TOWN OF PALM BEACH

Town Manager's Office

TENTATIVE-
SUBJECT TO
REVISION

TOWN COUNCIL MEETING

EMERGENCY OPERATIONS CENTER (EOC)
THIRD FLOOR, CENTRAL FIRE-RESCUE STATION
355 SOUTH COUNTY ROAD

AGENDA

WEDNESDAY, MARCH 10, 2010

9:30 A.M.

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

The progress of this meeting may be monitored by visiting the Town's website (www.townofpalmbeach.com) and selecting "Live Meeting Audio" under the "Your Government" tab. 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 under "Agendas, Minutes, and Audio."

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.

I. CALL TO ORDER AND ROLL CALL

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Post Office Box 2029 * 360 South County Road * Palm Beach, Florida 33480
Telephone (561) 838-5410 * Facsimile (561) 838-5411 * townmanager@townofpalmbeach.com

III. COMMENTS OF MAYOR JACK McDONALD

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

V. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

VI. APPROVAL OF AGENDA

VII. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal of Administrative Decision Regarding Patio Roof Construction, 3000 South Ocean Boulevard (Bellaria) (Per Letter Dated March 2, 2010, From James R. Brindell). Page 5

B. Time Extensions & Waivers

1. Waiver of Town Code Section 18-242, 105.4.1.6.A., Extension of Agreed Maximum Time Schedule for Completion of Construction, 640 Island Drive (Per Letter Dated January 27, 2010, From Zack Ciomek). Page 21
Request for Withdrawal Per Letter Dated February 24, 2010, From Zack Ciomek.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

a. VARIANCE #1-2010 The application of Paul Benk, relative to property commonly known as **231 Cocoanut Row**; described as Lots 656, 660 and 662, POINCIANA PARK THIRD ADDITION, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County Florida, recorded in Plat Book 6, Page 86; located in the R-B Zoning District. Request for Variance to allow a new circular driveway which would result in a front yard landscaped open space of 23% in lieu of the 40% minimum required and the 49.8% existing. [Attorney: Maura A. Ziska, Esq.]

b. VARIANCE #2-2010 The application of Bradford D. and Jill E. Kaufman; relative to property commonly known as 151 Seagate Road; described as Lot 16, NORTH SHORE ADDITION TO PALM BEACH according to the Plat thereof recorded in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, ion Plat Book 20, Page 62; located in the R-B Zoning District. Request for Variance to reduce side yard setback from 12.5 feet to 5 feet in order to construct a one story, one car garage and laundry room addition.
[Agent: Thomas M. Kirchhoff, AIA, PA]

3. Old Business- More Than 15 Minutes

None

4. New Business- More Than 15 Minutes

None

D. Other

1. Request for Consultant Funding to Conduct Town-Serving Study. Page 23
[John S. Page, Director of Planning, Zoning, and Building]

VIII. ANY OTHER MATTERS

IX. ADJOURNMENT

PLEASE TAKE NOTE:

Note 1: If a person decides to appeal any decision made by this Council with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings. For such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Note 2: Disabled persons who need an accommodation in order to participate in the Town Council Meeting are requested to contact the Town Manager's Office at 838-5410 or through the Florida Relay Service by dialing 1-800-955-8770 for voice callers or 1-800-955-8771 for TDD callers, at least two (2) working days before this meeting.

Note 3: Items listed on the Consent Agenda will be approved by one motion of the Town Council, unless the Mayor or an individual Council Member requests that any item(s) be moved to the Regular Agenda and individually considered.

Note 4: 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: March 10, 2010

Section of Agenda

Appeals

Agenda Title

Appeal of Administrative Decision Regarding Patio Roof Construction, 3000 South Ocean Boulevard (Bellaria) (Per Letter Dated March 2, 2010, From James R. Brindell).

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated March 3, 2010, from John Page
- Letter dated March 2, 2010, from James R. Brindell
- Letter Dated February 24, 2010, from John Page
- Letter dated February 22, 2010, from James R. Brindell
- Letter dated January 20, 2010, from Dr. Samuel Mandel

TOWN OF PALM BEACH

Information for Town Council Meeting on: March 10, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Appeal of Administrative Decision
Patio Roof Construction: 3000 South Ocean Boulevard (Bellaria)

Date: March 3, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council consider the appeal received from attorney Jim Brindell relative to an administrative decision from PZB Director Page regarding the necessity to obtain Town Council site plan/special exception approval for a proposed 532 sq. ft. roof to be constructed on a fifth floor open-air patio.

GENERAL INFORMATION

The Bellaria, a 5-story multi-family condominium (with sub-basement) at 3000 South Ocean Boulevard, received site plan and special exception approval from the Town Council in 2003. A series of variances were also approved at that time granting partial relief from height requirements, setbacks and lot area coverage. A portion of the fifth (top) floor is open to the sky and used as outdoor patio space. Condominium owner Diane Wren has proposed to build a 532 sq. ft. roof over a portion of the open patio area.

Attorney Brindell submitted a February 22, 2010 letter to Director Page expressing the owner's intent to build a new roof, and concluded with a request "that you authorize administratively this minor revision to the site plan for Bellaria, subject to any necessary ARCOM and Building Department approvals" (see attached).

The response from PZB Director Page is also enclosed. Two very specific sections of the Town's Zoning Ordinance (134-227 and 134-326(b)) address the issue at hand. These sections 1) require Town Council approval of an expansion, enlargement, or modification of an existing special exception use, and 2) stipulate that when the Ordinance calls for site plan approval, no building permit shall be issued for the purpose of erecting, altering or converting any structure or any part thereof until after the Town Council approves the site plan. As such, a return letter from PZ&B dated February 24, 2010, was sent to Mr. Brindell declining the request for administrative approval (see attached).

Staff does not give administrative approval to building changes of this magnitude once site plan and special exception approvals have been granted by the Town Council. It has been standard procedure for multi-family buildings to seek revisions to their site plans/special exceptions as such buildings have been expanded, modified or altered.

Attachments

cc: Paul Castro, Zoning Administrator
James R. Brindell, Esquire

GUNSTER

ATTORNEYS AT LAW

Writer's Reference Number 00032377.00001
Writer's Direct Dial Number: (561) 650-0511
Writer's E-Mail Address: jbrindell@gunster.com

March 2, 2010

Via Hand Delivery

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

Re: Appeal of a Staff Determination/Wren

Dear Town Council Members:

This constitutes an appeal pursuant to Sections 134-141 through 134-145 of the Town's Zoning Code. It is an appeal of a determination by John Page, Director of Planning, Zoning, and Building for the Town of Palm Beach made on February 24, 2010 but not received by us until March 1, 2010.

Background

Our client, Mrs. Diane Wren, owns one of the two fifth floor penthouses in the east building of the Bellaria condominium located at 3000 South Ocean Boulevard.

Her unit occupies the north half of the fifth floor. Running the entire length of the east and north faces of her unit is a patio area of approximately 3,945 square feet. There is no shaded area on that patio. See the site plan under Tab "A".

Mrs. Wren proposes to construct a roof over a small 532 square foot area of the patio. (the "Patio Roof"). The front and sides of the covered area would remain open. See Tab "B".

Bellaria received special exception approval to allow five stories pursuant to the R-D(2) zoning regulations. Mrs. Wren's proposed Patio Roof does not violate any Code provisions and is of such a minor consequence that she should not be required to spend several thousand dollars to have a special exception amendment application prepared and processed and then wait some two and a half months for a hearing.

We submitted a letter to John Page on February 22, 2010 outlining the reasons we believe that Mr. Wren's proposed Patio Roof should not require approval of a special exception by the Town Council. A copy of that letter is set forth under Tab "C". Mr. Page's adverse determination set forth in his letter dated February 24, 2010 is found under Tab "D".

Reasons for Reversal of Mr. Page's Determination

1. The proposed Patio Roof violates none of the special exception and site plan review criteria, does not require any variances, and given its location complies with all applicable lot, yard, and area requirements of the R-D(2) zoning district.

2. Section 134-1063 of the Town Code of Ordinances provides that in the R-D(2) District awnings and trellises can be erected within side and rear setbacks as long as the total area of such awnings and trellises when combined with the area of the principal structure does not exceed the allowable lot coverage by 3%. Since the proposed Patio Roof would not be constructed within any setback and would be constructed over a portion of the existing building, there would be no increase in lot coverage.

3. (a) Section 134-1063 states that:

> "In the R-D(2) high density residential district, as an exception to the yard regulations in Section 134-1548, an awning and/or open trellises located in a side or rear yard which meet applicable minimum yard requirements may be erected, provided the area of the principal structure and all awnings and open trellises combined does not exceed allowable lot coverage by more than three percent. Awnings and/or trellises so erected may not be converted to permanent additions to the principal structure if such conversion would increase lot coverage of the principal structure above the allowed percentage."

(b) The last sentence of Section 134-1063 implies that such awnings and trellises constructed within a setback may be converted to permanent additions to the principal structure, if such conversion would not increase the lot coverage of the principal structure above the allowed percentage. In other words, in the zoning district governing Bellaria (the R-D(2) district) an increase in lot coverage beyond the existing

building footprint is allowable. The proposed Patio Roof would not result in any increase in lot coverage of Bellaria and would not enlarge the building footprint.

(c) The Code defines "awning" as "an accessory structure either temporary or permanent which is supported by an open framework and is covered by cloth material." An "awning" has a solid, albeit cloth, top held up by supports and according to the Code can be made permanent.

(d) The Code defines "trellis" as "an ornamental accessory structure of lattice work over which vines are trained, usually made of narrow strips of wood which cross each other at regular intervals." A "trellis" is a permanent structure with a partially solid and partially open roof held up by supporting structures.

(e) The proposed "Patio Roof" is, in effect, a combination of an awning and a trellis. It has the solid top of an awning, is held up by supports as both an awning and trellis are, and it is a permanent structure as an awning and a trellis are allowed to be by Code.

4. The Patio Roof would not increase the interior volume of the building.

5. The Patio Roof would not increase the density/intensity of Bellaria, the building height, the overall building height, the number of stories, or the lot coverage.

6. The Patio Roof would not reduce building set backs or landscaped open space.

7. The Patio Roof would not increase traffic or the number of parking spaces required.

8. The Patio Roof would not increase a demand on Town services (i.e. water, sewer, solid waste, police and fire protection, or emergency medical services).

9. The Bellaria Condominium Association has approved the Patio Roof. A copy of the approval letter dated January 20, 2010 is found under Tab "E".

Staff's Position

The Staff asserts that the proposed Patio Roof constitutes an expansion of a special exception use or facility which pursuant to Section 134-227 requires Council

approval. However, the special exception granted to Bellaria was for a five story facility. The proposed Patio Roof does not affect the five story nature of the facility.

Section 134-326 allows the Director of Planning, Zoning, and Building to approve with no Council involvement a fully enclosed, air-conditioned room which expands a building footprint and increases lot coverage by 200 square feet. Yet, he asserts Mrs. Wren's Patio Roof which would not be enclosed, would not expand the building footprint, would not create more enclosed building area, and would not increase lot coverage must wait two and half months to process and pay for a special exception amendment to the entire Bellaria complex.

Conclusion

1. It is apparent on its face that the proposed Patio Roof does not violate any of the special exception or site plan review criteria, does not require any variances, and meets the applicable lot, yard, and area requirements of the R-D(2) zoning district regulations.

2. The only pertinent criteria are those associated with architectural review and building permits.

3. Consequently, no Town Council review should be required under the particular circumstances in this case.

Request:

We ask that you reverse the February 24, 2010 determination by John Page, and also we ask that this matter be placed on the March 10, 2010 Town Council agenda.

Sincerely yours,

James R. Brindell

JRB/gvt
Enclosure
cc: Peter Elwell
John Page
Diane Wren
Gene Lawrence

TOWN OF PALM BEACH

Planning, Zoning & Building Department

RECEIVED
MAR - 1 2010

February 24, 2010

Mr. James Brindell
Gunster, Yoakley & Stewart, P.A.
Attorneys at Law
777 South Flagler Drive, Suite 500 East
West Palm Beach, FL 33401-6194

RE: 3000 South Ocean Boulevard/Bellaria

Dear Jim:

I have received and reviewed your letter of February 22, 2010 regarding your client's intention to construct a roof over a 532 square foot area of her patio at 3000 South Ocean Boulevard. While you are correct in noting that the patio roof would not increase density, building setbacks, traffic or demand on Town services, the Zoning Ordinance does require Town Council site plan approval for all multi-family structures.

Section 134-326 (b) specifically provides as follows: "Where, by the terms of this chapter site plan review is required, no building permit shall be issued for the purpose of erecting, altering or converting any structure or building or any part thereof or altering the use of any land until after the town council approves the site plan in accordance with this article."

Bellaria also received special exception approval from the Town prior to its construction. Section 134-227 addresses this requirement: "Special exception uses and their related accessary uses or any expansion, enlargement, or modification of an existing special exception use or any physical expansion of an existing special use or facility shall be permitted only upon authorization by the town council, provided that such uses shall be found by the town council to comply with the requirements in this subdivision and other applicable requirements as set forth in this chapter."

I cannot accept categorizing the permanent roof as an awning or trellis as you attempted to do so in your letter. Those terms are defined in the Ordinance and are clearly different from the roofed structure illustrated in your letter. Site plan and special exception approval from Town Council is required per Town Code. Please contact Paul Castro to coordinate a zoning application if you so choose. Thank you.

Sincerely,

John Page
Director

GUNSTER

ATTORNEYS AT LAW WRITER'S DIRECT DIAL NUMBER: (561) 650-0511
WRITER'S E-MAIL ADDRESS: jbrindell@gunster.com

February 22, 2010

Via Hand Delivery

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

Re: 3000 South Ocean Boulevard/Bellaria

Dear JP:

We represent Mrs. Diane Wren. She owns one of two fifth floor penthouses in the east building of Bellaria located at 3000 South Ocean Boulevard in the Town.

Her unit occupies the north half of the fifth floor. Running the entire length of the east and north faces of their unit is a patio area of approximately 3,945 square feet. There is no shaded area on that patio. See the enclosed site plan. Mrs. Wren proposes to construct a roof over a small 532 square foot area of the patio (the "Patio Roof"). The front and sides of the covered area would remain open. See the enclosed before and after images.

Bellaria received special exception approval to allow five stories pursuant to the R-D(2) zoning regulations. We believe that Mrs. Wren's proposed Patio Roof is of such a minor consequence that she should not be required to spend several thousand dollars to have a special exception amendment application prepared and processed and then wait some three months for a hearing.

Section 134-1063 of the Town Code of Ordinances provides that in the R-D(2) District awnings and trellises can be erected within side and rear setbacks as long as the total area of such awnings and trellises when combined with the area of the principal structure does not exceed the allowable lot coverage by 3%. Since the proposed Patio

Roof would not be constructed within any setback and would be constructed over a portion of the existing building, there would be no increase in lot coverage.

Furthermore, Section 134-1063 implies that such awnings and trellises constructed within a setback may be converted to permanent additions to the principal structure, if such conversion would not increase the lot coverage of the principal structure above the allowed percentage. As stated before, the Patio Roof would not result in any increase in lot coverage of Bellaria. See the last sentence in the attached copy of Section 134-1063.

The following also provide support for our conclusion:

1. The Patio Roof would not increase the density/intensity of Bellaria, the building height, the overall building height, the number of stories, or the lot coverage.

2. The Patio Roof would not reduce building set backs or landscaped open space.

3. The Patio Roof would not increase traffic or the number of parking spaces required.

4. The Patio Roof would not increase a demand on Town services (i.e. water, sewer, solid waste, police and fire protection, or emergency medical services).

5. The Bellaria Condominium Association has approved the Patio Roof. See the enclosed copy of the approval letter dated January 20, 2010.

Since the proposed Patio Roof is within the outer boundaries of the building, is open on three sides, does not create more habitable space, and does not increase, alter, or create any new impacts, it should not be considered an expansion of the special exception use or facility. If an awning or a trellis over the same area as the proposed Patio Roof could later be converted to a permanent structure in the R-D(2) District pursuant to Section 134-1063, it seems logical to allow that permanent structure to be constructed in the first place.

We ask that you authorize administratively this minor revision to the site plan for Bellaria, subject to any necessary ARCOM and Building Department approvals.

Sincerely,

James R. Brindell

Attachments
cc: Mr. Paul Castro
Mrs. Diane Wren
Mr. Eugene Lawrence

JRB/gvt

does not exceed a height of eight feet nor cover more than 15 square feet in area.

(Ord. No. 2-74, § 5.32, 3-26-74; Ord. No. 3-77, §§ 4, 5, 3-29-77; Ord. No. 7-82, § 4(d), 3-31-82; Ord. No. 1-96, § 14, 2-5-96; Ord. No. 3-02, § 2, 7-9-02; Ord. No. 5-09, § 4, 4-15-09)

Editor's note: See note at section 134-1056.

Sec. 134-1063. Awnings or trellises in side or rear yards.

In the R-D(2) high density residential district, as an exception to the yard regulations in section 134-1548, an awning and/or open trellises located in a side or rear yard which meet applicable minimum yard requirements may be erected, provided the area of the principal structure and all awnings and open trellises combined does not exceed allowable lot coverage by more than three percent. Awnings and/or trellises so erected may not be converted to permanent additions to the principal structure if such conversion would increase lot coverage of the principal structure above the allowed percentage.

(Ord. No. 2-74, § 5.31(c), 3-26-74; Ord. No. 1-89, § 3(a), 2-6-89; Ord. No. 6-93, § 3(c), 2-9-93; Ord. No. 5-09, § 4, 4-15-09)

Editor's note: See note at section 134-1056.

Sec. 134-1064. Special exception to height regulations; special exception structures.

(a) In order to encourage increased open space, landscaped open space, reduced density and lot coverage and architectural detail, the town council may at its discretion, upon review of an application and public hearing thereon, allow for the increase of the maximum building height in the R-D(2) high density residential district, upon a finding being made by the town council that the proposed increase in height for a contemplated special exception structure is in the public interest, that careful attention is given to architectural detail, and that it meets the standards of sections 134-227 through 134-233 and the following goals and guidelines:

(1) Four-story guidelines. Lot coverage not more than 27 percent.

(2) Five-story guidelines. Lot coverage not more than 22 percent.

(b) In no event shall the building height in an R-D(2) zoning district exceed five stories and 55 feet, unless increased to a maximum of 62 1/2 feet as follows:

(1) Three-story/35 feet, plus one additional foot for each foot of ceiling height of each story over eight feet six inches, up to a maximum of 37 feet six inches.

(2) Four-story/45 feet, plus one additional foot for each foot of ceiling height of each story over eight feet six inches, up to a maximum of 50 feet.

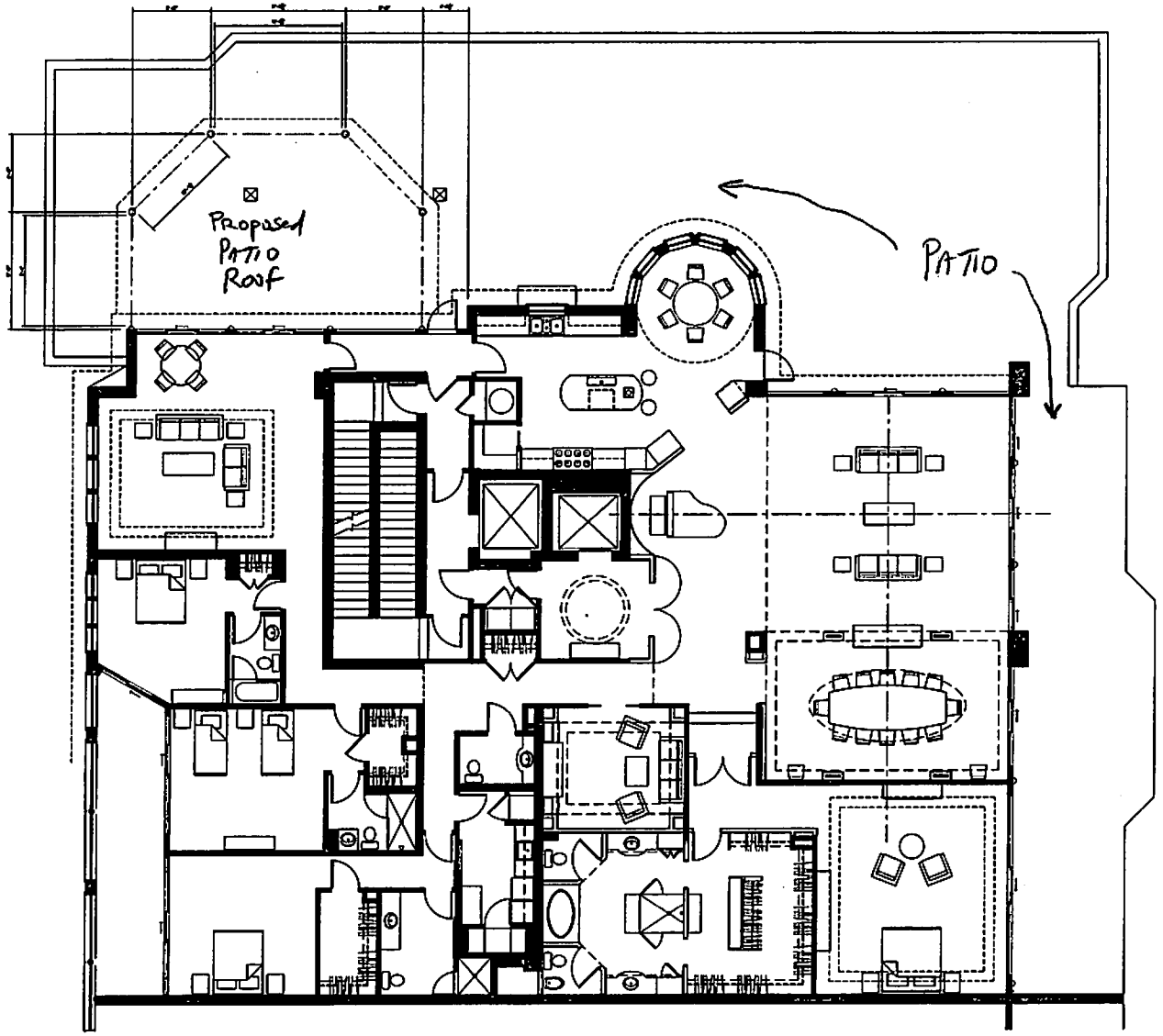
(3) Five-story/55 feet, plus one additional foot for each foot of ceiling height of each story over eight feet six inches, up to a maximum of 62 feet six inches.

(Ord. No. 2-74, § 5.48(l), 3-26-74; Ord. No. 3-76, § 3, 3-23-76; Ord. No. 5-78, § 11, 3-31-78; Ord. No. 7-82, § 4(g), 3-31-82; Ord. No. 2-83, § 4(d), 2-23-83; Ord. No. 1-84, § 3(e), 3-1-84; Ord. No. 1-85, § 3 (d), 2-11-85; Ord. No. 1-91, § 3(e), 4-23-91; Ord. No. 1-92, § 3(d), 2-3-92; Ord. No. 5-09, § 4, 4-15-09)

Editor's note: See note at section 134-1056.

Sec. 134-1065. Lot grade topography and drainage.

In the R-D(2) high density residential district, for single-family development, the natural grade



1 PENTHOUSE FLOOR PLAN

NOTES

NO.	DATE	ISSUE

PROJECT:

WREN RESIDENCE

3000 SOUTH OCEAN BOULEVARD
PALM BEACH, FLORIDA

DRAWING TITLE:

PROPOSED TERRACE
PENTHOUSE FLOOR PLAN

RIDBERG + Associates
Ridberg & Associates Architects, PC
30 Church Street, Suite A4
Greenwich, CT 06830
203 625 9401
203 625 9021 (FAX)
www.ridberg.com

DATE	OCT 27, 2009
SCALE	3/16"=1'-0"
DRAWN BY	JPD
PROJECT NO.	0920-TERRACE

DWG NO. A1

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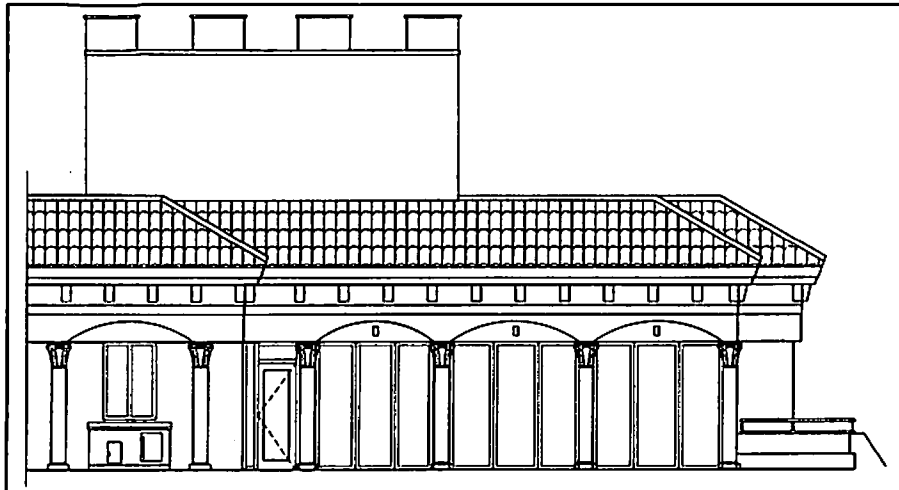
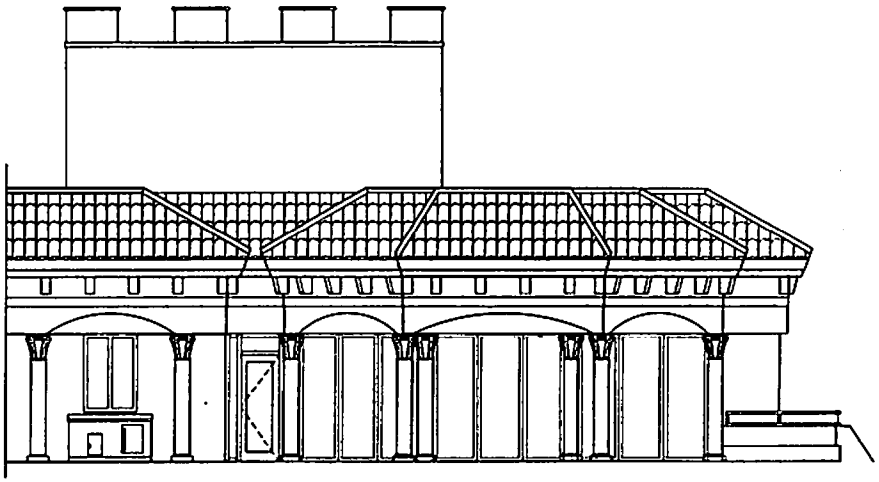
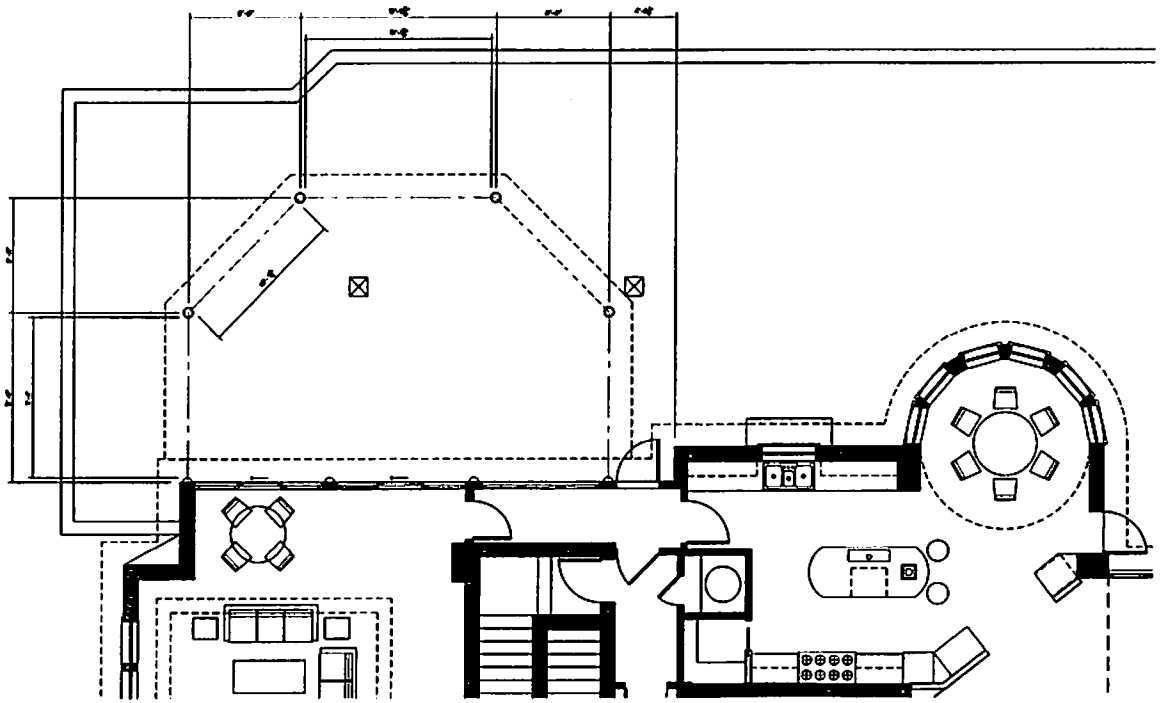


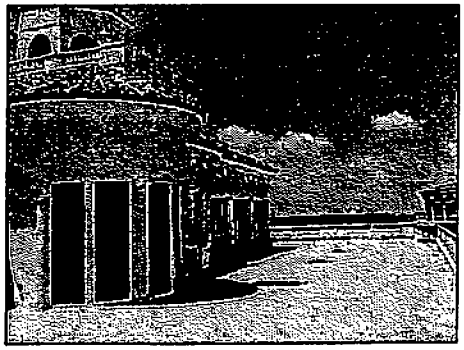
2 EXISTING ELEVATION



3 PROPOSED ELEVATION



1 ENLARGED FLOOR PLAN



EXISTING

1	REVISION	NOTE REVISED
NO.	DATE	SCALE

PROJECT:

WREN RESIDENCE

3099 SOUTH OCEAN BOULEVARD
PALM BEACH, FLORIDA

DRAWING TITLE:

PROPOSED TERRACE ENLARGED PLAN, EXISTING & PROPOSED ELEVATION

RIDBERG + Associates

Ridberg & Associates Architects, PC
39 Church Street, Suite 44
Greenwich, CT 06830
203 629 0691
203 629 0691 (FAX)
www.ridberg.com

DATE	OCT 31, 2005
SCALE	AS NOTED
DRAWN BY	JHD
PROJECT NO.	(WREN-TERRACE)

DWG NO.

A2

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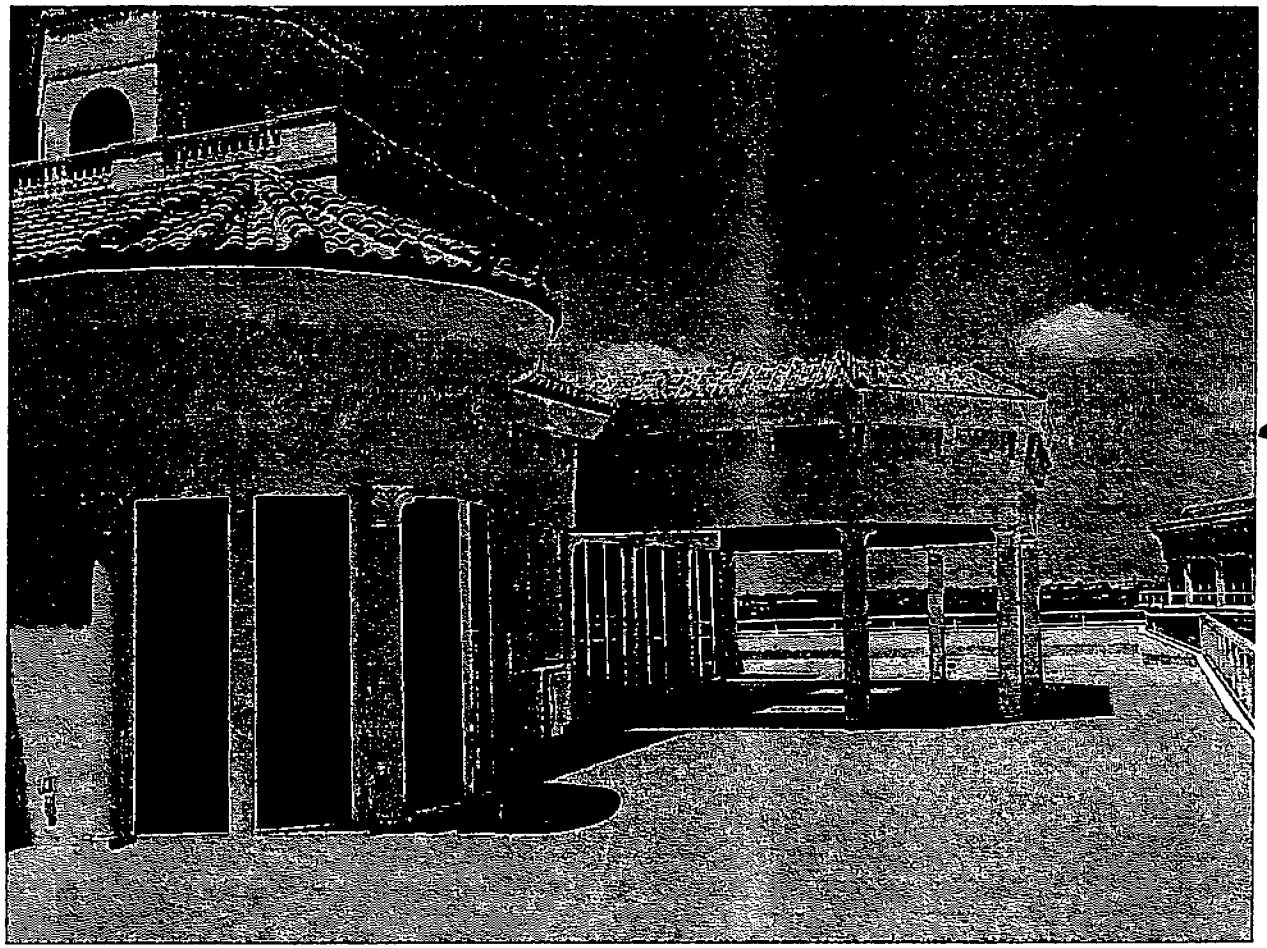
Proposed
Covered
Area

BELLARIA

January 20, 2010

Mrs. Diane Wren
3000 South Ocean Boulevard, PH6
Palm Beach, FL 33480

Dear Mrs. Wren:

This letter is notify you that the Board has approved the design for the proposed addition to Penthouse 6 at the Bellaria as shown on the plan and elevation drawings of the Lawrence Group done on January 11, 2010, subject to being finished in the same or similar materials to match the existing building.

Sincerely,

Dr. Samuel Mandel
President

TOWN OF PALM BEACH

Town Council Meeting on: March 10, 2010

Section of Agenda

Time Extensions

Agenda Title

Waiver of Town Code Section 18-242, 105.4.1.6.A., Extension of Agreed Maximum Time Schedule for Completion of Construction, 640 Island Drive (Per Letter Dated January 27, 2010, From Zack Ciomek). *Request for Withdrawal Per Letter Dated February 24, 2010, From Zack Ciomek.*

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter dated February 24, 2010, from Zack Ciomek

Euro Homes

RECEIVED
FEB 24 2010
TOWN OF PALM BEACH
PZB DEPT

February 24, 2010

Mr. Jeff Taylor, Chief Building Official
Town of Palm Beach Building Dept.
360 South County Road
Palm Beach, FL 33480

RE: 640 Island Drive, Permit # 8092330 & 8092331

Dear Mr. Taylor,

I hereby withdraw my request for a permit extension for the above listed address because we were able to complete the house within the time frame of the existing permit.

Please feel free to contact me at 561-655-5533 if you have any additional questions about this very important matter.

Kind Regards,

Zack Ciomek
President,
EURO HOMES, INC.

ZC/mo

P.O.BOX 2558 PALM BEACH, FL 33480 PH.-561-655-5533 FAX-561-832-5417

BUILDING TODAY'S TREASURES, TOMORROW'S LANDMARKS

TOWN OF PALM BEACH

Town Council Meeting on: March 10, 2010

Section of Agenda

Development Review - Other

Agenda Title

Recommendations from Planning & Zoning Commission Pertaining to Town-Serving Study Update.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum from John Page dated February 26, 2010
- Memorandum from Martin Klein dated December 9, 2009
- Memorandum from Tanner Rose (undated)
- Memorandum from John Page dated January 11, 2010
- Letter from James LaRue dated February 4, 2010
- Email from Bill Brisson dated February 25, 2010

TOWN OF PALM BEACH

Information for Town Council Meetings on: March 10, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Request for Consultant Funding to Conduct Town-Serving Study

Date: February 26, 2010

RECOMMENDATION

Staff recommends the Town Council retain Mr. Bill Brisson, LaRue Planning & Management Services, Inc., as a single-source provider, to conduct a Town-serving study as outlined in the attached proposal at a fee not to exceed $18,000 at such time that the funding is available.

PLANNING AND ZONING COMMISSION RECOMMENDATION

The Planning and Zoning Commission, by a 6-1 vote (Mr. Shaw dissenting), recommended that the Town Council retain Mr. Bill Brisson of LaRue Planning & Management Services, Inc., to conduct the Town-serving study.

GENERAL INFORMATION

At the June 10, 2009 Town Council meeting, the Town Council authorized staff to re-evaluate and study the Town-serving zoning regulations. The Planning and Zoning Commission considered the Town-serving regulations at its October 6, 2009 meeting. At that meeting, the Commission asked Mr. Klein and Mr. Rose, two of its members with extensive legal practice, to provide them with reports on the existing Town-serving regulations.

Those reports were presented to the Commission (copies attached) at its December 8, 2009 meeting. After discussion about the regulations and the legal history of the Town-serving provisions, the Commission asked staff to provide them with a summary of staff issues and concerns about those regulations.

At the January 19, 2010 Commission meeting staff presented a memorandum dated January 11, 2010 outlining concerns with the Town-serving regulations and how they are administered (copy attached). Staff recommended that if a policy decision is made that the

Town-serving regulations needed modification, the maximum 2,000 square foot gross leasable area threshold in the Town-serving regulations should not be changed without careful consideration and study. Town-serving regulations have withstood two court challenges on their validity and a similar study should be completed as originally conducted in 1979-1980 to ensure that any new threshold square footage remains sustainable/ defensible.

After hearing staff's concerns, the Commission asked staff to report back to them on the feasibility of using Mr. Bill Brisson as a sole source provider. It was the consensus of the Commission that he would be the best resource to conduct such a study since he had at least thirty year of previous planning and zoning experience with the Town as its consultant; conducted the original study; and twice successfully testified in court in defense of existing Town-serving regulations. Staff was also asked to report back with a scope of work and rough estimate from Mr. Brisson on a fee to conduct a new study.

At the February 16, 2010 Commission meeting, staff reported that the Town could use Mr. Brisson as a sole source provider. The Commission also considered the attached proposed scope of work and the "ball park" estimate from LaRue Planning & Management Services, Inc., who employs Mr. Brisson. After discussion about the fee, travel and expenses and scope, the Commission voted 6-1 (Mr. Shaw dissenting) to recommend that the Town retain Mr. Brisson of LaRue Planning & Management Services, Inc., with the assistance of staff, to conduct the study.

Attached is the"ball park" estimate from the consultant. If the Council chooses to use LaRue Planning & Management Services, Inc., with Mr. Brisson being the project manager for the firm, the estimated fee is $15,000. However, that fee is only an estimate based on an hourly rate and does not include travel and additional meetings. Upon request, Mr. Brisson has given staff an estimate of an additional $3,000 for travel, and if necessary, additional meeting expenses. Staff would recommend that if funds are appropriated for the Consultant to conduct the study, an amount not to exceed $18,000 be appropriated. This would cover additional expenses for the consultant to travel from Fort Meyers and any additional meetings . Staff would collect as much of the data as possible for the analysis in the report and would monitor and participate as much as possible to keep the fee below that appropriated amount.

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

Attachments

PBE:jsp:pc

cc: John C. Randolph, Town Attorney
Lynda Venne, Purchasing Agent
Joanna Cunningham, Town Clerk
Veronica B. Close, AICP, Asst. Director, Planning, Zoning and Building Department
Paul W. Castro, AICP, Zoning Administrator
zf

Martin I. Klein, P.C.
205 Worth Avenue
Palm Beach, Florida 33480
Telephone: (561) 881-8000
Facsimile: (561) 881-8080

To: **Town of Palm Beach Planning and Zoning Commission**

From: **Martin I. Klein**

Date: **9 December 2009**

Re: **Town Serving Issues**

In 1980, the Town of Palm Beach adopted Ordinance No. 4[1] which amended its zoning code and introduced the concept of "town serving" to its commercial zoning districts.[2] Essentially the concept, designed to preserve the small town character of Palm Beach, requires many commercial users to meet a test (and obtain a special exception) if they want to occupy more than 2,000 square feet of interior gross leasable space. Now, almost thirty years after its introduction, questions have been raised as to its current usefulness. This memorandum will discuss the concept, its application, and the questions but the ultimate answer is properly left to the town council.

Before March 1980, most of the Town's commercial property, including Worth Avenue, was zoned (C-A) and permitted general commercial uses without regard to any square foot limitations. Residents became concerned about an increase in traffic, parking problems, displacement of small, neighborhood businesses by larger, region-serving retail establishments, and what they perceived to be a rapid change in the Town's character.

In 1979 the Town commissioned a Commercial District Study of the problems and to recommend solutions. A summary of the Study's findings was published December 3, 1979. The goals and objectives of the study were, in part, to "achieve a balance of commercial uses in the Town…to reduce the region serving nature of the Town's commercial sector, thereby alleviating traffic and parking congestion".[3] The study included a summary of floor space inventory for both Worth Avenue and Royal Poinciana Way It also included a market potential analysis and a discussion of certain

[1] See Ordinance No. 4-80 adopted March 31, 1980, as amended by Ordinance 7-82, December 1984.
[2] Section 134-751 establishes 16 zoning districts of which 5 are considered commercial: C-TS (Commercial-Town Serving); C-WA (Commercial-Worth Avenue); C-OPI (Commercial-Offices, professional and institutional); C-PC (Commercial-Planned center); and C-B (Commercial-Offices).
[3] See Summary of Research and Findings Commercial District Study Town of Palm Beach 12/3/79 by Adley Associates, Inc.

parking requirements. It concluded that more than 80 percent of the commercial uses in Town occupied less than 2,000 square feet of space.

Following publication of the Study, interested citizens and property owners had an opportunity to meet with Bill Brisson of Adley Associates, Inc., the Town's planning consultant. Over 55 persons met with him over a period of four days. He then published a summary of what he believed were the most pertinent comments and concerns."[4] The Summary of Comments noted the concern of limiting permitted commercial district uses to 2,000 square feet but seemed to emphasize not the limitation so much as how it would apply to existing establishments of greater size. The suggestion was that these establishments be "grandfathered" in some way.

Ordinance No. 4-80 was promulgated and passed by second reading on March 31, 1980. It divided the existing C-A Commercial District into three separate districts, the C-WA, Worth Avenue District, the C-TS Town-Serving Commercial District, and the C-OPI Office, Professional and Institutional District.

The Ordinance implements the Town Serving concept by making establishments[5] with a maximum of 2,000 square feet of gross leasable area a permitted use while making larger establishments a special exception use. Each commercial zoning district lists uses that are allowed by right, and those that may be permitted by Town Council Special Exception.[6] For example, in the C-TS District, a restaurant or clothing store (less than 2000 square feet) is a permitted use but in the C-WA District, a restaurant of less than 2000 square feet is a special exception use while a clothing store of less than 2000 square feet is a permitted use.

The Ordinance allows for special exception uses in excess of the 2,000 square foot limitation provided that the Town Council finds, as fact, that the proposed use is Town Serving.[7] "Town Serving" is defined as "Establishments principally oriented to serving the needs of Town Persons which would not substantially rely upon the patronage of persons not defined as Town Persons. Town serving establishments, by definition, would typically contain 2,000 or less square feet of interior Gross Leasable Area (GLA) and would not engage in advertising designed to attract other than Town Persons." The Ordinance goes on to define "Town Persons" as "All full-time and seasonal residents as

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[4] See Summary of Comments and Suggestions by Interested Citizens/Property Owners at meetings of 1/23, 1/30, 2/6 and 2/13/80 published February 18, 1980 by Mr. Bill Brisson of Adley Associates, Inc.

[5] Differences not relevant for this discussion exist in the use regulations and wording among the various districts. For example, in the C-TS district, the special exception language is "any commercial establishment with greater than 2,000...", while in the C-WA district, the special exception language is "retail and service activities...which contain greater than 2,000 square feet..."

[6] Note there is a significant difference between a variance and a special exception-a difference which is beyond the scope of this memo but essentially the standard for a special exception is somewhat lower but requires the Town Council to specifically find that certain enumerated criteria have been met-if so, the special exception is granted; a variance confers more discretionary authority on the Town Council.

[7] It appears to the author that there are slight variances in the language and methodology but these are irrelevant to the concepts discussed in this memorandum. Compare the Special Exception Uses in the C-TS Town-Serving District with the Special Exception Uses in the C-WA Worth Avenue District.

well as visitors staying at accommodations and employees working in establishments located within the Town." [8]

Shortly after enactment, in a broad-based attack, City Federal Savings and Loan challenged the constitutionality of the ordinance.[9] The 5 day trial occurred over two years. By decision dated March 20, 1984, Circuit Judge Thomas Sholts rejected each and every aspect of the challenge, noting:

> "Clearly, the object of preserving small neighborhood shopping and personal service businesses to accommodate the needs of the residents located in close proximity to the area, the avoidance of additional traffic congestion, the esthetic considerations relating to the preservations of such businesses, and the preservation of the existing character, not only of the commercial area itself, but also of the adjacent residential area, are legitimate objectives of zoning and bear a rational relationship to a municipality's police power."[10]

Four years after Judge Sholts' strong validity of the Town Serving concept, Ordinance 4-80, as amended, came under attack again when a significant Worth Avenue landlord filed another legal challenge to the Ordinance after being denied a special exception in connection with a proposed lease involving a 7,000 square foot retail store.[11] The landlord challenged the constitutionality of the Ordinance and as it was applied to him and also claimed a violation of his Civil Rights under 42 U.S.C Section 1983 based upon alleged violations of procedural and substantive due process and equal protection.

In a well-reasoned, 20 page opinion dated December 12, 1989, Circuit Judge Mary Lupo dismissed all of the landlord's claims. She held that the landlord had no right to a permit other than by seeking a special exception, that the provision of the Ordinance was constitutional on its face and as applied, and that the Town's denial of the landlord's application was not arbitrary and capricious and did not violate the landlord's civil rights

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[8] Section 134-229 of the Town's Code of Ordinances dealing with Special Exceptions provides(12) The proposed use will not attract the principal portion of its customers/clients from off-island locations. The applicant shall submit evidence satisfactory to the town council that not less than 50 percent of the customers of the proposed use will be townpersons. Evidence submitted in support of this contention shall include credible data or information suitable for review by the town to determine its credibility and the appropriateness of the applicant's conclusions. The submittal shall include a description of the types of information used and the methodology employed to arrive at the conclusion. Information used shall include, but shall not be limited to, lists of customer/client addresses or certification thereof by an independent certified public accountant approved by the town, market studies prepared by independent professional firms, or data from similar operations under the control of the applicant. Once in operation, similar documentation must be provided the Town annually when renewing the business tax receipt license.

[9] City Federal Savings and Loan Association v. Town of Palm Beach, Case No. 80-2550 CA (L).

[10] See, Final Judgment of Dismissal with Alternative Findings of Fact and Conclusions of Law dated March 20, 1984 at p.11.

[11] Burton Handelsman, et al. v. Town of Palm Beach, Case Co. CL 88-4773 AJ. The Town's Building Official had determined a special exception was required; the Town Council affirmed the decision, and subsequently denied the Special Exception. The tenant canceled its lease which was conditioned upon either overturning the Building Official's determination that a Special Exception was necessary or upon the issuance of a Special Exception by the Town Council.

as a taking without due process. She noted that the landlord purchased the particular property after enactment of the Ordinance and also considerable additional property in the C-WA District after the Ordinance's constitutionality was upheld in the prior case. She also found that his property had doubled in value.

Judge Lupo concluded: "The town-serving ordinance bears a substantial relationship to the public health, safety and welfare of the Town of Palm Beach."[12] After noting the Adley survey that approximately 80% of the retail and service businesses occupied less than 2,000 square feet, Judge Lupo stated: "The court finds that the retention and preservation of Worth Avenue's existing character of small businesses is a proper goal of zoning"[13] (emphasis added).

Apparently not content with the decision, the landlord appealed and in an opinion dated September 14, 1991, the Fourth District Court of Appeal affirmed.[14] The 4th District Court of Appeal upheld the trial court's interpretation of the Ordinance's Schedule of Use Regulations, found it consistent with the overall purpose of the Ordinance, concluded the landlord had not demonstrated he was deprived of property without due process or equal protection of the law and that the town's conduct was not arbitrary or capricious.

Eleven years after enactment and following two unsuccessful constitutional challenges, Ordinance 4-80, as amended was finally free to operate as envisioned by its advocates to help preserve and enhance the small town character of Palm Beach's commercial districts.

With the current economic climate and the overall decline in appearance of some of the Town's commercial districts, some in the business community are claiming that the Town Serving concept is an anachronism and ought to be abolished. Those who do so usually cite that Palm Beach is an inconvenient place for customers to get to, especially during the winter season and there are many other larger malls throughout Palm Beach County that are more accessible. They claim that most of the national stores on Worth Avenue can be found in one or more of the regional malls. Finally they also argue that Palm Beach rents are higher and there are now many Internet options for shopping and accordingly, Palm Beach is not as enticing a location for business as it was when the Ordinance was enacted.

Those in favor of strict zoning and preservation argue that the Town Serving concept is but one tool available to planners. They point out that "use regulations" alone were deemed insufficient to preserve the small town character of Palm Beach and some size limitation was considered necessary.

Resolving the competing arguments is a policy decision that is committed to the discretion of the Town Council just as the enactment of the Town Serving concept in

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[12] See Final Judgment for Defendant dated December 12, 1989 at p.5.
[13] Id at p.6
[14] Handelsman v. Town of Palm Beach, Fla. App. 4 Dist., 1991, September 4, 1994, Rehearing Denied October 16, 1991.

Ordinance 4-80 was then committed to the discretion of the Town Council. Some points however are worth noting.

Prior to enactment, a comprehensive market study was done and it concluded that the overwhelming majority of Town businesses operated within less than 2000 square feet. It also concluded that the residents wanted to preserve the small town character of the commercial districts. Responsive to some concerns voiced prior to enactment, the Town included a grandfather provision in the Ordinance for existing businesses over 2,000 square feet.

Although some argue the Town Serving provision ought to be abolished, there is no empirical evidence to show that it is not doing exactly what its framers sought to do- preserve the existing character of our Town. The concept operated to prevent a 7,000 square foot retail store on Worth Avenue. If 7,000 square feet had become the Worth Avenue norm, who knows what would have become of the many small Town Serving businesses? The arguments advanced for abolition of the Town Serving provision, namely the high cost of doing business in Palm Beach (and they have yet to be quantified/substantiated) can just as easily be attributed to overall economic conditions.

No one has shown that the current 2,000 square foot limitation is either unworkable or undesirable. If there is strong sentiment for change, perhaps it might be advisable to update the original market analysis to see if the 2,000 square foot limitation is really impacting our Town businesses in a negative way. If so, perhaps a middle ground such as slightly increasing the 2,000 square foot limitation or loosening a bit, the definition of town serving (perhaps decreasing the island customers from 50% to 40%) might be a better approach. Another alternative would be to provide that once approved, Town Serving data would be provided every other year instead of every year.

The Town spent considerable time and effort in designing a constitutional approach that would enable it to preserve its small town character. It commissioned a study, had public input, enacted an ordinance, amended it, and spent a large amount of public funds defending two constitutional challenges. Zoning is a key land planning tool and the Town Serving concept is a building block of a well-conceived foundation that has helped preserve our heritage. To jettison the Town Serving concept entirely without adequate basis in fact would not seem to be in the best interests of our residents. To obtain more data on whether and how it is working, or even to loosen the requirements somewhat, may, depending upon the wishes of the Town Council, be prudent.

Memorandum

To: Alan S. Golboro, Chairman
Planning and Zoning Commission
of the Town of Palm Beach

From: C. Tanner Rose, Jr., Member

Re: Review of Article VI, Divisions 8-12, of Chapter 134, Zoning, from the Code of Ordinances, of the Town of Palm Beach, Relating to Town Servicing

You have asked me to examine the above-referenced provisions of Chapter 134, Zoning, of the Code of Ordinances, of the Town of Palm Beach (the "Zoning Code") with specific reference to the provisions that relate to "town-serving" as defined in Sec. 134-2 and as applied to Article VI, Division 8-12. There are distinctions in each of the applicable Divisions that are worth noting, but I have not summarized the provisions in their entirety.

Part I. The Applicable Provisions of the Zoning Code.

1. Article I, Sec. 134-2 Definition and Rules of Construction.

"Town-serving" is defined as "establishments principally oriented to serving the needs of townspersons which would not substantially rely upon the patronage of persons not defined as townspersons. Town-serving establishments, by definition, would typically contain 2,000 or less square feet of interior gross leasable area ("GLA") and would not engage in advertising designed to attract other than townspersons."

2. Division 8-C-TS Town-Serving Commercial District ("C-TS District").

Sec. 134-1106 states that the purpose of the "C-TS District" is to "create, preserve and enhance areas of attractive, small-scale, retail, personal and professional/business services… providing for the frequently recurring needs of townspersons."

Sec. 134-1107 sets forth permitted uses, all of which are limited to a maximum of 2,000 square feet of GLA. Excluded from the list of permitted uses are formula restaurants, as defined in Sec. 134-2. In fact, whenever restaurants are permitted as of right or by special exception, formula restaurants are excluded. Provision is made for non-conforming uses.

Sec. 134-1109 lists the special exception uses, which includes as item (11) "any commercial establishment with greater than 2,000 square feet of GLA provided the town council has found, as a fact, that the proposed use is town serving". Note that as item (11) is a special exception use it would in any event be subject to Sec. 134-229(12) which prohibits a special exception use from attracting the principal portions of its customers/clients from off-island locations and embodies the provisions for making and reporting such determinations.

3. Division 9. C-WA Worth Avenue District ("C-WA District").

Sec. 134-1156 states that the purpose of the C-WA District is to "preserve and enhance an area of unique quality and character… providing a wide range of retail and service establishments… serving the short-term and long-term needs of townspersons." (Note the distinction from the purpose of the C-TS District described above.)

Sec. 134-1157 provides a list of twenty-nine service and retail uses each which are limited to a maximum of 2,000 square feet of GLA. Provision is made for non-conforming uses.

Sec. 134-1159 lists the special exception uses, which includes, among others, item (6) restaurants, other than formula restaurants, and item (8) retail and service activities permitted under Sec. 134-1157 which contains greater than 2,000 square feet of GLA. Again, as these are special exceptions uses they are subject to the provisions of Sec. 134-229(12).

4. Division 10. C-OPI Office, Professional and Institutional District ("C-OPI District").

Sec. 134-1206 states that the purpose of the C-OPI District is to "provide locations for the administrative, professional business and institutional offices which are adequate for the town's needs and convenient for use by town citizens".

Sec. 134-1207 sets forth permitted uses, without reference to a maximum GLA of 2,000 square feet.

Sec. 134-1209 lists the special exception uses which most notable allow item (6) restaurants, other than formula restaurants, item (8) banks and financial institutions, excluding brokerage and trust companies and item (9) institutions. Thus all of the above special exception uses are subject to Sec. 134-229 (12).

5. Division 11. C-PC Planned Center District ("C-PC District).

Sec. 134-1256 states that the purpose of the C-PC District is to "preserve and enhance an area of unique character oriented toward a combination of office, professional and retail uses…. Further, it is the intent of this district to enhance the town-servicing character of the area through limitation on maximum GLA."

Sec. 134-1257(a)(1) sets forth twenty-nine uses that are not subject to the 2,000 square foot GLA maximum. Sec. 134-1257(a)(2) places the 2,000 square foot GLA maximum on all other uses not specified in subsection (a)(1). The provision also provides for non-conforming uses.

Sec. 134-1259 list the special exception uses, which includes item (5) restaurants, other than formula restaurants and item (11) which is all retail and personal service activities exceeding 2,000 square feet of GLA not specifically cited under permitted uses in Sec. 134-1257(a)(1). As special exception uses they are subject to Sec. 134-229(12), as previously described.

6. Division 12. C-B Commercial District ("C-B District").

Sec. 134-1301 states that the purpose of the C-B District is to "create an environment especially suited to a group of professional and administrative offices compatible in appearance with single-family housing."

Sec. 134-1302 sets forth permitted uses all of which require a site plan and are limited to a maximum of 2,000 square feet of GLA. The provision also provides for non-conforming uses.

Sec. 134-1304 lists the special exception uses all of which require site plan review. In addition, item (8) allows any permitted establishment with greater than 2,000 square feet of GLA, "provided the town counsel has found, as a fact, that the proposed use is town serving. As special exception uses they are subject to Sec. 134-229(12) as previously described.

The purpose of these provisions is two fold: (i) to create a commercial environment that will nurture office uses, retail establishments and restaurants that cater to and meet the needs of predominately residents of Palm Beach, (ii) without attracting the "principal portion of its customers/clients from off-island locations thus creating less traffic and parking problems for the Town." The mechanics to do this are the maximum limit of 2,000 square feet of GLA that run through all of above-described divisions of Article VI combined with the restriction on attracting customers/clients from off-island locations and the related reporting requirements set forth in Sec. 134-229(12).

The question is whether these provisions have applicability and are fulfilling their intended purpose almost thirty years after their adoption; if not should they be removed or modified.

Part II. Results of Research and Investigation.

In preparing this memorandum I reviewed the materials listed on Schedule A attached and had conversations with the individual listed on the schedule. I also undertook to try to determine what other similarly situated municipalities were or are doing. I did not undertake any type of poll or survey. The material below should be viewed for what it is: conversations with a few individuals and an attempt to find applicable precedent on the web. This is not in-depth research (which I do not believe was part of the assignment) nor is it reflective of first hand experience with the provisions. I have not been in Palm Beach that long.

1. Approaches to the Issue by Other Municipalities.

(a) The town of Port Townsend, a community of some 8,500 residents in the State of Washington, bars all formula retail stores and restaurants over 3,000 square feet; formula businesses under 3,000 square feet are allowed only in a single commercial zone and banned entirely from all other parts of town. Formula restaurants are subject to additional scrutiny and require a conditional use permit, are not allowed on corners and must share a building with at least one non-formula business.

(b) Bristol, Rhode Island, bars businesses larger than 2,500 square feet or that have more than 65 feet of frontage from locating in the historic district. Formula businesses smaller than 2,500 square feet must apply for a special use permit. To be approved the applicant must demonstrate that the business will not detract from the district's uniqueness or contribute to the "nationwide trend of standardized downtown offerings" and will "complement those businesses already in the Historic District and foster the local economic base."

(c) An ordinance restricts in the Brookside business district of Kansas City retail uses to a maximum of 10,000 square feet, except grocery stores that may be as large as 25,000 square feet. This along with other restrictions is intended to protect and maintain Brookside's small-scale, neighborhood-servicing businesses and pedestrian nature.

(d) Portland, Maine limits formula business to no more than 23 (the current number), not greater than 2,000 square feet in size and not less than 200 feet from another formula business. Certain types of formula business are exempt such as gas stations, movie theaters and drug stores.

These are just a few examples, but legislation against "big boxes" is prevalent throughout the United States and cities large and small (Chicago, San Francisco, Bozeman, Cape Cod) are all addressing the size of retail stores.

2. Administration of Town Servicing Requirement. Sec. 134-229 (12) requires that if a special exception use (which would usually relate to a commercial establishment of greater than 2,000 square feet of GLA) is being requested, "the applicant shall submit evidence satisfactory to the town council that not less than 50 percent of the customers of the proposed use will be townsperson". The provision goes on to describe what constitutes satisfactory evidence.

In my conversation with staff I was advised that to date no applicant has been turned down. This applies to initial applications as well as those that have been required by Town Council to be provided on an annual basis. This of course has no relationship to the number of potential businesses that did not apply knowing that they could not meet the requirement.

3. Perceptions from Conversations. As noted above, I did no survey of owners or tenants. However, I did have several conversations with those people noted on Schedule A and one cannot live in Palm Beach, even for a relatively short period of time, without being engaged on the issue of "town serving". Here is a summary of these conversations and anecdotal comments:

(a) The system does not work, no one gets turned down.

(b) Town serving is no longer necessary as a means to keep people from coming across the bridge to shop as they have City Place, Gardens Mall, Wellington Green, etc.

(c) The 2,000 square foot maximum is too small.

(d) The system does nothing to create tenant mix; there are 31 jewelry stores on Worth Avenue.

(e) The true town serving tenants (card store, shoe repair, etc.) cannot afford the rent. It is hard to survive in a seasonal community, particularly in this economic climate.

(f) There has been an erosion of retailers over the years and they have not been replaced. The "entry fee" is too high due to cost of permitting, etc.

(g) Many Worth Avenue stores could not survive without a high percentage of off-island customers.

Part III. Recommendation.

I am aware that there is little appetite to engage more consultants and take on additional surveys, but this is what I think is needed. I believe the Planning & Zoning Commission should recommend to Town Council that an RFP be developed and put out for a consultant with expertise in this area. I believe strong consideration should be given to Adley Associates, Inc. as they performed the prior surveys and analyses. I see little use in doing a survey of owners and tenants until we have hired a consultant who would properly orchestrate the survey. Given our fragile economy and the gloomy outlook for retail and commercial real estate generally, I believe the cost is justified.

Some questions that might be considered in preparing the RFP or further along in the process:

(a) Is the main issue with town serving just retail and restaurants or are there issues that relate to other commercial areas?

(b) Should there be a different set of standards for the C-TS District which addresses "frequently recurring needs of townspersons" and the C-WA District which addresses "the shortterm and longterm needs of townspeople"? How frequently do townspersons purchase "longterm needs" and wouldn't a retailer need more off-island customers to support that type of inventory?

(c) As noted in one of the interview comments, is Palm Beach still a destination for certain types of retail stores? Will people come across the bridge to shop in the C-TS District? Will formula business of moderate size attract off-island

shoppers; are there synergies with these retailers that will benefit our existing town-serving retailers?

(d) To maintain the viability of the C-WA District do the town serving provisions need to be different from some of the other districts?

(e) What tools are available to the Town to create tenant mix (as previously noted there are 31 jewelry stores on Worth Avenue).

(f) What can the Town do to create an environment and rent structure that will preserve the retail tenants in all Districts?

Schedule A

Materials Reviewed

1. Applicable provisions of the Chapter 134, Zoning, of the Code of Ordinances, of the Town of Palm Beach and Ordinance No. 4-80.

2. Minutes of the Town Council meeting of March 31, 1980.

3. Report of Adley Associates, Inc. (marked "Draft"), received by the Town on December 5, 1979.

4. Summary of Comments and suggestions by Interested Citizens/Property Owners at Meetings of 1/23, 1/30, 2/6 and 2/13/80.

5. Market Potential Analysis (marked "Discussion Draft") by Adley Associates, Inc., date stamped November 12, 1979. Note, one of its conclusions is that "over 60% of the sales of apparel and accessory stores located in the Town are made to customers from an external market."

6. Summary Date: Estimated Retail and Commercial Floor Space Worth Avenue and Royal Poinciana Commercial Districts. September, 1979.

7. Materials Received from John C. Randolph, Town Attorney, relating to Litigation.

8. Retail Findings Report by the Gibbs Planning Group.

Individuals Spoken to or Met With

1. Paul Castro, Zoning Administrator, Town of Palm Beach

2. John Maus, Owner of Maus & Hoffman and member of the Worth Avenue Association

3. Laurel Baker, Executive Director of the Palm Beach Chamber of Commerce

TOWN OF PALM BEACH

Planning, Zoning & Building Department

TO: Planning and Zoning Commission

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

DATE: January 11, 2010

SUBJECT: Town-Serving Regulations

The Planning and Zoning Commission, at its December 8, 2009 meeting, requested that Staff provide the Commission with a summary of staff issues or concerns about Town-serving regulations. Staff has identified the following concerns with the administrative portion of those zoning regulations for your consideration.

- If a policy decision is made that the Town-serving regulations need modification, the maximum 2,000 square foot gross leasable area threshold in that regulation should not be changed without careful consideration and study. Town-serving regulations have withstood two court challenges on their validity. Therefore, a similar study as originally conducted in 1979 by the Town's consultant, should be undertaken to ensure that any new threshold square footage is sustainable/defensible.

  There has been discussion amongst the Commission about changing how the Town calculates gross leasable area. The Town already excludes common areas such as bathrooms, stairwells, elevators and common elevator lobbies, mechanical rooms, janitor rooms, elevators, escalators and common hallways. Therefore, staff does not recommend that this definition be further relaxed.

- The practice of placing a condition of approval requiring that some, but not all, special exception uses provide Town-serving documentation at the time of renewal of a business tax receipt is administratively problematic. Not all businesses or clubs are required to provide that documentation. Since 1994, there have been 446 special exception uses granted by the Town. All, with the exception of houses of worship, were required to demonstrate that they would be Town-serving in order to obtain Town Council approval. Of those 446 special exceptions granted, only 70 are required to annually provide acceptable Town-serving documentation at the time of renewal of their business tax receipt. Please note that some of these businesses are no longer in operation.

  Staff would recommend that Town-serving verification continue to be required at the time of Town Council approval. However, staff would not recommend that the documentation be provided each year by only a select number of applicants. A provision in the Code could be added which would allow the Town Council to re-evaluate Town-serving documentation if there was some evidence that a business was no longer Town-serving. This would require those businesses or clubs that received special exception approval to maintain records if valid questions concerning their Town-serving nature surface.

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- Some annual reviews are reviewed and approved by staff only. The requirements for documentation for Town-serving are broad and general. The original intent was to allow the applicant the discretion to provide evidence satisfactory to the Town Council that not less than 50% of the customers of the proposed use are Town-serving (See Sec. 134-229(12) attached).

  Staff receives a wide variety of reports, data, studies and information to evaluate and determine Town-serving compliance. Without specific submission requirements, it can be difficult and time consuming to get the attorneys, accountants and marketing firms who represent these businesses to provide information that staff finds is acceptable. It is recommended that this process either become more objective with clearly defined submission requirements or eliminated.

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

Enclosures

cc: Mayor and Town Council
Peter B. Elwell, Town Manager
John C. Randolph, Town Attorney
Veronica B. Close, Asst. Director, Planning, Zoning & Building
Joanna Cunningham, Town Clerk
Paul W. Castro, Zoning Administrator
John Lindgren, Planning Administrator
zf

(5) The use will comply with yard, other open space, and any special requirements set out in article VI for the particular use involved.

(6) The use will comply with all elements of the comprehensive plan.

(7) The use not result in substantial economic, noise, glare, or odor impacts on adjoining properties and properties generally in the district.

(8) Adequate ingress and egress to property and proposed structures thereon and off-street parking and loading areas will be provided where required, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

(9) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, and economic impact shall be compatible and in harmony with properties in the district.

(10) Location, availability and compatibility of utility service for the use shall be satisfactory to ensure health and safety.

(11) Refuse and service areas for the use shall not adversely affect automotive and pedestrian safety and convenience, traffic flow and control, or access in case of fire or catastrophe.

(12) The proposed use will not attract the principal portion of its customers/clients from off-island locations. The applicant shall submit evidence satisfactory to the town council that not less than 50 percent of the customers of the proposed use will be townpersons. Evidence submitted in support of this contention shall include credible data or information suitable for review by the town to determine its credibility and the appropriateness of the applicant's conclusions. The submittal shall include a description of the types of information used and the methodology employed to arrive at the conclusion. Information used shall include, but shall not be limited to, lists of customer/client addresses or certification thereof by an independent certified public accountant approved by the town, market studies prepared by independent professional firms, or data from similar operations under the control of the applicant.

(13) If historic/specimen trees are located on the subject property, the location of said historic/specimen trees shall be identified on a signed and sealed survey. In addition, adequate landscaping, screening and barricade protection of historic/specimen trees shall be demonstrated to be provided as required in this chapter.

(14) The proposed use will not place a greater burden than would be caused by a permitted use on municipal police services due to increased traffic or on fire protection services due to the existence of or increased potential for fire/safety code violations.

(Ord. No. 2-74, § 6.40(a)—(m), (r), 3-26-74; Ord. No. 3-77, § 11, 3-29-77; Ord. No. 5-78, § 12, 3-31-78; Ord. No. 7-79, § 12, 3-30-79; Ord. No. 4-80, § 6, 3-31-80; Ord. No. 1-85, §§ 3(b), 4(d), (e), 2-11-85; Ord. No. 1-90, § 4(d), 2-5-90; Ord. No. 1-91, § 4(c), (d), 4-23-91; Ord. No. 1-96, § 7, 2-5-96; Ord. No. 1-99, § 6, 4-5-99)

Sec. 134-230. Determination of parking needs of commercial uses.

(a) In conjunction with subsection 134-229(8), the following factors may be used as a guide in determining the parking need generated by any commercial uses (retail, personal services, offices, professional and business services, banks and financial institutions) being considered for special exception approval:

(1) *Offices, professional and business services, banks and financial institutions.*

a. Per each full-time employee, 0.65 spaces; plus

b. Per each part-time employee, 0.33 spaces; plus

c. Per salesman, 0.16 spaces; plus

February 4, 2010

Mr. Paul Castro, Zoning Administrator
P.O. Box 2029
Palm Beach, Florida 33480-2029

Dear Mr. Castro:

In response to your telephone conversations with Bill Brisson on January 25th and February 1st, following is a brief description of the scope of work we envision and a preliminary estimate of the likely cost involved in undertaking a study of the "Town-serving" provision associated with commercial uses in the Town of Palm Beach.

STATEMENT OF THE TASK

The Town of Palm Beach is interested in determining whether or not an increase in the 2,000 square foot "Town-serving" limitation on gross leasable area in the commercial districts is warranted and, if so, what limit would be the most appropriate and supportable. We also understand that there may be some question as to the appropriateness of applying the "Town-serving" standard to all Special Exceptions, as currently is being done.

SUGGESTED APPROACH

We believe the most appropriate course is to ascertain the pattern of commercial uses by type throughout the Town and the approximate square footage of each. This will allow determination of the character of commercial uses in terms of their location and size. This was the original basis for imposition of the "Town-serving" provision. This regulation has been successfully upheld in the face of two legal challenges since its adoption in 1980.

The initial investigations conducted by Mr. Brisson during the Town's 1979/80 "Zoning Season" involved the physical inventory of each business in the Town, the nature of the business, and the approximate square footage of each use. We believe this can now be accomplished using the Town's database of Business Tax records (formerly the Occupational License) and perhaps the Town's GIS database which we believe still uses the County Property Appraiser's database as its foundation. Mr. Brisson will be the Project Director and the primary participant in the conduct of the study and in presenting our findings and recommendations to the Planning & Zoning Commission and City Council.

We believe it would be prudent to review the patterns and trends associated with the Town's history of approval of Special Exceptions to the 2,000 square foot limitation, preferably by zoning district. This will add additional credence to any decision to modify the Town-serving provision. If conducted prior to enacting any changes, this analysis will further support any decision made by the Town in the event that a challenge to the Town's action is ever filed.

The combination of the inventory of businesses and the Special Exception approval data will provide a sound basis for determining how the Town should address the issue. It should also be noted that elimination of the "Town-serving" provision, or any change to the square foot limitation on gross leasable area, will require an amendment to the Comprehensive Plan.

Inventory of the Location and Size of Commercial Uses

It appears to us that the most effective and cost-efficient approach would be for us to work with Town Staff so that the Town Staff could adapt the Town's computer records of its Business Tax files (and GIS property data files if needed) for analysis. Once the Town Staff has compiled the data from the computer records into a spreadsheet or database format, we will be able to determine and undertake the types of queries or analyses needed to arrive at credible conclusions and recommendations.

History of Special Exception Approvals

As a cost saving measure, we suggest that the Town Staff identify the number of Special Exceptions to the 2,000 square foot limitation that have been approved since 1980; review these documents and provide us with the relevant data for analysis. We will provide guidance to the Town Staff as to the particular information needed from each approved Special Exception. Upon receipt of the information from the Town Staff, we will analyze the data and combine the results with the analysis of the commercial inventory and analysis to develop our findings and recommendations.

WORK PRODUCT

We will provide the Town with a Technical Memorandum outlining the task, methodology, and description of the work undertaken culminating in findings and recommendations to the Town that are based on the combination of the following factors:

1. The existing type and size of businesses Town-wide and in the various commercial zoning districts.

2. The patterns and trends of Special Exception approvals since the "Town-serving" provision was enacted.

ATTENDANCE AT MEETINGS

We will be prepared to attend meetings with the Planning and Zoning Board and Town Council as necessary to adequately explain our findings and recommendations.

PRELIMINARY COST ESTIMATE:

Based on the level of Town Staff involvement in the collection and compiling of the computer – based data and information gathered from the previously approved Special Exceptions, we estimate the cost of the foregoing scope of work to approximate $15,000 plus reimbursement for travel, lodging and subsistence expense necessitated by meetings with the Town Staff, field research, and attendance at meetings with the Planning and Zoning Commission and Town Council. This preliminary estimate may need to be revised when we have been able to more clearly determine the availability and form of needed data and the extent to which Town Staff participation can be committed.

We expect that it will be necessary to visit the Town twice to meet with Staff and/or conduct field investigations. In addition, we have made allowance to attend one meeting each with the Planning and Zoning Commission and Town Council for presentation of our findings and recommendations.

As we have in the past, we expect our contract with the Town to be on a man-hour basis plus documented out-of-pocket expenses. Our professional hourly rates are as follow and include travel time between Fort Myers and the Town of Palm Beach, when such travel is necessary and approved by the Town.

James G. LaRue, AICP, Principal	$135.00
Wm. F. Brisson, AICP, Sr. Planner	$125.00
Planner	$ 95.00
Planning Technician	$ 50.00

Should you have any questions about this preliminary scope and cost estimate, please call us at 239-334-3366. We look forward to working with the Town again and are prepared to begin immediately upon authorization.

Sincerely,

James G. LaRue, AICP
Principal
gp

Meeting cost to be added to original estimate for Town-serving study
bill
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pcastro
02/25/2010 09:38 AM
Cc:
jim
Show Details

Paul,

Looking over our original estimate, we allowed for one meeting each with the P&Z and Town Council. Based on our telephone discussion, it would be prudent to make allowance for one more meeting before each body. Considering preparation time, travel time, attendance and debriefing/summary time, we estimate the additional cost to be about $3,000. There will be no additional charges for out-of-pocket expense for travel, subsistence or lodging.

We appreciate the opportunity to serve the Town and work with you again. If you have any questions or need additional information, let me know.

Bill

Wm. F. Brisson, Sr. Planner
LaRue Planning & Management Services, Inc.
1375 Jackson St., Suite 206
Fort Myers, FL 33901
Phone: (239) 334-3366
Cell: (941)-228-1499
Fax: (239) 334-6384
Web: www.larueplanning.com

TOWN OF PALM BEACH

Planning, Zoning & Building Department

March 1, 2010

Ms. Maura Ziska, Esq.
222 Lakeview Avenue
Suite 950
West Palm Beach, FL 33401

Subject: Variance #30-2009, 1470 North Lake Way

Dear Ms. Ziska:

The Town Council, at its February 10, 2010 meeting, accepted your request to withdraw the side yard setback variance request for the north side of the subject property. The Town Council also conditionally approved the following variances:

1) Construction of the proposed dock and associated appurtenances a maximum 235 feet west of land in lieu of the 244 feet originally requested and the 150 feet maximum allowed;

(2) To allow a side yard setback for triple dolphin piles to be 15 feet from the south property line in lieu of the 25 foot minimum required;

(3) to allow an accessory structure (dock) to be built on a parcel of land that has no principal structure.

The condition of approval is that prior to the issuance of a building permit, the applicant will enter into a recorded agreement with the Town that the dock will not be used until a certificate of occupancy is approved for a house on the subject property. The conditional approval is identified on sheet drawing stamp dated March 1, 2010, prepared by Isiminger & Stubbs Engineering, Inc. , and made part of the approval of this application.

The Town Council approval of this application for variances constitutes only zoning approval and does not relieve the owner and/or applicant from obtaining additional Town approvals as may be required, such as Architectural Commission approval and necessary construction permits. The work authorized under the approval of this variance must be commenced within one year from the date of approval or said approval will expire.

Sincerely,

Paul Castro, AICP
Zoning Administrator

cc: John Page, Director, Planning, Zoning and Building
Veronica Close, Asst. Director, Planning, Zoning and Building
Joanna Cunningham, Town Clerk
John Lindgren, Planning Administrator
Jeff Taylor, Building Official

CMD✓

148 Seagate Road
Palm Beach FL 33480

cc: PBE
JP
JC
JCR
PF
ZF

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March 8, 2010

TO: Mr. Jack MacDonald, Mayor
Members of the Town Council
Members of the Architectural Commission

Dear Sirs,

REF: Town Council Meeting of March 10, 2010 and agenda item C.2.b.:
VARIANCE #2-2010 The application of Bradford D. and Jill E. Kaufman; relative to property commonly known as 151 Seagate Road; described as Lot 16, NORTH SHORE ADDITION TO PALM BEACH according to the Plat thereof recorded in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, ion Plat Book 20, Page 62; located in the R-B Zoning District. Request for Variance to reduce side yard setback from 12.5 feet to 5 feet in order to construct a one story, one car garage and laundry room addition. [Agent: Thomas M. Kirchhoff, AIA, PA].

My wife, Barbara, and I are resident directly across the street (151 is to the north) from the proposed Variance. We wish to state to the Town Council that we have no objections to the Variance and as such recommend that the Variance be approved.

Very truly yours,

Gerard M. Thompson

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March 5, 2010

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

Re: Variance #2-2010
151 Seagate Road, Palm Beach, FL 33480

Dear Mayor, Members of the Town Council and Members of ARCOM:

I reside at 110 Seagate Road, Palm Beach, FL. I have reviewed the proposed plans for 151 Seagate Road, my neighbors to the northeast. I fully support the proposed improvements. Hopefully, you and your staff will agree with me and support my neighbors' variance request.

Thank you for your consideration.

Very truly yours,

William Degray
110 Seagate Road
Palm Beach, FL 33480

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March 5, 2010

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

Re: Variance #2-2010
151 Seagate Road, Palm Beach, FL 33480

Dear Mayor, Members of the Town Council and Members of ARCOM:

I reside at 120 Seagate Road, Palm Beach, FL. I have reviewed the proposed plans for 151 Seagate Road, my neighbors to the northeast. I fully support the proposed improvements. Hopefully, you and your staff will agree with me and support my neighbors' variance request.

Thank you for your consideration.

Very truly yours,

Marcie Stollof
120 Seagate Road
Palm Beach, FL 33480

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March 5, 2010

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

Re: Variance #2-2010
151 Seagate Road, Palm Beach, FL 33480

Dear Mayor, Members of the Town Council and Members of ARCOM:

I reside at 167 Seagate Road, Palm Beach, FL. I have reviewed the proposed plans for 151 Seagate Road, my neighbors to the northeast. I fully support the proposed improvements. Hopefully, you and your staff will agree with me and support my neighbors' variance request.

Thank you for your consideration.

Very truly yours,

Scott Derrin
167 Seagate Road
Palm Beach, FL 33480

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TOWN OF PALM BEACH
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March 5, 2010

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

Re: Variance #2-2010
151 Seagate Road, Palm Beach, FL 33480

Dear Mayor, Members of the Town Council and Members of ARCOM:

I reside at 156 Seagate Road, Palm Beach, FL. I have reviewed the proposed plans for 151 Seagate Road, my neighbors to the northeast. I fully support the proposed improvements. Hopefully, you and your staff will agree with me and support my neighbors' variance request.

Thank you for your consideration.

Very truly yours,

Richard Holt
156 Seagate Road
Palm Beach, FL 33480

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TOWN OF PALM BEACH
PZB DEPT

March 5, 2010

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

Re: Variance #2-2010
151 Seagate Road, Palm Beach, FL 33480

Dear Mayor, Members of the Town Council and Members of ARCOM:

I reside at 135 Seagate Road, Palm Beach, FL. I have reviewed the proposed plans for 151 Seagate Road, my neighbors to the ~~northeast~~ West. I fully support the proposed improvements. Hopefully, you and your staff will agree with me and support my neighbors' variance request.

Thank you for your consideration.

Very truly yours,

Tom & Isabelle Pangia
135 Seagate Road
Palm Beach, FL 33480

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TOWN OF PALM BEACH
PZB DEPT

March 5, 2010

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

Re: Variance #2-2010
151 Seagate Road, Palm Beach, FL 33480

Dear Mayor, Members of the Town Council and Members of ARCOM:

I reside at 170 Seagate Road, Palm Beach, FL. I have reviewed the proposed plans for 151 Seagate Road, my neighbors to the northeast. I fully support the proposed improvements. Hopefully, you and your staff will agree with me and support my neighbors' variance request.

Thank you for your consideration.

Very truly yours,

Ruth B Paine

Ruth Paine
170 Seagate Road
Palm Beach, FL 33480

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TOWN CLERK