



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, FEBRUARY 16, 2011

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
William J. Diamond
Richard M. Kleid
Michael J. Pucillo
David A. Rosow
Robert N. Wildrick

II. INVOCATION AND PLEDGE OF ALLEGIANCE

III. COMMENTS OF MAYOR GAIL L. CONIGLIO

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

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

VI. APPROVAL OF AGENDA

VII. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 6 -11 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Adding A New Provision To The Town Code Of Ordinances At Chapter 18, Building And Building Regulations, Section 108.2 Permit Fees; Providing For The Institution Of A Building Permit Revision Fee; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date. [John Page, Director of Planning, Zoning, and Building]

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B. First Reading

1. ORDINANCE NO. 5-11 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County Florida, Amending Chapter 134, Zoning, At Sections 134-172 To Change The Commencement Of Special Exceptions And Variances From Architectural Commission Or Landmark Preservation Commission Submission To Approval; Section 134-330 To Change The Commencement Of Site Plan Review As Architectural Commission Or Landmark Preservation Commission Submission To Approval; Sections 134-1107 And 134-1109 To Permit Office Uses On The First Floor In The Two Hundred Block Of Peruvian Avenue And Bradley Place In The C-TS Zoning District; Section 134-2175 By Providing An Exemption For The Two Hundred Block of Peruvian Avenue And Bradley Place In The C-TS Zoning District from Principal Equivalency For Required Parking; Sections 134-2436 And 134-2437 To Provide A Provision To Allow Hanging Business Identification Signs In Commercial Zoning Districts; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing For An Effective Date. [John Page, Director of Planning, Zoning, and Building]

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VIII. RESOLUTIONS

1. RESOLUTION NO. 9-11 A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Adopting A Permit Revision Fee In Accordance With Chapter 18, Section 108.2 (P) Of The Town Code Of Ordinances; Providing An Effective Date. [John Page, Director of Planning, Zoning, and Building]

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2. RESOLUTION NO. 17-11 A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Adopting An Application Fee And Renewal Fee For Administrative Approval Of Outdoor Seating In Accordance With Chapter 134, Section 134-2104(b) Of The Town Code Of Ordinances; Providing An Effective Date.
[John Page, Director of Planning, Zoning, and Building]

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IX. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions & Waivers

1. Request for Waiver of Section 42-199, Hours of Construction Work, at 206 Worth Avenue (Per Email Dated January 28, 2011, From Michael K. Vaughn).

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C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. SPECIAL EXCEPTION #3-2011 WITH VARIANCES

The application of Worth Avenue Associates; relative to property commonly known as **150 Worth Avenue**; described as lengthy legal description on file; located in the C-WA Zoning District. The applicant is requesting a Special Exception to modify the special exception for the arcade which was approved in 1998 (Site Plan Review No. 4-98 with Special Exception and Variance) to allow for the addition of signs. Variances are requested to allow signs to be erected within the right-of-way of Worth Avenue and for those signs to exceed the allowable sign area for Gucci. All of Gucci's signs will total 28.92 square feet, while the code allows a 20 square foot maximum.

[Attorney: James R. Brindell]

[ARCOM Recommendation: Approval of the variances as requested and the signage and architectural changes necessary for the signage to occur. Specifically, ARCOM approved the Gucci, Tory Burch and Lacoste signage placed on existing bands, and the Vilebrequin, Christofle and Pucci signage on the existing keystones over the arches

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(Option 1); no architectural changes are needed to accommodate this signage. ARCOM also approved the Louis Vuitton sign on an added single band under one of the curved arches (Option 2). Carried 6-1.]

Deferred from the January 12, 2011, Town Council Meeting.

- (1) Appeal of ARCOM Decision B-070-2010, 150 Worth Avenue (Per Letter Dated December 22, 2010, from James R. Brindell).

2. New Business

a. **SITE PLAN REVIEW #3-2011 WITH VARIANCE**

The application of Lydian Bank; relative to property commonly known as **180 Royal Palm Way**; described as lengthy legal description on file; located in the C-OPI Zoning District. The applicant is requesting a Site Plan Review to request a modification to the parking lot which required changes to the handicap spaces to meet the American with Disabilities Act (“ADA”). The changes require variances: to have 11 parking spaces in lieu of the 12 parking spaces that exist and to have a drive isle width of 24 feet in lieu of the 25 foot minimum required.

[Attorney: Maura A. Ziska]

- b. **SITE PLAN REVIEW #4-2011** The application of 210 Emerald Lane, LLC.; relative to property commonly known as **210 Emerald Lane**; described as Lot 34 of REVISED PLAT OF STOTESBURY PARK, according to the Plat thereof as recorded in Plat Book 20, Page 42, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting a Site Plan Review to permit construction of a 3,197 square foot two-story single family residence on a platted lot with a width of 90 feet in lieu of the minimum 100 foot lot width required within the R-B District.

[Attorney: M. Timothy Hanlon]

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c. **SPECIAL EXCEPTION #6-2011 WITH VARIANCES**

The application of Terry R. Taylor; relative to property commonly known as **780 South Ocean Blvd.**; described as lengthy legal description on file; located in the R-A Zoning District. Variances are requested to install a tennis court with a rear yard setback of 10 feet in lieu of the 35 foot minimum required; to allow an associated 10 foot high fence with a side yard setback of 15 feet in lieu of the 30

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foot minimum required and to install light poles at a height of 23 feet in lieu of the 15 foot maximum required. A Special Exception is requested to install night lighting which will meet all requirements in the Code, including a light timer switch to ensure the lights will operated only from 9:00 a.m. to 9:00 p.m. [Attorney: Peter S. Broberg]

- d. **SPECIAL EXCEPTION #7-2011** The application of Robert and Ann Fromer; relative to property commonly known as **340 Polmer Park**; described as Lots 6, 6A and 7, POLMER PARK, according to the Plat thereof, as recorded in Plat Book 27, Page 53, Palm Beach County, Florida, Public Records; located in the R-B Zoning District. A Special Exception is being requested to allow a set of driveway gates on Polmer Park (which is a cul-de-sac) with a 5 foot setback from the street pavement in lieu of the 18 foot minimum required. [Attorney: Maura A. Ziska]
- e. **SPECIAL EXCEPTION #8-2011** The application of Bank United; relative to property commonly known as **2875 South Ocean Blvd.**; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant is requesting a Special Exception to permit a 618 square foot expansion to the operation of an approved 4,004 square foot full service bank in the C-TS Zoning District, for a total of 4,622 square feet. [Attorney: Alfred J. Malefatto]
- f. **VARIANCE #3-2011** The application of Matt and Tracy Smith; relative to property commonly known as **1240 North Ocean Blvd.**; described as Lots 1, 1-A, 2 and 2-A, of Alto Lido, according to the Plat thereof, as recorded in Plat Book 11 at Page 36, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting a Variance to allow the minimum perimeter landscape area to be 6,909 square feet in lieu of the 8,010 square foot minimum required to meet the 50% of the 45% in the code for the perimeter of a lot in the R-B Zoning District.
[ARCOM Recommendation: Implementation of the proposed variance would not cause negative architectural impacts. Carried 7-0.]
[Landmark Commission Recommendation: Landmark Commission recommends that the statue can be modified to conform to the Code without the need for a variance. Carried 7-0.]
[Attorney: Maura A. Ziska]

- g. **VARIANCE #4-2011** The application of Richard and Patsy Johnson; relative to property commonly known as **751 Island Drive**; described as lengthy legal description on file; located in the R-B Zoning District. The applicant is proposing to convert two patio awnings to permanent loggias, enlarge the family room, and convert the front entry awning into a permanent structure. The proposed additions will require a variance to allow an increase in the lot coverage to 34.6% in lieu of the 27.3% existing and 30% maximum allowed in the R-B Zoning District. Variances are also requested to: allow an existing boat lift to remain in the same location after the reconstruction of the seawall which is currently at 20 feet west of the U.S. Pierhead line the Town's Bulkhead line in lieu of the 6 foot maximum allowed; to allow a marginal dock to be 20 feet from the north property line in lieu of the 25 foot minimum required; to allow a marginal dock to be 20 feet from the south property line in lieu of the 25 foot minimum required. [Attorney: Maura A. Ziska]
[ARCOM Recommendation: Implementation of the proposed variance would not cause negative architectural impacts. Carried 7-0.]
- h. **VARIANCE #5-2011** The application of John J. Cafaro Revocable Family Trust u/a/d 11/1/95, as amended and restated; relative to property commonly known as **860 South Ocean Blvd.**; described as lengthy legal description on file; located in the R-A Zoning District. The applicant is requesting a variance to permit a statue/fountain which is 14 feet in height in lieu of the 12 foot maximum allowed. [Attorney: M. Timothy Hanlon]

D. Other

1. ARCOM Recommendation Regarding Revised Plans at 1100 North Ocean Boulevard (Karp/Castle).
[John Page, Director of Planning, Zoning, and Building]
Time Limit: 15 Minutes Per Side
2. Request to Consider Zoning Ordinance No. 5-11 Prior to 5:00 p.m. at the March 9, 2011, Town Council Meeting.
[John Page, Director of Planning, Zoning, and Building]

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X. ANY OTHER MATTERS

XI. 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: February 16, 2011

Section of Agenda

Ordinances - Second Reading

Agenda Title

ORDINANCE NO. 6 -11 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Adding A New Provision To The Town Code Of Ordinances At Chapter 18, Building And Building Regulations, Section 108.2 Permit Fees; Providing For The Institution Of A Building Permit Revision Fee; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Ordinance No. 6-11

ORDINANCE NO. 6-11

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ADDING A NEW PROVISION TO THE TOWN CODE OF ORDINANCES AT CHAPTER 18, BUILDING AND BUILDING REGULATIONS, SECTION 108.2 PERMIT FEES; PROVIDING FOR THE INSTITUTION OF A BUILDING PERMIT REVISION FEE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

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

Section 1. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 18, Building and Building Regulations; Section 108.2(p), Schedule of Permit Fees, to read as follows:

“108.2 Schedule of permit fees. On all new and existing buildings, structures, plumbing, mechanical, electrical, and gas systems, site work, and swimming pools and spas, requiring a permit as set forth in section 104, and all right of way permits, a fee shall be paid based on the construction value and is required at the time of filing application in accordance with the following schedule:

- a. A minimum permit fee as established by resolution shall apply to all construction permits and right-of-way work.
- b. The permit fee for all permits for construction within the town shall be assessed in accordance with the fee schedule adopted by the Town Council by resolution.

Subcontractors for all work will be required to obtain a permit and will be charged in accordance with the fee schedule above. Separate permits will be required for each separate building and a separate permit will be required for all site work (to include walkways, driveways, property walls and fences, gates, irrigation, landscaping, exterior lighting, patios, slabs, etc.). Separate permits will be required for all structures such as pools, docks and seawalls.

- c. Demolition -- Fee based on construction value, same as a. and b. above, unless condemned by the Town, then no fee will be charged.
- d. Moving a Building -- Fee based on construction value in accordance with the fee schedule adopted by the Town Council by resolution.
- e. Permit Refund Fee -- Fee shall be based upon the time required for staff processing, plan review, inspections, etc. as determined by the building official, but in no case less than the minimum permit fee established by resolution. All requests for refunds must be received within 30 days from issuance of permit.
- f. Permit transfer fee -- Fee as determined by the building official but not to exceed the amount established by resolution of the Town Council.

- g. Plan examination fee -- Fee not to exceed the amount as established by resolution.
- h. Major Plan rechecking fee -- Second and additional check list charge will be ten (10) percent of permit fee each time rechecked.
- i. Expedited Plan Review Fee -- At the option of the contractor and with the approval of the building official, the town, at its discretion, will perform a special plan review to expedite permit applications and plan revisions. Fees will be assessed in accordance with the fee schedule adopted by the Town Council by resolution, and are based upon the current availability of personnel and the current cost for plan review services.
- j. Each re-inspection failed due to wrong address, work rejected because of faulty construction, work not ready for inspection at time requested, or repairs or corrections not made at time of subsequent inspection will be assessed in accordance with the fee schedule adopted by the Town Council by resolution. Fees for re-inspection shall be paid in the town planning, zoning & building department before the re-inspection is made. No further inspections will be made or permits issued until such fees have been paid.
- k. For education travel and certification maintenance for development regulation and fire prevention personnel -- one and one-half percent (1.5%) of the fees outlined in a. through j. shall be directed to a separate expenditure account specifically and solely for educational travel and certification maintenance of development regulation and fire prevention personnel.
- l. A surcharge of one cent per square foot of under roof floor space of new, remodeled, renovated, or added square shall be collected, in accordance with Florida Statutes 468.631 and 553.721, as amended, copies of which are on file in the Department to fund the Homeowners' Construction Recovery Fund and the functions of the Building Code Administrators and Inspectors Fund. This surcharge shall be adopted by resolution of the Town Council and may be amended from time to time.
- m. The sanitary sewer capital connection charge (CAP) shall be collected at the time of the issuance of the building permit according to the fee schedule adopted by the Town Council by resolution. No capital connection charge shall be assessed for a building addition, remodel, renovation or replacement of a building within twelve (12) months of its demolition, unless a larger water meter is installed. In such event, only the fee difference between the two meter sizes shall be assessed for the water service capital connection charge.
- n. Tents and Other Temporary Structures. Permit Fee is assessed in accordance with the fee schedule adopted by the Town Council by resolution. In addition to the permit fee, a fee in accordance with the fee schedule adopted by the Town Council by resolution per tent, per month (or portion thereof) will be charged for any tent standing for more than fifteen (15) days. For multiple events over a period of time, a re-inspection will be required for each event, at a fee in accordance with the fee schedule adopted by the Town Council by resolution.
- o. Local Product approval. If a local product approval of a product per Department of Community Affairs Rule 9B-72 is requested, a fee in accordance with the fee schedule adopted by the Town Council by resolution will be required with the application for such local product approval."

p. Permit Revision Fee. Each revision to a construction permit will be assessed a fee in accordance with the fee schedule adopted by the Town Council by resolution.

Section 2. Severability.

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

Section 3. Repeal of Ordinances in Conflict.

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

Section 4. Codification.

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

Section 5. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in regular, adjourned session assembled on first reading this 12th day of January, 2011, and second and final reading on this 16th day of February, 2011.

Gail L. Coniglio, Mayor

, Town Council President

, Town Council President Pro Tem

, Town Council Member

ATTEST:

, Town Council Member

Cheryl Somers, Acting Town Clerk

, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: February 16, 2011

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 5-11 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County Florida, Amending Chapter 134, Zoning, At Sections 134-172 To Change The Commencement Of Special Exceptions And Variances From Architectural Commission Or Landmark Preservation Commission Submission To Approval; Section 134-330 To Change The Commencement Of Site Plan Review As Architectural Commission Or Landmark Preservation Commission Submission To Approval; Sections 134-1107 And 134-1109 To Permit Office Uses On The First Floor In The Two Hundred Block Of Peruvian Avenue And Bradley Place In The C-TS Zoning District; Section 134-2175 By Providing An Exemption For The Two Hundred Block of Peruvian Avenue And Bradley Place In The C-TS Zoning District from Principal Equivalency For Required Parking; Sections 134-2436 And 134-2437 To Provide A Provision To Allow Hanging Business Identification Signs In Commercial Zoning Districts; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing For An Effective Date.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum from John Page dated February 4, 2011
- Ordinance No. 5-11
- Letter from Gay Cinque dated January 25, 2011
- Letter from Orley Shabahang dated February 8, 2011
- Letter from Patti Esbia dated February 9, 2011
- Undated letter from A. Seltzer

TOWN OF PALM BEACH

Information for Town Council Meetings on: February 16, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Proposed Modifications and Changes to Chapter 134, Zoning
Ordinance No. 5-11

Date: February 4, 2011

STAFF RECOMMENDATION

Staff recommends that the Town Council approve Ordinance No. 5-11, on first reading of the Ordinance.

PLANNING AND ZONING COMMISSION/LOCAL PLANNING AGENCY RECOMMENDATION

The Planning and Zoning Commission/Local Planning Agency, at its meeting of January 18, 2011, recommended by a 7-0 vote, approval of Ordinance No. 5-11, as modified by the Commission at that meeting. The Commission's modifications include a recommendation to deny the proposal to allow offices on the first floor in the 200 block of Peruvian Avenue and Bradley Place in the C-TS zoning district and to deny the proposal to eliminate the principal of equivalency requirement for off-street parking in those areas. The Commission reiterated its concern to deny the proposal for office use on the first floor in these areas. Their belief is that allowing offices on the first floor in these areas would change the character of the district and lead to spill-over office uses in other areas of the C-TS zoning district.

In addition, the Commission recommended a modification to allow hanging signs not only in arcades, which was the proposal in the original Ordinance 5-11, but to also allow them in the vias. Their recommendation also included eliminating the proposal which would have required the hanging signs to be uniform in color and design. They believe that these changes to the ordinance would create more appealing, creative character in certain areas of the commercial districts.

GENERAL INFORMATION

1. Sections 1 and 2 of the proposed Ordinance modify language clarifying when approved special exceptions, variances and site plan reviews commence and expire. Commencement of work currently is considered as the time when an Architectural Commission (ARCOM) or Landmark Preservation Commission application is submitted to the Town. The proposed language changes the commencement of work from ARCOM or Landmark Preservation Commission “submission” to “approval.”
2. Sections 3 through 5 further address the first floor office use proposal which the Commission, as the Local Planning Agency, recommended denial of on November 16, 2010 and January 18, 2011. The Town Council considered the proposal at its December 15th meeting and was receptive to allowing office uses on the first floor in the 200 Block of Peruvian Avenue and Bradley Place, however, they wanted to concurrently address the parking problem that would be created by adopting the proposed changes. An office use requires less parking than retail or personal service establishment (beauty salon, barbershop, spa, etc.) uses and the Council wanted to allow the flexibility to change from an office use back to other uses without the requirement of providing more off-street parking. As Council directed, the proposed code changes in these sections are intended to permit office uses on the first floor in those two areas of the C-TS zoning district and solve this parking equivalency problem created by allowing office uses on the first floor.
3. Sections 6 and 7 address hanging signs in the commercial zoning district. Currently the Worth Avenue Design Guidelines which are adopted by reference in Chapter 134, Zoning, contemplate the use of hanging signs in the Worth Avenue zoning district. However, the zoning code itself does not allow hanging business identification signs. The proposed modifications would allow hanging signs within arcades and vias in any Commercial zoning district provided following conditions are met.
 - a. The sign would count as part of the total sign copy area allowed by Code.
 - b. The sign copy area would be a maximum of two square feet.
 - c. The sign would not be allowed above the first floor of the building and required to have eight feet of clearance from the sidewalk.
 - d. The sign would be required to be perpendicular to the building front facade.
 - e. The sign would not be required to be uniform in color and design with all other hanging signs on the property.

- f. The sign would be required to obtain either Landmark Preservation or Architectural Commission approval, whichever is relevant.

4. Sections 8 through 11 are standard language provided in all ordinances.

If you have any questions or comments about the ordinance please contact Paul Castro at 227-6406.

TOWN ATTORNEY REVIEW

Modified Ordinance No. 5-11 was approved by Town Attorney John C. Randolph for legal form and sufficiency.

Attachments

PBE:jsp:pc

cc: Planning and Zoning Commission
Thomas G. Bradford, Assistant Town Manager
John C. Randolph, Town Attorney
Cheryl Somers, Town Clerk
Veronica B. Close, AICP, Asst. Director, Planning, Zoning and Building Department
Paul W. Castro, AICP, Zoning Administrator
John Lingdren, AICP, Planning Administrator
pf

ORDINANCE NO. 5-11

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY FLORIDA, AMENDING CHAPTER 134, ZONING, AT SECTIONS 134-172 TO CHANGE THE COMMENCEMENT OF SPECIAL EXCEPTIONS AND VARIANCES FROM ARCHITECTURAL COMMISSION OR LANDMARK PRESERVATION COMMISSION SUBMISSION TO APPROVAL; SECTION 134-330 TO CHANGE THE COMMENCEMENT OF SITE PLAN REVIEW AS ARCHITECTURAL COMMISSION OR LANDMARK PRESERVATION COMMISSION SUBMISSION TO APPROVAL; SECTIONS 134-1107 AND 134-1109 TO PERMIT OFFICE USES ON THE FIRST FLOOR IN THE TWO HUNDRED BLOCK OF PERUVIAN AVENUE AND BRADLEY PLACE IN THE C-TS ZONING DISTRICT; SECTION 134-2175 BY PROVIDING AN EXEMPTION FOR THE TWO HUNDRED BLOCK OF PERUVIAN AVENUE AND BRADLEY PLACE IN THE C-TS ZONING DISTRICT FROM PRINCIPAL EQUIVALENCY FOR REQUIRED PARKING; SECTIONS 134-2436 AND 134-2437 TO PROVIDE A PROVISION TO ALLOW HANGING BUSINESS IDENTIFICATION SIGNS IN COMMERCIAL ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, after a public hearing pursuant to notice as required by law, the Town Local Planning Agency has recommended that Town Council amend Chapter 134, Zoning, of the Code of Ordinances, as herein set forth;

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

Section 1. Amend Article II, ADMINISTRATION, Sec. 134-172 at subsection (h), Hearing procedure, to read as follows

Sec. 134-172. Hearing procedure.

(h) The work or use authorized under an approved variance or special exception application must be commenced within 12 months from the date of the town council approval thereof, and if not so commenced the special exception or variance shall be null and void. Commencement shall be considered as either Landmarks Preservation Commission or Architectural Commission application ~~submission~~ approval, whichever is

appropriate, or the submission of a building permit application if said Commission's ~~application~~ approval is not required.

~~Once commenced, a~~ A building permit, if required, must be issued within one year of the date of commencement or said special exception or variance approval shall expire. In addition, all authorized work under the building permit for said approved special exception or variance must be completed within the time frame set forth in section 105.4.1.6. of the Florida Building Code as amended in section 18-242 of the Code of Ordinances or said special exception or variance shall expire.

Section 2. Amend Article II, ADMINISTRATION, Section 134-330 at subsection (c), Action by the town council; deviations; time limit for beginning work, to read as follows:

Sec. 134-330. Action by the town council; deviations; time limit for beginning work.

...

(c)The work authorized by ~~the~~ town council approval of a site plan review must be commenced within 12 months after the date of town council approval thereof, and if not so commenced town council approval shall thereupon become null and void. Commencement shall be considered either Landmarks Preservation Commission or Architectural Commission ~~application submission, whichever is appropriate, approval~~ or the submission of a building permit application if said Commission's ~~application~~ approval is not required.

~~Once commenced, a~~ A building permit must be issued within one year of the date of commencement or said site plan review approval shall expire. In addition, all authorized work under the building permit for said approved site plan review must be completed within the construction schedule contained in section 105.4.1.6. of the Florida Building Code as amended in section 18-242 of the Code of Ordinances or said site plan review approval shall expire.

Section 3. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-1107 at subsection (a)(3) and (6), Permitted Uses, to read as follows:

Sec. 134-1107. Permitted uses.

(a) Enumerated; maximum gross leasable area. The permitted uses in the C-TS town-serving commercial district, with a maximum 2,000 square feet of gross leasable area (GLA), are as follows:

- (1) Retail and service establishments, such as restaurants, excluding formula restaurants as defined in section 134-2 and bars/lounges, hardware stores, food stores, clothing stores, drugstores, barbershops beauty salons and jewelry stores.
- (2) Offices, executive office suites, professional services, business services and securities and financial brokerage and trust companies located above the first floor.

- (3) Offices, professional services, business services and securities and financial brokerage and trust companies in the 200 block of Peruvian Avenue and Bradley Place.
- (4) Nonprofit cultural centers.
- (5) Professional and studio type schools.
- (6) Essential services.

Section 4. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-1109 at subsection (a)(18), Special exception uses, to read as follows:

Sec. 134-1109, Special exception uses.

(a) The special exception uses require a site plan ~~and~~ review as provided in article III of this chapter. The special exception uses in the C-TS town-serving commercial district are as follows:

- (18) Except as provided for in Sec. 134-1107(3), ~~O~~ffices (excluding executive office suites), professional services, business services and securities or financial brokerage and trust companies on the first floor provided that there are at least 50 percent existing office uses on all floors of the building in which the office use is proposed and more than 50 percent existing office uses on the first floor within 300 feet of the proposed office use within the same zoning district.

Section 5. Amend Article IX, OFF-STREET PARKING AND LOADING*, Sec. 134-2175 at subsection (a)(3)(b) and (e), Number of parking spaces required-Generally, to read as follows:

Sec. 134-2175. Number of parking spaces required-Generally.

(a) Under this division the following shall be provided.

(3) Except as provided in section (e), ~~A~~at the time any use or occupancy of an existing building is changed to a new use or occupancy having differing off-street parking requirements, the parking requirement for the new use or occupancy shall be computed on the basis of the schedule of off-street parking requirements in the section 134-2176. This requirement shall be compared to the requirements of the existing use or occupancy, and, if the total number of spaces required under the new use or occupancy exceeds that of the existing use or occupancy, the difference shall constitute that number of additional off-street parking spaces to be provided, with adequate provisions for ingress and egress, in accordance with sections 134-2172 and the schedule of off-street parking requirements as prescribed in section 134-2176.

(b) Except as provided in section (e), A a use, building or structure, lawfully in existence at the effective date of this division, which shall be made nonconforming on the effective date of the ordinance from which this division derives or any applicable amendment thereto, may be continued even though off-street parking may not be provided in full compliance with this division, but the degree of nonconformity due to a deficiency in providing the required off-street parking spaces may not be increased, either by reducing the number of parking spaces which are provided on the effective date of the ordinance from which this chapter is derived or by changing the use or occupancy of an existing building to a use or occupancy which increases the requirement for off-street parking. For existing buildings or establishments therein which are nonconforming with respect to the current parking requirements, and which involve only those uses requiring one space per 200 or 250 square feet of ~~floor area~~ gross leasable area, whichever is applicable, and which may be required under this chapter to provide additional parking spaces as a result of a change in use, such establishments shall be required only to provide that number of spaces over and above the number of spaces that would have been required at one space per 200 or 250 square feet of floor area gross leasable area, whichever is applicable.

(e) In the 200 Block of Peruvian Avenue and Bradley Place in the C-TS zoning district, existing buildings or establishments therein which are nonconforming with respect to the current parking requirements, and which involve only those uses requiring one space per 200 or 250 square feet of gross leasable area, whichever is applicable, shall not be required to provide additional parking spaces as a result of a change from a use which alters the parking ratio from one space per 250 square feet to a use which requires one space for every 200 square feet of gross leasable area.

Section 6. Amend Article XI, SIGNS*, Sec. 134-2436, Building identification or business identification signs, to read as follows:

Sec. 134-2436. Building identification and business signs.

One building identification sign may be provided on the front of each wall of a building which fronts onto a street, provided the building identification sign is installed flat against such wall and does not exceed 20 square feet in area. Additionally, business signs which are installed flat against the street front or street side wall of a building are permitted for each licensed business in a building in accordance with this division. A licensed business within a building arcade or via shall be allowed one hanging business identification sign within the arcade and perpendicular to the building. If the hanging sign is within a via said sign shall be mounted on the wall of the building fronting the via. A hanging business identification sign shall not be above the first floor of the building it is attached to, shall have a minimum of 8 feet of clearance, and shall be calculated as part of the maximum business identification sign area allowed. In addition said hanging business identification sign shall have only the name of the business and shall require either Architectural Commission or Landmark Preservation Commission approval, whichever is

pertinent.

Section 7. Amend Article XI, SIGNS*, Sec. 134-2437, Building identification and business identification signs, to read as follows:

Sec. 134-2437. Size of Signs.

The gross surface area of all business signs on a building shall not exceed the following schedule:

<i>Building Street Frontage Per Ground Floor Individual Business Sign Space (in feet)</i>	<i>Maximum Gross Surface Area for Business Signs (in feet)</i>
Less than 18	10
18 and over	20

Note: This permitted gross surface sign area per individual business may be in the form of one sign, or composed of a group of smaller signs which may advertise any licensed individual business with the building, provided their aggregate area does not exceed that area contained in the schedule. The gross surface area of any signs on a building shall not, however, exceed 20 square feet. In addition, any hanging sign, as allowed in Sec. 134-2436, shall not exceed two square feet in area.

Section 8. Severability.

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

Section 9. Repeal of Ordinances in Conflict.

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

Section 10. Codification.

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

Section 11. Effective Date.

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

PASSED AND ADOPTED in regular, adjourned session assembled on first reading this 16th day of February, 2011, and second and final reading on this ____ day of _____, 2011.

Gail L. Coniglio, Mayor

To be determined on 2/15/11, Town Council
President

To be determined on 2/15/11. Town Council
President Pro Tem

, Town Council Member

, Town Council Member

, Town Council Member

ATTEST:

Cheryl Somers, Acting Town Clerk

TOWN OF PALM BEACH

FEB 02 2011

Town Manager's Office

TOWN OF PALM BEACH
TO WHOM IT MAY CONCERN
FROM: GAY CINQUE

JANUARY 25, 2011

RE: OFF WORTH SIGN ON VIA D MARIO, 325 WORTH AV #5

REMOVAL OF MY 2 YEAR OLD SIGN WILL CREATE A HUGH
HARDSHIP FOR MY STORE. I HAVE JUST GONE THROUGH
A (7) SEVEN MONTH STREET REMODELING THAT HAS COST
OFF WORTH A GREAT LOSS OF BUSINESS INCOME. ESPECIALLY
BAD DURING THE SUMMER.. I HAD (3) THREE MONTHS
WHEN I COULD NOT EVEN GROSS OUR RENTAL PAYMENT.

I AM REQUESTING AT THE TOWN COUNCIL MEETING A CHANCE
TO EXPLAIN MY HARDSHIP AND REQUEST A DELAY UNTIL
THE NEW SIGN ORDINANCE HAS BEEN APPROVED. AT THAT TIME
I WILL MOVE AND OR REPLACE MY SIGN IN ACCORD-
ANCE WITH THAT ORDINANCE. JOHN LINDGREN TOLD ME MR.
CASTRO WILL BE PRESENTING THE FIRST DRAFT AT THAT
FEBRUARY MEETING.

ALL VIAS HAVE DIFFERENT CONFIGURATIONS. UNFORTUNATELY
VIA D MARIO IS THE VERY NARROWIST. A SIGN PLACED ABOVE
OUR WINDOW CANNOT BE SEEN UNTIL THE CUSTOMER IS
STANDING IN FRONT OF THE STORE. IF MY SIGN COMES DOWN
NOW I KNOW SOME OF MY CUSTOMERS ARE GOING TO LOOK
DOWN THE VIA FROM WORTH AVE AND THINK I HAVE GONE
OUT OF BUSINESS.

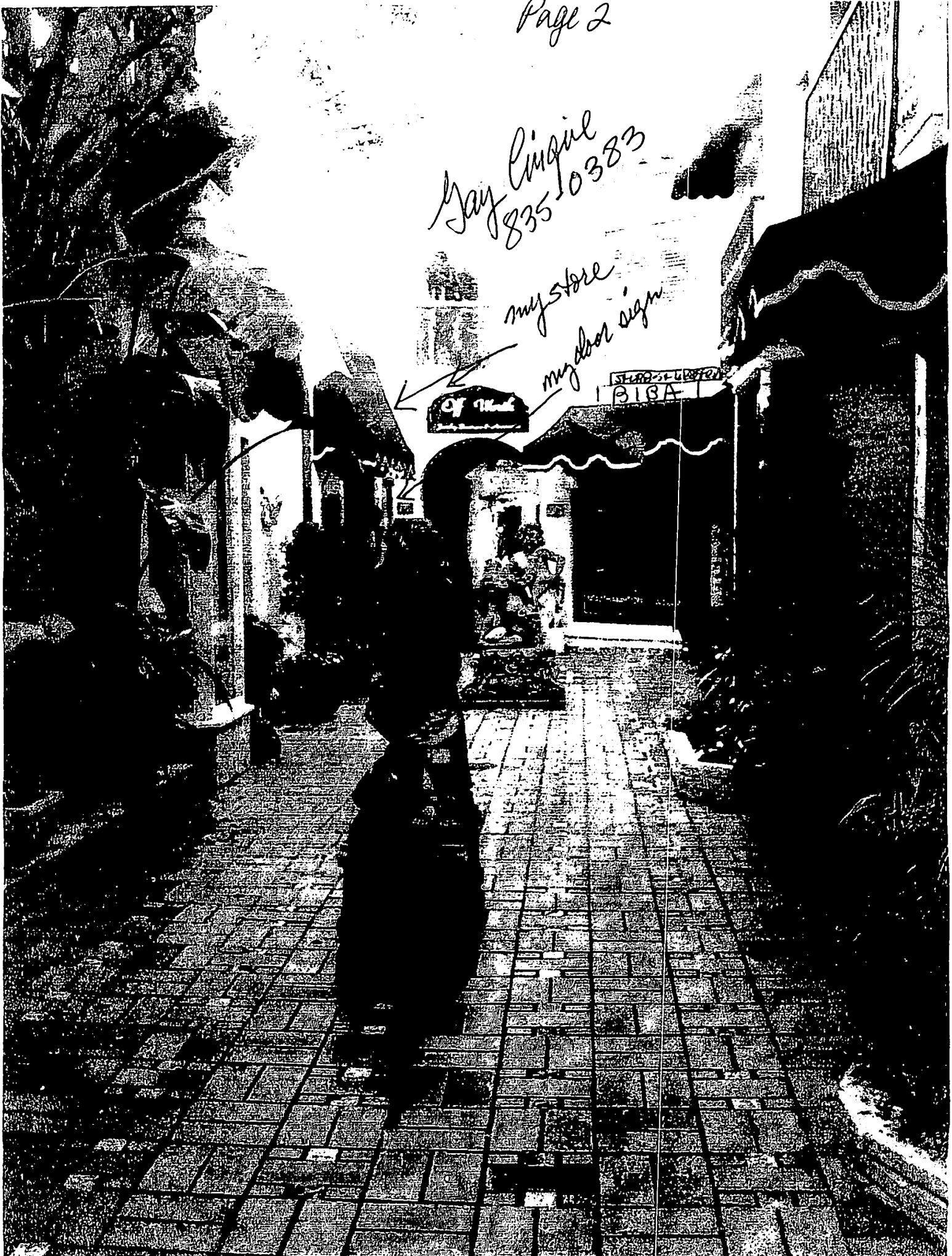
CC: RACHEL HOUSTON
TOWN COUNCIL MEMBERS
MR CASTRO
MR NEWSOME, LANDLORD

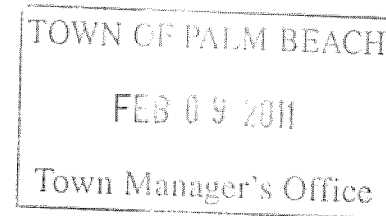
PER MR. LINDGREN THE SIGN CODE WAS ESTABLISHED 3/26/1974
AND THE ONLY AMENDMENT WAS 2004 #134-2435 WHEN IT WAS
ADDED TO THE EXISTING CODE (19740) THAT ALL VIAS SHALL BE
TREATED THE SAME AS ROADS. Changing times, maybe time to change
the code. Maybe the code might be better written if the business owners were
to have input and PLANNING & ZONING should recognize the different
configuration of each via.

Jay Cingul
835 10383

my store

my door sign





Mr. Peter Elwell, Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

February 8, 2011

Re: Shop Signs in Via De Mario

Dear Mr. Elwell,

On behalf of the shops in the Via De Mario which have signs that are mounted perpendicular to their entrances, we respectfully request that the Town of Palm Beach and its Code Enforcement Board allow the shops to maintain these signs until the Town can review and hopefully amend its relevant ordinances in order to permit these signs.

Keeping the perpendicular-mounted signs, many of which have been in place for at least two years, is vitally important to the shopkeepers because they enable us to draw the attention of potential consumers who, in the absence of these signs, might not realize that we are here. The signs are all the more desirable in view of the rather narrow, tunnel-like structure of the via which, unlike its relatively wide, neighboring vias, does not allow people to see from a distance the names and locations of many of its shops.

The property owners and some of the shopkeepers who are involved with this sign issue wish to personally convey their sentiments about this matter at next week's meeting of the Town Council, and they hope to be granted that opportunity.

Thank you for your consideration of this matter.

Very truly yours,

Orley Shabahang

cc: Town Council, John Page, John Lindgren, Paul Castro, Rachel Houston, Jacqui Kaufer

BONNIE ROSEMAN

Via DeMaro
323 Worth Ave / 326 Peruvian #5
Palm Beach, FL 33480
Store: (561) 833-4133
Appointments: (917) 209-0516
Web: bonnieroseman.com
Email: bonnie@bonnieroseman.com

February 8, 2011

Town of Palm Beach
To whom It May Concern
From: Bonnie Roseman
Bonnie Roseman's BLT
Via de Mario, Shop 5

Re: Signs in Via de Mario

Via de Mario is a narrow Via and my location at the rear can be easily overlooked. The signs that are currently up help direct customers looking for our boutiques and encourage o shoppers to come farther into the Via. Enforcement of the code in question would require removal of our present signs. The approved signs will not be visible until one is directly in front of our stores. This would make it difficult to find our shops, especially those such as mine that are located at the end.

When I leased the shop at the rear of the Via, the signs in question were up. I added mine to those already existing. I had no reason to believe that they would be disallowed. It is particularly distressing at this time, after having endured the losses incurred by the renovation of Worth Avenue, to be further disadvantaged by an ordinance that does not consider the shops, the configuration of the via, nor the customer.

I appreciate that the City wants uniformity, however, the Vias are not only different from Worth Avenue but are also different from each other, and therefore not easily conformed to one rule. Shoppers on Worth Avenue who enter the wider Vias are able to see a panoramic view, at which time something could catch their eye and encourage them to at least wander through. The Via de Mario is the narrowest Via whose rear shops are obscured by those at the front. Shops not right off Worth Avenue will have no way to draw in customers.

At this particular time in a poor economy exacerbated by the renovation, it seems counter-productive and destructive to enforce an ordinance that would put our shops at further disadvantage.

I appeal to the council to reconsider any action that would be detrimental to our businesses.

Yours, very truly,



Bonnie Roseman
Owner

Patti Esbia Antique And Estate Jewelry

326 Peruvian Avenue

Palm Beach, Florida 33480
561-833-9448
esbiajewelry.com
esbia@aol.com

February 9, 2011

To: Peter Elwell, Town Manager

Re: Signs in Via De Mario

Dear Mr. Elwell,

Everyone loves the new renovations on Worth Ave. It's beautiful and with all the press bringing people back to Worth Avenue, it seems a big success. I'm thrilled for Worth Avenue. I've been a member of the Worth Avenue Assn for 20 years and have never asked for anything. Unfortunately, the renovations did not include the Via's. The shop owners on both the avenue and in the Via's are seeing higher taxes, and of course, higher rents because of these renovations.

We are in such a disadvantage. I am located in the **most narrow** Via off Worth Avenue, at the very end store. When people come to see "the new Worth Avenue", no one mentions the Via's. I'm fine with that. But now, the only possible chance to get someone new down our Via is if they look down this direction. The original sign ordinance was written in 1974 for driving on the Avenue, not the Via's that are only accessible by foot. **Please** help us.

All I want is a chance to make a living. I have been at this location for 20 years, I do a lot of advertising and promotions, but a lot of people still don't know I'm here. If there is no sign, then there is no chance to show there is life down this Via. Hence, we will all be forced to go out of business. I plead with you, please, let us keep our signs. Every Via has signs on there store fronts. Please let us keep our signage, for without signs, the Via's are left with little to persuade customers to come down and shop our stores. It's needed to remind people we are here. We are not asking to lower any Palm Beach standards. Our signs are all tasteful. We all want to keep our Via's beautiful. In these very difficult times, I'm sure your intent is not to drive us out of business. Please put yourself in our shoes. I personally work about 60 hours a week or more. I just don't want to loose my livelihood.

Attached: Please find photo's of how difficult it is to see down our Via, and photo's of the signs themselves.

Thank you for taking the time to listen.

Sincerely,


Patti Esbia
Patti Esbia Antique & Estate Jewelry

Cc: Town Council, John Page, John Lindgren, Paul Castro, Rachel Houston, Jackie Kaufer

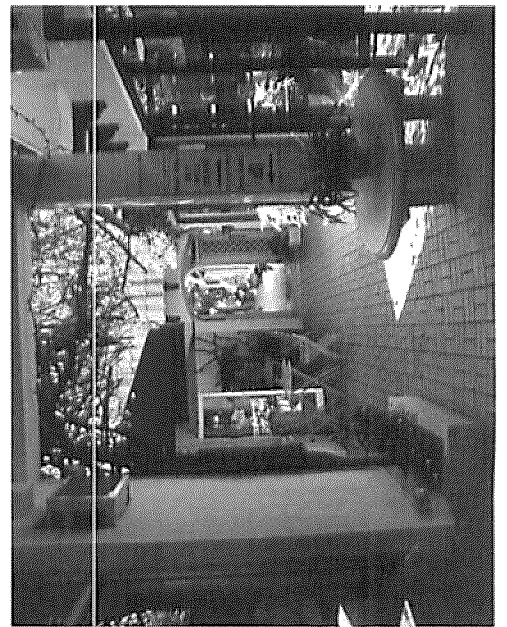
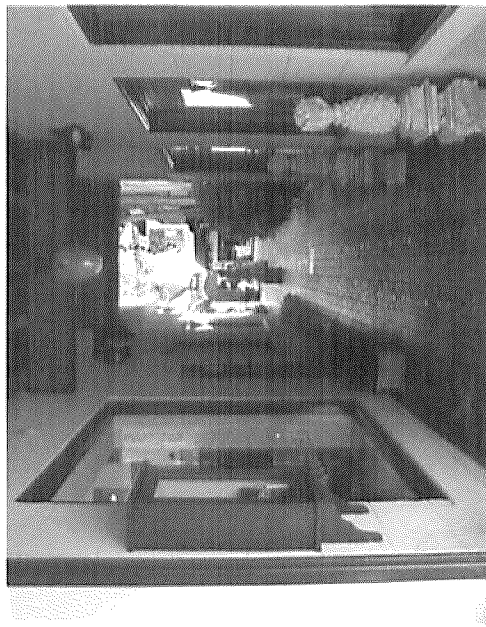
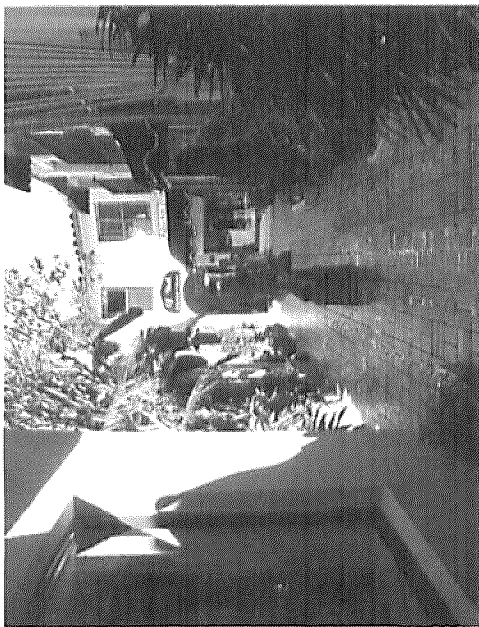
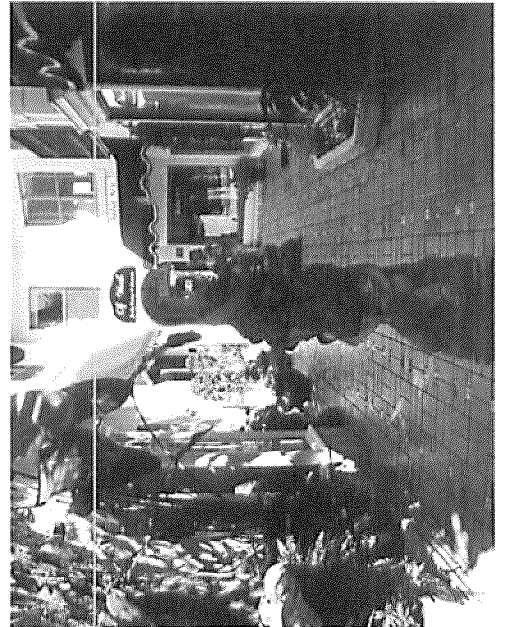
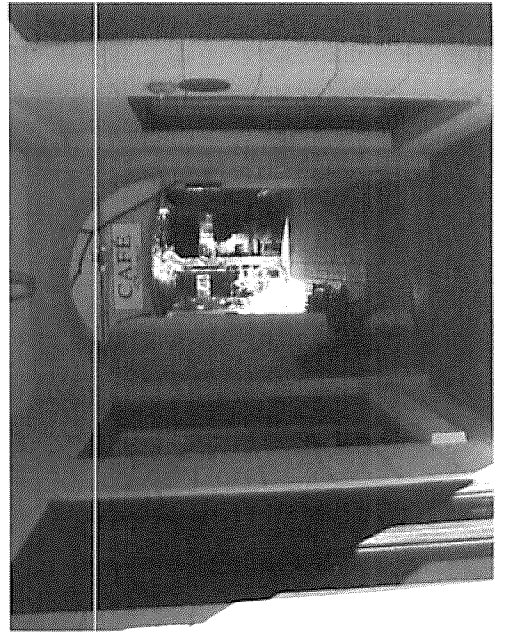
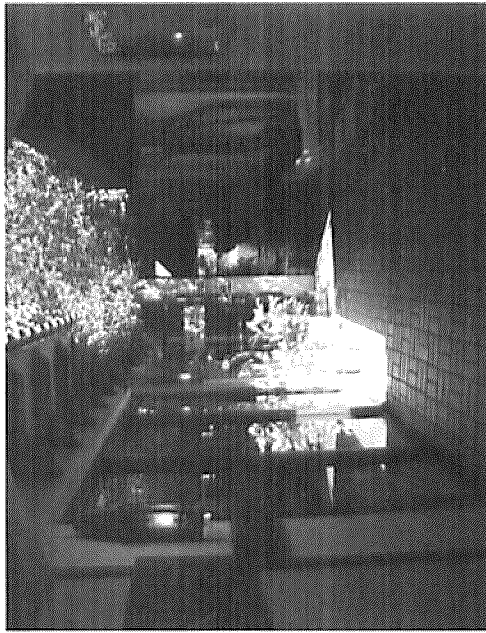
TOWN OF PALM BEACH

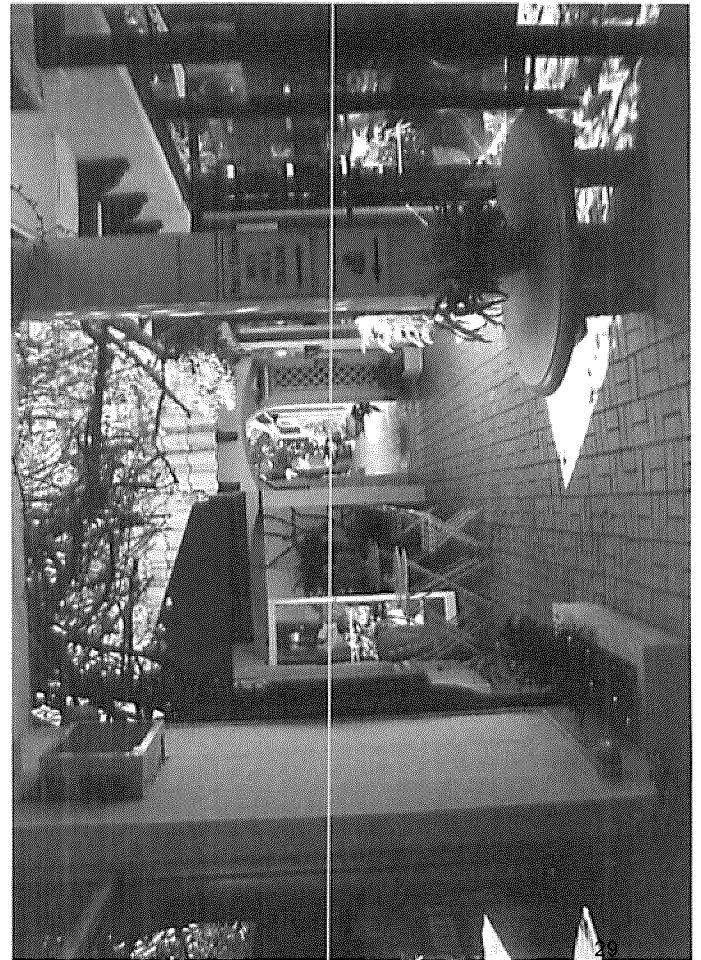
FEB 10 2011

Town Manager's Office

RECEIVED

FEB 09 2011
TOWN OF PALM BEACH
PBZ DEPT.





A. Seltzer
44 Coconut Row
Palm Beach, FL 33480

DRAFT ORDINANCE AN ORDINANCE OF THE TOWN COUNCIL OF THE
TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING
CHAPTER 134, ZONING, AT

SECTION 134-1107 AND 134-1109 TO PERMIT
OFFICE USES ON THE FIRST FLOOR IN THE C-TS ZONING DISTRICT;

P&Z
AUG, 2010

ORDINANCE NO. 26 -10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM
BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 134,
ZONING, AT SECTION

134-1107 AND 134-
1109 TO PERMIT OFFICE USES ON THE FIRST FLOOR IN THE TWO
HUNDRED BLOCK OF PERUVIAN AVENUE AND BRADLEY PLACE IN
THE C-TS ZONING DISTRICT;

P&Z
Sept 2010

ORDINANCE NO. 5-11

Sections 134-1107 And 134-1109 To
Permit Office Uses On The First Floor In The Two Hundred Block Of
Peruvian Avenue And Bradley Place In The C-TS Zoning District; Section
134-2175 By Providing An Exemption For The Two Hundred Block of
Peruvian Avenue And Bradley Place In The C-TS Zoning District from
Principal Equivalency For Required Parking; Sections 134-2436 And 134-

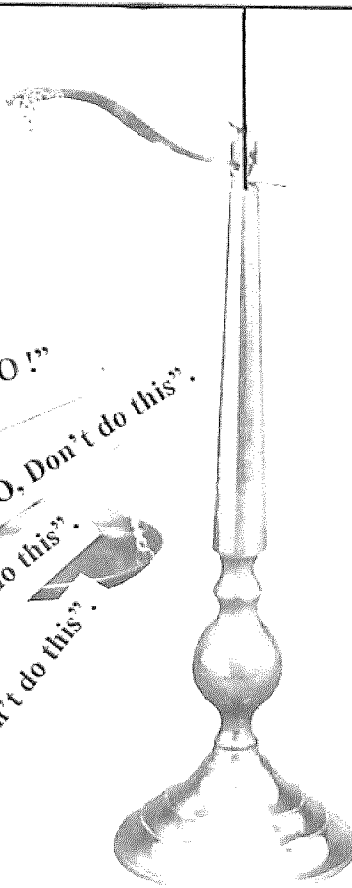
P&Z
Jan. 2011

P&Z as the LPA said, "NO, NO, NO!"
at three separate hearings.

The Chamber of Commerce said "NO, Don't do this".

Preservation Foundation said "NO, Don't do this".

Mayor McDonald said, "NO, Don't do this".



One lone property owner said, Do it.

Staff now says, "Do it".
Council says, "Do it".

WHY ????

The effort to change the zoning was embedded in a large ordinance containing “provisions that were deficient, antiquated or in error.”

It is not a minor change. It represents a major overhaul in our zoning code .

There are no studies to sustain this change.

Planning and Zoning rejected the change on three occasions, even after they were “instructed “ to codify an unintended consequence that could occur if the language was implemented, one of a number of consequences which had not presented to them during their earlier deliberations.

The Variance process for the 200 Block of Peruvian and the CT-S Blocks of Bradley Place do not need “fixing”. This change should be denied.

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 16, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Establishment of a Building Permit Revision Fee

Resolution No. 9-11

Date: February 2, 2011

STAFF RECOMMENDATION

Staff recommends Town Council adopt the resolution delineated below.

BOARD OR COMMISSION RECOMMENDATION

The Ordinance, Rules and Standards Committee has considered this issue, and recommends approval of the establishment of a building permit revision fee.

GENERAL INFORMATION

In the fall of 2009 the Town Council requested that the ORS Committee begin the process of reviewing the Town Code of Ordinances in a systematic fashion with regular reports to the Town Council. The Department began a thorough review of those code provisions for the purpose of recommending any Code changes to the ORS Committee, including changes to Chapter 18, which contains building code (and building fee) regulations. Those changes included the implementation of a building permit revision fee.

In addition, the Town Council directed Staff to implement this fee, initially established at \$100, during its FY11 budget considerations.

An ordinance specifically addressing this fee has been approved on first reading by the Town Council at its January meeting, with final adoption and immediate implementation in February, if adopted by the Council. A resolution containing the fee (\$100) is attached.

FUNDING/FISCAL IMPACT

Estimated revenue from this fee has already been included in FY11 budget.

TOWN ATTORNEY REVIEW

This resolution has been reviewed by the Town Attorney for legal form and sufficiency.

Attachments

JSP:VWC:pc

cc: John C. Randolph, Town Attorney
Thomas G. Bradford, Deputy Town Manager
Jeff Taylor, Building Official

RESOLUTION NO. 9-11

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ADOPTING A PERMIT REVISION FEE IN ACCORDANCE WITH CHAPTER 18, SECTION 108.2 (p) OF THE TOWN CODE OF ORDINANCES; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council adopted on first reading Ordinance No. 6-11 at the January 12, 2011, Town Council meeting; and

WHEREAS, Ordinance No. 6-11 provides for an amendment to existing Town fees, to be adopted by and amended by resolution of the Town Council; and

WHEREAS, in order to effectuate this new fee, the Town Council wishes to adopt the aforementioned fee amendment, subsequent to adoption of Ordinance No. 6-11 on second reading as advertised pursuant to state statute at the regular Town Council meeting scheduled for February 15, 2011.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, AS FOLLOWS:

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

Section 2. Pursuant to the Code of Ordinances of the Town of Palm Beach, Chapter 18, Building and Building Regulations; Section 108.2(p), Schedule of Permit Fees, there is hereby adopted a permit revision fee of \$100.

Section 3. This Resolution shall become effective immediately upon passage by the Town Council.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 16th day of February 2011.

Gail L. Coniglio, Mayor

To be determined on 2/15/11, Town Council
President

To be determined on 2/15/11, Town Council
President Pro Tem

, Town Council Member

ATTEST:

, Town Council Member

Cheryl Somers, Acting Town Clerk

, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: February 16, 2011

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 17-11 A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Adopting An Application Fee And Renewal Fee For Administrative Approval Of Outdoor Seating In Accordance With Chapter 134, Section 134-2104(b) Of The Town Code Of Ordinances; Providing An Effective Date.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated February 4, 2011, from John Page
- Resolution No. 17-11

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 16, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Establishment of an Administrative Outdoor Seating Application Fee and Renewal Fee
Resolution No. 17-11

Date: February 4, 2011

STAFF RECOMMENDATION

Staff recommends Town Council adopt the attached Resolution creating an application and renewal fee for administrative outdoor seating applications.

GENERAL INFORMATION

On April 15, 2009, the Town Council adopted Ordinance No. 5-09 which established zoning provisions in Chapter 134 of the Code of Ordinances to allow application for administrative approval of outdoor seating. In Section 134-2104(b) of those provisions there is a requirement that an initial fee and renewal fee be established to process those applications.

Staff has created an application form and process for review of those applications and determined that the fee for the initial application should be \$200. This fee is the estimated cost in staff time to meet with the applicants and review the required documentation associated with the application. In addition, staff has determined that the renewal fee, which would be collected every year at the time of renewal of the business tax receipt, should be \$50 to cover staff review and processing time. A Resolution containing the fee (\$200) and renewal fee (\$50) is attached.

FUNDING/FISCAL IMPACT

These fees will provide minimal funding to the Town and its impact on the budget is negligible.

TOWN ATTORNEY REVIEW

This resolution has been reviewed by the Town Attorney for legal form and sufficiency.

Attachments

JSP:PWC:pc

cc: John C. Randolph, Town Attorney
Thomas G. Bradford, Deputy Town Manager
Paul Castro, Zoning Administrator

RESOLUTION NO. 17-11

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ADOPTING AN APPLICATION FEE AND RENEWAL FEE FOR ADMINISTRATIVE APPROVAL OF OUTDOOR SEATING IN ACCORDANCE WITH CHAPTER 134, SECTION 134-2104(B) OF THE TOWN CODE OF ORDINANCES; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council adopted Ordinance No. 5-09 at the April 15, 2009, Town Council meeting; and

WHEREAS, Ordinance No. 5-09 provides for an establishment of a fee and renewal fee for administrative approval for outdoor seating; and

WHEREAS, in order to effectuate this new fee and renewal fee, the Town Council wishes to adopt the aforementioned fees;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, AS FOLLOWS:

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

Section 2. Pursuant to the Code of Ordinances of the Town of Palm Beach, Chapter 134, Zoning; Section 134-2104, Requirements and fee, (b), there is hereby adopted an outdoor seating permit application fee of \$200.

Section 3. Pursuant to the Code of Ordinances of the Town of Palm Beach, Chapter 134-2104, Zoning, Section 134-2104, Requirement and fee, (b), there is hereby adopted an outdoor seating renewal fee \$50.

Section 3. This Resolution shall become effective immediately upon passage by the Town Council.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 16th day of February 2011.

Gail L. Coniglio, Mayor

To be determined on 2/15/11, Town Council
President

To be determined on 2/15/11, Town Council
President Pro Tem

, Town Council Member

ATTEST:

, Town Council Member

Cheryl Somers, Acting Town Clerk

, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: February 16, 2011

Section of Agenda

Time Extensions

Agenda Title

Request for Waiver of Section 42-199, Hours of Construction Work, at 206 Worth Avenue
(Per Email Dated January 28, 2011, From Michael K. Vaughn).

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated February 1, 2011, from John Page
- E-mail dated January 28, 2011, from Michael K. Vaughn
- 206 Worth Avenue Photo 1 of 2
- 206 Worth Avenue Photo 2 of 2

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 16, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Waiver of Town Ordinance- Section 42-199, Hours For Construction Work
206 Worth Avenue

Date: February 1, 2011

STAFF RECOMMENDATION

Staff **does not recommend approval** of a waiver of Town Code 42-199 allowing work to be performed during the season. A site visit was performed on January 31, 2011. Staff found minor stress cracking in the concrete section of the floor. This cracking, while unsightly, does not present a tripping, structural, or life safety issue. Minor repair should be attempted before removing and replacing this section of floor.

In the event Town Council disagrees with staff and favors this waiver, the following conditions should be met:

- Approval of the Worth Avenue Merchants Association.
- All parking, material delivery and staging shall be in the parking lot behind the building.
- No loading or unloading, parking or material staging is to take place on Worth Avenue.
- A building permit shall be obtained before starting any work.
- No exterior work shall be performed during this extension of working hours.
- All removal of concrete involving cutting, chipping, hammering or other noise producing means shall be completed no later than 8:00 PM.
- All concrete shall be site mixed using an electric mixing machine or by hand, no deliveries of concrete by truck will be allowed.
- Any verified complaints from neighbors will revoke this extension of hours.

GENERAL INFORMATION

The Town received an email on January 28, 2011, from the Retail Facilities Manager requesting an extension of the allowable hours for construction work in the C-WA zoning district to perform a concrete floor repair overnight.

Last year, on February 10, 2010, Town Council granted a waiver of Town Code 42-199 to replace this same concrete area. At that time the existing concrete was very uneven and was cited

by Code Enforcement as a tripping hazard. That work was performed and now the new concrete is showing minor stress or thermal cracking a year later.

Staff believes that the cracks are very minor and that repairs should be attempted before granting a waiver for this work to be performed during season.

Attachments

JP/jlt

cc: Jeff Taylor, Building Official
Paul W. Castro, Zoning Administrator
H. Paul Brazil, Public Works Director
Robert Walton, Lead Code Enforcement Officer
Michael Vaughn, Retail Facilities Manager



Fw: Request for Hours of Construction Variance for internal construction

Jeff Taylor to: Kathleen Ruderman

01/28/2011 04:11 PM

From: Jeff Taylor/PalmBeach
To: Kathleen Ruderman/PalmBeach@PalmBeach

Jeff Taylor,
Building Official
Phone: 561-227-6415
Fax: 561-835-4621
e-mail: jtaylor@townofpalmbeach.com

PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from the Town of Palm Beach officials and employees regarding public business are public 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 phone 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.

Please consider the environment before printing this e-mail.
----- Forwarded by Jeff Taylor/PalmBeach on 01/28/2011 04:11 PM -----

From: "Michael Vaughn" <Michael.Vaughn@bcbg.com>
To: "Jeff Taylor" <JTaylor@TownofPalmBeach.com>
Date: 01/28/2011 03:21 PM
Subject: Request for Hours of Construction Variance for internal construction

Hi Jeff,

We need to redo the concrete flooring around the palm trees inside of Herve Leger / Max Azria, 206 Worth Avenue, Palm Beach, FL. Please add this store's request for a Section 42-199 Hours of Construction variance to the agenda for the February Town Council meeting.

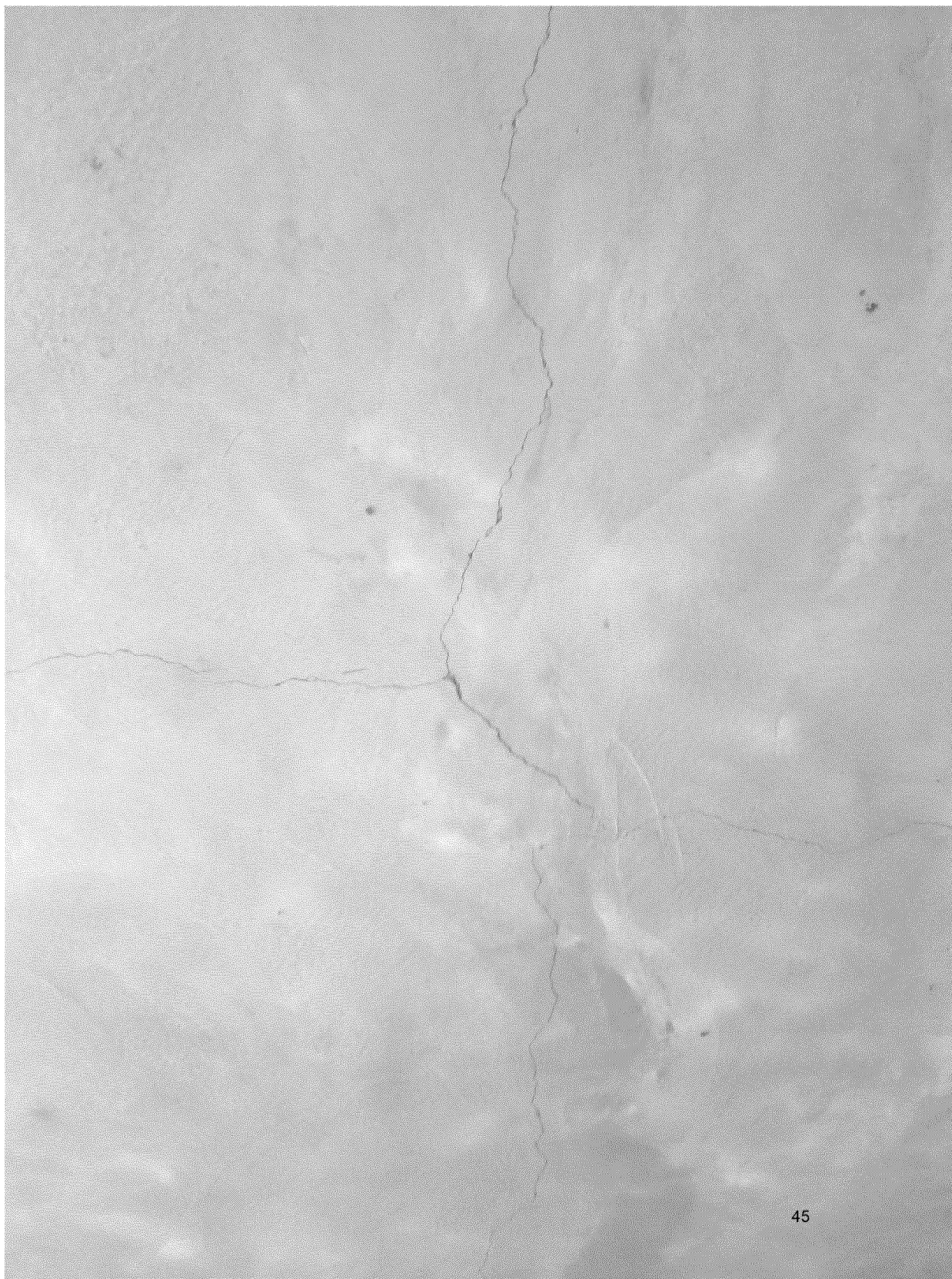
I will call you on Monday to confirm the detail needed to place this in motion.

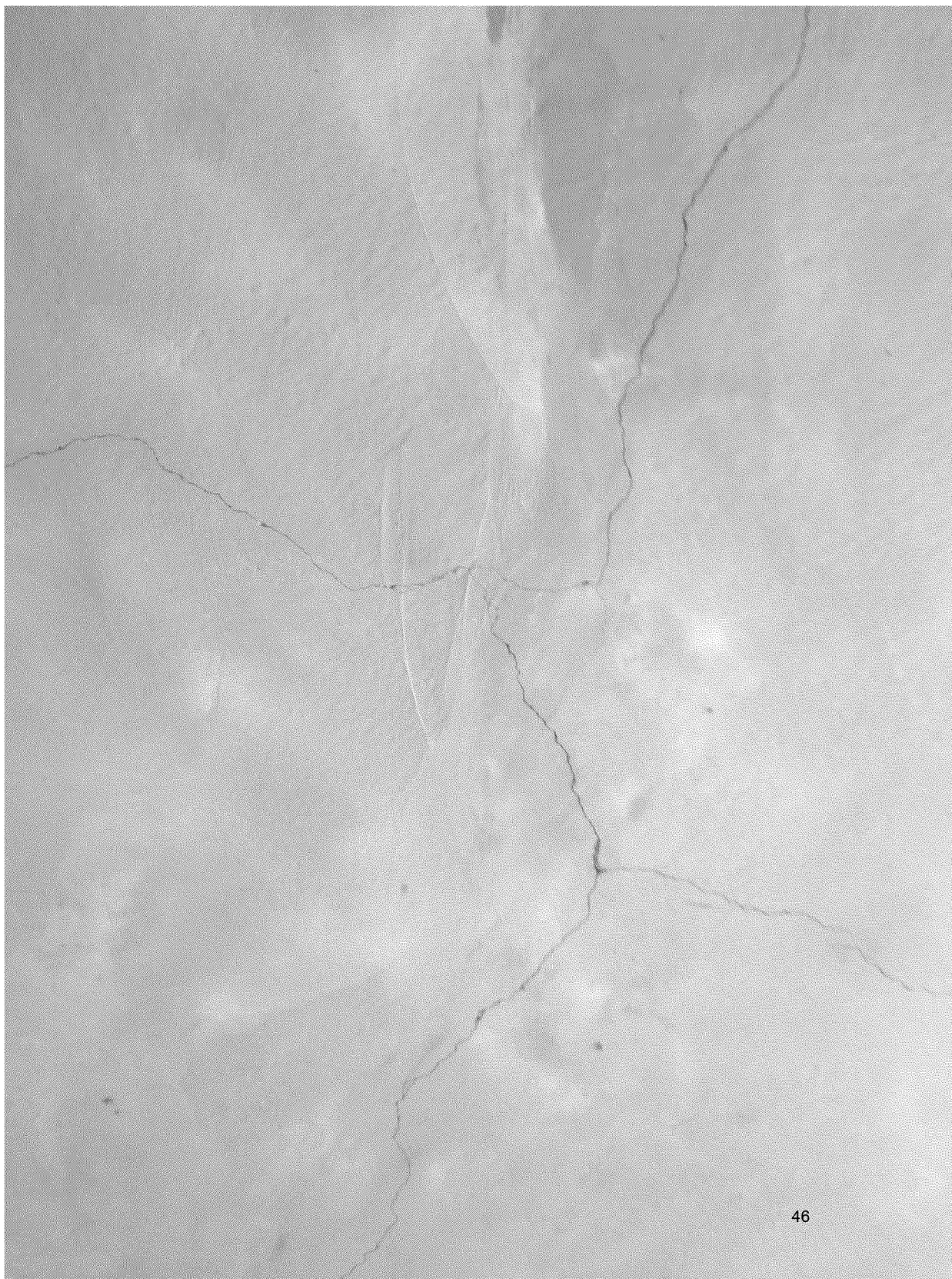
Sincerely,

Michael K. Vaughn

Retail Facilities Manager

BCBGMAXAZRIAGROUP





TOWN OF PALM BEACH

Town Council Meeting on: February 16, 2011

Section of Agenda

Old Business - < 15 Minutes

Agenda Title

SPECIAL EXCEPTION #3-2011 WITH VARIANCES The application of Worth Avenue Associates; relative to property commonly known as **150 Worth Avenue**; described as lengthy legal description on file; located in the C-WA Zoning District. The applicant is requesting a Special Exception to modify the special exception for the arcade which was approved in 1998 (Site Plan Review No. 4-98 with Special Exception and Variance) to allow for the addition of signs. Variances are requested to allow signs to be erected within the right-of-way of Worth Avenue and for those signs to exceed the allowable sign area for Gucci. All of Gucci's signs will total 28.92 square feet, while the code allows a 20 square foot maximum. [Attorney: James R. Brindell]

[ARCOM Recommendation: Approval of the variances as requested and the signage and architectural changes necessary for the signage to occur. Specifically, ARCOM approved the Gucci, Tory Burch and Lacoste signage placed on existing bands, and the Vilebrequin, Christofle and Pucci signage on the existing keystones over the arches (Option 1); no architectural changes are needed to accommodate this signage. ARCOM also approved the Louis Vuitton sign on an added single band under one of the curved arches (Option 2). Carried 6-1.] *Deferred from the January 12, 2011, Town Council Meeting.*

(1) Appeal of ARCOM Decision B-070-2010, 150 Worth Avenue (Per Letter Dated December 22, 2010, from James R. Brindell).

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated January 31, 2011, from John Page
- Letter Dated February 2, 2011 from James Brindell

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 16, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: ARCOM B-070-2010 (150 Worth Avenue) – ARCOM Review of Revised Plans as Directed by Town Council

Date: January 31, 2011

STAFF RECOMMENDATION

Staff recommends that the Town Council ratify the Architectural Commission's (ARCOM) actions regarding the applicant's revised request for additional signage and to alter the architecture of the 150 Worth Avenue building to accommodate an additional business sign.

GENERAL INFORMATION

ARCOM reviewed application B-070-2010 at its December 17, 2010 meeting. The application was for the addition of two windows on the second floor of the building in between three existing faux windows, to make all five windows true windows, to change the building's facade to create areas for additional business signage, and approval of the new signage. The proposed signage areas also would require special exception approval from Town Council, and Town Council approval of a variance to erect the signs and signage areas within Town right-of-way. Furthermore, another variance would be required for the Gucci total signage to exceed the 20 square-feet permitted.

At the December 17, 2010 meeting, ARCOM unanimously (7 - 0) approved the proposed additional windows on the second floor and to make all five windows true windows; however, ARCOM unanimously denied the proposed architectural changes necessary to accommodate the signage. Because the areas needed for the signage were denied, approval of the signage itself became moot. ARCOM also made a recommendation to Town Council to deny the variances requested, because the "implementation of the proposed variance will cause negative architectural impacts to the subject property."

Subsequent to ARCOM's decision regarding application B-070-2010, the applicant filed a letter of appeal to the Town Council dated December 22, 2010, which is attached. Though ARCOM did not state specific criteria in their denial, they did voice a unanimous disapproval of the proposed signage related architectural changes because the proposed changes did not enhance the building, and would actually detract from the architecture of the building.

At the January 12, 2011 Town Council meeting, the Town Council remanded the matter back to ARCOM so that they could review revised plan options that would allow for the proposed signage. At their January 26, 2011 meeting, ARCOM voted 6-1 (Mr. Zukov dissenting) to recommend approval of the variances requested, and approved the signage and architectural changes necessary for the signage to occur. Specifically, ARCOM approved the Gucci, Tory Burch and Lacoste signage placed on existing bands, and the Vilebrequin, Christofle and Pucci signage on the existing keystones over the arches (Option 1); no architectural changes are needed to accommodate this signage. ARCOM also approved the Louis Vuitton sign on an added single band under one of the curved arches (Option 2). Assuming the Council concurs with the ARCOM recommendations of January 26, 2011, no further Town Council action is needed regarding ARCOM's previous (December 17, 2010) denial nor the applicant's subsequent appeal of the denial.

cc: John C. Randolph, Town Attorney
John Lindgren, AICP, Planning Administrator
ARCOM Members



GUNSTER

ATTORNEYS AT LAW

Our File Number: 0003150.00017
Writer's Direct Dial Number: (561) 650-0511
Writer's E-Mail Address: JBrindell@gunster.com

February 2, 2011

VIA E-MAIL AND U.S. MAIL

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

Re: Appeal of ARCOM Denial B-070-2010 (150 Worth Avenue)

Dear J.P.:

This is to confirm what I told you today regarding the appeal referenced above which is pending before the Town Council. If the Council grants the associated Special Exception #3-2011 with Variances for signage on the arcade façade at 150 Worth Avenue and approves the signage design, then we will dismiss the pending appeal.

Sincerely yours,



James R. Brindell

JRB/gvt

cc: Paul Castro
Robert Saffran

TOWN OF PALM BEACH

Town Council Meeting on: February 16, 2011

Section of Agenda

New Business - < 15 Minutes

Agenda Title

SITE PLAN REVIEW #4-2011 The application of 210 Emerald Lane, LLC.; relative to property commonly known as **210 Emerald Lane**; described as Lot 34 of REVISED PLAT OF STOTESBURY PARK, according to the Plat thereof as recorded in Plat Book 20, Page 42, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting a Site Plan Review to permit construction of a 3,197 square foot two-story single family residence on a platted lot with a width of 90 feet in lieu of the minimum 100 foot lot width required within the R-B District. [Attorney: M. Timothy Hanlon]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Email dated January 27, 2011, from Jerome R. Klein



To:

Cc:

Bcc:

Subject: Opposition to the site plan review and variance request for the Town Council Hearing Feb 16 2011.



**Opposition to the site plan review and variance request for the Town Council Hearing
Feb 16 2011.**

Cilc to: wdiamond, JTaylor, jpage, PEIwell, KBlouin, RHouston, RWalton,
rkakoff

01/27/2011 11:57 AM

Please respond to "Cilc"

Dear All

I am attaching my Opposition to the site plan review and variance request for the Town Council Hearing Feb 16 2011.

I am sending this to as many people as I know. As the last time I did this in 2007 somehow despite a certified letter to the city And a hand delivered letter, my letter never made it to the hearing and made known to the members. I expect that you will see other letters from my neighbors.

I know that not everyone on Emerald Ln and Crescent has received letters so the response may not be 100% as a result, but people are pretty upset.

Jerome Klein MD

225 Emerald Ln

Attachment and below

225 Emerald Ln
Palm Beach, Florida 33480
Email Cilc@prodigy.net
Voice 561 . 659 . 3736
Cell 212. 371 . 7373

Jerome R. Klein

January 27, 2011

Town of Palm Beach
Town Council Hearing Feb 16 2011
Site Plan Review SPR 4-2011
PO Box 2029
360 South County Road
Palm Beach Florida 33480
Fax 561 838 5411

Dear Sir:

I am very much AGAINST

1. The site plan acceptance for a non-conforming 90 foot lot
2. the granting of any variance to 210 Emerald Ln

3. The application Exhibit B item 8 is in error, the proposed building does NOT conform with lot coverage and other requirements.

Any preferential treatment or variance will be at my expense and to the detriment of my rights as an owner of 225 Emerald Ln. I have just lived through 4 years of construction, which has not yet ended, behind my house and I resent and contest any further denial of my right to enjoy my property in peace and quiet.

The 210 Emerald Lane LLC has been a horrendous neighbor.

- a. They tore down the house due to mold without advance notice to the neighbors. They did not perform any mitigation to the spread of the mold into the area during destruction. And the air reeked for 3 days.
- b. They did not provide a mold report to ARCOM or to the city as required by the ARCOM hearing requirement to tear down the house nor did they provide it to their neighbors as requested.
- c. They kept the emerald lane landscaping as a trash dump for a year photo attached. And when cited by the city they only did minimal landscaping not consistent with emerald lane's lush hedges that this street is known for.
- d. They run a "parking lot" on crescent with rows of cars routinely parked up and down crescent and many comings and goings at all times of the day and night.

It goes against every principle to reward bad behavior with a variance, with privileges and preferential treatment and as a result allowing discriminatory behavior against the other adjoining property owners and reduction of our rights. Under new federal law agencies are required to consider "equity, human dignity, fairness and distributive impacts". And none of this is fair to me as an owner of 225 Emerald Ln or to my neighbors.

Despite our protests should you elect to still allow the construction then:

- a. The owners 210 Emerald Lane LLC are trying to create an estate on Emerald Ln and Crescent with an existing house and an accessory / guest house. To mitigate against forming an estate and the resulting impact on the area a solid wall without doors should be placed around the emerald lane lot isolating it from the other houses on the property as per law and as per custom.
- b. Plans are not available to ensure a paving site for the driveway to ensure privacy.
- c. Adequate notice of Final Landscape plans need to be made available to the neighbors prior to any approval
- d. There should be some quid pro quo with the neighbors, such as hiring a top palm beach contractor well known to the island without any complaints lodged against them who can get the property rapidly built, that any commencement should start after the Season in late April to move the main noise to the summer months.
- e. Otherwise you are allowing a unilateral preferential treatment.

This is clearly discriminatory against myself and my neighbors and will be legally addressed.

Sincerely:
A

Jerome R Klein, MD FACS

JRK/bms

Landscaping Kept as a Dump



CHEAP Poorly done landscaping done under protest to the city and with refusal to properly maintain and grow
Won't cooperate with Neighbors

What the Rest of Emerald Ln looks like when neighbors properly upkeep their Landscaping



town variance Site Review Feb 2011.pdf

TOWN OF PALM BEACH

Town Council Meeting on: February 16, 2011

Section of Agenda

New Business - < 15 Minutes

Agenda Title

SPECIAL EXCEPTION #6-2011 WITH VARIANCES The application of Terry R. Taylor; relative to property commonly known as **780 South Ocean Blvd.**; described as lengthy legal description on file; located in the R-A Zoning District. Variances are requested to install a tennis court with a rear yard setback of 10 feet in lieu of the 35 foot minimum required; to allow an associated 10 foot high fence with a side yard setback of 15 feet in lieu of the 30 foot minimum required and to install light poles at a height of 23 feet in lieu of the 15 foot maximum required. A Special Exception is requested to install night lighting which will meet all requirements in the Code, including a light timer switch to ensure the lights will operated only from 9:00 a.m. to 9:00 p.m. [Attorney: Peter S. Broberg]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter dated February 3, 2011, from Maura Ziska

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

Marvin S. Rosen, *Counsel**

*Also admitted in New York

*Also admitted in Michigan

Esperanté

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

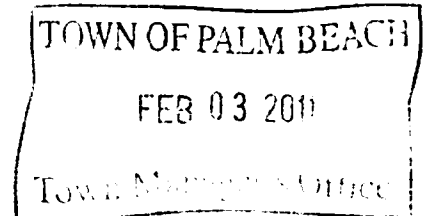
Telephone: (561) 802-8960

Facsimile: (561) 802-8995

VIA HAND-DELIVERY

February 3, 2011

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



**RE: Taylor Residence/780 South Ocean Boulevard, Palm Beach, Florida
Special Exception # 6-2011 with variances**

Dear Mayor and Members of the Town Council:

My client owns and resides at 801 South County Road which is immediately south of the Taylor property. We have received notice of the Taylor's request to construct a tennis court with a tennis court fence 15 feet closer to their common property line than the code allows. There is also a request to have tennis court lights and to have the light poles 8 feet taller than the code allows. This matter will be heard at your February 16th Town Council meeting.

My client's guest house (which is occupied by a family member) is 7 feet from the property line and the swimming pool and outdoor recreation area are within feet of the proposed lighted tennis court. Allowing such an encroachment would disturb my client's peaceful use and enjoyment of their guest house and outdoor recreation area. The potential for tennis court noise and glare from the light poles would be disastrous. As you can see from the attached photos, there are windows on the north side of my client's guest house and not a substantial amount of landscaping to buffer the light and noise. Even with the addition of a ficus hedge around the proposed tennis court, the court and associated use would be too close to my client's property and would be a nuisance.

There is no hardship for granting the variances for the setbacks of the proposed fence and height of the light poles, as the property is 3.5 acres and there is room for a tennis court elsewhere on the property. If the variance is not granted and the Taylors are not able to build a tennis court in this location, they would not be denied of all reasonable use of their land, which is the test for a legal hardship under Bernard v. Town of Palm Beach, 569 So. 2d 853 (Fla. 4th DCA 1990). Bernard sets out the test for granting a variance which is that "no reasonable use could be made of the property absent a variance." Further, "a hardship must be such that it

Mayor and Town Council
February 3, 2011
Page 2

renders it virtually impossible to use the land for the purpose for which it is zoned." The subject property is zoned residential, and if the variance is not granted to allow the proposed tennis court, a hardship does not result. Further, the special exception request to allow lights in a residential district should not be granted and the criteria of Section 134-229 has not been met as it negatively impacts the neighbor with regard to noise and light.

Lighted tennis courts are more appropriate in the clubs or hotels, and not in residential districts, especially if there is neighbor objection. In 1999, the Town Council denied a lighted tennis court at 220 El Bravo Way when there was neighbor objection. It would be consistent for the Town Council to follow this precedent. My client respectfully requests that you **deny** the above referenced application.

Sincerely,

A handwritten signature in black ink that reads "Maura Ziska". The signature is written in a cursive, flowing style.

Maura Ziska

/maz
Enclosures
cc: client



GUEST HOUSE AND SWIMMING POOL LOCATED AT 801 S. COUNTY RD AND ADJACENT
TO PROPOSED LIGHTED TENNIS COURT





NORTH SIDE OF GUEST HOUSE



NORTH SIDE OF GUEST HOUSE

TOWN OF PALM BEACH

Town Council Meeting on: February 16, 2011

Section of Agenda

New Business - < 15 Minutes

Agenda Title

VARIANCE #4-2011The application of Richard and Patsy Johnson; relative to property commonly known as **751 Island Drive**; described as lengthy legal description on file; located in the R-B Zoning District. The applicant is proposing to convert two patio awnings to permanent loggias, enlarge the family room, and convert the front entry awning into a permanent structure. The proposed additions will require a variance to allow an increase in the lot coverage to 34.6% in lieu of the 27.3% existing and 30% maximum allowed in the R-B Zoning District. Variances are also requested to: allow an existing boat lift to remain in the same location after the reconstruction of the seawall which is currently at 20 feet west of the U.S. Pierhead line the Town's Bulkhead line in lieu of the 6 foot maximum allowed; to allow a marginal dock to be 20 feet from the north property line in lieu of the 25 foot minimum required; to allow a marginal dock to be 20 feet from the south property line in lieu of the 25 foot minimum required. [Attorney: Maura A. Ziska]
[ARCOM Recommendation: Implementation of the proposed variance would not cause negative architectural impacts. Carried 7-0.]

Presenter

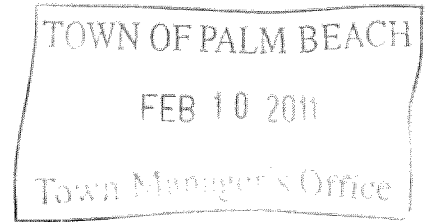
John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter from John B. Haggin, Jr., dated February 7, 2011

JOHN B. HAGGIN, JR.
757 Island Drive
Palm Beach, FL 33480

February 7, 2011



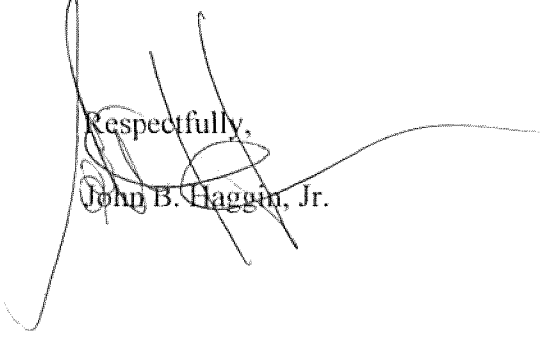
Town of Palm Beach
Town Council
360 S. County Road
Palm Beach, FL 33480

RE: Richard Johnson Approval Request
Variance #4-2011

Dear Sirs:

My name is John B. Haggin, Jr. and I reside at my homestead located at 757 Island Drive, Palm Beach, FL 33480. I have received notice that my neighbor, Mr. and Mrs. Richard Johnson, has requested to install a dock and extend his sunroom at his residence located at 751 Island Drive, Palm Beach, FL 33480. I have no objection to this request and wish them all the best.

Respectfully,


John B. Haggin, Jr.

cc: Richard Johnson

TOWN OF PALM BEACH

Town Council Meeting on: February 16, 2011

Section of Agenda

Development Review - Other

Agenda Title

ARCOM Recommendation Regarding Revised Plans at 1100 North Ocean Boulevard (Karp/Castle).

Time Limit: 15 Minutes Per Side

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated January 31, 2011, from John Page
- Minutes from 1100 N Ocean Blvd. Mediation Report's Revised Plan
- Mediation Report Re 1100 N Ocean Blvd Dated December 8, 2010
- Castles' Motion to Disqualify Town Council President David Rosow
- Affidavit in Support of Castles' Motion to Disqualify Town Council President David Rosow
- Letter dated February 10, 2011, from James R. Brindell

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 16, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Stephen and Jill Karp, 1100 North Ocean Boulevard

Date: January 31, 2011

STAFF RECOMMENDATION

Staff requests that the Town Council give consideration to the Architectural Commission's (ARCOM) recommendation, and the Mediation Report attached hereto and take whatever action deemed appropriate.

GENERAL INFORMATION

As the Town Council is aware, Stephen and Jill Karp, as beneficiaries of the 1100 North Ocean Boulevard Trust (and Steven S. Fischman as Trustee) requested relief pursuant to the terms of the Florida Land Use and Environmental Dispute Resolution Act, Florida Statute § 70.51, based on the Town's action in denying the property owners' application to build a guest addition to the existing home on their property. The application had been denied by the ARCOM. The denial was appealed to the Town Council and the Town Council, on July 14, 2010, after hearing argument from counsel for the property owners and counsel for the Castles, voted to uphold ARCOM's denial.

On December 7, 2010, at Town of Palm Beach Town Hall, a mediation hearing was held before the Special Magistrate, Samuel S. Goren. Section 70.51, of the Florida Land Use and Environmental Dispute Resolution Act, provides that the responsibility of the Special Magistrate is to facilitate a resolution of the conflict between the owner and governmental entity to the end that some modification of the owners' proposed use of the property or adjustment in the development order or enforcement action by the governmental party may be reached. The duty of the Special Magistrate, therefore, is to act as a mediator between the parties in an effort to effect a mutually acceptable solution. Karp presented an alternative plan for the use of the property, along with a chart comparing the alternative plan to the proposal which had been denied by the Town Council on July 14, 2010. The attorneys and architect for Castles presented an alternative plan that would have included a smaller addition on the north end of the Karp property. After all parties had an opportunity to address the alternatives, Karp and the Town representatives in attendance agreed that that Karp alternative plan is an acceptable plan to recommend to the Town to provide a resolution to this dispute. The attorneys for Castles disagreed.

At their January 12, 2011 meeting, the Town Council remanded the revised plans back to ARCOM for their review and comments. At the January 26, 2011 ARCOM meeting the attorney for the Karpis presented the revised application, and the attorney for the abutting property owner (Castles) spoke against the project. After the presentations, ARCOM reviewed the revised plans and had a lengthy discussion concerning the proposed addition (see attached ARCOM meeting minutes). After the discussion, ARCOM voted 4-3 (Mr. Smith, Mr. Vila & Mr. Zukov dissenting) to recommend to Town Council that they do not approve the revised plans.

The Town Council should give consideration to ARCOM's recommendation and to the Mediation Report, and determine if the revised application and plans should be approved. Interested parties should be given an opportunity to present their positions in regard to this matter.

Attachments



MINUTES FOR 1100 N OCEAN BLVD – MEDIATION REPORT’S REVISED PLANS
ARCHITECTURAL COMMISSION
IN THE TOWN COUNCIL CHAMBERS
2ND FLOOR, TOWN HALL
360 SOUTH COUNTY ROAD, PALM BEACH

WEDNESDAY, JANUARY 26, 2011, 9:00 a.m.

Please be advised that in keeping with a recent directive from the Town Council, the minutes of all Town Boards and Commissions will be “abbreviated” in style. Persons interested in listening to the meeting, after the fact, may access the audio of that item via the Town’s website at www.townofpalmbeach.com or may obtain an audio recording of the meeting by contacting Cindy Delp, Secretary to the Architectural Commission at (561) 227-6408. As a point of reference, you will find the recording times listed on these minutes at the beginning of each item.

I. CALL TO ORDER (8:59:03 a.m.)

II. ROLL CALL (8:59:37 a.m.)

PRESENT

Jeffery W. Smith, Chairman
William J. Strawbridge, Jr., Vice Chairman
Leslie C. Diver, Member
Kenn Karakul, Member
Nikita Zukov, Member
Robert J. Vila, Member
Ann L. Vanneck, Alternate Member (voting member today)
Peter I. C. Knowles II, Alternate Member

ABSENT

Samuel M. Boykin, Member (Excused)
Martin D. Gruss, Alternate Member (Unexcused)

Staff members present were John C. Randolph, Town Attorney (present for latter part of meeting) John S. Page, Director of Planning, Zoning & Building, John Lindgren, Planning Administrator, and Cynthia Delp, Secretary to the Architectural Commission

B - 06 - 2010 ARCOM consideration/comments regarding Mediation Report’s revised plans

Address: 1100 North Ocean Boulevard
Applicant: 1100 North Ocean Boulevard Trust
Architect: The Lawrence Group Architects

Prior to hearing from either side in this matter, Town Attorney Randolph gave a lengthy explanation of why and how this matter was once again before ARCOM. In short, a mediation took place, with Mr. Randolph, Mr. Rosow and Mr. Smith participating in that process. After reviewing alternative proposals by both parties, both Mr. Rosow and Mr. Smith agreed to take the Karp's (1100 North Ocean Boulevard) alternative plan back to the Town Council, and the Town Council, in turn, approved the mediation report and remanded the matter back to ARCOM for further consideration. At the Town Council's February meeting, the Council will make a final determination regarding this matter.

Call for disclosure of ex parte communication: Mr. Smith made an ex parte declaration.

Chairman Smith stated that each side will be given 15 minutes for their respective presentations, after which the members will go into executive session.

Attorney James Brindell, Architect Eugene Lawrence, and Landscape Architect Jeff Blakely presented a new design alternative designed completely within the zoning code. In an effort to address the issue of too much mass, the revised design eliminates the second floor over the parking garage and extends the first floor to the south. Mr. Lawrence reviewed the elevations as revised, and Mr. Blakely did likewise with respect to the landscaping. Mr. Lawrence felt the new design successfully decreases the mass and the square footage within the building. He noted that the addition, as revised, is not more seaward than in previous designs.

Attorney Paul Rampell, representing the Castles at 1095 North Ocean Boulevard, placed into the record a disc of all records from previous meetings. He called attention to the fact that the Castles and their neighbors continue to object to the proposal. Architect Thomas Kirchhoff testified to the new Karp proposal. He felt that the new design takes a step backwards, and fails in every criterion which he evaluated; that the new guesthouse lacks any positive relationship with the house; that the interior circulation is problematic; that there is lots of wasted space; and, that the concept has a commercial quality. He added that the plans are incomplete for proper review by ARCOM. Mr. Kirchhoff presented a Photoshop image of what the Castles would see when looking north if the Karp proposal is built. Mr. Kirchhoff presented three different alternate locations (A, B & C) where the Karp's addition might be built.

Mr. Rampell focused upon the 15 feet between the properties; the sustainability of plant material within that 15 feet; 300 petitions from Town residents who oppose the Karp plans and seek the preservation of open space; the testimony of former ARCOM members who served in 1996, when the house was built; the positioning of the Karp house upon its lot; and the belief that the original spacing between the houses should be maintained.

Commission Comments – Executive Session

Questioned the accuracy of the Photoshop images presented; questioned whether placing the addition at the North end of the property, as proposed by the Castles, is feasible; the Karp's revised proposal is a huge improvement from the previous presentation, even though some additional improvements may be needed; why would anyone attempt to squeeze this addition into a space (North end) where there is no room?; the one story design is an improvement, but on the south side, it looks like a ranch house that rambled on... make it more appropriate; there is still an awkward connection from the loggia to the guest wing; the east elevation, as proposed, has a piece that hangs off at the end nearest the Castles...this could be made smaller; not comfortable approving a home that duplicates the details of a main house that we would not approve today; the reduction in mass is a big improvement and a positive change...the 1996 architecture is what it is...the addition matches the main house...landscaping is very important to the Castles; they were asked to blend the addition into the main house and they did; this is an improvement, but is there another solution...is there a better place to build what they are entitled to build?; we are not the designers of this project...we can only comment on whether this proposal is appropriate or not; have we exhausted all options to preserve sensitivity to open space; the house was originally skewed to the north because of a tennis court which is no longer there; are we not creating a precedent to say that a 15 ft. separation is not enough?; I believe in property rights...the Karp's are not asking for variances...the massing is not overwhelming...it's a good compromise by the Karp's since they could have built two stories by code...it goes with the house...it respects the neighbor... minor tweaks are needed, but I could recommend to the Town Council that they should consider this; and, (later in the meeting), there are other options which would be more friendly to the neighbors.

MOTION BY MR. ZUKOV TO FAVORABLY RECOMMEND APPROVAL OF THIS PLAN TO THE TOWN COUNCIL.

MOTION SECONDED BY MR. SMITH (PASSED GAVEL TO STRAWBRIDGE.)

UPON MR. VILA'S SUGGESTION, MOTION AMENDED BY MR. ZUKOV TO ADD THE REQUIREMENT THAT THE APPLICANT RETURNS TO ARCOM WITH ADDITIONAL LANDSCAPE PLANNING.

MOTION SECONDED BY MR. VILA. (MR. SMITH TAKES GAVEL BACK.)

MOTION FAILED 3-4, WITH MR. STRAWBRIDGE, MS. DIVER, MR. KARAKUL AND MRS. VANNECK OPPOSED.

MOTION BY MS. DIVER THAT THE APPLICANT COME BACK TO PROPOSE A DIFFERENT LOCATION FOR THE ADDITION AND SHOW

**US THE POSSIBILITIES FOR A DIFFERENT LOCATION ON THE SITE
FOR THE ADDITION.**

MOTION DIED FOR LACK OF A SECOND.

**MOTION BY MR. KARAKUL THAT ARCOM DOES NOT STRONGLY
RECOMMEND THIS AS THE BEST ALTERNATIVE FOR THE TOWN
COUNCIL.**

MOTION SECONDED BY MS. DIVER.

**MOTION CARRIED 4-3, WITH MR. ZUKOV, MR. VILA, AND MR.
SMITH OPPOSED.**

Mrs. Vanneck clarified that her objection was on the basis of architecture as drawn
as she felt it could be approved.

12/8/10

IN THE MATTER OF:
Request for Relief Filed by
Stephen and Jill Karp and
the 1100 North Ocean Boulevard Trust against
The Town of Palm Beach for the Property
Located at 1100 North Ocean Boulevard
Palm Beach, Florida

MEDIATION REPORT

THIS CAUSE came before a Special Magistrate for a mediation conference pursuant to Florida Statutes Section 70.51, the Florida Land Use and Environmental Dispute Resolution Act ("Section 70.51"). The Parties, Stephen and Jill Karp and Steven S. Fischman, as Trustee of the 1100 North Ocean Boulevard Trust, the legal and beneficial owners of the property at issue ("Karp"), and the Town of Palm Beach, the governmental authority against whom relief was requested ("Town"), have come to agreement on a proposed settlement of this dispute. This Mediation Report summarizes the mediation and the proposed settlement:

1. Mediation in this cause occurred on December 7, 2010 at the Town of Palm Beach, Florida Town Hall beginning at 9:00 a.m. and concluding at approximately 2:00 p.m.
2. In attendance at the mediation were:
 - (a) For Karp: Stephen Karp, the authorized representative for Stephen and Jill Karp and the 1000 North Ocean Boulevard Trust, James R. Brindell, Esq., Brian M. Seymour, Esq. and Ronald L. Weaver, Esq., attorneys for Karp, and Eugene Lawrence, Florida licensed architect for Karp.
 - (b) For the Town: David Rosow, Town Council President, Jeff Smith, Town Architectural Commission ("ARCOM") Chairman, and John C. Randolph, Esq., Town Attorney.
 - (c) For Marianne and John Castle, as abutting property owners and limited

parties ("Castle"): James Green, Esq. and Paul Rampell, Esq., attorneys for Mr. & Mrs. Castle.

Neither Mr. nor Mrs. Castle were present.

(d) Two nearby non-party property owners, Gina Borman and William Holman.

(e) Other interested non-party observers.

3. Opening statements were made by attorneys for Karp, the Town, and Castle.

4. After opening statements, the Special Magistrate met separately several times with Karp, the Town, and the attorneys and architect for Castle.

5. Karp presented an alternative plan for the use of the property at issue, which requires no variances and which provides substantial decreases in height, living square footage, and massing of the proposed addition to the property. The proposed alternative is set forth on the attached Composite Exhibit A (the "Karp Alternative Plan"). Karp also presented a chart comparing the proposed Karp Alternative Plan to the proposal which the Town had denied on July 14, 2010. The Comparison Chart is attached at Exhibit B. The Karp Alternative Plan and the Comparison Chart are provided with the reservation of all legal rights and as a privileged settlement offer.

6. The attorneys and architect for Castle presented an alternative plan that would have included a smaller addition on the north end of the Karp property. A copy of that plan cannot be attached, as the attorneys for Castle took back all copies at the conclusion of mediation.

7. All present were provided an opportunity to speak to and about the alternatives proposed by both Karp and the attorneys and architect for Castle.

8. Both Karp and the Town representatives in attendance agreed that the Karp Alternative Plan as shown on Composite Exhibit A is an acceptable plan to recommend to the

Town to provide a resolution to this dispute which protects the public interest served by the development order and the regulations at issue, and that the alternative proposed by Castle is not.

9. The attorneys for Castle disagreed with the Karp Alternative Plan.

10. The Parties (Karp and the Town) agree to present to the entire Town Council for their consideration the Karp Alternative Plan which has a recommendation of approval from the Town Council President, the ARCOM Chairman, and the Town Attorney. The Town will consider this settlement under the following procedures:

(a) The Town, providing appropriate notice, will place this proposal for initial consideration on the agenda for the January 11 and 12, 2011 Town Council meeting;

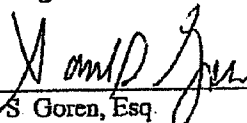
(b) The Town Council may seek input from ARCOM, in which case the Karp Alternative Plan will be reviewed for comment by ARCOM at its January 26, 2011 meeting as part of the resolution process under Section 70.51;

(c) The Town Council will consider for final approval the settlement of this matter at its February 8 and 9 Town Council meeting.

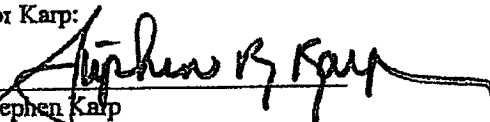
11. If the Town agrees to adopt the settlement proposed through this mediation process, the proceedings pursuant to Section 70.51 will be concluded. If the Town does not agree to adopt the settlement, the Special Magistrate will set this matter for an expedited hearing under Section 70.51 on the merits of the Karp Claim for Relief.

Agreed to this 27th day of December, 2010.

Special Magistrate:

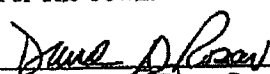

Samuel S. Goren, Esq.

For Karp:


Stephen Karp


James R. Brindell, Esq

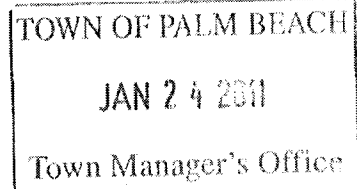
For The Town:


David Rosow, Town Council President


Jeff Smith, ARCOM Chairman


John C. Randolph, Esq., Town Attorney

IN THE MATTER OF:
Request for Relief filed by
Stephen and Jill Karp against
Town of Palm Beach for the
Property Located at 1100 North
Ocean Boulevard Palm Beach, Florida



C: M+TC
PAGE

CASTLES' MOTION TO DISQUALIFY
TOWN COUNCIL PRESIDENT DAVID ROSSOW

John K. Castle and Marianne S. Castle, contiguous landowners to the south of the Karp property, through counsel, hereby file this Motion to Disqualify Town Council President David Rosow from participating in further proceedings in this matter and state:

1. The Castles reasonably fear they will not receive a fair consideration of their opposition to the Mediation Report and request for further mediation due to the bias or prejudice of the Town Council President Rosow against them and/or their lawyers.

2. On January 12, 2011, a quasi-judicial hearing was held regarding the Mediation Report in the above matter during the Town Council meeting, with David Rosow presiding as Town Council President.

3. The Mediation Report was not signed by the Castles, agreed to by them, or shown to them prior to submission to the Town Council.

4. Notwithstanding the fact that he set no time limits on attorneys in at least nine (9) quasi-judicial hearings preceding the Castles' matter on appeals and requests for variances and special exceptions, President Rosow imposed a three-minute limitation on the Castles' attorney. (In fact, one attorney, Harvey Oyer, in an unrelated matter scheduled early on the agenda, failed to appear on behalf of a client, but was allowed to be reheard hours later, with no time limitation imposed.)

5. At each of the previous quasi-judicial hearings held on January 12th, either President Rosow or the Town Attorney requested disclosure of ex parte communications. At no time was such a request made during the hearing on the Castle/Karp matter, and no such disclosures were made.

6. Unfortunately, neither the Castles' lead attorney nor their lead expert was available for the January 12th meeting. Despite having granted the Karps' attorney two postponements (one by ARCOM and one by President Rosow), the Castles' request for a brief postponement was denied by Mr. Rosow.

7. Notwithstanding the arbitrary three-minute limitation imposed by Mr. Rosow on the Castles' presentation, he immediately and repeatedly interrupted the Castles' attorney's attempts to argue for a postponement with false statements and accusations that the Castles or their attorney was "duplicitous":

MR. GREEN: I'm James Green. I represent John and Marianne Castle who are the property owners adjacent to the 1100 North Ocean

MR. ROSOW: And by the way, just to remind you, Mr. Green, I voted in favor of your clients at the initial Town Council Meeting.

So, this was a --

MR. GREEN: (Shakes head.)

MR. ROSOW: Yes, I did. I voted to deny the Karps' plan.

MR. GREEN: That's not my recollection, sir.

MR. ROSOW: Well, it was.

Tr. Hrg. p. 10. (emphasis added.)

9. The Town Council Minutes from the July 14, 2010 Karp appeal from ARCOM reflect that President Rosow, in fact, voted against the Castles and in favor of the Karps:

Motion made by Council Member Diamond seconded by President Pro Tem Coniglio to uphold ARCOM denial of the [Karp] addition. On roll call the motion carried 4-1 with President Rosow dissenting.

Minutes, p. 5. (emphasis added.)

10. Then, immediately after the Town Council's vote to refer the "Mediation Report" to ARCOM, President Rosow, in an obvious act of vengeance, directed the Town's preservationist, Jane Day, to consider landmarking the Castle estate, anticipating that the Castles would oppose more extensive landmarking.

JANE DAY: Good afternoon, Mr. Rosow, members of the Town Council -

MR. ROSOW: I have a question before you start, Jane.

MS. DAY: Yes.

MR. ROSOW: Why isn't the Castle home landmarked? I understand that in 1993 there was an agreement that the home would be landmarked.

Boulevard property. Their property is formerly known as the Kennedy Estate.

MR. ROSOW: Is it a landmarked property?

MS. CONIGLIO: Yes.

MR. GREEN: The front part is.

MR. ROSOW: The front door is. You know, in my mind --

MR. GREEN: I --

MR. ROSOW: . . . In my mind, to keep referring to it as somebody notable's estate and not have it landmarked, **I just think is duplicitous.** That's my personal point of view.

MR. GREEN: I didn't use the word "landmark," sir.

MR. ROSOW: **No, you said it was the former Kennedy Estate, as to give it some sort of individual status within the town, and I find that objectionable.** But go ahead. I've not used any of your time. That's my personal point of view.

Tr. Hrg. 11/12/11 ("Tr."), pp. 7-8. (emphasis added.)

8. The Castles had earlier objected to President Rosow serving as the Town's representative at the mediation that resulted in the so-called "Mediation Report" because he had been the sole vote against the Castles in the 4-to-1 to affirm ARCOM's decision denying approval of the Karps' proposed guesthouse.¹ At the January 12th meeting, however, Mr. Rosow denied voting against the Castles:

¹ See Castles' Response In Opposition To Mediation Report, ¶ 13 ("Mr. Rosow was the sole dissenter on the Karps' appeal to the Town Council. (If Mr. Rosow favors a three-story addition, he obviously will support a two-story building.) We believe that Mr. Rosow was an inappropriate representative for the Town and at mediation because he was the sole dissenter on the ARCOM appeal and, therefore, does not represent the majority opinion of the Council or the Town.")

MS. DAY: No, they came to Landmark for all of the approvals on the renovations that they made, and it was never brought forward to landmarking it because so much of the property was new after the Castles' renovation.

MR. ROSOW: I'd like you to review that again.

MS. DAY: You would like us to review that at Landmarks?

MR. ROSOW: Um hm.

MS. DAY: All right, we will do that next week.

MEMORANDUM OF LAW

11. "While the quality of due process required in a quasi-judicial hearing is not the same as that to which a party to full judicial hearing is entitled," *Jennings v. Dade County*, 589 So.2d 1337, 1340 (Fla. 3d DCA 1991)(citations omitted), "an impartial decision maker is [an] essential" element of procedural due process. *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970).

12. No Florida precedents address the disqualification of elected officials who display bias in quasi-judicial hearings. However, courts in other jurisdictions regularly consider state rules and laws as governing, or at least informing, disqualification of judges. *See, e.g., See Milwaukee R.R. v. Human Rights Comm'n*, 87 Wash.2d 802, 807, 557 P.2d 307 (1976) (en banc) ("There can be no doubt that the hearing tribunal ... was performing an adjudicatory, rather than a legislative or policy-making function ... [and] since the hearing tribunal was ... performing in a quasi-judicial capacity, there is no reason that the same common-law rules of disqualification applicable to judges should not apply.")

13. Under Florida Statute § 38.10 and Florida Rule of Judicial Administration 2.330, disqualification is clearly required. A motion for disqualification must be granted if the alleged facts would cause a reasonably prudent person to have a well-founded fear that he/she would not receive a fair and impartial trial. *Rogers v. State*, 630 So.2d 513 (Fla.1993); *Mulligan v. Mulligan*, 877 So.2d 791, 792 (Fla. 4th DCA 2004). In determining whether the motion is legally sufficient, the allegations "must be taken as true and must be viewed from the movant's perspective." *Siegel v. State*, 861 So.2d 90, 92 (Fla. 4th DCA 2003).

14. In regard to the party's fear, the attorney need only show that a reasonably prudent person would fear that he or she could not receive a fair and impartial proceeding. Conclusive proof is unnecessary. *MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So.2d 1332 (Fla. 1990) (applying former Fla.R.Civ.P. 1.432), citing *Livingston v. State*, 441 So.2d 1083 (Fla. 1983).

15. Disqualification on the basis of a party's fear has been found in cases such as *State v. Alzate*, 972 So.2d 226 (Fla. 3d DCA 2007) (judge accused defendant's counsel of playing games and delaying trial to accrue higher pay); *Jimenez v. Ratine*, 954 So.2d 706 (Fla. 2d DCA 2007) (judge criticized counsel's personal integrity and honesty); *DeMetro v. Barad*, 576 So.2d 1353 (Fla. 3d DCA

1991) (applying former Rule 1.432 — judge denounced petitioner's character and believability in prior proceeding before judge).

16. Disqualification is also appropriate where a decisionmaker's mind is closed with respect to the facts as they pertain to the parties. *Central Platte Natural Resources Dist. v. State of Wyo.*, 245 Neb. 439, 513 N.W.2d 847 (1994); *1616 Second Ave. Restaurant, Inc. v. New York State Liquor Authority*, 75 N.Y.2d 158, 551 N.Y.S.2d 461, 550 N.E.2d 910 (1990); *1000 Friends of Oregon v. Wasco County Court*, 304 Or. 76, 742 P.2d 39 (1987); *Kizer v. Dorchester County Vocational Educ. Bd. of Trustees*, 287 S.C. 545, 340 S.E.2d 144 (1986). Here. Mr. Rosow, even in the face of the Castles' request to remand this matter for further mediation, said:

MR. ROSOW: It's obvious that Mr. Castle -- Mr. and Mrs. Castle, until they get what they want, are going to continue the process. It's obvious that Mr. Karp and his wife, until they get what they want, are going to continue the process. So, I think we ought to let the process continue. I've seen no indication, having attended this meeting and having attended ARCOM meetings and so forth, that there's any willingness to compromise.

Tr. pp. 14-15.²

² The Castles are not seeking disqualification based upon Mr. Rosow's adverse ruling. *See, Jackson v. State*, 599 So.2d 103 (Fla.1992) (prior adverse rulings, standing alone, generally are not a legally sufficient basis on which to recuse a judge).

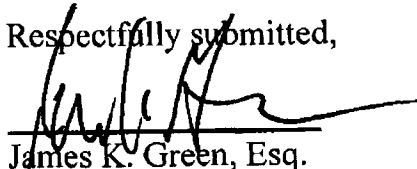
17. President Rosow's mind is made up: A three-story addition is acceptable, a two-story addition is acceptable, and the Castles are standing in his way of bulldozing a project through for the benefit of Mr. Karp irrespective of the concerns of neighbors.

CERTIFICATE OF GOOD FAITH

I, James K. Green, one of the counsel of record for the Castles, pursuant to Florida Statute § 38.10 and Florida Rule of Judicial Administration 2.330, hereby certify that this motion and affidavit are filed in good faith.

WHEREFORE the Castles respectfully request that President Rosow disqualify himself from further action in this matter.

Respectfully submitted,



James K. Green, Esq.
JAMES K. GREEN, P.A.
222 Lakeview Ave.
Suite 1650, Esperantè
West Palm Beach, FL 33401
561.659.2029
561.655.1357 (facsimile)
Florida Bar No: 229466

Bruce Rogow, Esq.
BRUCE ROGOW, P.A.
500 E. Broward Blvd., Suite 1930
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954.767.8909
954.764.1530 (facsimile)

Florida Bar No: 067999

Paul Rampell, Esq.
400 Royal Palm Way
Suite 410
Palm Beach, FL 33480
561.833.1116
Florida Bar No: 305901

COUNSEL FOR THE CASTLES

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been furnished by Hand Delivery to Town Council President Davis Rosow and by U.S. Mail to all remaining parties listed below on this 24th day of January, 2011.

Brian M. Seymour, Esq.
Christopher P. Benvenuto, Esq.
Gunster, Yoakley & Stewart, P. A.
777 S. Flagler Drive
Suite 500 East, Phillips Point
West Palm Beach, FL 33401

Ronald L. Weaver, Esq.
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P. A.
401 East Jackson Street, Suite 2200
Tampa, FL 33602

John C. Randolph, Esq.
505 South Flagler Drive
Flagler Center Tower, Suite 1100
West Palm Beach, FL 33401

David Rosow
Town Council President
Town of Palm Beach
360 S. County Road
Palm Beach, FL 33480


James K. Green, Esq.

IN THE MATTER OF:

Request for Relief filed by
Stephen and Jill Karp against
Town of Palm Beach for the
Property Located at 1100 North
Ocean Boulevard Palm Beach, Florida

**AFFIDAVIT IN SUPPORT OF CASTLES' MOTION TO
DISQUALIFY TOWN COUNCIL PRESIDENT DAVID ROSOW**

I, John K. Castle, a contiguous landowner to the south of the Karp property, do hereby affirm that I believe and fear that David Rosow, who presided as Town Council President until this time, is prejudiced against me and/or my lawyers. The facts and matters on which my belief is based are as follows:

1. On January 12, 2011, a quasi-judicial hearing was held regarding the Mediation Report in the above matter during the Town Council meeting, with David Rosow presiding as Town Council President.

2. The Mediation Report was not signed by me, agreed to by me, or shown to me prior to submission to the Town Council.

3. Notwithstanding the fact that the Town Council set no time limits on attorneys in at least nine (9) quasi-judicial hearings on appeals and requests for variances and special exceptions, Town Council President Rosow imposed a three-minute limitation on my attorney, James K. Green. (In fact, one attorney in an unrelated matter failed to appear on behalf of a client, but was allowed to be reheard later, with no time limitation.)

4. At each of the previous quasi-judicial hearings held on January 12th, either Town Council President Rosow or the Town Attorney requested disclosure of *ex parte* communications. At no time was such a request made during the hearing on the Castle/Karp matter, and no such disclosures were made.

5. Unfortunately, neither my lead attorney, Paul Rampell, Esq., nor my lead expert were available for the January 12th meeting. Despite having granted the Karps' attorney two postponements (one by ARCOM and one by Town Council President Rosow), my request for a brief postponement was denied.

6. Notwithstanding the arbitrary three-minute limitation imposed by Mr. Rosow on my attorney's presentation, he repeatedly interrupted my attorney's attempts to argue for a postponement with false statements and accusations that we were "duplicitous":

MR. GREEN: I'm James Green. I represent John and Marianne Castle who are the property owners adjacent to the 1100 North Ocean Boulevard property. Their property is formerly known as the Kennedy Estate.

MR. ROSOW: Is it a landmarked property?

MS. CONIGLIO: Yes.

MR. GREEN: The front part is.

MR. ROSOW: The front door is. You know, in my mind --

MR. GREEN: I --

MR. ROSOW. . . In my mind, to keep referring to it as somebody notable's estate and not have it landmarked, **I just think is duplicitous.** That's my personal point of view.

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MR. ROSOW: **No, you said it was the former Kennedy estate, as to give it some sort of individual status within the town, and I find that objectionable.** But go ahead. I've not used any of your time. That's my personal point of view.

Tr. Hrg. 11/12/11 ("Tr."), pp. 7-8. (emphasis added.)

7. We had earlier objected to Town Council President Rosow serving as the Town's representative at the mediation that resulted in the so-called "Mediation Report" because he had been the sole vote against us in the 4-to-1 to affirm

ARCOM's decision denying approval of the Karps' proposed guesthouse.¹ At the January 12th meeting, however, Mr. Rosow denied voting against the Castles:

And by the way, just to remind you, Mr. Green, I voted in favor of your clients at the initial Town Council Meeting. So, this was a --

MR. GREEN: (Shakes head.)

MR. ROSOW: Yes, I did. I voted to deny the Karps' plan.

MR. GREEN: That's not my recollection, sir.

MR. ROSOW: Well, it was.

Tr. Hrg. p. 10. (emphasis added.)

8. The Town Council Minutes from the July 14, 2010 Karp appeal from ARCOM reflect that President Rosow, in fact, voted against the Castles and in favor of the Karps:

Motion made by Council Member Diamond seconded by President Pro Tem Coniglio to uphold ARCOM denial of the [Karp] addition.
On roll call the motion carried 4-1 with President Rosow dissenting.

Minutes, p. 5. (emphasis added.)

9. Then, immediately after the Town Council's vote to refer the "Mediation Report" back to ARCOM, President Rosow, in an obvious act of retaliation, directed the Town's preservationist, Jane Day, to consider landmarking our estate, even though anticipating from prior correspondence that we might oppose more extensive landmarking.

JANE DAY: Good afternoon, Mr. Rosow, members of the Town Council -

MR. ROSOW: I have a question before you start, Jane.

¹ See, e.g., Castles' Response In Opposition To Mediation Report, ¶ 13 ("Mr. Rosow was the sole dissenter on the Karps' appeal to the Town Council. (If Mr. Rosow favors a three-story addition, he obviously will support a two-story building.) We believe that Mr. Rosow was an inappropriate representative for the Town and at mediation because he was the sole dissenter on the ARCOM appeal and, therefore, does not represent the majority opinion of the Council or the Town.")

MS. DAY: Yes.

MR. ROSOW: Why isn't the Castle home landmarked? I understand that in 1993 there was an agreement that the home would be landmarked.

MS. DAY: No, they came to Landmark for all of the approvals on the renovations that they made, and it was never brought forward to landmarking it because so much of the property was new after the Castles' renovation.

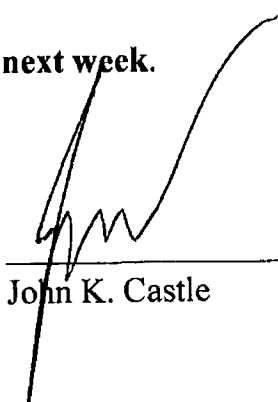
MR. ROSOW: I'd like you to review that again.

MS. DAY: You would like us to review that at Landmarks?

MR. ROSOW: Um hm.

MS. DAY: All right, we will do that next week.

Further affiant sayeth naught.



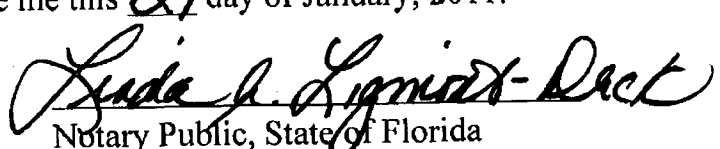
John K. Castle

STATE OF FLORIDA)
) ss:
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, personally appeared John K. Castle, who is personally known to me, deposes and says that he has read and executed the foregoing instrument and that the facts contained therein are true and correct to the best of his knowledge and belief.

SWORN TO and subscribed before me this 21 day of January, 2011.




Notary Public, State of Florida

LINDA A. LIGMONT-DERCK

Notary's Printed Name:

My Commission expires:



TOWN OF PALM BEACH

FEB 10 2011

Town Manager's Office

Our File Number: 00032655.00001
Writer's Direct Dial Number: (561) 650-0511
Writer's E-Mail Address: JBrindell@gunster.com

February 10, 2011

VIA HAND DELIVERY

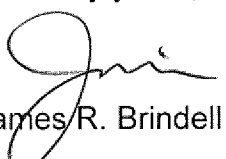
Mr. Peter Elwell
Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: Karp Mediation

Dear Peter:

You will find enclosed copies of a Summary of Case and Issues which we are submitting on behalf of Mrs. and Mrs. Stephen Karp for the Council meeting on February 16. Please provide copies to the Mayor and Town Council. Thank you.

Sincerely yours,


James R. Brindell
JRB/gvt

1100 North Ocean Boulevard
Applicant Karp's Summary of Case and Issues
(Town Council – February 16, 2011)

This case is solely an architectural design matter involving a review by the Town's Architectural Review Commission(ARCOM). It involves no requests for variances or other Town Council approvals, and all Town requirements involving setbacks, height, lot coverage, and landscaped open space will be met or exceeded. Unfortunately, a number of misrepresentations of fact and law have been interjected into this matter on behalf of John and Marianne Castle. They own the property immediately south of the property owned by Mrs. And Mrs. Stephen Karp, the property which is the subject of this ARCOM matter. There has also been an attempt by the Castles' representatives to turn this evidence-based process into a public referendum process with serious implications for the future integrity of residents' property rights and the integrity of the Town's processes. Consequently, the Applicants in this matter believe it is necessary to sort through relevant and diversionary issues in this matter, and that is the purpose of this Summary.

I. BACKGROUND

(a) The Karp property is located on the Ocean in the R-A District and has 40,821 s.f. of lot area, twice as much as the required minimum of 20,000 s.f. It has 240 feet of ocean frontage, and 270 feet of street frontage along North Ocean Boulevard. By comparison, the Castle property located immediately to the south of the Karps has 46,460 square feet of lot area, but only 218 feet of Ocean frontage, and 200 feet of street frontage.

(b) The property is irregularly shaped as a result of the curve in North Ocean Boulevard. Consequently, the street façade of the house cannot be seen in a perpendicular fashion, so it appears less massive than the two houses to the south, whose street facades are essentially on the same plane.

(c) There is an existing covenant with the Town requiring the maintenance of a landscape buffer along the street frontage from the driveway to the north property line. There are no other recorded covenants or restrictions on the property.

(d) Mr. & Mrs. Stephen Karp purchased the property and house at 1100 North Ocean Boulevard in 2005. The house was built in 1996/97 without variances or any other special Town approvals (i.e. it complied with setbacks, did not exceed allowable lot coverage, building height, or overall height, satisfied the required landscaped open space, etc. and did not require any Town Council approvals). It only required ARCOM approval which it received in 1996.

(e) Inherent in the 1996 ARCOM approval of the existing house was a finding that the architectural design meets all of the ARCOM criteria for approval including the first one which provides that the house:

“is in conformity with good taste and design and, in general, contributes to the image of the Town as a place of beauty, spaciousness, balance, taste, fitness, charm and high quality; Town Code Section 18-205 Criteria for building permit.”

(f) The ARCOM guidelines in the ARCOM application package provide that “architectural stylistic integrity is encouraged at all times.” In other words, the proposed guest suite is expected to achieve architectural stylistic integrity with the existing house style previously approved by ARCOM, and the present ARCOM has acknowledged that it does achieve that.

(g) The Kars filed an application in October of 2009 with ARCOM to construct a two-story guest suite with a basement garage on their property at 1100 North Ocean Boulevard. That application required no variances or other special approvals from the Town. It was criticized by ARCOM at November and December hearings in 2009, and was denied.

(h) A new application, again requiring no variances or other special Town approvals, was filed for a two-story guest suite with a basement garage in January, 2010, and was reviewed by ARCOM at hearings in February and April 2010. ARCOM denied the application 6 to 1, and it was appealed to the Town Council. The Council heard the appeal on July 14, 2010 and upheld ARCOM’s denial 4-1.

II. THE MEDIATION AND MODIFIED PROPOSAL

(a) Mr. and Mrs. Karp instituted the mediation process provided by Section 70.51 of the Florida Statutes, the Florida Land Use and Environmental Dispute Resolution Process. A mediation proceeding was held on December 7, 2010. At that proceeding, Mr. and Mrs. Karp presented a modified proposal which reduced the proposed guest suite to a one-story structure with a basement garage. That proposal also does not require any variances or any other special Town approvals.

(b) The original proposal was two stories with a basement garage. The modified proposal is a one-story plan with a basement garage. The modified plan has reduced the living area by 18.1%, the building height by 41.9%, and the overall building height by 40%. It would increase the north/south dimension of the footprint of the proposed one-story addition by 12.75 feet, while still providing the 15 foot side yard setback required by Code. The proposed one-story plan is no closer to the street or the Ocean than the proposed two-story addition. It would be setback 101 feet from the street, while the Code requires only 35 feet.

(c) The site plan of the existing house with the addition of the one-story guest suite would provide 52.7% of overall landscaped open space (Code requires 50%) and 71.6% of the front yard would be landscaped open space (Code requires only 45%).

(d) The modified proposal incorporates some 12 revisions suggested by ARCOM members over the past year. Specifically, the plan revisions included: moving the addition up against the existing house, lowering the height; eliminating the chimney; moving the addition farther west; matching the fenestration and roof line with the existing house; increasing the landscaping on the south property line; adding vines to the west facade of the basement garage; linking the east façade of the house with the proposed addition by extending the existing current lanai; eliminating an arched window on the east façade, reducing the size of the window in the south façade, and making the addition subservient to the main house.

As a result, the modified proposal achieves architectural integrity with the existing house as required by the ARCOM guidelines, and enables the existing house with the guest suite to continue to be in conformity with the good taste and design, contribute to the image of the Town as a place of beauty, spaciousness, balance, taste, fitness, charm and high quality as previously determined by the 1996 ARCOM when they approved the existing house.

(e) The modified proposal includes a very thick and tall landscape buffer along the entire south property line between the Karp and Castle properties. That buffer would be maintained at a height of approximately 14 to 16 feet.

(f) The Town's representatives concluded that the Karps' modified proposal was the basis for a reasonable settlement of the dispute. The Castles' representatives rejected the modified proposal, but presented their own proposal for a guest suite on the north end of the Karps' house. Aside from the fact that the Castles' proposal would require the granting of variances from zoning regulations and would add substantial mass immediately adjacent to the street, it also was not functionally acceptable to Mr. & Mrs. Karp.

(g) The Mediation Report which adopted the Karps' modified proposal was filed with the Town for consideration by the full Town Council. On January 12, 2011, the Town Council approved the Mediation Report. Pursuant to that Report, the Town Council referred the modified proposal to ARCOM for the limited purpose of comment and recommendation back to the Town Council for the Council's final determination.

III. ARCOM REVIEW OF MEDIATON REPORT

(a) One of the fundamental problems in this case is that some members of ARCOM do not like the design approved by their predecessor ARCOM in 1996, and would like to divest the Karps of the 1996 ARCOM approval upon which they

and their predecessors-in-title relied in good faith. For example, ARCOM member Diver stated her dislike for the 1996 approved design at the April 2010 ARCOM meeting and again at the January 26, 2011 ARCOM meeting. To underscore her view, she suggested that the existing house be re-designed. Ms. Diver said:

"I guess this is different from the last project because we don't get this option, is what I'm reading here. And I'm trying to think back, the last time we met, I think we denied this 6 to 1 based on the fact that we felt the addition was matching the original home, and we would not approve the original home at ARCOM today because it doesn't meet our standards here, the original architecture. I'm just talking about the architecture.

So, now I see another addition that, again, the details match the original home. So, I say, okay, I appreciate the fact they went to one story, I do. But I still don't think that – I'm not comfortable, again, approving a home that we wouldn't – that is duplicating the detailing of the main house, which we would not approve today. So, it's back to the same – to me, it's the same argument as we had the first time.

.....

I think Gene Lawrence has improved as an architect through the years. He has improved. I do not think this was his best project. I would like to see him go back and redo the main home, then put on an addition that would match a home that we would approve today. That would be my opinion." *Transcript January 26, 2011 ARCOM meeting at pp. 7 and 8.*

(b) At the January 26, 2011 ARCOM meeting during consideration of the Mediation Report, the Town Attorney instructed the ARCOM members that:

"...nor do I think it's relevant as to whether or not you would have approved this house that exists there in the first place. An Architectural Commission that preceded you did approve that, and you're dealing with what's on the table in that respect." *Transcript January 26, 2011 ARCOM meeting at p. 31.*

(c) ARCOM reviewed the modified proposal on January 26, 2011 and voted 4 to 3 that "that we do not strongly recommend this as the best alternative for the Town Council." It is important to note that this recent ARCOM recommendation is not an outright recommendation against the proposed modified plan. The comments of the two architects on ARCOM, who supported the modified proposal, should also be noted:

1. Chairman Smith said:

"I think this is a very good compromise on the Karps to do their – they were allowed to do a two-story by code. And I think it was a very good compromise that they did put it on one floor. And I'm looking at it as the building. And does it go with the house? It absolutely goes with the house. When it was a two-story did it go with the house? It was a tail wagging the dog. It no longer has an effect. It does step down. It does, I think, respect the neighbor. And I have no objection to this. I mean, there are minor things that I would comment about, but I think I can certainly recommend that the Town Council, given the mediation, that they should consider this." *Transcript January 26, 2011 ARCOM meeting p.41.*

2. Mr. Zukov said:

"I agree with you that there was a building that was approved by a group of people like us, and they liked it. They approved it. So, we can't make a change. We can't make Mr. Karp rebuild his building because this group doesn't like it. Another group will come after us, and they'll say, 'What did you do? That was a great building'. Maybe, maybe not. So, we asked them already several times, Gene, we asked them, to please make sure that he blends this expansion with what exists there. And that, he did." *Transcript of January 26, 2011 ARCOM meeting at p. 33.*

(d) Mr. Vila who had made the motion at the April 2010 meeting to deny the two-story plan supported the modified proposal at the January 26, 2011 ARCOM meeting and said:

"Well, if I could just say that it seems to me, even from the point of view of maintaining open space, this reduction of the mass is a big improvement over what we had looked at twice before. I think that we need to accept the fact that the architecture from 1996 is what it is, and it's not our job to come up here and say fix it or change it. It is what it is. Our job is to kind of look at what we're asked to make a judgment on in terms of expanding that architecture. What we're being presented with right now continues in the same language. Whether that's good or bad is not what we are really here to decide. " *Transcript of January 26, 2011 ARCOM meeting at p. 32.*

IV. THE CASTLE'S ALLEGATIONS

(a) Unfortunately, Marianne and John Castle's representatives have repeatedly inserted into this proceeding issues and allegations which are irrelevant to the architectural issue and which are not supported by law. Their objective is to deny Mr. and Mrs. Karp's right to use a portion of their property in conformance with the Town Code. Instead, they would have the Town use its police power for the illegal purpose of acquiring for Mr. and Mrs. Castle's benefit, and without compensation to Mrs. And Mrs. Karp, a side yard setback of open space on the Karps' property of some 62 feet in width which is 47 feet greater than the setback required by the Town Code.

(b) Mr. and Mrs. Castle's representatives would have this proceeding be one where the Karps' property rights are determined by a petition, or by a phantom open-space restriction, or by an asserted right of lateral view across the Karps' property, or by an alleged concern for their house because it was once owned by the Kennedy family. None of these lines of attack by the Castles have any legal merit. They have not demonstrated any substantial interest of theirs which is different from the general public and which will be adversely affected by the Karp's proposed guest suite.

RIPARIAN RIGHT OF LATERAL VIEW

(c) The Castles claim that Mrs. & Mrs. Karp's proposed addition would interfere with a riparian right of lateral view across the Karps' property. Under Florida Law, riparian property owners have a right of view from their uplands out into the adjacent navigable waters in an area bounded by an extension of their side property lines into the water. Riparians do not have a right of view of the water laterally across the property of their neighbors. This interpretation was confirmed by the Town Attorney. See *Transcript of July 14, 2010 Town Council hearing at p. 27*. Furthermore, there is no such general right of view across an adjacent property or over one across the street under Florida law, and the Town Attorney has so advised the Town; See *Transcripts of the February 24, 2010 ARCOM meeting at p. 30 and of the July 14, 2010 Town Council hearing at p. 27*.

(d) The lack of merit in the Castles' view issue is further supported by the interior elements within the Castle house. The north side of the Castle house, which faces the Karps' house, has a kitchen, pantry, and a breakfast room on the first floor, and staff quarters and two offices on the second floor. All of the family bedrooms, dining room, living room, and family room are located interior and south of these other areas which are adjacent to the Karp property.

PROTECTING THE KENNEDY HOUSE

(e) When the Castles purchased their house, they knew that it was built within 10 feet of the property line between their property and the Karps. The Castles

knew, or were on notice, that the Town Code only requires a house on the Karp property to provide a 15 foot side yard setback.

(f) If the Castles had been concerned about this possible separation issue and wanted to ensure that an extra buffer was provided to their north, they could have purchased the Karp property from the Kennedy trust at the same time they purchased the Kennedy house.

(g) There is no authority in the Zoning Code which allows the Town to impose on one property a setback greater than required by Code for the benefit of any structure, landmarked or not, on an adjacent property.

(h) The alleged concern of the Castles about protecting the Kennedy house by having the Town extract an extraordinary setback from the Karps' property is disingenuous at best. On May 23, 1995, the Castles entered into an agreement with the Town pursuant to which they agreed to "...submit voluntarily and without objection the property as it is then constituted for designation as a landmark within five years from the Effective Date..."; ORB8760 Pg. 110, Official Records, Palm Beach County. The five years expired on May 23, 2000, but the Castles have never complied with their commitment.

THE ALLEGED PHANTOM 1996 OPEN SPACE CONDITION

(i) The Castles contend that the 1996 ARCOM approval of the existing house included a requirement that the area of the proposed addition be left open except for a tennis court. The Town Attorney has advised the Town that there is no such open space condition on the Karps' property. See *Transcript of February 24, 2010 ARCOM meeting at p. 29-30.*

(j) The Castle's attorneys suggest that 14 years after the 1996 ARCOM approval of the Karp (formerly Smith) house, the Karp property should have a use restriction in the form of an open space requirement placed on it by the use of affidavits from several persons some of whom were members of ARCOM in 1996. Ironically, the member of ARCOM in 1996 who made the motion to approve the Karp (Smith) house, Robert Deziel, testified at the April 28, 2010 ARCOM meeting that he did not intend that such a restriction be imposed, and so his motion did not include such a condition. *Transcript of April 28, 2010 ARCOM meeting at p. 81.*

(k) The Minutes of that May 22, 1996 ARCOM approval reflect no discussion or imposition of such an open space condition of approval. However, the Minutes do reflect five other conditions of approval involving roof lines, windows, window transoms, and arches. **See Tab A.** Mr. Rampell claimed at the January 26, 2011 ARCOM meeting that the Minutes of the May 22, 1996 ARCOM approval of the Karp (Smith) house were "cryptic". Perhaps, if the Minutes had stated something like "Approved with Conditions", but without listing those

conditions, one might characterize them as "cryptic". But, the listing of five conditions of approval is hardly "cryptic".

(l) On June 26, 1996, a month after the May approval by ARCOM, the draft Minutes of the May 22, 1996 ARCOM meeting were reviewed by ARCOM. In fact, several corrections were made to the matters addressed in those Minutes, but none of those corrections involved the Karp (Smith) house approval. After the corrections were made, the Minutes of the May 22, 1996 hearing were approved by ARCOM. **See Tab B.** Several of the 1996 ARCOM members signing Mr. Rampell's affidavit were present at those May 22, 1996 and June 26, 1996 meetings of ARCOM, but none of them said anything about a missing open space condition, and they all voted to approve those Minutes, i.e. John Schuler, Laurel Baker, Bruce Helander, Sally Gingras, Lowry Bell, and Floyd Wideman.

(m) Additional evidence that there was no open space condition is found on the face of Sheet 1 of the architectural plans approved by ARCOM. Sheet 1 is the site plan, and on that are the handwritten notes of the Town staff setting forth in the upper right hand corner and again in the lower right hand corner that there are conditions involving changing the roof lines, adding window transoms, changing arches and re-working windows. There is no reference to an open space condition. **See Tab C.**

(n) Finally, no such condition of approval involving open space was placed in a declaration of use agreement between the Town and the owner. Nor can such a condition be found in a recorded covenant or in any unrecorded written agreement. Yet, the Town Attorney advised ARCOM that this recorded document process was used at the time of the 1996 ARCOM approval for such alleged open space conditions; *See Transcript of February 24, 2010 ARCOM meeting at pp. 30-31.*

(o) Some examples (unrelated to Mr. & Mrs. Karp's property) of the Town's use of deed restrictions, covenants, and use agreements involving other properties, but contemporaneous with the May 1996 ARCOM approval of the original house on the Karp property, can be found in the following ARCOM and Town Council matters:

1. ARCOM

January 25, 1995, during a discussion of ARCOM guidelines, the Town Attorney suggested that a provision be added to the guidelines to the effect that "the Commission often requires deed restrictions to assure continued compliance with landscaping or other restrictions involved." That suggestion was adopted unanimously by the Commission. Among the ARCOM Commissioners present were Laurel Baker, Lowry Bell, and Bruce Helander, each of whom signed an affidavit in this matter. Later in that same meeting under A14-95, ARCOM imposed a condition of approval requiring that a letter of agreement be submitted to the Building Department agreeing to a landscape screen for a carport and that the

carport would not be converted to living space; June 28, 1995, B-30-905 ARCOM imposed a deed restriction to guarantee landscaping in perpetuity (affiants in this matter who were present then included Laurel Baker, Sally Gingras, John Schuler, and Lowry Bell); July 24, 1996, B-38-96, the Commission imposed a restrictive covenant as a condition of approval requiring the maintenance of a landscape buffer between the garage and the street (affiants in this matter who were present then included Laurel Baker, Lowry Bell, Bruce Helander, John Schuler, Floyd Wideman, and Marvin Rosenberg).

2. Town Council

July 11, 1995, Variance No. 30-95, (a deed restriction requiring that a porch would never be enclosed); November 14, 1995, Variance No. 59-95 (a deed restriction requiring the maintenance of a wall or hedge buffer); December 12, 1995, Variance No. 59-95, (a deed restriction requiring that a pergola over a pool be removed upon a change of ownership); January 9, 1996, Special Exception No. 29-95, (agreement to remove a kitchen in a guest house); June 14, 1996, Special Exception No. 15-96, (a deed restriction limiting use of two single family residences to club staff and prohibiting for sale to or use by others).

(p) To allow the retroactive imposition of a condition on a Town approval 14 years after that approval was granted supported by nothing recorded in the public record contemporaneous with that approval would subject every property in Town to such an action, thereby placing the title to every property in the Town under a cloud.

1996 SITE PLAN APPROVAL

(q) The Castle's attorneys also suggest that the 1996 ARCOM approval of the Karp (Smith) house was a determination for all time that the area on the south side of the house must remain open space. The 1996 ARCOM approved site plan has several conditions written on that plan, but none indicate that the south side area of the Karp property was to remain open space forever. **See Tab C.**

THE ALLEGED AGREEMENT BY GENE LAWRENCE

(r) The Castles' attorneys assert that a March 25, 1996 letter from Gene Lawrence to Tim Frank, the Town's ARCOM staff, constituted an agreement on behalf of the Smiths to maintain the south portion of their property as open space. When one reads that letter it becomes clear that their allegation is a total misrepresentation of the contents of that letter; **see Tab D.** First, the letter was written before any application had been submitted to ARCOM. Second, there is no reference to any setback or open space in the letter, let alone with respect to the Castles' property. It is a letter asking for an informal review by ARCOM two days later and conveying a spirit of intended cooperation, nothing more and nothing less.

THE ALLEGED RIGHT OF THE TOWN TO IMPOSE A VIEW EASEMENT

(s)

1. The Castle's representatives assert that in 1998, the Town Council imposed against the will of one property owner a view easement of the ocean across that owner's property in favor of an adjacent property owner. The case to which they refer (Variance No. 52-98) involved a variance request to which the adjacent owner objected. Council members expressed concern about the applicant being able to meet the variance hardship test. With the objection of a neighboring property owner, the Town Council was particularly concerned, as they always are when there are objections to a variance request, with their ability to defend a court challenge of a determination that the hardship test had been met. The objecting neighbors wanted to ensure a view of the ocean, and the applicant voluntarily agreed to provide them with a view easement in an effort to appease the neighbors. *See Transcript of Town Council hearing of December 8, 1998.* As a result, the Council included that voluntary view easement as a condition of approval.

2. Without the voluntary agreement of a property owner, the government has no authority under Florida law to impose such a view easement over that owner's property for the benefit of another property owner. In Florida, there is no right of view across an adjacent property, nor can such right be acquired by prescriptive use. Therefore, the claims of nearby property owners, Gina Borman and Mr. & Mrs. William Holman, of a legal right to a view of the ocean from second story windows through the Karp's property are contrary to Florida law.

PRESERVING OCEAN VISTAS

(t) The Castle's representatives have asserted that the ARCOM criterion under Code Section 18-205(9) to protect "...unique site characteristics such as those related to scenic views, rock outcroppings, natural vistas, waterway, and similar features" requires the Town to preclude the Karps from building their guest suite on the south portion of their property. However, the Karp's property does not provide any of the "unique site characteristics" listed in that criterion. The dune which runs north/south through the middle of the property precludes anyone on the street in front of this south area of the Karps' property from seeing the ocean. The street is at an elevation of about 4.5 ft. NAVD and the top of the dune area is about 8 feet higher at an elevation of about 12.5 ft. NAVD. As the Town Attorney concluded, the Karps' proposed guest suite does not violate section 18-205(9). Furthermore, he advised the Town Council that a person in a house across the street has no right to have a view of the ocean from any place in their house preserved for them by the Karps. *See Transcript of July 14, 2010 Town Council hearing at p. 28.*

CITIZEN PETITIONS

(u) The presentation by the Castles of petitions against the Karp's proposed addition is an effort to use political pressure to affect the outcome of an evidence-based proceeding. Citizen petitions are not credible, competent substantial evidence in an evidence-based proceeding, and it is unlawful for decision-makers to give any weight to such petitions in reaching their decision in such a proceeding. Allowing petitions to be given any weight in such a proceeding would prejudice deliberations on evidence which is credible and would be a violation of due process and equal protection.

ALTERNATIVE PROPOSALS

(v) At the January 26, 2011 ARCOM meeting, architect Tom Kirchhoff presented three optional locations and footprints for the Karp's guest suite. One was an addition to the north end of the Karp's house and the other two would be located in front of their house. **See Tab E.** All three of these options would require variances, while the Karp proposal would not. One of the Town requirements for the issuance of a variance is that it must be the minimum variance necessary; see town Code Section 134-201(a)(5). Locating the guest suite on the south side of the Karp property as proposed minimizes the need for a variance by eliminating the need for any variance. Such location enhances the balance of the existing house on the property, while the Kirchhoff plan would create a substantial imbalance. Furthermore, all three of Kirchhoff's proposals would construct substantial mass immediately adjacent to the frontage of North Ocean Boulevard, while the Karp proposal would be 101 feet back into the property from the street.

Submitted by:



James R. Brindell, Esq.
Brian M. Seymour, Esq.
Ronald S. Weaver, Esq.

cc: Mayor
Town Council
Peter Elwell
John C. Randolph, Esq.
John Page
Paul Rampell, Esq.

TAB A

Leighton A. Rosenthal,
Chairman

gd

**MINUTES OF THE ARCHITECTURAL COMMISSION REGULAR MEETING
IMMEDIATELY AFTER THE WORKSHOP MEETING
WEDNESDAY, MAY 22, 1996
TOWN COUNCIL CHAMBERS, 360 SOUTH COUNTY ROAD, PALM BEACH**

I. CALL TO ORDER

The regular meeting was called to order at 9:15 a.m.

II. ROLL CALL

III. APPROVAL OF THE MINUTES FROM THE MARCH 27, 1996 WORKSHOP MEETING, MARCH 27, 1996 REGULAR MEETING, APRIL 24, 1996 WORKSHOP MEETING AND APRIL 24, 1996 REGULAR MEETING.

Mrs. Kinsella wanted the minutes of March 27, 1996 to reflect that hedges will be planted along the bike trail reference project #A41-96. The minutes had been corrected prior to the meeting.

**MOTION BY MR. BELL TO APPROVE THE MINUTES.
MOTION SECONDED BY MR. HELANDER.
MOTION CARRIED UNANIMOUSLY.**

Vice Chairman Baker announced Leighton Rosenthal is recovering from surgery in Cleveland.

Let the record show Mr. Deziel and Mr. Wideman were voting members during this meeting.

Mr. Randolph reviewed the Sunshine Law for the new members and everyone present.

IV. PROJECT REVIEW

**MR. BELL MADE THE MOTION TO DEFER THE PROJECT TO THE JUNE MEETING FOR RE-STUDY.
MOTION SECONDED BY MR. HELANDER.
MOTION CARRIED UNANIMOUSLY.**

It was suggested the architect meet with the neighbors regarding the project and look at the neighborhood.

C18-96

Applicant: Richard Furland
Address: 745 Hi-Mount Road
Architect:
Project Description:

A variance request was scheduled for the April Town Council meeting. No ARCOM application has been received. Therefore, staff recommends deferral of this project.

**MOTION BY MRS. KINSELLA TO DEFER THIS PROJECT TO THE JUNE MEETING.
MOTION SECONDED BY MR. SCHULER.**

**AMENDED MOTION BY MRS. KINSELLA TO REMOVE THIS ITEM FROM THE AGENDA.
MOTION SECONDED BY MR. SCHULER.
MOTION CARRIED UNANIMOUSLY.**

B27-96 New Residence

Applicant: Mr. and Mrs. Richard E. Smith
Address: 1100 North Ocean Blvd.
Architect: The Lawrence Group

Project Description: New single family residence.

This project was informally heard at the March meeting and deferred from the April meeting.

Mr. Bell, Mr. Schuler and Mrs. Baker disclosed ex-parte communications.

Attorney Doyle Rogers addressed the Commission. Mr. Rogers felt the objections from the neighbors and comments from the Commission have been addressed.

Architect Gene Lawrence stated the changes to the plans include smaller windows throughout the house. The round windows on the front elevation were replaced with rectangular windows. The roof on the entrance portico was changed to a flat roof. The building will have a deeply scored stucco finish such as a rusticated stone wall. The height of the lanai on the rear elevation was lowered and the amount of glass was reduced. It was agreed to take two feet off of the height of the chimneys covers. Aluminum removable shutters will be used for hurricane protection.

Mr. Bell felt the rustication should be on buildings higher than three stories.

Mr. Lawrence agreed to bring back a sketch showing the changes.

Attorney Peter Broberg addressed the Commission and said he represents Mr. and Mrs. Grubman, who live across the street to this project. His clients would like the site screening, particularly the 30 foot high seagraves at the corner remain.

MOTION BY MR. DEZIEL TO APPROVE THE PROJECT WITH THE PROVISION TO CHANGE THE ROOF LINE, CHANGE THE ½ ROUND WINDOW ABOVE THE PORTE COCHERE TO A RECTANGULAR WINDOW, REWORK THE WINDOWS ON THE EAST SIDE ADDING TRANSOMS, CHANGE THE ARCHES AT THE LIVING ROOM AND KEEP THE SEAGRAPHES AS LONG AS POSSIBLE DURING CONSTRUCTION.

MOTION SECONDED BY MR. SCHULER.

MR. BELL OPPOSED.

MOTION CARRIED 6-1.

B. NEW BUSINESS - MAJOR PROJECT

B40-96 New Two Story Commercial Building

Applicant: James C. Gavigan
Address: 396 Royal Palm Way
Architect: The Lawrence Group Architects
Project Description: New two story commercial bank building.

Mr. Lawrence stated the project needs to go to Town Council for a Special Exception and asked for deferral.

TAB B

MINUTES OF THE ARCHITECTURAL COMMISSION WORKSHOP MEETING
WEDNESDAY, JUNE 26, 1996 AT 8:00 A.M.

TOWN

COUNCIL CHAMBERS, 360 SOUTH COUNTY ROAD, PALM BEACH

I. CALL TO ORDER

The meeting was called to order at 8:05 a.m.

II. ROLL CALL

PRESENT: Laurel Baker, Vice Chairman
Bruce Helander, Member
Sally Gingras, Member
John H. Schuler, Member
Lowry M. Bell Jr., Member
Robert E. Deziel, Alternate Member
Floyd Wideman, Alternate Member
Marvin Rosenberg, Alternate Member
John C. Randolph, Town Attorney
Robert L. Moore, Director of Planning, Zoning &

Building

Timothy M. Frank, Planner/Projects Coordinator

ABSENT: Leighton A. Rosenthal, Chairman
Ethel Kinsella, Member

RECORDING SECRETARY: Gretchen Dayton
TRANSCRIBED BY: Tammy Fairchild

Vice Chair Laurel Baker reported that Leighton Rosenthal will not be able to attend the meeting as he is in New York consulting a doctor as a follow-up to his recent surgery.

Let the record show Mr. Deziel and Mr. Wideman were voting members at this meeting.

III. DISCUSSION

Mrs. Baker stated she sent comments to Mr. Frank regarding the ARCOM application forms.

The color schemes used by the Town of Gulf Stream for Mediterranean, Regency and Bermuda style homes were discussed. It was suggested to put the approved colors on a board for easy reference.

JUNE 26, 1996

I. CALL TO ORDER

The regular meeting of the Town of Palm Beach Architectural Commission of June 26, 1996, was called to order at 9:10 a.m.

II. APPROVAL OF THE MINUTES FROM THE MAY 22, 1996 WORKSHOP MEETING, AND THE MAY 22, 1996 REGULAR MEETING.

Mr. Bell asked that on Page 15 of the minutes, his comment regarding rustification should state, rustification should only be on buildings higher than two stories. Mr. Bell said that on page 18 of the minutes it is stated that Mr. Bell and Mr. Helander left the meeting. He would like the minutes to reflect that Mr. Bell and Mr. Helander were not absent from the meeting. Mrs. Baker said the minutes do not reflect that she voted against project #B 31-96, on page 9 of the minutes.

**MOTION BY MR. BELL TO APPROVE THE MEETING MINUTES AS AMENDED.
MOTION SECONDED BY MR. HELANDER
MOTION CARRIED UNANIMOUSLY.**

Mrs. Baker announced for the audience that ARCOM would be asking for elevation drawings to be in 1/4 inch scale. This will ensure consistency in evaluating projects for size and volume. This new requirement would begin in September 1996.

III. PROJECT REVIEW

A. DEFERRALS AND CONTINUATIONS - MAJOR PROJECTS

B25-96 Additions:

Applicant: Thomas and Silvia Hirschmann
Address: 102 Flagler Drive
Architect: Mark Ferguson
Project Description: One and two story additions

This project was deferred from the March and April meetings and no action was taken at the May meeting. Mr. Deziel has a Conflict of Interest form on file regarding this project and left

TAB C

REVIEWED

WITHOUT CONDITIONS ☐
 WITH CONDITIONS ☒

SUBJECT

Approval of Landscape Plan ☐
 Following Specified Changes ☒

CHANGE ROOF LINES, ADD WINDOW
TRANSOMS ON EAST ELEVATION
CHANGE ARCHES; RE-WORK WINDOWS

As Reviewed this 26TH day of JUNE 1996

TOWN OF PALM BEACH
Architectural Commission

Wynne F. For the
Chairman, Architectural Commission

STAFF APPROX REQ'D
OF CHANGES

NOTE:

INFORMATION FOR THIS PARCEL OF LAND REFLECTS
TOWN OF PALM BEACH RECORDS

18" 26" W

REVIEW OF
ARCHITECTURAL COMMISSION

DATE PL

SCALE 1/4"

1527-96

Approved providing the roof line is changed
add transoms on the windows on the east side
and remove the windows, and. **RECEIVED**
Chair the Arch's on the windows MAY 15 1996
at the Living Room

1

0012

TOWN OF PALM BEACH
BUILDING & ZONING

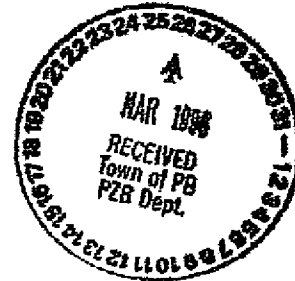
TAB D



THE LAWRENCE GROUP ARCHITECTS

25 March 1996
#9612

Mr. Timothy M. Frank, AICP
Planner/Project Coordinator
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480



Dear Mr. Frank:

We have been retained by Mr. and Mrs. Richard B. Smith to design a house for them on the vacant parcel of land comprising some 1.3 acres immediately north of the former Kennedy Estate. The land currently is under contract and scheduled to close in the month of March.

Our clients have information indicating that the state intends to move the Coastal Construction Control Line substantially to the west on 11 June of this year. This move would place the back of the building area under state control and severely damage the effective use of the property. It is their goal to have construction operations sufficiently underway at that time so as to protect the use of the land.

To this end, we will file an application to be formally heard by the Architectural Review Commission at the regularly scheduled April hearing. It is this client's intention to provide any information requests by the Commission to comply fully with all the ordinances of the Town, to address any issues raised by neighbors and generally to cooperate in all ways possible. We intend to contact the neighbors, particularly in light of the public exposure given to the Kennedy house to the south, to coordinate as much as possible with their plans in order expedite the process. ←

We request that The Architectural Review Commission allow Mr. Doyle Rogers and me to make an informal presentation to the Commission at the March 27th meeting so that we can be prepared to address any concerns at the April meeting. We understand that there can be no vote this Wednesday but it will be very helpful for us to have a preliminary review and discussion.



Town of Palm Beach
Planning, Zoning & Building Department

RECORDS CUSTODIAN CERTIFICATE

I, hereby certify that I am the duly appointed and acting Records Custodian for the Planning, Zoning & Building Department of the Town of Palm Beach, Florida, and that the foregoing is a true and correct copy of the document, the original of which is on file in the Records Office of the Town's Planning, Zoning & Building Department.

205 WORTH AVENUE, PALM BEACH, FLORIDA 33480 TELEPHONE (407) 855-0670 FAX (407) 833-5852

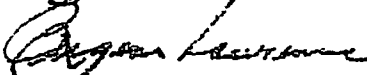
In witness whereof, I have hereunto set my hand this 27th Day of April, 1996.

By: Jackie L. Kern
Records Department Representative

Mr. Timothy M. Frank, AICP
Planner/Project Coordinator
Town of Palm Beach
Continuation

We would be grateful to the Chairman and the Commission for
granting some flexibility since we have a critical time factor.
We will contact you to determine the appropriate procedure.

Very truly yours,


EUGENE LAWRENCE

CSL:j

cc: Mr. and Mrs. Richard E. Smith
Boyle Rogers, Esquire

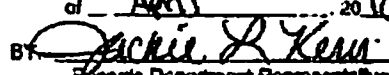


Town of Palm Beach
Planning, Zoning & Building Department

RECORDS CUSTODIAN CERTIFICATE

I, hereby certify that I am the duly designated and acting Records
Custodian for the Planning & Building Department of the Town
Of Palm Beach and that the records pertaining to a true
And correct copy of the document, the records are on file in the
Records Office of the Town's Planning & Building Department.

In witness whereof, I have hereunto set my hand this 20th day
of April, 2010

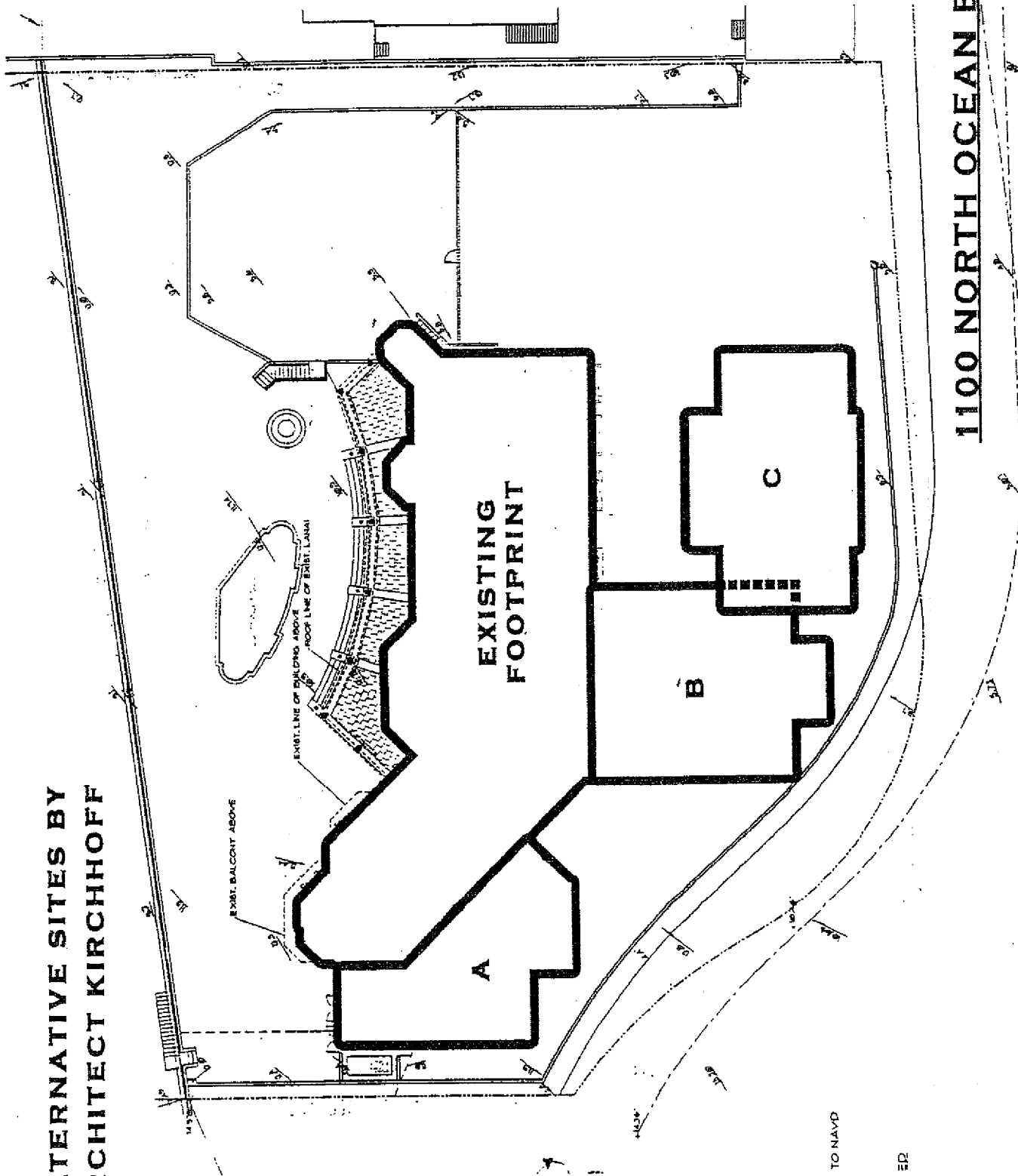
By 
Records Department Representative
Planning, Zoning & Building Department

PL 430502530

THE LAWRENCE GROUP ARCHITECTS

TAB E

ALTERNATIVE SITES BY ARCHITECT KIRCHHOFF



SCALE	DATE
NTS	08/04/98
COMPILED	DATE
BY	NTS
DATE	08/04/98
BY	NTS
DATE	08/04/98

THOMAS M. KIRCHHOFF, AIA, P.A.
ARCHITECT
1807 COMMERCIAL LANE, SUITE 108
JUPITER, FL 33408
Phone (561) 575-9904
Fax (561) 575-9904

PROPOSED GUEST HOUSE FOR
1100 NORTH OCEAN BLVD.
PALM BEACH, FLORIDA 3348

TOWN OF PALM BEACH

Town Council Meeting on: February 16, 2011

Section of Agenda

Development Review - Other

Agenda Title

Request to Consider Zoning Ordinance No. 5-11 Prior to 5:00 p.m. at the March 9, 2011, Town Council Meeting.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum from John Page dated February 4, 2011

TOWN OF PALM BEACH

Information for Town Council Meetings on: February 16, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Request to Consider Zoning Ordinance No. 5-11 prior to 5:00 p.m. at the March 9, 2011 Town Council meeting

Date: February 4, 2011

STAFF RECOMMENDATION

Staff recommends that the Town Council conduct the remaining public hearing on Ordinance No. 5-11 at the March 9, 2011 meeting prior to 5:00 p.m.

GENERAL INFORMATION

Staff is requesting that the Town Council elect to conduct the second and final reading of Ordinance No. 5-11, which will be considered at the March 9, 2011 meeting, during the course of the normal Council business. This may occur before 5:00 p.m. Florida Statutes require the Town Council to hold at least one of two public hearings to adopt a zoning ordinance after 5:00 p.m. However, the Statute provides that the time can be changed if a majority plus one of the local governing body elect to have the hearing at another time.

PBE:jsp:pc

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