 East, Palm Beach County, Florida, said point being in the North line of land deeded by George M. Osborn and wife to Jessie W. Donahue by deed dated March 31, 1925, and recorded in the Public Records of Palm Beach County, Florida, in Deed Book 268, at Page 173; thence Westerly along said North line of land of said Donahue a distance of 130', more or less, to the East line of the Ocean Boulevard, as now laid out and in use; thence Northerly along the said East line of the Ocean Boulevard to a point in a line parallel to and 100' North of, measured at right angles to the North line of the land of said Donahue; thence Easterly parallel to and 100' North of the North line of land of said Donahue, a distance of 120', more

or less, to the waters of the Atlantic Ocean; thence Southerly, along the water of the Atlantic Ocean, a distance of 100', more or less, to the point of beginning.

TOGETHER WITH all of the littoral rights thereunto belonging or in any wise appertaining.

Parcel II

A permissive easement over, across, in and upon the following described property:

Beginning at a point in the East Right-of-Way line of Ocean Boulevard 774.5' South of and measured at right angles to the North line of Government Lot 2, Section 35, Township 43 South, Range 43 East, Town of Palm Beach, Palm Beach County, Florida; thence run Easterly parallel to the said North line of Government Lot 2 for a distance of 37.80' to a point; thence Northerly at right angles to the preceding course for a distance of 7.53' to a point; thence 'run Westerly parallel to said North line of Government Lot 2 for a distance of 36.92' to a point in the Easterly Right-of-Way line of Ocean Boulevard, thence Southerly along said Right-of-Way line for a distance of 7.58' to the Point of Beginning, for the purpose of maintaining and operating the air conditioning equipment and covering structure, as well as the pump and pump house now located upon said premises for so long as said equipment is located upon said area and is used for said purpose.

Parcel Identification Number: 50-43-43-35-00-002-0150

To Have and to Hold, the same together with all and singular the appurtenances thereto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of grantors, either in law or equity, for the use, benefit and profit of the said grantee forever.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Lori C. Thomas
Witness Name: Lori C. Thomas

K. Addison Jack, LLC

By Karin Jack
Karin Jack

Shelly Pruitt-Mari
Witness Name: Shelly Pruitt-Mari

State of Florida
County of Palm Beach

The foregoing instrument was acknowledged before me this 30th day of December, 2008 by Karin Jack, she (☐) is personally known to me or (☒) has produced DRIVER LICENSE identification.



Shelly Pruitt-Mari
Notary Public

Printed Name: _____

My Commission Expires: _____

Copy

1047 South Ocean Boulevard



DESIGNATION REPORT

Wednesday, March 20, 2013
Landmark Preservation Commission
Palm Beach, Florida

DESIGNATION REPORT

1047 South Ocean Boulevard

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Report produced by Murphy Stillings, LLC

I. General Information

Location:	1047 South Ocean Boulevard Palm Beach, Florida
Date of Construction:	1935
First Owner:	James and Adeline Moffett
Architect:	John L. Volk
Builder/Contractor:	Arnold Construction Company
Present Owner:	Karin Jack
Present Use:	Residential
Present Zoning:	R A
Palm Beach County Tax Folio Number:	50-43-43-35-00-002-0150
Current Legal Description:	North 100 Feet of South 1865.25 Feet of Government Lot 2 East of Ocean Boulevard

II. Location Map

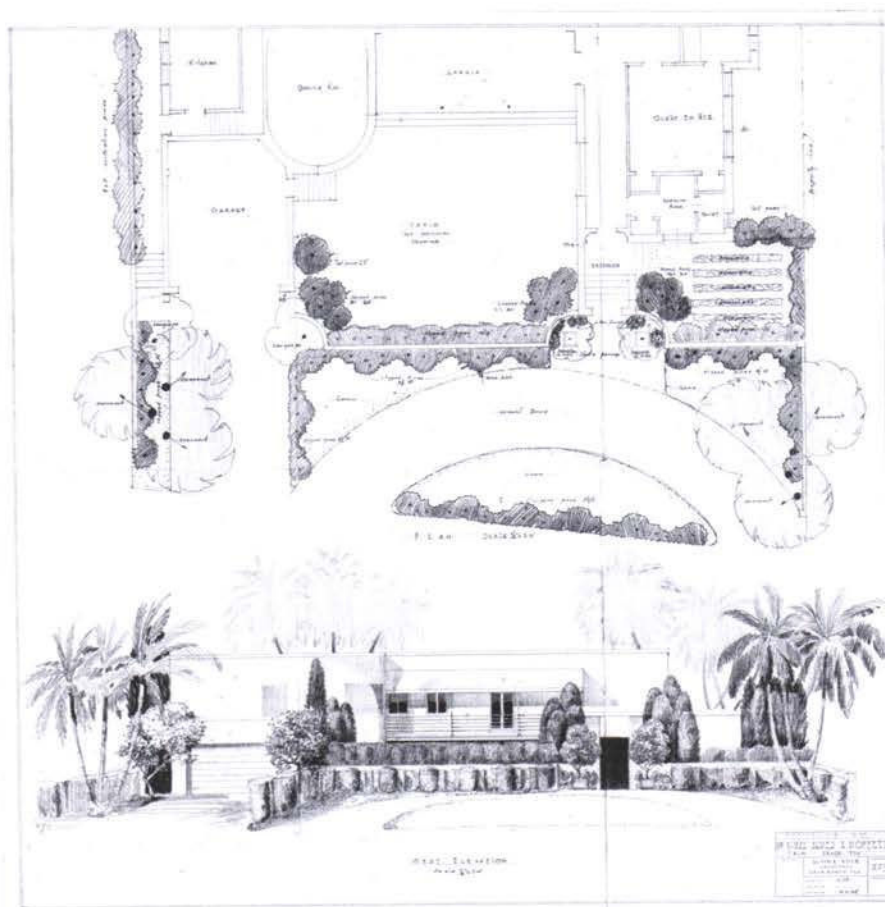
1047 South Ocean Boulevard



III. Architectural Information

The residence at 1047 South Ocean Boulevard is a good example of the Art Moderne style of architecture. The Art Moderne style flourished between 1930 and 1945, and was highlighted at the 1933 World's Fair in Chicago. It was influenced by the technology that followed WWI and followed the "less is more" standard of design. It drew from the streamlined aerodynamic shapes of planes and cars and used materials such as glass block and stainless steel. The Art Moderne style, with its simple geometric forms and simplicity in decorative details was becoming popular as the more decorative Art Deco style was falling out of favor. Art Moderne architecture features flat roofs, asymmetric shapes, smooth surface finishes, curvilinear features, horizontal elements, metal screen doors with stylized decorations, eyebrows, stainless steel and glass block accents.

1047 South Ocean Boulevard was designed by John Volk in 1935 for James and Adeline Moffett. Permit Number 13135 was issued to John Volk and the Arnold Construction Company of West Palm Beach for the construction of a residence and garage in the amount of \$35,000 in October 1935.¹



Courtesy of the John L. Volk Foundation

¹ Town of Palm Beach Building Permits

Located on the ocean side of South Ocean Boulevard, the residence is constructed of hollow tile with a smooth stucco surface and a flat roof. It has asymmetrical massing and was designed in a U-shape around a patio on the west side between the garage and entrance. A distinguishing element of Volk's design is a curved wall with a window of glass blocks facing southwest. The main entrance reflects the Art Moderne style of the house. The squared entry has fluted columns and stylized metal screen doors. Volk designed the rear façade with a curved second floor balcony with a metal railing overlooking the Atlantic Ocean.



Curved Wall Containing Glass Blocks
Courtesy of the John L. Volk Foundation



Main Entrance



Rear (East) Façade with Curvilinear Balcony
Courtesy of the John L. Volk Foundation

There have been alterations to the property over time. In 1956, the owner Frank Pryor commissioned Volk and Associates to design an addition to the existing garage, located at the north end of the residence, to provide an additional six feet of depth.² Mr. Pryor also had the lanai and a portion of the patio at the west side of the residence enclosed to create a Florida Room in 1962³. In 1981, the owner Howard Ruskin had the glass blocks in the curved wall replaced with fixed glass windows. And at some time since 2007, the curved balcony on the rear façade was removed and replaced with small metal balconies.



Rear (East) Facade

IV. Historical Information

The 1930s was a period of transition in the Town of Palm Beach. The building boom of the 1920s had ended and the Island was experiencing a period of economic instability, including a building slowdown that lasted until after WWII. The architecture in Palm Beach was also transitioning during the 1930s and less elaborate styles of architecture were being explored.

² Town of Palm Beach Building Permit No. 32556.

³ Town of Palm Beach Building Permit No. 14262.

In 1935, James A. Moffett, Jr. and his wife Adeline Kim Stilwell Moran Moffett purchased the property at 1047 South Ocean Boulevard. They commissioned John L. Volk to design a residence on the ocean. They named the residence "White Caps." A newspaper article in December 1935 describes the residence,

"Palm Beach's first 'shining palace built upon the sand' is now a reality...The unusual interest centering in the Moffett house is based not only on the fact that this is an experiment in beach houses, but that it represents still another new note into the changing architectural trends in Palm Beach...There have been one or two experiments with the rather geometric, modernistic type of house, but none that to date have really met the term 'modern' in all its implications, combining simplicity of design with comfort and utility, rather than the bizarre and exotic."⁴

James Moffett Jr. was the vice president of Standard Oil of New Jersey before becoming the first Federal Housing Administrator from 1934-35. As a member of the Franklin D. Roosevelt administration he led the Federal Housing Administration (FHA), which was created by the 1934 National Housing Act to insure home mortgages.⁵ Following his departure from the FHA he became the head of several other oil companies, including Standard Oil of California. While Mr. Moffett passed away in 1953, Mrs. Moffett continued to live in the residence until 1958. The property was sold in 1958 to Frank and Elsie Pryor who owned the property until 1970. Since that time, the property has changed ownership several times.

V. Architects Biography

John L. Volk

John Volk has been called the last of the "original" Palm Beach architects. He was one of an elite group of early 1920s architects that included Addison Mizner, Maurice Fatio, and Marion Sims Wyeth who developed the architectural style of the island that came to be known as the "Palm Beach Style".

⁴ "Palm Beach Shows Keen Interest in Moffett's New Beach House," December 1935. Historical Society of Palm Beach County, Moffett File.

⁵ "The FHA Story in Summary", 1 May 1959, The Federal Housing Administration.

Volk was born in Graz, Austria in 1901. He came to the United States with his parents at the age of nine and grew up in New York. He attended Columbia University School of Architecture and the Ecole des Beaux Arts. Volk opened his office in Palm Beach in 1925.

Volk designed more than 1000 houses, theaters, clubs, shops, and other buildings and lived in Palm Beach from 1925 to his death in 1984. He designed homes for some of the wealthiest and most powerful people in America over his 58-year career in Palm Beach including Colonel Robert McCormack, William Paley, George Vanderbilt, Nicholas DuPont, Henry Ford II, Herbert Pulitzer, Matthew Mellon, George Storer, Horace Dodge II, and John S. Phipps. Included in the designs of John Volk are some of the most prominent commercial and private club buildings in the Palm Beach area including the First National Bank, the Royal Poinciana Plaza and Playhouse, the center section of the Town Hall, the Beach Club, Good Samaritan Hospital, and several shops on Worth Avenue including the Everglades Colonnade. He also extensively modified and rebuilt the Bath and Tennis Club after a major hurricane.

Numerous other buildings are the result of Mr. Volk's labor and it must be noted that no particular style can be exclusively associated with Mr. Volk. Unlike other talented architects who developed or refined specific styles, John Volk understood and perfected many varying architectural styles from Mediterranean Revival to Contemporary Design.

VI. Statement of Significance

The residence at 1047 South Ocean Boulevard is a good example of the Art Moderne style of architecture as interpreted by John Volk. Constructed on the ocean during the 1930s, this Art Moderne residence was a departure from the large estates of the 1920s and reflects the changing times and styles of the 1930s.

VII. Criteria For Designation

Section 54-161 of the Town of Palm Beach Landmarks Preservation Ordinance outlines the criteria for designation of a landmark or landmark site and suggests that at least one criterion must be met to justify the designation. Listed below are criteria which relate to this property and justification for designation:

(3) “Embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship.”

The residence at 1047 South Ocean Boulevard is a good example of the Art Moderne style of architecture and it features many design elements characteristic of this style. The architectural style and design by John Volk is suited to its oceanfront location and is representative of the period of time that it was constructed.

(4) “Is representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or who influenced his age.”

1047 South Ocean Boulevard is a very good representation of the design work of the architect John L. Volk. John Volk has always been recognized as one of the most important architects to practice in the Town of Palm Beach. Unlike other talented architects who developed or refined specific styles, John Volk understood and perfected many varying architectural styles from Mediterranean Revival to contemporary designs.

VIII. Selected Bibliography

“The FHA Story in Summary,” The Federal Housing Administration 1 May 1959.

John L. Volk Commission No. 229, 1935. John L. Volk Foundation.

McAlester, Virginia and Lee. A Field Guide to American Houses. New York: Alfred A. Knopf, Inc., 1984.

“Moffett Resigns as FHA Director,” The New York Times 29 August 1935.

The Palm Beach Daily News. Archived articles online and articles from the files of the Historical Society of Palm Beach County and the Preservation Foundation of Palm Beach.

The Palm Beach Post. Archived articles online and articles from the files of the Historical Society of Palm Beach County and the Preservation Foundation of Palm Beach.

“Palm Beach Shows Keen Interest in Moffetts’ New Beach House,” Post-Times December 1935.

Town of Palm Beach. Building Permits, 1920 – present.

“Trouble; No Trouble,” Time Magazine 3 December 1934.

“Unforgettable Palm Beach: Modernist Buildings Among Town’s Most Endangered Cultural Resources,” Palm Beach Daily News 6 March 2011.

West Palm Beach City Directories. Asheville, NC: Florida-Piedmont Directory Company, 1918-1966.

IX. Florida Master Site File Form



HISTORICAL STRUCTURE FORM

Electronic Version 1.1.0

Site # PB04270

Recorder # Jane S. Day

Field Date 12/7/2010

Form Date 12/26/2010

Form No 201012

Format: Field Date (YYYYMM)

First Site Form Recorded for this Site? NO

GENERAL INFORMATION

Site Name (address if none) Jack Karin, House Multiple Listing (DHR only)

Other Names >>

Survey or Project Name Palm Beach Historic Sites Survey, Phase V Survey#

National Register Category Building(s)

LOCATION & IDENTIFICATION

Address

Street No.	Direction	Street Name	Street Type	Direction Suffix
<u>1047</u>	<u>South</u>	<u>Ocean</u>	<u>Boulevard</u>	

Cross Streets (nearest/ between) Algoma Rd. & Kings Rd.

City / Town (within 3 miles) Town of Palm Beach In Current City Limits? YES

County Palm Beach Tax Parcel #(s) 50-43-43-35-00-002-0150

Subdivision Name Glidden tract Block 2 Lot 2

Ownership Private Individual

Name of Public Tract (e.g., park)

Route to (especially if no street address) On the east side of South Ocean Between Algoma and Kings Rd., facing the beach.

MAPPING

USGS 7.5' Map Name PALM BEACH;1946 Publication Date >>

Township: 43S Range: 43E Section: 35 1/4 section: UNSP

Irregular Section Name:

Landgrant

UTM: Zone 18N Easting 100000 Northing 1000000

Plat or Other Map (map's name, location)

DESCRIPTION

Style Modern Other Style

Exterior Plan Irregular Other Exterior Plan

Number of Stories 2

Structural System(s) Masonry - General

Other Structural System(s)

Foundation Type(s) Continuous

Other Foundation Types

Foundation Material(s) Concrete Block

Other Foundation Material(s)

Exterior Fabric(s) Stucco

Other Exterior Fabric(s)

Roof Type(s) Flat

Other Roof Type(s)

Roof Material(s) Tar & gravel

Other Roof Material(s)

Roof Secondary Structure(s) (dormers etc) >>

Other Roof Secondary Structure(s)

Number of Chimneys

Chimney Material

Other Chimney Material(s)

Chimney Location(s)

HISTORICAL STRUCTURE FORM

8PB04270

DESCRIPTION (continued)

Window Descriptions: glass blocks, fixed, sliding

Main Entrance Description (stylistic details) on the west facade, below street level and through a squared entry with fluted columns

Porches: \$open 3 \$closed \$incised Location(s) entry - w, terrace facing beach - e, patio - s

Porch Roof Type(s)

Exterior Ornament glass blocks, decorative metal gate, stainless steel railings, fluted columns

Interior Plan Irregular

Other Interior Plan

Condition Excellent

Structure Surroundings

Commercial: NONE of this category

Residential: ALL this category

Institutional: NONE of this category

Undeveloped: NONE of this category

Ancillary Features (Number / type of outbuildings, major landscape features)

Archaeological Remains (describe): none observed

If archaeological remains are present, was an Archaeological Site Form completed?

Narrative Description (optional)

HISTORY

Construction year 1935

Architect (last name first): Volk, John L.

Builder (last name first): Arnold Construction Co.

Changes in Locations or Conditions

Type of Change	Year of Change	Date Change Noted	Description of Changes
>>			

Structure Use History

Use Year Use Started Year Use Ended >> Private residence; 1935;

Other Structure Uses

Ownership History (especially original owner, dates, profession, etc.) This house was built for James Moffett, chairman of the Federal Housing Admin. under FDR

RESEARCH METHODS

Research Methods >> Examine local property records

Other research methods

SURVEYOR'S EVALUATION OF SITE

Potentially Eligible for a Local Register? YES Name of Local Register if Eligible Town of Palm Beach Landmark

Individually Eligible for National Register? INSUFF. INFO

Potential Contributor to NR District? NO

Area(s) of historical significance >> Community planning & development

Other Historical Associations

Explanation of Evaluation (required) This is an excellent example of the Moderne style by John Volk from the 1930s. When it was built it was criticized for being cantilevered over the beach but has withstood the test of time. It is worthy of landmarking.

HISTORICAL STRUCTURE FORM

8PB04270

DOCUMENTATION (Photos, Plans, etc.)

Photographic Negatives or Other Collections Not Filed with FMSF, including Field Notes, Plans, other Important Documents.

Document type: _____ Maintaining Organization: _____
 File or Accession #: _____ Descriptive Information: _____
 >> Photographs (archived); Research Atlantica; ;

RECORDER INFORMATION

Recorder Name (Last, First) Day, Jane S.
 Recorder Address / Phone 728 Granada Drive, Boca Raton, FL 33432 561-362-4473
 Recorder Affiliation Research Atlantica Other Affiliation Town of Palm Beach
 Is a Text-Only Supplement File Attached (Surveyor Only)? _____

***** MASTER SITE FILE USE ONLY *****

Cultural Resource Type: Electronic Form Used: Form Type Code: Form Quality Ranking: Form Status Code: Supplement Information Status: Supplement File Status: Form Comments:	SHPO's Evaluation of Resource Date: FMSF Staffer: Computer Entry Date:
--	---

REQUIRED PAPER ATTACHMENTS

- (1) USGS 7.5" MAP WITH STRUCTURE PINPOINTED IN RED
- (2) LARGE SCALE STREET OR PLAT MAP
- (3) PHOTO OF MAIN FACADE, B&W, AT LEAST 3"X5"

EXCERPT FROM THE MINUTES OF THE LANDMARKS PRESERVATION COMMISSION
MEETING OF MARCH 20, 2013

Item 2: 1047 S. Ocean Boulevard

Owner: Karin Jack

Call for disclosure of ex parte communication: No disclosures

Emily Stillings of Murphy Stillings, LLC, Staff Historic Preservation Consultants, testified to the architecture, history and architect for this 1935 John Volk Art Moderne style residence, and stated that this property meets the following criteria for designation as a landmark of the Town of Palm Beach:

Sec. 54-161 (3) Embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmen; and,

Sec. 54-161 (4) Is representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or who influenced his age.

Ms. Stillings indicated that the current property owner supports the landmark designation.

Mr. Feldkamp noted, for the record, that no one was present in the audience from the Volk Foundation. Secondly, he stated his disappointment that the original glass block window and the curved balcony in the rear have both been changed or removed. With those deletions, he stated, "There is a very fine line between minimalism and just boring." (The original photograph shown during the presentation showed the original details of the design. Currently, at the site, landscaping obscures the fact that those details are now missing.) It was noted, however, that these two particular original details, the glass block window and the curved balcony, could be restored by the current owner or a future owner.

Mrs. Delp verified that proof of publication and proper legal service were in place for this hearing.

MOTION BY MRS. ALBARRAN TO MAKE THE DESIGNATION REPORT A PART OF THE RECORD.

MOTION SECONDED BY MS. TOWNSEND.

MOTION CARRIED UNANIMOUSLY.

MOTION BY MR. MOORE THAT THE PROPERTY AT 1047 SOUTH OCEAN BOULEVARD BE RECOMMENDED TO THE TOWN COUNCIL FOR DESIGNATION AS A LANDMARK OF THE TOWN OF PALM BEACH, AND THAT THE CRITERIA, AS PRESENTED, BE MADE A PART OF THE RECORD.

MOTION SECONDED BY MR. STRAWBRIDGE.

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

Palm Beach, Florida, Code of Ordinances >> PART II - CODE OF ORDINANCES >> Chapter 54 - HISTORICAL PRESERVATION >> ARTICLE IV. - DESIGNATION PROCEDURE >>

ARTICLE IV. - DESIGNATION PROCEDURE

Sec. 54-161. - Criteria for landmarks and landmark sites.

Sec. 54-162. - Creation of historic districts.

Sec. 54-163. - Commission powers with respect to landmarks, landmark sites and historic districts.

Sec. 54-164. - Landmark, landmark site and historic district designation and undesignation procedures.

Sec. 54-165. - Voluntary restrictive covenants.

Secs. 54-166—54-195. - Reserved.

Sec. 54-161. - Criteria for landmarks and landmark sites.

A landmark or landmark site shall meet at least one of the following criteria:

- (1) Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town.
- (2) Is identified with historic personages or with important events in national, state or local history.
- (3) Embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship.
- (4) Is representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or who influenced his age.

(Code 1982, § 16-38)

Sec. 54-162. - Creation of historic districts.

- (a) *Authorized.* For preservation purposes, the commission shall identify geographically defined areas within the town to be designated as historic districts and shall cite the guideline criteria upon which such designation shall be made. An historic district may be designated for any geographic area of particular historic, architectural or cultural significance to the town that:
 - (1) Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town.
 - (2) Is identified with historic personages or with important events in national, state or local history.
 - (3) Embodies distinguishing characteristics of one or more architectural types, or contains specimens inherently valuable for the study of a period, style or methods of construction or use of indigenous materials or craftsmanship.
 - (4) Is representative of the notable works of one or more master builders, designers or architects whose individual ability has been recognized to have influenced their age.
 - (5) Constitutes a unique area of architecture, landscaping and planning.
- (b) *Petition for special historic district category.* Following the designation of each landmark or landmark site, the commission may petition the town council for the categorizing of such

property as special district H. Following the designation of each historic district, the commission may petition the town council for the categorizing of each property in such district to special district HD.

(Code 1982, §§ 16-38.1, 16-39)

Sec. 54-163. - Commission powers with respect to landmarks, landmark sites and historic districts.

The commission has the power to:

- (1) Designate a building, together with its accessory buildings and its lot of record, or a vacant site or a district as historic and worthy of preservation as a landmark, landmark site or historic district, as the case may be, within the jurisdiction of the commission, provided such designation is ratified by the town council.
- (2) Recommend appropriate legislation for the preservation of any building, site or district which it has so designated.
- (3) Make application for public and private funds when appropriate and available for the purposes set forth in this article subject to the approval of the town council.
- (4) Review applications proposing erection, alteration, restoration or moving of any building it has so designated or any building located in a district it has so designated, and to issue or deny certificates of appropriateness accordingly.
- (5) Review applications for demolition permits proposing demolition of all or part of any landmark or any building located in an historic district, and to issue certificates of appropriateness or to deny them for one year.
- (6) Cooperate with the owner of a landmark or a property located in an historic district throughout the year following a refusal to issue a certificate of appropriateness pursuant to an application for a demolition permit, and to seek alternative economic uses for such landmark or property.
- (7) Review its denial of a certificate of appropriateness for demolition of such landmark or property annually, during a public hearing at which time the owner of the affected landmark or property shall be afforded an opportunity to appear with counsel and to present testimony.
- (8) Prohibit the issuance of building, exterior remodeling or demolition permits affecting any property under consideration for landmark designation without a certificate of appropriateness, this prohibition to remain in effect for the length of time required by the commission and the town council for final action on the proposed designation. The commission shall accomplish such prohibition by furnishing the building official a list of all property under consideration for landmark designation.

(Code 1982, § 16-42)

Sec. 54-164. - Landmark, landmark site and historic district designation and undesignation procedures.

- (a) The following procedure shall be adhered to by the commission in designating any building, building site or district that is worthy of preservation:
 - (1) The commission shall consider for landmark designation any property proposed by the owner of record or by a member of the commission.
 - (2)

Notice of a proposed designation shall be sent by certified mail to the owner of record of property proposed for designation as a landmark or landmark site and to each owner of record of property in a district proposed for designation as an historic district, describing the property proposed and announcing a public hearing by the commission to consider such a designation to be held not less than 30 days after the mailing of such notice.

- (3) The commission shall also cause notice of each such proposed designation to be posted at least 30 days prior to the public hearing on the bulletin board in the lobby of the town hall, and in addition the commission shall cause such notice to be published in a newspaper having general circulation in the town.
 - (4) The commission may retain or solicit expert testimony regarding the historic and architectural importance of the buildings and districts under consideration for designation.
 - (5) The commission may present testimony or documentary evidence of its own to establish a record regarding the historic and architectural importance of the proposed landmark, landmark site or historic district.
 - (6) The commission shall afford the owner of each affected property reasonable opportunity to present testimony or documentary evidence regarding the historic and architectural importance of such property.
 - (7) The owner of each affected property shall be afforded a right of representation by counsel and reasonable opportunity to cross examine witnesses presented by the commission.
 - (8) Any interested party may present testimony or documentary evidence regarding the designation of a proposed landmark, landmark site or historic district at the public hearing and may submit to the commission documentary evidence within three days after the hearing.
 - (9) Within not more than 30 days after a public hearing, the commission shall render a final decision regarding the proposed designation and give written notice of its decision to each owner of property affected by the designation, setting forth the reasons for the decision.
 - (10) The commission shall maintain a record of testimony and documentary evidence submitted to it for consideration of the designation of a proposed or previously designated landmark, landmark site or historic district.
 - (11) In accordance with section 54-163(1), the town council shall, within 90 days of the commission's final decision, hold a public hearing to consider ratification of the determination of the commission prior to the designation of a property as a landmark or landmark site or of a district as an historic district becoming effective. Absent ratification by the town council, the commission's determination shall be ineffective.
 - (12) Within 30 days of the date on which the town council ratifies the commission's designation of a landmark, landmark site or historic district, the commission shall cause to be filed in the office of the county recorder of deeds a certificate of notification that such property is designated a landmark or landmark site or is located within a district designated an historic district; and the certificate of notification shall be maintained on the public record until such time as such designation may be withdrawn by the commission and the town council.
- (b) Designation and undesignation hearings before the commission shall be held only during the months of November, December, January, February, March and April.
- (c)

Designation of a landmark, landmark site or a historic district may be withdrawn by following the same procedure as listed above.

(Code 1982, § 16-43)

Sec. 54-165. - Voluntary restrictive covenants.

The owner of any landmark or landmark site may, at any time following the designation of his property, enter into a restrictive covenant on the property after negotiation with the commission. The commission may assist the owner in preparing such a covenant in the interest of preserving the landmark or the landmark site. The owner shall record such covenant in the office of the county recorder of deeds and shall notify the town clerk, building official and town council and may notify the office of the county property appraiser of such covenant and the conditions thereof.

(Code 1982, § 16-48)

Secs. 54-166—54-195. - Reserved.

TOWN OF PALM BEACH

Town Council Meeting on: April 10, 2013

Section of Agenda

Appeals

Agenda Title

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

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum Dated March 27, 2013 from John S. Page
- Letter dated March 22, 2013, from John W. Little, III

TOWN OF PALM BEACH

Information for Town Council Meeting on: April 10, 2013

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Del Frisco's Grille Restaurant (Royal Poinciana Plaza)
Appeal of Administrative Decision by Staff

Date: March 27, 2013

STAFF RECOMMENDATION

Staff recommends that the Town Council consider and rule upon the appeal filed by John W. Little III, attorney for Sterling Palm Beach, LLC, and Harvey E. Oyer III, attorney for Del Frisco's Grille, relative to staff determinations governing 1) weekend parking requirements, and 2) 5:00 pm vs. 6:00 pm end of business day, at the yet-to-be-established Del Frisco's Grille Restaurant in the Royal Poinciana Plaza.

GENERAL INFORMATION

The Town Council held a special meeting on November 16, 2012, to consider application for a 218-seat restaurant. At that meeting, the Council approved a Special Exception for Del Frisco's Grille (thereby allowing a restaurant to be established in the Royal Poinciana Plaza), yet denied a parking variance (meaning that restaurant plans must adhere to applicable off-street parking requirements). Council directed staff to make a determination on the amount of seating that would be allowed based on the Town's off-street parking requirements and provisions in the 1979 Agreement between the property owner and the Town. "Sterling" has worked with Town staff since that time in an attempt to devise an operational plan for the restaurant that would satisfy those requirements, including Town Council approval of a parking lot cure plan (February 13, 2013) finalizing parking lot design and total space count following FDOT land acquisition for the new Flagler Memorial Bridge.

The appeal materials submitted (attached) by Sterling and Del Frisco's contain critical communications between the applicants and staff regarding the proposed restaurant, including hours of operation. Staff has concluded that the 1979 Agreement, excerpt shown below, governing future use of the Royal Poinciana Plaza creates separate daytime and evening parking requirements:

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

The 1979 Agreement verbiage noted above, coupled with the total parking availability in the Plaza, led staff to conclude that ample off-street parking exists for the 218-seat restaurant to be open after 6:00 p.m., but that daytime restaurant service could not be allowed for a restaurant of that size during weekdays and also on weekends. Those staff determinations were clearly conveyed to the applicants. Weekday and weekend hours were addressed separately because the theater, a major off-street parking generator, is prohibited from operating matinees on weekdays.

SPECIFICS OF THE APPEAL

Applicants submitted a letter of March 8, 2013 to staff attempting to resolve two issues (now the subject of this appeal). The applicant believes: 1) that the restaurant should be allowed to open for evening dinner service beginning at 5:00 p.m. rather than 6:00 p.m., and 2) that sufficient parking exists allowing the restaurant to open for brunch on weekends without the need for further action by the Town Council. Their justification cited Florida case law and the term “business week” that has commonly been held to mean Monday – Friday 9:00 a.m. to 5:00 p.m. It should be noted at this time that the Special Exception with Variances application approved by the Town Council last November identifies the days/times when the restaurant would be open. It specifically indicates that Sunday hours would be dinner only, 5:00 p.m. to 11:00 p.m.

Town staff responded to the March 8th letter (See Exhibit C from applicant) via email on March 13. In sum, staff concluded that it lacked authority to alter the restaurant opening time from 6:00 p.m. to 5:00 p.m., and likewise lacked authority to allow for brunch service on weekends.

Applicants, via letter of March 22, 2013, hereby appeal those two decisions, and ask that the Town Council review their attached justification materials and reverse the position of staff.

NOTE. If the Council determines that there is adequate off-street parking for weekend brunch based on zoning requirements and the 1979 Agreement, the applicant will be required to obtain approval of a Special Exception that would modify/detail hours of operation (following legal notice).

Attachments

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

RECEIVED

MAR 22 2013

**TOWN OF PALM BEACH
PZB DEPT**

March 22, 2013

VIA HAND DELIVERY

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

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

Dear Mayor and Members of the Town Council:

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

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

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

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

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

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

BACKGROUND

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

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

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

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

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

ARGUMENT

I. The 1979 Agreement and Parking at the Plaza

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

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

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

A. Theater Matinees

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

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

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

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

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

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

II. Daytime Parking Space Requirements at the Plaza During Weekends

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

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

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

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

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

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

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

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

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

Honorable Gail Coniglio, Mayor, and
Town Council of Town of Palm Beach
March 22, 2013
Page 6

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

CONCLUSION

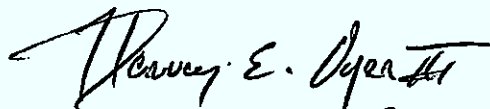
When Florida law is applied to the 1979 Agreement, two things are clear - - the Applicant should not be required to account for office parking after 5:00 p.m. or on Saturdays and Sundays. This is truly one of those occasions when the law and common sense and reason are completely in step. With this correct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

Thank you for your consideration of this matter.

Sincerely,



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



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

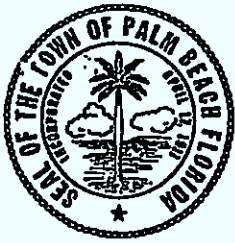
Enclosure(s)

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

JWL/all

WPB_ACTIVE 5445380.1

EXHIBIT A



TOWN OF PALM BEACH

Planning, Zoning & Building Department

January 14, 2013

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

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

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

Dear Sirs:

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

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

Town staff offers the following responses to your communication:

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

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

Weekday daytime parking space requirements:

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

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

Weekend daytime parking space requirements:

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

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

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

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

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

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

Sincerely,

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

John Page, Director

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

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

RECEIVED

DEC 07 2012

**TOWN OF PALM BEACH
PZB DEPT**

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

December 6, 2012

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

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

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

Gentlemen:

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

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

I THE 1979 AGREEMENT AND PARKING AT THE PLAZA

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

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

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

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

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

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

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

A. Theater Matinees

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

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

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

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

C. Summary of Impact of These Provisions

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

II. HIBEL BUILDING PARKING SPACES

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

III. REVISED CURE PLAN FOR PARKING DUE TO FDOT TAKING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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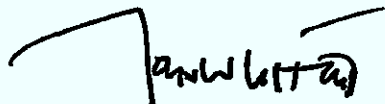
When the revised cure plan filed with the Town which adds 11 parking spaces is considered, the daytime shortfall is further reduced to	12 spaces
--	-----------

When the reduction by Del Frisco's of 36 seats from the restaurant during lunch is considered, the daytime shortfall is eliminated	0 spaces
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Conclusion

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

Sincerely,


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


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

cc: John C. Randolph, Esq.

Little, John

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

John,

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

Paul

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

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

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

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



GUNSTER

FLORIDA'S LAW FIRM FOR BUSINESS

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

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

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

39,500

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

real estate

flowers

43 spaces

property mgmt

17,574

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

15,026

59

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

Financial consultant

10,250

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

25,991

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

104,349 #61A

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

28,888

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

The following was taken from AS400

14,950

CONFIDENTIAL

The following information was taken from AS400 BTR records

HIS	Dining Rm	17290 70 ROYAL POINCIANA PLZ	189	10000 THE POINCIANA CLUB	
HIS	Nightclub WITH dance	17300 70 ROYAL POINCIANA PLZ	225	10000 THE POINCIANA CLUB INC	74
HIS	Theater	17250 70 ROYAL POINCIANA PLZ	878	27500 PTG FLORIDA INC	218 175
HIS	Club Dining over 40	35904 70 ROYAL POINCIANA PLZ A	330	THE POINCIANA CLUB INC	
HIS	Nightclub WITH dance	35905 70 ROYAL POINCANA PLZ A		THE POINCIANA CLUB INC	
HIS	Merchant	37763 150 ROYAL POINCIANA PLZ	1	3000 DTY INC	
HIS	Restaurant over 40	35776 338 ROYAL POINCIANA PLZ	130	JE ME SOLUTIONS INC	

3,000 #6 LA

[REDACTED]

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

DESIGNERS TO YOU

HAVANA 336

SE#4-95

The following information was taken from AS400 BTR records

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

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

Theatre 878 seats @ 1 per ⁵ seats = ~~219~~ 175

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

TooTays " = 43

P.B. Grill " = 59

McCarty 's " = 59

mi. ~~11.11~~



Closed 1993?

Closed 2004
SE17-95

SE#4-95

EXHIBIT B

March 8, 2013

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

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

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

Gentlemen:

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

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

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

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

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

A. Parking Requirement for Evening Uses at the Plaza

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

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

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

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

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

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

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

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

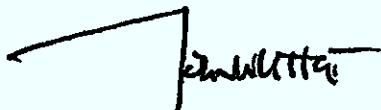
Florida courts have repeatedly held that, "One looks to the dictionary for the plain and ordinary meaning of words." *Specialty Restaurants Corp. v. City of Miami*, 501 So.2d 101, 102 (Fla. 3d DCA 1987). Turning to *Black's Law Dictionary*, a "business day" is defined as "A day that most institutions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

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

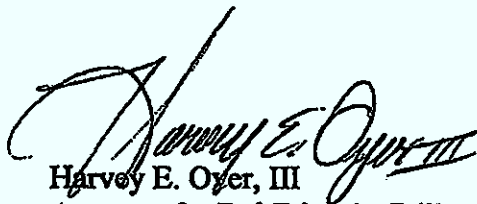
John S. Page
Paul W. Castro
March 8, 2013
Page 4

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

Sincerely,



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



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

cc: John C. Randolph, Esq.

WPB_ACTIVE 5426677.2

EXHIBIT C

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

John and Harvey:

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

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

1.

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

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

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

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

EXHIBIT D

79 042635

APR 13 PM 4:25

AGREEMENT

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

WITNESSETH:

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

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

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

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

25.60
Reliance
THIS INSTRUMENT WAS PREPARED BY
VELVYN L. MIDDLETON
Attorney at Law
205 NORTH AVENUE, PALM BEACH, FLORIDA 33480

- PALM BEACH REC 3023 PAGE 380 -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TOWN OF PALM BEACH

By: George R. Frost, Town Manager

CORPORATE SEAL

PRINCIPAL PROPERTIES, LTD.

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

Grace T. Peters
TOWN ATTORNEY
Style Rogers
Charles C. Rogers
As to Partnership

STATE OF FLORIDA)

SS

COUNTY OF PALM BEACH)

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

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

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

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

STATE OF FLORIDA

: 55

3

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

Witness my hand and official seal this 16th day of March 1979.

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

My Commission Expires:

Salary Table, State of Florida and Large
City Commissions Expires Dec. 31, 1979
Bonded by American Fico & Casualty Co.

PALM OFF 3023 PAGE 386
BEACH REC

DESCRIPTION

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

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

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

PALM BEACH OFF 3023 PAGE 387

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

EXHIBIT "A"

TOWN OF PALM BEACH

Town Council Meeting on: April 10, 2013

Section of Agenda

New Business - < 15 Minutes

Agenda Title

SITE PLAN REVIEW #4-2013 The application of Richard True; relative to property commonly known as **119 East Inlet Drive**; described as Lot 15, SEA ISLES ESTATES, according to the Plat thereof, 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 Site Plan Review to allow the construction of a 4,694 square foot two-story single family residence on a non-conforming platted lot which is 96 feet in width in lieu of the 100 foot minimum required in the R-B Zoning District. [Attorney: Maura A. Ziska]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter Dated April 3, 2013, from Adam Jackson

Adam Jackson

April 3, 2013

Mayor and Town Council and
Members of the Architectural Review Commission
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Site Plan Review 4-2013 and Arcom Number B-29-2013
119 E. Inlet Drive, Palm Beach, Florida

Dear Madam Mayor, Town Council members and ARCOM members:

I own the property located at 167 East Inlet Drive in Palm Beach. My neighbor, Mr. Richard True, is planning to build a new house on a non-conforming lot which requires Site Plan Review by the Town Council. I have reviewed the plans for the proposed house and fully support the project and have no objection to any relief they might need from the Town in order to get their project approved. I believe that the proposed residence will be a fine improvement to both my neighbor's property and our neighborhood. Hopefully, you and your staff will agree with me and will approve the proposed project.

Thank you for your consideration.

Sincerely,

Adam Jackson

A handwritten signature in blue ink, appearing to be 'AJ' with a long horizontal stroke extending to the right.

TOWN OF PALM BEACH

Town Council Meeting on: April 10, 2013

Section of Agenda

Development Review - Other

Agenda Title

Consideration Of The Testa Family, Inc., Comprehensive Plan And Zoning Text Amendment Application To Create An Overlay Within The Five Acres Of Land Between Bradley Place And North County Road And Royal Poinciana Way And Sunset Avenue. The Application Was Previously Deferred April 2012 To The February 2013 Council Meeting In Order For The Newly Established Royal Poinciana Way Committee To Study Regulations For This Area.

Deferred from the April 11, 2012 and February 13, 2013 Town Council Meetings

Request for Deferral to the September 11, 2013 Town Council Meeting

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter Dated April 3, 2013, from Francis X.J. Lynch

The Law Offices of
BRETON, LYNCH, EUBANKS & SUAREZ-MURIAS, P.A.

Peter L. Breton
Francis X. J. Lynch
John R. Eubanks, Jr.
Marta M. Suarez-Murias
Robert J. Sniffen – Of Counsel

www.blesmlaw.com
Sender's Direct Line: (561) 721-4004
E-Mail: flynych@blesmlaw.com

1209 North Olive Avenue
West Palm Beach, FL 33401
Phone: (561) 721-4000
Facsimile: (561) 721-4001

April 3, 2013

VIA E-MAIL

Mr. Paul Castro
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

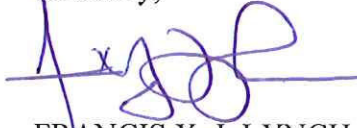
Re: T3 Family Investments, LLC

Dear Paul:

With regard to the above, T3 would like to defer this application to the September, 2013, Town Council meeting. The basis for this request is that now, with the proposed PUD-5 ordinance heading back to Planning and Zoning, this will give us time not only to get some idea of the economic viability of this ordinance as well as its likelihood of receiving final approval from Town Council.

Thank you for your assistance in this matter. Should you have any questions or comments in this regard, please feel free to contact me.

Sincerely,



FRANCIS X. J. LYNCH

FXJL/kh